# POWER PURCHASE AGREEMENT

between

ENTERGY LOUISIANA, LLC,

and

[ ][1],

dated as of [ ]

[1] **NTD:** Insert name of Seller entity.

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SCHEDULES

# POWER PURCHASE AGREEMENT

**THIS POWER PURCHASE AGREEMENT** is made and entered into as of [ ], by and between [ ], a [ ] organized and existing under the laws of the state of [ ] ("Seller") and ENTERGY LOUISIANA, LLC, a corporation organized and existing under the laws of the state of Texas ("Buyer"). Seller and Buyer are hereinafter sometimes referred to individually as a "Party" and collectively as the "Parties."

## RECITALS

**WHEREAS**, Seller will engineer, procure equipment for, design, construct, install, start up, own, manage, operate and maintain, replace, repair and test a solar photovoltaic electric generation facility located [in/near] [ ] expected to have a Nameplate Capacity equal to the Expected Capacity, as more particularly described in Schedule B; and

**WHEREAS**, in response to the 2020 ELL Request for Proposals for Solar Photovoltaic Resources (the "RFP"), [ ] submitted to Buyer a proposal setting forth commercial terms on which Seller would agree to sell, make available and deliver to Buyer the Products from such power generation facility for the Delivery Term; and

**WHEREAS**, Buyer notified [ ] that its proposal was selected for negotiation of a definitive agreement with Buyer based on the terms set forth in the RFP, including Appendix B-2 (Model PPA); and

**WHEREAS**, having concluded such negotiation, Seller wishes to sell, make available and deliver, on an exclusive basis, the Products to Buyer from such power generation facility for the Delivery Term, and Buyer wishes to purchase and receive such Products, all upon and subject to the terms and conditions set forth herein;

## AGREEMENT

**NOW, THEREFORE**, in consideration of the representations, warranties, covenants and conditions hereinafter set forth, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

## ARTICLE I
## DEFINED TERMS AND INTERPRETATION

I.1 Defined Terms. Unless the context otherwise requires, the following terms, when used in this Agreement, shall have the meanings assigned to such terms below.

"AC" means alternating current.

"Acceleration Plan" has the meaning specified in Section 3.4(a).

"Accepted Agency Rating" means (i) a long-term local issuer credit rating for Seller Parent Guarantor[2] of BBB- or better from S&P or (ii) a local long-term issuer credit rating for Seller Parent Guarantor or a senior unsecured long-term debt rating for Seller Parent Guarantor of, in each case, Baa3 or better from Moody's, except that if, at any time, (a) Seller Parent Guarantor has more than one credit rating that meets the above criteria for an Accepted Agency Rating, the applicable Accepted Agency Rating shall be the lowest such credit rating and (b) Seller Parent Guarantor has one or more credit ratings that meet the above criteria for an Accepted Agency Rating but a local long-term issuer rating from S&P or Moody's or a senior unsecured long-term debt rating from Moody's that does not meet the criteria for an Accepted Agency Rating, Seller Parent Guarantor shall not have an Accepted Agency Rating.

"Accepted Industry Practices" means those practices, methods and acts generally employed or approved by a significant portion of the solar photovoltaic generation industry in the relevant region of the United States of America during the relevant time period that, in the exercise of reasonable judgment in light of the facts known at the time a decision is made, would have been expected to accomplish the desired result consistent with good solar photovoltaic generation industry practices, reliability, safety and the requirements of applicable Laws. Accepted Industry Practices are not intended to be limited to the optimum practices, methods or acts to the exclusion of others, but rather are intended to include a spectrum of possible practices, methods and acts generally employed or approved by a significant portion of the solar photovoltaic generation industry in the relevant region of the United States of America during the relevant time period that meet the requirements of the preceding sentence.

"Accounting Certification" has the meaning specified in Section 2.3(b)(vi).

"Accounting Treatment" has the meaning specified in Section 2.3(b)(viii).

"Accounting Treatment Modifications" has the meaning specified in Section 9.9(b).

"Accounting Treatment Work-Out Notice" has the meaning specified in Section 9.9(b).

"Accounting Treatment Work-Out Period" has the meaning specified in Section 9.9(b).

"Accounting Treatment Work-Out Period Extension" has the meaning specified in Section 3.6(b).

"Adverse Litigation" means litigation or arbitration that is adverse to Buyer or any Entergy Operating Company that involves or involved, as the case may be, (a) the potential imposition of criminal liability on Buyer or any Entergy Operating Company (or their respective directors, officers, partners, members, trustees, employees, agents, or representatives), (b) the potential imposition on Buyer or any Entergy Operating Company of new or additional adverse regulation,

[2] **NTD:** This draft assumes that Seller will not be publicly rated or have an Accepted Agency Rating. Certain defined terms (e.g., Credit Event, Applicable PA Amount Reduction, SPG Minimum Threshold Credit Thresholds) and other terms of this Agreement may change if Seller is publicly rated and meets the credit criteria for an Accepted Agency Rating and liquid credit support reductions are provided on the basis of Seller's creditworthiness instead of Seller Parent Guarantor's creditworthiness.

(c) causes of action or claims against Buyer or any Entergy Operating Company (or their respective directors, officers, partners, members, trustees, employees, agents, or representatives) for or of slander, libel, defamation, damage to reputation or other similar legal claims or (d) an amount in controversy exceeding the applicable amount set forth below:

| **If the date of Seller's notice requesting consent to the applicable transfer pursuant to Section 19.6 occurs:** | **then:** |
|---|---|
| before the seventh ($7^{th}$) anniversary of the Delivery Term Commencement Date | $1,500,000 |
| on or after the seventh ($7^{th}$) anniversary of the Delivery Term Commencement Date but before the fourteenth ($14^{th}$) anniversary of the Delivery Term Commencement Date | $2,500,000 |
| on or after the fourteenth ($14^{th}$) anniversary of the Delivery Term Commencement Date | $3,500,000 |

"Affected Party" has the meaning specified in Section 10.1.

"Affiliate" means, with respect to any specified Person, any other Person directly or indirectly Controlling or Controlled by or under direct or indirect common Control with such specified Person.

"Agreement" means this Power Purchase Agreement, including the exhibits and schedules hereto.

"Annual Expected Energy Quantity" means, for any Contract Year, the amount (in MWh) for such Contract Year set forth in Schedule 1.1.1, subject to adjustment according to Section 3.9; provided, however, that, if such Contract Year has less than three hundred and sixty-five (365) Days, such amount shall be multiplied by a fraction, the numerator of which is the number of Days in such Contract Year and the denominator of which is three hundred and sixty-five (365).

"Annual Guaranteed Energy Quantity" means, for any Contract Year, (a) the amount (in MWh) for such Contract Year set forth in Schedule 1.1.2, subject to adjustment according to Section 3.9, minus (b) the Quantity Adjustment for such Contract Year; provided, however, that, if such Contract Year has less than three hundred and sixty-five (365) Days, the amount in clause

(a) of this definition shall be multiplied by a fraction, the numerator of which is the number of Days in such Contract Year and the denominator of which is three hundred and sixty-five (365).

"Applicable Environmental Attribute Program" means any renewable portfolio standard or other renewable energy or environmental attribute required compliance program, any voluntary renewable energy or environmental attribute compliance program and any other renewable energy or environmental attribute program or monitoring, tracking, certification or trading system, in each case for which the Facility, Contract Capacity, Contract Energy or Environmental Attributes are eligible, including, as of the Effective Date, the Applicable Guaranteed Programs.

"Applicable Guaranteed Programs" means **[INSERT ALL ENVIRONMENTAL ATTRIBUTE PROGRAMS FOR WHICH THE FACILITY IS ELIGIBLE AS OF THE EFFECTIVE DATE (E.G., M-RETS, STATE RPSs, GREEN-E, ETC.)]**.

"Applicable Market" means, for any applicable MISO Settlement Interval, (a) if the MISO Day-Ahead Energy Market clears with an LMP for such MISO Settlement Interval at or above the Minimum Market Price applicable to the MISO Day-Ahead Energy Market, then the MISO Day-Ahead Energy Market, or (b) if the MISO Day-Ahead Energy Market clears with an LMP for such MISO Settlement Interval below the Minimum Market Price applicable to the MISO Day-Ahead Energy Market, but the MISO Real-Time Energy Market clears with an LMP for such MISO Settlement Interval at or above the Minimum Market Price applicable to the MISO Real-Time Energy Market, then the MISO Real-Time Energy Market.

"Applicable PA Amount" means (i) prior to satisfaction or Buyer's waiver of the condition precedent set forth in Section 2.3(b)(i), [ ][3] Dollars ($[ ]), (ii) upon satisfaction or Buyer's waiver of the condition precedent set forth in Section 2.3(b)(i) until the date set forth in clause (iii) herein, [ ][4] Dollars ($[ ]), (iii) on achievement of Milestone (iv) (Full mobilization to Facility Site to commence civil and electrical works) set forth in Section 3.3 until the date set forth in clause (iv) herein, [ ][5] Dollars ($[ ]), and (iv) on and after the Commercial Operation Date, [ ][6] Dollars ($[ ]).

"Applicable PA Amount Reduction" means the applicable amount set forth in the table below based on Seller Parent Guarantor's Accepted Agency Rating, if any:[7]

| **Credit Rating** | **Applicable PA Amount Reduction** |
|---|---|

[3] **NTD:** Amount to equal $2.5 million plus (Expected Capacity multiplied by $15,000/MW).

[4] **NTD:** Amount to equal Expected Capacity multiplied by $100,000/MW.

[5] **NTD:** Amount to equal Expected Capacity multiplied by $150,000/MW.

[6] **NTD:** Amount to equal Expected Capacity multiplied by $250,000/MW.

[7] **NTD:** The "maximum reduction" for each rung in the table is based on the potential Portfolio Exposure as described in the RFP documents. For each row except the last row, the maximum "up to" Applicable PA Amount Reduction will be determined by deducting the Portfolio Exposure from the dollar amount shown in the righthand column for such row.

| | |
|---|---|
| Accepted Agency Rating: | |
| BBB+ or higher from S&P<br>Baa1 and higher from Moody's | 50% of the Applicable PA Amount, up to a maximum reduction of [Seventy-Five Million Dollars ($75,000,000)] |
| BBB from S&P<br>Baa2 from Moody's | 50% of the Applicable PA Amount, up to a maximum reduction of [Sixty-Two Million Five Hundred Thousand Dollars ($62,500,000)] |
| BBB- from S&P<br>Baa3 from Moody's | 50% of the Applicable PA Amount, up to a maximum reduction of [Fifty Million Dollars ($50,000,000)] |
| No Accepted Agency Rating and: | |
| Seller or Seller Parent Guarantor is deemed acceptable by Buyer in its sole and absolute discretion | 50% of the Applicable PA Amount, up to a maximum reduction of [Fifty Million Dollars ($50,000,000)] |
| Seller and Seller Parent Guarantor are not deemed acceptable by Buyer in its sole and absolute discretion | Zero Dollars ($0) |

As of the Effective Date, the Applicable PA Amount Reduction is [ ].[8]

"Applicable Tag Deadline" means, with respect to a tag, one (1) hour before the applicable submission deadline specified by the applicable Balancing Authority or established by the Transaction Information System for such tag, provided that, if both the applicable Balancing Authority and the Transaction Information System establish a tag submission deadline, the earliest of such deadlines shall be the "Applicable Tag Deadline".

"ARR" means an Auction Revenue Right (as defined in the MISO Rules).

"Auction Clearing Price" has the meaning given to such term in the MISO Rules.

"Available Capacity" means the MW output that the Facility is capable, as of a given moment, of producing and making available, taking into account the operating condition of the Facility, the Facility's auxiliary energy requirements, solar irradiance, temperature and relative humidity conditions, losses, and other relevant factors at such time.

"BA Penalties" means any penalties, fees, assessments and other costs, debits and charges (whether in effect as of the Effective Date or at any time in the future) assessed or imposed for non-compliance with any policy, rule, guideline, procedure, protocol, standard, criterion or requirement of any market monitor, Balancing Authority (including any applicable RTO or ISO) or other Transmission Provider (including the MISO Rules), including Imbalance Charges for Energy Imbalances and any penalties, fees, reductions in payment, assessments and other costs, debits and charges arising out (1) any mitigation action taken by, any disallowance by, or other limitation on the recovery or payment of a cost, charge, expense, or credit imposed by, any market

[8] **NTD:** To be inserted based on Buyer's evaluation of Seller Parent Guarantor's credit as of the Effective Date.

monitor or MISO in connection with such non-compliance or (2) any failure to meet the operational directives, instructions, or requirements of MISO or other applicable Balancing Authority.

"BA Time" means, as of a particular time, the time zone used for scheduling, offering and bidding the Products with the largest Balancing Authority that, as of such time, includes the Delivery Portion. As of the Effective Date, the "BA Time" is Eastern Prevailing Time.

"Balancing Authority" means the Person(s) responsible for integrating resource plans and maintaining load-interchange-generation balance within a Balancing Authority Area. As of the Effective Date, (a) the Balancing Authority in respect of the Balancing Authority Area that includes the Injection Portion includes both MISO and the local Balancing Authority at the Injection Point (being the Entergy Electric System on the Effective Date), and (b) the Balancing Authority in respect of the Balancing Authority Area that includes the Delivery Portion includes both MISO and the local Balancing Authority at the Energy Financial Delivery Point (being the Entergy Electric System on the Effective Date).

"Balancing Authority 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: (a) match, at all times, the power output of the generators within such electric power system(s) and the net power purchased from or sold to Persons outside such electric power system(s) with the load within such electric power system(s); (b) maintain scheduled interchange with other such electric power system(s), within the limits of Accepted Industry Practices; (c) maintain the frequency of such electric power system(s) within reasonable limits in accordance with Accepted Industry Practices; and (d) provide sufficient generating capacity to maintain operating reserves in accordance with Accepted Industry Practices.

"Bankrupt" means, with respect to any Person, such Person (a) 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, (b) has any such petition filed or commenced against it, (c) makes an assignment or any general arrangement for the benefit of creditors, (d) otherwise becomes bankrupt or insolvent (however evidenced), (e) 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 (f) is generally unable to pay its debts as they become due.

"Base Bank Asset Amount" means Ten Billion Dollars ($10,000,000,000).

"Billing Month" has the meaning specified in Section 11.1.

"Business Day" means any Day, except (a) Saturday, (b) Sunday and (c) (i) with respect to scheduling, bidding and/or offering of Products, a holiday as defined by NERC or (ii) with respect to payments and all other matters, a holiday observed by Federal Reserve Banks in New York, New York.

"Buyer" has the meaning specified in the introductory paragraph of this Agreement.

"Buyer-Allocated Disallowance Adjustment Amounts" means (a) all costs incurred by Buyer in connection with this Agreement for which recovery was disallowed, disapproved or denied by the express terms of Buyer's Required Governmental Approvals and (b) all payments or costs or expenses disallowed, denied or precluded (or effectively disallowed, denied or precluded) by the applicable Disallowance Adjustment Event to the extent such disallowance, denial or preclusion (or effective disallowance, denial or preclusion) is due to the active fault of Buyer in the performance of its obligations under this Agreement.

"Buyer Conditions Precedent Notice" has the meaning specified in Section 2.6(a).

"Buyer LRZ" means the Local Resource Zone in which the Energy Financial Delivery Point is located. As of the Effective Date, the Buyer LRZ is Local Resource Zone 9.

"Buyer's Required Consents" means the Consents deemed necessary or prudent by Buyer to enter into this Agreement or perform its obligations hereunder that are set forth in Schedule A, each on terms and conditions acceptable to Buyer in its sole and absolute discretion.

"Buyer's Required Governmental Approvals" means (a) the Governmental Approvals from FERC and/or each of the state or local Governmental Authorities having jurisdiction over Buyer's operations that (i) approve the Transaction and this Agreement, including approval of the full recovery of all Buyer costs associated with this Agreement and all related agreements and transactions (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 participation by Buyer in this Agreement and the Transaction serves the public convenience and necessity, is in the public interest and is prudent, and/or (ii) provide any other regulatory treatment of the Transaction and this Agreement desired by Buyer and (b) all other Governmental Approvals that are deemed necessary or prudent by Buyer to enter into this Agreement or perform its obligations hereunder, each such Governmental Approval described in clauses (a) and (b) on terms and conditions acceptable to Buyer in its sole and absolute discretion (including with respect to timing, scope and means of recovery of costs).

"Capacity Demonstration Test" means a test of the Facility to demonstrate the maximum Available Capacity based on Energy output, as measured at the Electric Interconnection Point, conducted in accordance with Accepted Industry Practices and the terms and conditions of this Agreement, including Section 3.12 and the procedures set forth in Schedule 3.12.

"Capacity-Related Benefit" means any benefit associated with the Contract Capacity, including any ZRCs, other capacity credits and similar rights and benefits, but excluding Contract Energy, Other Electric Products and Environmental Attributes.

"CFO" means cash generated from operating activities as specified on Seller Parent Guarantor's cash flow statement prepared on a consolidated basis on the date of determination in accordance with GAAP (calculated by adjusting net income for non-cash expenses and changes in working capital).

"Claim" means a claim, suit, action, cause of action, proceeding, demand, or investigation.

"COD Capacity Threshold" means, subject to Section 3.13, the lesser of (a) ninety-five percent (95%) of the Expected Capacity or (b) only following the effectiveness of a resizing (if applicable) according to Section 3.8 and Section 3.9, the Expected Capacity, as so resized.

"COD Delay Damages Cap" means [ ] Dollars ($[ ])[9].

"COD Termination Deadline" means the first date on which the aggregate Daily COD Delay Damages equal or exceed the COD Delay Damages Cap.

"Code" means the Internal Revenue Code of 1986, as amended from time to time, and any corresponding provisions of any successor tax statute.

"Commercial Operation" has the meaning specified in Section 3.1.

"Commercial Operation Date" or "COD" means the date on which Seller achieves Commercial Operation of the Facility.

"Commercial Pricing Node" has the meaning given to such term in the MISO Rules.

"Commercially Reasonable Efforts" means, with respect to any action required to be made, attempted, or taken by a Party under this Agreement, such efforts as a reasonably prudent business would undertake for the protection of its own interest under the conditions affecting such action, including the amount of notice of the need to take such action, the duration and type of the action, the competitive environment in which such action occurs and other material considerations.

"Commissioning" means "Commission Completion" under the engineering, procurement and construction contract or solar panel/inverter supply agreement(s) for the Facility (or equivalent term(s) meaning successful performance and completion of all commissioning tests and readiness for commercial operation).

"Confidentiality Agreement" means that certain Confidentiality Agreement, dated as of the date hereof, between Seller and Buyer.

"Consents" means consents, authorizations, approvals, releases, waivers, estoppel certificates, and any similar agreements or approvals (other than Governmental Approvals).

"Consumer Price Index" or "CPI" means, for any month, the Consumer Price Index, "All Urban Consumers; U.S. City Average; All Items; Not Seasonally Adjusted (base index year 1982–1984 = 100)", as published by the United States Bureau of Labor Statistics (or if such index shall cease to be published, such other index as may be reasonably agreed by the Parties) for such month.

"Contract Capacity" means the entire Available Capacity of the Facility.

"Contract Energy" means Energy associated with or provided or to be provided from the Contract Capacity.

[9] **NTD:** Amount to equal the Daily COD Delay Damages multiplied by 180 days.

"Contract Year" means (a) the period commencing at the beginning of hour ending 0100 BA Time on the Delivery Term Commencement Date and ending at the end of hour ending 2400 BA Time on the Day before the first Contract Year Anniversary Date and (b) each period of twelve (12) consecutive months thereafter, including the last Day of such period, commencing at the beginning of hour ending 0100 BA Time on each Contract Year Anniversary Date; provided, however, that the last Contract Year will begin at the beginning of hour ending 0100 BA Time on the Contract Year Anniversary Date immediately preceding the termination or expiration of this Agreement (or, if such termination or expiration occurs during the first Contract Year, on the Delivery Term Commencement Date) and will end upon termination or expiration of this Agreement.

"Contract Year Anniversary Date" means each anniversary of the Delivery Term Commencement Date.

"Contractual FinSched Confirmation Deadline" has the meaning specified in Section 7.8(d).

"Contractual FinSched Submission Deadline" means, with respect to a Financial Schedule, two (2) hours prior to the MISO FinSched Deadline for such Financial Schedule.

"Control" (including, with correlative meanings, the terms "Controlling," "Controlled by" and "under common Control with"), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities or interests having voting power, by agreement or otherwise.

"Costs" means, with respect to the Non-Defaulting Party, all (a) brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred by the Non-Defaulting Party in entering into new arrangements that replace this Agreement and (b) reasonable attorneys' fees and other costs and expenses incurred by the Non-Defaulting Party in connection with the termination of this Agreement.

"Credit Event" means the occurrence of any of the following:

(i) Seller Parent Guarantor had, at any time on or after the Effective Date, an Accepted Agency Rating and no longer has an Accepted Agency Rating;

(ii) Seller or Seller Parent Guarantor is Bankrupt; or

(iii) if Seller Parent Guarantor does not have an Accepted Agency Rating, fewer than two (2) of the SPG Minimum Credit Thresholds are satisfied.

"Credit Rating" means, with respect to any Person, on the relevant date of determination, the rating then assigned to such Person's unsecured, senior long-term debt (not supported by third party credit enhancement) by S&P or Moody's (as applicable). If no rating is assigned to such entity's unsecured, senior long-term debt by S&P or Moody's (as applicable), then "Credit Rating" shall mean the lesser of the general corporate credit rating or long-term issuer rating assigned to such Person by such rating agency.

"Current Inverters" means devices used to convert DC electric energy to AC electric energy.

"Curtailed Energy" has the meaning specified in Section 7.4(c)(i).

"Daily COD Delay Damages" has the meaning specified in Section 3.7.

"Day" or "day" means a period of twenty-four (24) consecutive hours, beginning at 0000 BA Time; provided, however, that if BA Time recognizes and adheres to daylight savings time, (i) on the Day on which daylight savings time becomes effective, the period shall be twenty-three (23) consecutive hours, and (ii) on the Day on which daylight savings time ceases to be effective, the period shall be twenty-five (25) consecutive hours.

"Daylight Hours" means the period of time during each Day that commences at sunrise on such Day, and ends at the time of sunset on such Day; provided that the time of "sunrise" and "sunset" hereunder shall be as determined for [ ][10] for such Day by the National Weather Service.

"DC" means direct current.

"Defaulting Party" has the meaning specified in Section 15.1.

"Deliverability Arrangements" means all reservations, agreements and other arrangements (including applicable interconnection, firm transmission and tagging arrangements) necessary to qualify for and obtain Full Deliverability. For the avoidance of doubt, the Deliverability Arrangements include the Electric Interconnection Agreement.

"Delivered Energy" means the Contract Energy actually generated by the Facility, injected at the Injection Point and delivered financially to Buyer at the Energy Financial Delivery Point in accordance with Section 7.8 in the Applicable Market (all as determined according to Section 8.2), up to the Maximum Delivered Contract Energy in each applicable MISO Settlement Interval.

"Delivery Delay Condition" has the meaning specified in Section 2.2(b).

"Delivery Portion" means the portion of the Required Injection Transmission System in which the Energy Financial Delivery Point is located.

"Delivery Term" has the meaning specified in Section 2.2(a).

"Delivery Term Commencement Date" means the date on which the Delivery Term commences, as determined under Section 2.2(b).

"Disallowance Adjustment Event" has the meaning specified in Section 10.3(b)(i).

"Dispute" has the meaning specified in Article XVIII.

[10] **NTD:** Insert location of the Facility.

"Dollars" or "$" means the lawful currency of the United States of America.

"E4 Settlement Submission Deadline" means 1200 BA Time on the third Day following the Day on which the MISO Settlement Interval covered by the applicable Financial Schedule occurs or such shorter period of time following such MISO Settlement Interval established by the MISO Rules for purposes of determining the net credit exposure of a Market Participant or "asset owner" in MISO.

"EA Transfer Deadline" means, with respect to any Environmental Attribute or Replacement EA, the end of the month following the month in which the MW or MWh corresponding to such Environmental Attribute or Replacement EA was or would have been, as applicable, generated by the Facility.

"Early Termination Date" has the meaning specified in Section 15.2(a).

"EBITDA" means, for any period, the net income of Seller Parent Guarantor on a consolidated basis for such period plus, without duplication and to the extent deducted in determining net income for such period, the sum of (i) interest expense, (ii) provision for Taxes based on income, (iii) depreciation expense, (iv) amortization expense, and (v) other non-cash charges, expenses, or losses (excluding any such non-cash charge to the extent it represents an accrual or reserve for potential cash charge in any future period or amortization of a prepaid cash charge that was paid in a prior period), minus, to the extent included in determining net income for such period, the sum of (a) any non-cash income or gains increasing net income for such period (excluding any such non-cash gain to the extent it represents the reversal of an accrual or reserve for potential cash charge in any prior period) and (b) any gains realized from the disposition of property outside of the ordinary course of business, all as determined on a consolidated basis.

"Effective Date" means the date of this Agreement, as specified in the opening paragraph hereof.

"Electric Interconnection Agreement" means that certain Interconnection Agreement to be executed among Seller, MISO and the Host Utility that governs the interconnection of the Facility at the Electric Interconnection Point.

"Electric Interconnection Facilities" means all lines, structures, facilities, equipment, auxiliary equipment, items, systems, devices, apparatus and other assets directly or indirectly required and installed or required to be installed by or for Seller to interconnect the Facility at the Electric Interconnection Point and to make available Contract Capacity at, and deliver Contract Energy and Other Electric Products to, the Electric Interconnection Point, including electric transmission and/or distribution lines; connection, engineering, administrative, transformation and switching equipment and apparatus; Protective Apparatus; electric metering equipment at the Facility; any Electric Metering Equipment of Seller or its Affiliates or Subcontractors at the Electric Interconnection Point; and any other metering equipment, communications equipment and safety equipment that may be directly or indirectly required to interconnect physically and electrically the Facility at the Electric Interconnection Point.

"Electric Interconnection Point" means the physical point recognized by MISO as a Commercial Pricing Node at which the Facility interconnects to the Host Utility's transmission system.

"Electric Metering Equipment" means electric meters and associated equipment, including metering transformers, telemetric devices and check meters (if any), utilized by the Balancing Authority applicable to the Electric Interconnection Point to determine the amount of Contract Energy or Other Electric Products actually generated by the Facility and delivered to the Electric Interconnection Point. Unless so utilized by the Balancing Authority applicable to the Electric Interconnection Point, Electric Metering Equipment shall not include, for purposes of this Agreement, any meters that Buyer or Seller may install, own and maintain to check the accuracy and reliability of the Electric Metering Equipment.

"Electric Reliability Organization" or "ERO" means NERC and/or the entity designated by FERC pursuant to the Energy Policy Act of 2005 to establish and oversee standards for maintaining reliability of the United States' electric grid (or any regional organization with authority delegated therefrom).

"Energy" means electric energy of the character commonly known as three-phase, sixty-hertz electric energy.

"Energy Financial Delivery Point" means the Commercial Pricing Node included in the Commercial Model (as defined in the MISO Rules) for Entergy Louisiana, LLC's (or its successor's) load (or the equivalent thereof recognized by the Balancing Authority applicable to the Delivery Portion). As of the Effective Date, the Energy Financial Delivery Point is EES.ELILD.

"Energy Imbalance" means, during any period of time, the difference between the amount of Energy that is tagged, scheduled, offered (and dispatched by a Transmission Provider) or otherwise required to be delivered to a Transmission Provider and the actual amount of Energy delivered to such Transmission Provider.

"Energy Price" means the applicable rate for $EP_i$ set forth in Schedule 5.1; provided, however, that for any Delivered Energy in excess of one hundred and fifteen percent (115%) of the Annual Expected Energy Quantity in any Contract Year, the Energy Price shall be fifty percent (50%) of such otherwise applicable $EP_i$ for such Contract Year.

"Entergy Operating Companies" means the regulated electric utilities owned, directly or indirectly, by Entergy Corporation. As of the Effective Date, the Entergy Operating Companies are Entergy Arkansas, LLC, Entergy Louisiana, LLC, Entergy Mississippi, LLC, Entergy New Orleans, LLC, and Entergy Louisiana, LLC.

"Environmental Assessment" means an environmental site assessment with respect to the Facility and the Facility Site prepared by a recognized environmental consulting firm on behalf of Seller for purposes of, among other things, satisfying CERCLA § 101(35)(B), 42 U.S.C. § 9601(35)(B), and the regulations thereunder defining "all appropriate inquiry," 40 CFR Part 312, and ASTM E1527-13, including a vapor intrusion assessment per ASTM E 2600.

"Environmental Attributes" means any and all renewable energy credits, green certificates, green tags and other renewable energy or environmental characteristics, claims, credits, benefits, emissions reductions, offsets, allocations, allowances and other attributes, however characterized, denominated, measured or entitled and whether now in existence or in the future created, associated with the Contract Capacity or the Contract Energy or otherwise attributable to the Facility. Environmental Attributes include: (i) any avoided, reduced, displaced or off-set emissions of gases (including carbon dioxide ($CO_2$), methane ($CH_4$) and other greenhouse gases (GHGs)), chemicals, pollutants (including sulfur oxides ($SO_x$), nitrogen oxides ($NO_x$), carbon monoxide (CO), mercury (Hg), soot, particulate matter and other pollutants) and other substances into the environment; (ii) all set-aside allowances and/or allocations from emissions trading programs; and (iii) all credits, certificates, tags, registrations, recordations or other memorializations, of whatever type or sort, representing any of the above. For the avoidance of doubt, Environmental Attributes (a) include all allowances, offsets, allocations, and credits for $NO_x$, $CH_4$, $CO_2$, CO, $SO_x$ and any other type of emissions that are issued, granted or provided by Governmental Authorities or other Persons in connection with the ownership, leasing, operation, repair, modification, improvement, or use of the Facility, such as, for purposes of illustration only, NOx allowances issued pursuant to the Clean Air Interstate Rule or the Clean Air Act and (b) do not include (i) the investment tax credit provided for pursuant to Section 48 of the Code (or any successor thereof), (i) the production tax credit provided for pursuant to Section 45 of the Code (or any successor thereof), if applicable, and (iii) any tax credits (including any similar or related cash grant program) associated with the Facility for which Buyer is not eligible or otherwise qualified to receive as the purchaser of the Products under this Agreement.

"Environmental Costs" means all costs and expenses of any kind (including capitalized and non-capitalized costs) incurred in connection with (i) the application for, or acquisition, maintenance, or modification of, the environmental Governmental Approvals for the Facility or (ii) compliance or non-compliance with all applicable past, present, or future environmental Governmental Approvals or Laws arising out of or relating to the Facility.

"Event of Default" has the meaning specified in Section 15.1.

"Excess ZRCs" has the meaning specified in Section 3.11(a).

"Expected Capacity" means [ ] MW (without giving effect to any resizing (if applicable) according to Section 3.8 and Section 3.9).

"Expected Maximum Energy Amount" means, for any applicable MISO Settlement Interval, the number of MWh equal to the Final Capacity (expressed in MW), multiplied by the length of such MISO Settlement Interval (expressed in hours).

"Facility" means the solar photovoltaic electric generation facility located on the Facility Site (and, subject to Section 6.2, any modifications or replacements thereto), as further described on Schedule B. The "Facility" includes the Facility Site but, for the avoidance of doubt, does not include any generation or power production units at the Facility Site (or otherwise) that are not Inverter Block Units.

"Facility Site" means the site described in Schedule B.

"FERC" means the Federal Energy Regulatory Commission.

"Final Capacity" means the Expected Capacity, as resized (if applicable) according to Section 3.8 and Section 3.9.

"Financial Schedule" means, with respect to an applicable MISO Settlement Interval, a Financial Schedule (as defined in the MISO Rules) that settles at the LMP from the Applicable Market for such MISO Settlement Interval.

"Financing Estoppel" has the meaning specified in Section 19.4(f).

"FinSched Notice" has the meaning specified in Section 7.8(c).

"FM Claims Notice" has the meaning specified in Section 10.1(a).

"Force Majeure" means any event that meets all of the following criteria: (i) the event occurs after the Effective Date; (ii) the event and its effects are not within the reasonable control, directly or indirectly, of the Party claiming Force Majeure (including its Subcontractors); (iii) the event and its effects are unavoidable or could not be prevented, overcome or removed by the reasonable efforts and diligence of the Party claiming Force Majeure (including its Subcontractors); (iv) the event and its effects do not result from the negligence or fault of the Party claiming Force Majeure (including any breach by such Party of this Agreement) or the negligence or fault of its Subcontractors; and (v) the event causes the Party claiming Force Majeure, despite such Party's (including its Subcontractors) use of reasonable efforts and diligence, to be actually delayed in performing, or unable to perform, its obligations under this Agreement, in whole or in part (for reasons other than economic hardship, including lack of money). Provided the event meets all of the criteria described above, Force Majeure shall include: landslides; droughts; earthquakes; hurricanes; tornados; tsunamis; epidemics; wars (whether declared or undeclared) or other armed conflicts; riots; explosions; civil disturbances; sabotage; vandalism; terrorism; documented threats of terrorism; and blockades. Notwithstanding anything to the contrary, Force Majeure shall not include:

(a) mechanical failure or other breakdown, flaw, defect, or failure of equipment or systems that is not the direct and proximate result of, subject to clauses (d) and (f) of this sentence, acts of God (which acts of God shall include earthquakes, hurricanes and tornadoes), epidemics, wars, riots, civil disturbances or, subject to clause (b) of this sentence, sabotage;

(b) sabotage by employees, agents, representatives or Subcontractors (including their employees, agents and representatives) of the Party claiming Force Majeure or its Affiliates;

(c) delay in obtaining, or failure to obtain or revocation of, a Governmental Approval;

(d) any event stated in the technical specifications of the Facility to be within the tolerance of the Facility;

(e) the failure or other act or omission of employees, agents, representatives or Subcontractors (including their employees, agents and representatives) of the Party claiming Force Majeure (including the failure of a Subcontractor to furnish machinery, spare parts, materials,

consumables, labor, equipment or services in accordance with its contractual obligations) or any other non-delivery, delayed delivery, shortages or other unavailability of machinery, spare parts, materials, consumables, labor, equipment or services (including any interruption or curtailment of electric transmission or any delay in achieving Full Deliverability, including with respect to Network Upgrades), unless (1) the Party claiming Force Majeure has a firm contract for the applicable service or item, provided that this clause (1) shall apply with respect to electric transmission only if and to the extent the concept of a firm contract for electric transmission exists in the relevant context, and (2) (A) in any case other than interruption or curtailment of electric transmission, the provider, if it were a party hereto, would be entitled to Force Majeure protection as an Affected Party or (B) in any case of interruption or curtailment of electric transmission, the interruption or curtailment is due solely to "force majeure" or "uncontrollable force" or similar term as defined under the applicable Transmission Provider's tariff;

(f) any weather event or condition that does not qualify as a hurricane, tornado, tsunami, or other storm of an equivalent magnitude;

(g) a Party's ability to purchase or sell the Products (or any of them) at a more advantageous price or on better terms than provided for in this Agreement;

(h) a Party's financial inability to perform;

(i) events that affect the cost of equipment or materials or other costs of developing, engineering, procuring equipment for, designing, constructing, installing, starting up, owning, leasing, financing, insuring, operating, maintaining, managing, replacing, repairing, studying, testing or other use of the Facility or changes in market conditions affecting the economics of either Party (including a change in commodity prices or increased inflation) or any other economic hardship (including lack of money);

(j) without limiting clause (f) above, (1) a lack of, or insufficient, or excessive, solar irradiance for Energy production or (2) other events or conditions (including other climatic conditions and then-existing parameters of the electrical grid) outside of the operational specifications of the Photovoltaic Modules or the relevant Facility systems; or

(k) labor strikes, slowdowns or stoppages;

provided, however, that the existence of one or more of the factors listed in the exceptions to clauses (a), (e), (f) and (j) shall not be sufficient to conclusively or presumptively prove the existence of a Force Majeure if the event does not meet the criteria described in the first sentence of this definition; provided, further, for the avoidance of doubt, that the non-dispatch or reduction in the dispatch of the Facility by MISO or other applicable Transmission Provider or interruption or curtailment of electric transmission or other limitation on Products (including Delivered Energy) by MISO or other applicable Transmission Provider, in each case, made in response to offers, bids, plans or schedules submitted to an applicable Transmission Provider (or otherwise on the basis of price signals) shall not constitute Force Majeure under any circumstance.

"Force Majeure Extension" has the meaning specified in Section 3.6(a).

"Forecaster" means a reputable third-party forecaster (not Affiliated with Seller) selected by Seller with at least five (5) years' experience in the field of solar photovoltaic electric generation forecasting.

"FTR" means a Financial Transmission Right (as defined in the MISO Rules).

"Full Deliverability" means (a) the interconnection of the Facility to the MISO transmission system with NRIS for the full Delivery Term in an amount equal to at least the Final Capacity, (b) deliverability of at least the Final Capacity on a firm network resource basis to the Energy Financial Delivery Point for the full Delivery Term, and (c) qualification of the Facility as a firm network resource and Capacity Resource (as defined in the MISO Rules) with the deliverability described in clause (b) above.

"GAAP" means those U.S. generally accepted accounting principles consistently applied.

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

"Generation Forecast" has the meaning specified in Section 7.1(a).

"Generation Forecast Deadline" has the meaning specified in Section 7.1(c)(i).

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

"Governmental Authority" means any federal, foreign, state, local, or municipal governmental body; any governmental, quasi-governmental, regulatory or administrative agency, commission, body or other authority (including FERC, any ERO, any market monitor, any Balancing Authority (including any ISO or RTO) and any other Transmission Provider) exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power; or any court or governmental tribunal.

"Guaranteed Commercial Operation Date" means [ ], as may be extended for (i) Force Majeure Extension according to Section 3.6(a), and (ii) the Accounting Treatment Work-Out Period Extension according to Section 3.6(b); provided, however, that the Guaranteed Commercial Operation Date shall only be extended by one Day for each Day when both of the extensions described in clauses (i) and (ii) above apply.

"Guaranteed Environmental Attributes" means the environmental attributes required for compliance with (or, if not a compliance program, certified, tracked or otherwise issued by) the Applicable Guaranteed Programs. For the avoidance of doubt, the Guaranteed Environmental Attributes continue to be Guaranteed Environmental Attributes, even if any Applicable Guaranteed Program ceases to be an Applicable Environmental Attribute Program due to the negligence (including gross negligence), fraud, willful misconduct or other act or omission of Seller, its Affiliates or Subcontractors, or any of their respective directors, officers, partners, members, trustees, employees, agents or representatives.

"Guaranty" means a guaranty in the form of Schedule F of Seller's payment and performance under this Agreement from Seller Parent Guarantor for the benefit of Buyer.

"Host Utility" means the Person that owns and/or leases the portion of the electrical transmission system that is directly interconnected to the Facility. As of the Effective Date, the Host Utility is Entergy Louisiana, LLC.

"Imaged Document" has the meaning specified in Section 19.18.

"Imbalance Charges" means all penalties, fees, assessments and other costs, debits and charges (whether in effect as of the Effective Date or at any time in the future) assessed or imposed for Energy Imbalances, including revenue sufficiency guarantee and similar charges, costs of purchasing imbalance or real-time Energy to settle under-generated Contract Energy; settlement at negative prices of over-generated Contract Energy; other settlement charges; and other costs, debits and charges in all cases as assessed pursuant to the MISO Rules or such other applicable tariff or rate schedule or an applicable Balancing Authority's or other applicable Transmission Provider's balance, scheduling or other requirements.

"Inadvertent Imbalance Energy" has the meaning specified in Section 4.7.

"Indemnified Loss" means any loss, liability, damage, cost or expense, including legal fees and expenses, fines, penalties, and interest expenses, suffered or incurred by an Indemnitee, including damages and liabilities for bodily injury to or death of Persons or losses of or damages to property and including those owed to third parties.

"Indemnified Party" means, in respect of a particular Claim or Indemnified Loss, the Party being indemnified (or to which the Indemnitee(s) being indemnified are related) by the Indemnifying Party pursuant to this Agreement.

"Indemnifying Party" means, in respect of a particular Claim or Indemnified Loss, the Party indemnifying the Indemnified Party or another Indemnitee pursuant to this Agreement.

"Indemnitee" means, in respect of a particular Claim or Indemnified Loss, collectively, each of the following: the Indemnified Party, its Affiliates, and their respective directors, officers, partners, members, trustees, employees, agents, and representatives.

"Injection Point" means the Electric Interconnection Point.

"Injection Portion" means the portion of the Required Injection Transmission System in which the Injection Point is located.

"Interest Rate" means, for any date, the lesser of (i) 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* on such Day (or if not published on such Day, on the most recent preceding Day on which such prime lending rate is published) plus two percent (2%) and (ii) the maximum rate permitted by applicable Law.

"Inverter Block Unit" means each Current Inverter, together with the DC collection systems and Photovoltaic Modules connected to such Current Inverter, that have been installed on the Facility Site as part of the Facility and satisfied the requirements for Commercial Operation applicable thereto, or (subject to Section 6.2) any replacement or substitute therefor after Commercial Operation.

"Inverter Block Unit Capacity" means, with respect to each Inverter Block Unit, the manufacturer's output rating (expressed in MW AC) of the Current Inverter included in such Inverter Block Unit.

"ISO" means a Person operating a transmission system and found by the FERC to be an Independent System Operator.

"Law" means any statute, law (including environmental law), rule, regulation, ordinance, code, or other applicable legislative or administrative action of any Governmental Authority, whether in effect as of the Effective Date or at any time in the future, or any judicial, regulatory or administrative interpretation thereof having the force or effect of the foregoing (including the common law and Governmental Approvals). Laws include the policies, rules, guidelines, procedures, protocols, standards, criteria and requirements of FERC, the Host Utility and any market monitor, the Balancing Authority (including any applicable RTO or ISO), other Transmission Provider or ERO, including the MISO Rules and the NERC reliability standards promulgated pursuant to 18 C.F.R. Part 39.

"Lender" means any Person that provides debt or equity capital, loans, credit or credit support to, acts as a counterparty on any interest rate or currency hedging arrangements with, or provides other financing (including lease financing) to, Seller or any Affiliate of Seller in respect of the acquisition, construction, ownership, operation, maintenance, management, leasing and/or other use of the Facility. The term "Lender" also includes any such Person that acts in the capacity of Lender in connection with any refinancing by Seller or any Affiliate of Seller of such financing.

"Lender Consent" has the meaning specified in Section 19.4(f)."Letter of Credit" means an irrevocable standby letter of credit issued by a U.S. commercial bank or a U.S. branch of a foreign bank, which U.S. commercial bank or U.S. branch has at the applicable time total assets of at least the amount determined in accordance with Schedule E and a Credit Rating of at least "A-" from S&P and "A3" from Moody's, in substantially the form attached hereto as Schedule 12.2.

"LMP" means, for any MISO Settlement Interval in each MISO Market, the price at which MISO settles such MISO Market at the Energy Financial Delivery Point for such MISO Settlement Interval; provided, however, that, in the case neither such price nor any successor price any longer exists in MISO or such price (or any successor price) is unavailable for any MISO Settlement Interval, then the LMP shall be such other reference or index price for such MISO Settlement Interval as is reasonably acceptable to the Parties (expressed in $/MWh) that reflects as closely as possible the intention of the Parties as expressed herein. As of the Effective Date, the LMP is, for any MISO Settlement Interval, (a) in the MISO Day-Ahead Energy Market, the Day-Ahead Ex Post LMP (as defined in the MISO Rules) for such MISO Settlement Interval at the Energy Financial Delivery Point and (b) in the MISO Real-Time Energy Market, the Real-Time Ex Post

LMP (as defined in the MISO Rules) for such MISO Settlement Interval at the Energy Financial Delivery Point.

"Local Resource Zone" means each of the smallest geographic areas prescribed by MISO for purposes of addressing congestion that limits Planning Resource (as defined in the MISO Rules) deliverability and/or otherwise for purposes of defining and/or allocating Capacity-Related Benefits. As of the Effective Date, "Local Resource Zone" refers to each Local Resource Zone (as defined in the MISO Rules). If at any time after the Effective Date, MISO sub-divides Local Resource Zones (as defined in the MISO Rules) into smaller geographic areas, "Local Resource Zone", as used in this Agreement, refers to each of the smallest of such smaller geographic subdivisions.

"Losses" means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement, determined in a commercially reasonable manner. For the avoidance of doubt, calculation of Losses shall take into account any Gains resulting from termination of this Agreement, determined in a commercially reasonable manner.

"LPSC" means the Louisiana Public Service Commission.

"Major Planned Maintenance" means Planned Maintenance that interrupts or reduces the availability of the Contract Capacity, the operation of the Facility or the physical deliverability of the Contract Energy at the Injection Point or the deliverability of the other Products at the OP Delivery Point by more than ten percent (10%) of the Final Capacity.

"Market Monitor" or "market monitor" means a Person that is the Market Monitoring Unit (as defined in 18 C.F.R. 35.28) of an ISO or RTO. For the avoidance of doubt, the "Market Monitor" or "market monitor" for MISO, as of the Effective Date, is Potomac Economics, which serves as MISO's Independent Market Monitor.

"Market Participant" has the meaning given to such term in the MISO Rules.

"Maximum Adjustment" means, for any MISO Settlement Interval, the lesser of the Expected Maximum Energy Amount or the Maximum Delivered Contract Energy for such MISO Settlement Interval.

"Maximum Delivered Contract Energy" means, for any applicable MISO Settlement Interval, (a) if Buyer does not exercise its curtailment rights, and there is no deemed curtailment, pursuant to Section 7.4 for such MISO Settlement Interval, (i) the Expected Maximum Energy Amount plus (ii) the amount, if any, of Contract Energy in excess of the Expected Maximum Energy Amount that Buyer elects, in its sole and absolute discretion, by issuance of a notice to Seller (which notice may be included in Buyer's notice to Seller of the Minimum Market Price) increasing the Maximum Delivered Contract Energy for such MISO Settlement Interval or (b) if Buyer exercises its curtailment rights, or there is a deemed curtailment, pursuant to Section 7.4 for such MISO Settlement Interval, the amount of Contract Energy reflected in Buyer's exercise of its curtailment rights or the amount of Contract Energy that Seller is required to settle with Buyer after giving effect to the deemed curtailment pursuant to Section 7.4.

"Milestone" has the meaning specified in Section 3.3.

"Minimum Market Price" means, with respect to any MWh of Contract Energy for a MISO Settlement Interval in a given MISO Market, the lowest LMP at which Buyer is willing, in the context of such MISO Market, to take delivery of such MWh at the Energy Financial Delivery Point during such MISO Settlement Interval, as provided by Buyer to Seller pursuant to Section 7.3(a)(iii).

"Minimum Three Contract Year Energy Quantity" means, for any Contract Year, seventy-five percent (75%) of the Annual Guaranteed Energy Quantity for such Contract Year.

"Minimum Two Consecutive Contract Year Energy Quantity" means, for any Contract Year, eighty percent (80%) of the Annual Guaranteed Energy Quantity for such Contract Year.

"MISO" means Midcontinent Independent System Operator, Inc.

"MISO Day-Ahead Energy Market" means the Day-Ahead Energy and Operating Reserve Market (as defined in the MISO Rules).

"MISO FinSched Deadline" means the deadline for submission and confirmation to MISO of a Financial Schedule for the MISO Settlement Interval covered by such Financial Schedule.

"MISO Market" means each of the MISO Day-Ahead Energy Market and the MISO Real-Time Energy Market.

"MISO Real-Time Energy Market" means the Real-Time Energy and Operating or Reserve Market (as defined in the MISO Rules).

"MISO Rules" means the policies, rules, guidelines, procedures, protocols, standards, criteria, instructions, directives and requirements of MISO, including the MISO Tariff and MISO's Business Practice Manuals.

"MISO Settlement Interval" means, as of any applicable time with respect to the applicable MISO Market, the interval on which MISO settles such MISO Market at such time. As of the Effective Date, the MISO Settlement Interval is the Hour (as defined in the MISO Rules) for the MISO Day-Ahead Energy Market and on a five (5)-minute basis for the MISO Real-Time Energy Market.

"MISO Tariff" means the Open Access Transmission, Energy and Operating Reserve Markets Tariff of MISO.

"MMP Deadline" means, in respect of each MISO Settlement Interval for a given MISO Market, at least two (2) hours before the applicable deadline established by the Balancing Authority applicable to the Injection Portion for submitting a schedule, offer or bid for such MISO Settlement Interval in such MISO Market.

"Monthly Invoice" has the meaning specified in Section 11.1.

"Moody's" means Moody's Investor Services, Inc.

"MW" means megawatt or megawatts, as the context requires.

"MWh" means megawatt-hour or megawatt-hours, as the context requires.

"Nameplate Capacity" means the lesser of the following (expressed in MW AC):

(a) the sum of the Inverter Block Unit Capacities of all Inverter Block Units in the Facility; or

(b) the continuous active power rating at a power factor of 0.95 (leading or lagging) of the step-up transformer that connects the Facility to the Host Utility's transmission system.

"Negative Recovery Event" means the issuance or coming into effect of any Order or other applicable Law that disallows, denies or precludes (or has the effect of disallowing, denying or precluding) the full and complete recovery by Buyer from its customers of any payment made or to be made by Buyer under this Agreement or any cost or expense incurred or to be incurred by Buyer (including the cost of replacement Products) arising out of or in connection with this Agreement.

"NERC" means the North American Electric Reliability Corporation.

"Network Upgrades" shall mean the additions, modifications and upgrades required at or beyond the Electric Interconnection Point to accommodate Full Deliverability.

"Non-Defaulting Party" has the meaning specified in Section 15.1(a).

"NRIS" means Network Resource Interconnection Service (as defined in the MISO Rules).

"OP Delivery Point" means, for any Product that is physical in nature (other than Contract Energy), (a) if such Product is capable of being delivered to the Energy Financial Delivery Point and is recognized and marketable in the Balancing Authority Area applicable to the Delivery Portion, the Energy Financial Delivery Point, or (b) otherwise, the Injection Point.

"Operating Representative" has the meaning specified in Section 19.19.

"Order" means any order, injunction, judgment, decree, ruling, writ or assessment of a Governmental Authority or decision of an authorized arbitrator.

"Other Electric Products" means reactive power production, reactive power absorption, voltage control, regulation and frequency response, energy balancing, load following, reserves and any other services, capabilities or products (including any ancillary services, but excluding Capacity-Related Benefits and Environmental Attributes) available from or associated with the Contract Capacity and/or Contract Energy.

"Outage" means an interruption or reduction in the availability of the Contract Capacity, the operation of the Facility or the physical deliverability of Contract Energy at the Injection Point

or the deliverability of the other Products at the OP Delivery Point, whether due to maintenance (planned or unplanned) of the Facility (or any portion thereof), the interruption or curtailment of transmission service, any order or directive of FERC, the Host Utility or any market monitor, Balancing Authority (including any applicable RTO or ISO), other Transmission Provider, the ERO or other Governmental Authority, or otherwise (except that it shall not be considered an "Outage" if such interruption or reduction occurs as a result of a lack of, or insufficient, or excessive, solar irradiance for Energy production).

"Outside Date" has the meaning specified in Section 3.3.

"P50 Quantity" means the annual expected Energy deliveries at the Electric Interconnection Point from the Facility at which there is a 50% probability that the actual Energy deliveries at the Electric Interconnection Point for a given year will exceed such annual expected amount and a 50% probability that the actual Energy deliveries at the Electric Interconnection Point for a given year will be less than such annual expected amount.

"P90 Quantity" means the annual expected Energy deliveries at the Electric Interconnection Point from the Facility at which there is a 90% probability that the actual Energy deliveries at the Electric Interconnection Point for a given year will exceed such annual expected amount and a 10% probability that the actual Energy deliveries at the Electric Interconnection Point for a given year will be less than such annual expected amount.

"Performance Assurance" means credit support in the Required PA Amount in the form of a Letter of Credit or other security acceptable to Buyer in its sole and absolute discretion.

"Permitted Planned Maintenance" means (a) Major Planned Maintenance that is scheduled in advance with Buyer according to Section 9.6 and included in an agreed Planned Maintenance Schedule and (b) other Planned Maintenance performed according to Section 9.6.

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

"Photovoltaic Module" means each solar power photovoltaic module that has been installed on the Facility Site as part of the Facility and satisfied the requirements for Commercial Operation applicable thereto, or (subject to Section 6.2) any replacement or substitute therefor after Commercial Operation.

"Planned Maintenance" means an Outage for maintenance or other service to the Facility that does not require immediate interruption or reduction in the availability of the Contract Capacity, the operation of the Facility or the physical deliverability of Contract Energy at the Injection Point or the deliverability of the other Products at the OP Delivery Point.

"Planned Maintenance Schedule" has the meaning specified in Section 9.6(b).

"Planning Resource Auction" has the meaning given to such term in the MISO Rules.

"Potential Event of Default" means an event, circumstance or occurrence that, with notice or the passage of time or both, would constitute an Event of Default.

"Products" means the Contract Capacity, Capacity-Related Benefits, Environmental Attributes, Contract Energy (including Delivered Energy) and Other Electric Products.

"Progress Report" has the meaning specified in Section 3.2(b).

"Project Documents" means all agreements and documents to which Seller or any of its Affiliates is a party or by which any of such Persons or their assets are bound relating to the development, engineering, procurement of equipment, design, construction, installation, start-up, ownership, leasing, financing, insuring, operation, maintenance, management, replacement, repair, studying, testing or other use of the Facility, in whole or in part, including agreements and documents related to the real property interests serving the Facility, the Electric Interconnection Agreement and the other Deliverability Arrangements.

"Project Schedule" is the detailed permitting, engineering, financing, and construction schedule for the Facility attached as Schedule 3.2(a).

"Protective Apparatus" means such equipment and apparatus, including protective relays, circuit breakers and the like, necessary or appropriate to isolate the Facility from the electrical system to which it is connected consistent with Accepted Industry Practices, including equipment required to protect (a) the electrical system(s) to which the Facility is connected and other electrical systems to which such electrical system(s) is/(are) directly or indirectly connected, and the customers on any such electrical system(s), from faults occurring at the Facility and (b) the Facility from faults occurring on the electrical system(s) to which the Facility is connected or on other electrical systems to which such electrical system(s) is/(are) directly or indirectly connected.

"QF Energy" means energy that is delivered on an as-available basis to the utility without notice to the utility, as provided for by the Public Utility Regulatory Policies Act of 1978 and the applicable state regulatory authority.

"Qualified Operator" means a Person that has at least five (5) years' experience operating power generation facilities generally similar to the Facility.

"Quantity Adjustment" means, with respect to any period, (a) the Contract Energy that would have been, but was not, Delivered Energy during such period (up to the Maximum Adjustment for each applicable MISO Settlement Interval during such period) due solely to Force Majeure, plus (b) any Curtailed Energy during such period. Seller shall provide to Buyer a calculation of the quantity of Contract Energy described in clause (a) above (determined in accordance with the terms of this Agreement and Accepted Industry Practices), and such calculation shall be subject to audit and dispute by Buyer.[11]

[11] If the Facility is registered in MISO as a Dispatchable Intermittent Resource, "Quantity Adjustment" will include Contract Energy that would have been provided but for MISO's re-dispatch or reduction of the dispatch of the Facility in the MISO Real-Time Energy Market (excluding, for the avoidance of doubt, any Reliability Curtailment).

"Recording" has the meaning specified in Section 19.22.

"Reference EA Compliance Payment" means, with respect to any Environmental Attribute or Replacement EA, the highest "alternative compliance payment" or equivalent concept applicable among the Required Qualified Programs corresponding to such Environmental Attribute or Replacement EA.

"Release Date" has the meaning specified in Section 12.2.

"Reliability Curtailment" means any curtailment (a) made, initiated, directed or ordered by any ERO, the Host Utility, any market monitor, any Balancing Authority (including any ISO or RTO), any other Transmission Provider or any other Person other than Buyer (taking into account Section 1.5) or (b) resulting, in whole or in part, from any curtailment, limitation or shortcoming (including any scheduled or unscheduled outage) on, or other circumstance relating to, any transmission or distribution system, including emergencies or reliability events or conditions (even if any order, directive or other communication from any such Person is, or the occurrence of any such curtailment, limitation or shortcoming or circumstance condition is, communicated to Seller through Buyer).

"Replacement EAs" means, for any MW of Contract Capacity or MWh of Contract Energy, environmental attributes of equivalent or higher market and compliance/qualification value (meaning that such environmental attributes satisfy the compliance requirements of (or, if not a compliance program, were certified, tracked or otherwise issued by) at least the Applicable Environmental Attribute Programs and have at least an equal market and compliance/ qualification value within each such program), and the same vintage, as the Environmental Attributes for which, if such MW or MWh were generated by the Facility from photovoltaic solar energy conversion, injected at the Injection Point and delivered financially to Buyer at the Energy Financial Delivery Point in accordance with Section 7.8, such MW or MWh would be eligible (subject to the last sentence of Section 4.2(e))); provided, however, that, in the context of defining Replacement EAs for purposes of satisfying Seller's obligation to obtain and transfer to Buyer the Guaranteed Environmental Attributes, if any Applicable Guaranteed Program is no longer an Applicable Environmental Attribute Program, the Replacement EAs must nonetheless satisfy the compliance requirements of (or, if not a compliance program, be certified, tracked or issued by) the Applicable Guaranteed Program and, as a result, environmental attributes with only "equivalent" compliance/ qualification value to the Environmental Attributes would not be considered "Replacement EAs".

"Replacement Product" means electric generating capacity, capacity-related benefits, environmental attributes, Energy or other electric products from a generation resource other than the Facility that are provided or delivered to replace or substitute for Contract Capacity (or any Capacity-Related Benefit, Environmental Attribute, Contract Energy or Other Electric Product associated therewith), in whole or in part, pursuant to Section 4.6.

"Replacement ZRCs" has the meaning specified in Section 3.11(a).

"Required Injection Transmission System" means the Transmission System (as defined in the MISO Rules).

"Required PA Amount" means the Applicable PA Amount minus the Applicable PA Amount Reduction, if any.

"Required Qualified Programs" means, with respect to any Environmental Attribute or Replacement EA, the Applicable Environmental Attribute Programs and Applicable Guaranteed Programs for which such Environmental Attribute or Replacement EA is required by this Agreement to be qualified or eligible.

"Requisite Force Majeure Period" means (a) if the applicable period of performance excused by the Force Majeure began prior to the end of the seventh ($7^{th}$) Contract Year, twelve (12) months, (b) if the applicable period of performance excused by the Force Majeure began at or after the end of the seventh ($7^{th}$) Contract Year but prior to the end of the fourteenth ($14^{th}$) Contract Year, nine (9) months or (c) if the applicable period of performance excused by the Force Majeure began at or after the end of the fourteenth ($14^{th}$) Contract Year, six (6) months.

"RFP" has the meaning specified in the second recital.

"RTO" means any Person that satisfies the characteristics and functions of Regional Transmission Organizations as set forth in 18 C.F.R. 35.34.

"S&P" means Standard & Poor's Financial Services LLC.

"Seller" has the meaning specified in the introductory paragraph of this Agreement.

"Seller Conditions Precedent Notice" has the meaning specified in Section 2.6(a).

"Seller Parent Guarantor" means any Person that directly or indirectly Controls Seller and provides the Guaranty to Buyer pursuant to the terms of this Agreement.

"Seller's Cost Scope" means (a) the ownership, leasing, financing, insuring, development, engineering, procurement of equipment for, design, construction, installation, start-up, operation, maintenance, management, replacement, repair, studying, testing and other use of the Facility (or any part thereof), including the real property interests related thereto, (b) the conduct of business by Seller, (c) Seller's or Buyer's functions as Market Participant (or similar representative) of the Facility pursuant to Section 7.2, (d) the provision, delivery and transfer to Buyer (and, if applicable, tagging, scheduling, offering and bidding into the Balancing Authority applicable to the Injection Portion) of the Products (including any required Financial Schedules) and (e) the performance by Seller of its other obligations under this Agreement.

"Seller's Required Consents" means the Consents necessary for Seller to enter into this Agreement or perform its obligations hereunder that are set forth in Schedule C.

"Seller's Required Governmental Approvals" means the Governmental Approvals necessary for Seller to enter into this Agreement or perform its obligations hereunder that are set forth in Schedule D.

"Specified Seller Fault Event" means (i) the gross negligence, fraud or willful misconduct of, or the intentional withholding or over-generation, or under-forecasting, of Contract Capacity,

Capacity-Related Benefits, Contract Energy, Environmental Attributes and/or Other Electric Products by, Seller, its Affiliates or Subcontractors, or their respective directors, officers, partners, members, trustees, employees, agents or representatives, or (ii) a breach of Seller's obligations under this Agreement (including Section 4.4 and Section 9.1(b)).

"Specified Tag Agent" means any tag agent designated by Buyer in its sole and absolute discretion.

"SPG Minimum Credit Thresholds" means (i) a CFO/Total Debt ratio for Seller Parent Guarantor of at least 0.30, (ii) a Total Debt/Capital ratio for Seller Parent Guarantor of less than 0.45, and (iii) a Total Debt/EBITDA ratio for Seller Parent Guarantor of less than 3.0, each as determined annually based on Seller Parent Guarantor's audited financial statements for the prior fiscal year.

"Subcontractors" means, with respect to a Party, any (direct or indirect) contractor, subcontractor, supplier or vendor of such Party (including any original equipment manufacturer); provided, however, that Seller and Seller's Subcontractors shall be deemed not to be "Subcontractors" of Buyer.

"Target Date" has the meaning specified in Section 3.3.

"Tax Equity Financing" means a transaction or series of transactions involving one or more investors seeking a return that is enhanced by tax credits and/or tax depreciation (each a "Tax Equity Investor") and generally (i) described in Revenue Procedures 2001-28 (sale leaseback (with or without "leverage")), 2007-65 (flip partnership) or 2014-12 (flip partnership and master tenant partnership) as those revenue procedures are reasonably applied or analogized to a solar project transaction (as opposed to a wind farm or rehabilitated real estate) or (ii) contemplated by Section 50(d)(5) of the Code, as amended (a pass-through lease).

"Taxes" means any and all foreign, federal, state, local, municipal and/or other taxes, withholdings, assessments, impositions, duties, fees or similar charges, however denominated, imposed, levied or charged by any Governmental Authority (excluding, for this purpose, any ERO, the Host Utility, any market monitor, any Balancing Authority (including any ISO or RTO) and any other Transmission Provider) with jurisdiction on any Party or item or service that is the subject of this Agreement, together with all interest, penalties or additions payable with respect thereto, including ad valorem, real and personal property, occupation, payroll, severance, production, emissions, generation, first use, conversion, processing, carbon, energy, transmission, distribution, utility, gross receipts, privilege, sales, use, excise, transfer, transaction, and stamp taxes, import duties and charges, customs broker fees and other similar costs of importation, foreign value-added and other taxes or charges, now existing or in the future applicable, whether disputed or not, but excluding taxes based on net income or net worth.

"Termination Payment" has the meaning specified in Section 15.2(b).

"Termination Settlement Amount" means, with respect to the Non-Defaulting Party, the Losses, if any, and Costs, each expressed as a positive amount in Dollars, that such Party incurs as a result of the termination of this Agreement pursuant to Section 15.2.

"Transaction" means the transactions contemplated by this Agreement.

"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.

"Transmission Provider" means any Person that owns, leases, operates, controls, administers and/or coordinates transmission or distribution facilities used for the transmission or distribution of electricity, or any other Person that performs any functions supporting such functions, including the Persons that, as of the Effective Date, constitute Entergy Operating Companies, each in its capacity as the owner and/or lessee of regulated transmission and distribution functions (which, for the avoidance of doubt, includes their respective successor(s) in such capacity), and any market monitor or Balancing Authority (including MISO and any other applicable RTO or ISO).

"Unit Contingent" or "Unit Contingency" means that Seller's failure to deliver the Products intended to be supplied from the Facility is excused to the extent that the Facility is unavailable to produce and deliver Contract Capacity, Capacity-Related Benefits, Environmental Attributes, Contract Energy and/or Other Electric Products (as applicable) due to (i) Permitted Planned Maintenance, (ii) Force Majeure, (iii) an Outage, (iv) a Reliability Curtailment or (v) any other event or circumstance (including solar irradiance and other climatic conditions, but excluding economic considerations) that affects the Facility so as to prevent Seller from performing its obligations hereunder, provided, that, such event or circumstance is not a result of a Specified Seller Fault Event. The foregoing shall not be construed to eliminate, limit, or otherwise restrict Buyer's rights or remedies provided in this Agreement in the event of the occurrence of a Unit Contingency (including any liquidated damages applicable in the event of a Unit Contingency pursuant to Section 4.3(b) and Section 6.1 and the other requirements of Section 4.3(b) and Section 6.1 in respect of the shortfalls described therein). For the avoidance of doubt, the non-dispatch or reduction in the dispatch of the Facility by MISO or other applicable Transmission Provider or interruption or curtailment of electric transmission or other limitation on Products (including Delivered Energy) by MISO or other applicable Transmission Provider, in each case, made in response to offers, bids, plans or schedules submitted to MISO or other applicable Transmission Provider (or otherwise on the basis of price signals) shall not constitute a Unit Contingency under any circumstance.

"Variable Payment" means the payment to be made by Buyer to Seller pursuant to Section 5.1 in respect of Delivered Energy (up to the Maximum Delivered Contract Energy in each applicable MISO Settlement Interval) during the relevant month.

"ZRC" means a Zonal Resource Credit (as defined in the MISO Rules) corresponding to the zone in which the Energy Financial Delivery Point is located.

I.2 Interpretation. In this Agreement, unless otherwise expressly provided herein:

(a) Words singular and plural in number shall be deemed to include the other, and pronouns having masculine or feminine gender shall be deemed to include the other.

(b) Subject to Section 1.2(f) and Section 1.5, any reference to any Person includes its successors and assigns and, in the case of any Governmental Authority (including any Entergy Operating Company in its capacity as the owner and/or lessee of regulated transmission and distribution functions or any other Transmission Provider), any Person or organization, division, group or department succeeding to or assuming all or part of its functions and capacities as a Governmental Authority.

(c) Any reference in this Agreement to any Article, Section, Exhibit or Schedule means and refers to the article or section contained in, or exhibit or schedule attached to, this Agreement.

(d) Other grammatical forms of defined words or phrases have corresponding meanings.

(e) Relative to the determination of any period of time, "from" means "from and including," "to" means "to but excluding" and "through" means "through and including."

(f) Subject to Section 1.5, a reference to a Party includes that Party's successors and permitted assigns.

(g) A reference to a document or agreement, including this Agreement, includes a reference to that document or agreement as has been, or may be, amended, supplemented, restated or otherwise modified and in effect from time to time, and a reference to any particular Law, including to a term defined in, or other provision of, any particular Law (including the MISO Rules), means such Law, term or provision as has been, or may be, amended, supplemented, codified, re-codified, succeeded or otherwise modified, in whole or in part, and in effect from time to time, including by rules and regulations promulgated thereunder and by succession of successor statutes, rules, regulations, and orders.

(h) If any payment hereunder would occur or be due on a Day that is not a Business Day, then such payment shall occur or be due on the next following Business Day.

(i) A reference to "including" (and, with correlative meaning, "include" and other grammatical forms of same) means including without limiting the generality of any description preceding such term.

(j) The terms "hereunder," "hereof," "hereto," and words of similar import are references to this Agreement as a whole and not to any particular section or other provision hereof.

(k) In the event of any conflict that cannot reasonably be reconciled between the provisions of the body of this Agreement and those of any schedule or exhibit hereto, the provisions of the body of this Agreement shall control and prevail, except in the case of Schedule 7.2(b) (if and when applicable according to Section 7.2(b)).

(l) All indices, titles, subject headings, section titles and similar items in this Agreement are provided for the purpose of reference and convenience only and are not intended to be inclusive or definitive or to affect the meaning of the contents or scope of this Agreement.

(m) Except as otherwise expressly provided, all calculations and computations pursuant to this Agreement shall be carried and rounded to the nearest two (2) decimal places, except that (i) percentages that can also be expressed as decimals in accordance with this Agreement shall, if expressed as decimals, shall be carried and rounded to the nearest four (4) decimal places, (ii) all amounts expressed in MWh shall be rounded to the nearest thousandth of a MWh and (iii) all amounts expressed in MW shall be rounded to the nearest thousandth of a MW. Notwithstanding the foregoing, if the Balancing Authorit(y)(ies) applicable to the Delivery Portion utilize a rounding methodology for settlement purposes other than the one set forth above, amounts of Contract Capacity, Contract Energy and Other Electric Products pursuant to this Agreement shall be rounded in accordance with the rounding methodology utilized by such Balancing Authorit(y)(ies) from time to time for settlement purposes.

(n) A reference in this Agreement to "notice" shall be deemed to mean "written notice," and the terms "written notice" and "notice" shall have no distinction for purposes of the construction of this Agreement.

(o) A reference in this Agreement to "satisfaction" or "fulfillment" (or other term of equivalent meaning) of a condition set forth in Section 2.3 (including in the lead-in to each of Section 2.3(a) and Section 2.3(b) and in the second sentence of each of Section 2.5(a) and Section 2.5(b)) refers to the satisfaction or fulfillment of the substance of such condition, ignoring the passage (or not) of the date specified in each applicable condition. Such dates are specified only for purposes of Section 2.6(b), the first sentence of each of Section 2.5(a) and Section 2.5(b), and Section 3.8.

(p) The word "or" will have the inclusive meaning represented by the phrase "and/or", unless the context clearly indicates that an exclusive meaning is intended.

(q) A reference in this Agreement to MW (or power output or capacity or words of similar import) or MWh (or energy or words of similar import) shall be deemed to be AC, unless otherwise expressly provided.

I.3 Technical Meanings. Words not otherwise defined herein that have well-known and generally accepted technical or trade meanings are used herein in accordance with such recognized meanings.

I.4 Joint Drafting. Each Party acknowledges and agrees that it participated in the drafting and review of this Agreement. The terms of this Agreement and any documents or instruments delivered pursuant hereto shall be construed without regard to the identity of the Person who drafted the same. Any rule of construction that a document shall be construed against the drafting party shall not apply either to this Agreement or to such other documents and instruments.

I.5 Separate Entities. Seller expressly acknowledges and agrees that, for purposes of this Agreement, any Host Utility, Balancing Authority or other Transmission Provider shall be deemed to be a separate entity and separate contracting party from Buyer even if it is the same legal entity as Buyer or an Affiliate of Buyer, and even if any orders, directives or other communications from such entities are communicated to Seller through Buyer. Without limiting

the foregoing, the acts and omissions of any Host Utility, Balancing Authority or other Transmission Provider shall not be deemed to be acts and omissions of Buyer for any purpose arising out of or relating to this Agreement.

## ARTICLE II
## TERM

II.1 Contract Term. This Agreement shall be effective as of the Effective Date and shall have a term that ends according to Section 2.2(c).

II.2 Delivery Term.

(a) The "Delivery Term" means the period of time during which Seller and Buyer are obligated to sell and purchase the Products in accordance with the terms hereof, as determined according to Section 2.2(b) and Section 2.2(c).

(b) Unless this Agreement has been terminated in accordance with its terms, the Delivery Term shall commence at the beginning of hour ending 0100 BA Time on the later of (i) the date six (6) months prior to the Guaranteed Commercial Operation Date or (ii) the date ten (10) Business Days after the first date on which both the Buyer Conditions Precedent Notice and the Seller Conditions Precedent Notice have been delivered; provided, however, that if, as of the Generation Forecast Deadline in respect of the Day that would otherwise constitute the Delivery Term Commencement Date or anytime thereafter through the beginning of hour ending 0100 BA Time on such Day, (1) there is an Outage, including as a result of Force Majeure, that, individually or collectively, reduces the amount of Contract Capacity that Seller could reliably make available or Contract Energy that Seller could reliably inject at the Injection Point or other Products that Seller could reliably deliver at the OP Delivery Point, in each case, in accordance with the requirements of this Agreement to a level that is below ninety percent (90%) of the Final Capacity, (2) any of the conditions to Commercial Operation cease to be satisfied, or (3) there is an Event of Default or Potential Event of Default of Seller (each of the circumstances described in clause (1)-(3) above, a "Delivery Delay Condition"), then, unless this Agreement has been terminated in accordance with the terms hereof or Buyer otherwise elects, the Delivery Term shall commence at the beginning of hour ending 0100 BA Time on the third (3rd) Day following the Day in which no Delivery Delay Condition of any kind (including a Delivery Delay Condition different from the Delivery Delay Condition that initially delayed commencement of the Delivery Term) exists. If Seller experiences or is experiencing a Delivery Delay Condition within fifteen (15) Days before the expected Delivery Term Commencement Date, Seller shall promptly notify Buyer of the existence and the cause(s) (or, if not known to Seller, its best estimate of the cause(s)) of such Delivery Delay Condition and shall keep Buyer reasonably apprised of Seller's progress in and expected time for overcoming or eliminating such Delivery Delay Condition. Without limiting the foregoing, if the Delivery Delay Condition results because there is an Outage (including as a result of Force Majeure), Seller shall provide the information set forth in Section 9.7 consistent with the terms thereof.

(c) This Agreement (including, if commenced, the Delivery Term) shall expire or terminate upon the earlier of (i) the end of hour ending 2400 BA Time on the Day before the twentieth (20th) anniversary of the Delivery Term Commencement Date (or, if the Delivery Term

Commencement Date is delayed as a result of Delivery Delay Conditions, the date that would have been the Delivery Term Commencement Date but for the occurrence of any Delivery Delay Conditions); provided, however, that if such Day falls on a Day other than the Day immediately prior to the first Day of the applicable Balancing Authority's planning period for purposes of measuring and administering its resource adequacy requirements, Buyer may elect in its sole and absolute discretion, upon notice to Seller given at least one (1) year before the date on which, without such notice, the Delivery Term would expire, to have the Delivery Term continue through and including the Day immediately prior to the first Day of such planning period, or (ii) the effective time of the termination of this Agreement (A) in accordance with its terms, including pursuant to Section 10.2, or (B) by mutual agreement of the Parties. Neither Buyer nor Seller shall have any liability or obligation to the other hereunder subsequent to the expiration or termination of this Agreement, except for liabilities or obligations that survive termination of this Agreement under Section 19.2.

(d) For the avoidance of doubt, Buyer shall not be required to purchase Contract Capacity, Contract Energy, Capacity-Related Benefits, Environmental Attributes or Other Electric Products prior to the Delivery Term Commencement Date. Seller shall not sell such Products prior to the Delivery Term Commencement Date except that Seller may sell any or all such Products to MISO to the extent required for testing of the Facility or otherwise to the extent necessary to satisfy the conditions to achieve Commercial Operation or to commence the Delivery Term.

II.3 Conditions Precedent to Commencement of Delivery Term.

(a) Without limiting Section 2.2(b), the obligation of Seller to provide the Products under this Agreement and the commencement of the Delivery Term shall be subject to the satisfaction of each of the following conditions, except to the extent Seller waives the satisfaction of such conditions in accordance with the requirements of Section 19.8:

(i) on or before [ ] all of Seller's Required Governmental Approvals shall have been obtained; and

(ii) on or before [ ] all of Seller's Required Consents shall have been obtained.

(b) Without limiting Section 2.2(b) or Section 2.2(d), the obligation of Buyer to make Variable Payments under this Agreement and the commencement of the Delivery Term shall be subject to the satisfaction of each of the following conditions, except to the extent Buyer waives the satisfaction of such conditions in accordance with the requirements of Section 19.8:

(i) on or before [ ], all of Buyer's Required Governmental Approvals shall have been obtained, shall not have been granted or issued subject to or containing any terms or conditions unacceptable to Buyer in its sole and absolute discretion, and shall be final and not subject to appeal or otherwise subject to challenge;

(ii) on or before [ ], all of Buyer's Required Consents shall have been obtained on terms and conditions acceptable to Buyer in its sole and absolute discretion;

(iii) on or before [ ], (A) Seller and the applicable counterparties shall have entered into all final and binding Deliverability Arrangements; (B) the Deliverability Arrangements are in full force and effect and not subject to conditions precedent; (C) no party thereto is in default thereunder, and no event or circumstance shall have occurred and be continuing that with the passage of time or the giving of notice or both would constitute a default by a party thereunder; and (D) except for achieving Commercial Operation, Seller shall have otherwise achieved Full Deliverability (which shall be effective no later than, and on, the Delivery Term Commencement Date);

(iv) on or before [ ], (A) the Balancing Authorit(y)(ies) applicable to the Electric Interconnection Point will, according to the Electric Interconnection Agreement and other Project Documents and applicable Law, recognize the Facility as a separate generating resource at the Electric Interconnection Point (and the Electric Interconnection Point as a separate node or other settlement point, with the Facility being the only source of energy injection at the Electric Interconnection Point) for settlement purposes (including that such Balancing Authorit(y)(ies) determine separately for settlement purposes the amount of Products actually generated by the Facility and delivered to the Electric Interconnection Point and, if applicable, recognize the Facility as a separate generating resource for tagging, scheduling, offering and bidding purposes), (B) the Electric Interconnection Point is according to the Electric Interconnection Agreement and other Project Documents and applicable Law, contracted to be (and will be) within the Required Injection Transmission System, and (C) (1) all final and binding agreements and other arrangements necessary to give effect to the foregoing have been entered into and are in full force and effect and not subject to conditions precedent, (2) no party thereto is in default thereunder and (3) no event or circumstance shall have occurred and be continuing that with the passage of time or the giving of notice or both would constitute a default by a party thereunder;

(v) if required according to Section 7.2, on or before [ ], either (A) if Buyer has not made the election to be the Market Participant for the Facility pursuant to Section 7.2(b), Seller (or its designee) shall have been recognized (with effect as of no later than the Delivery Term Commencement Date) as the Market Participant for the Facility or (B) if Buyer has made the election to be the Market Participant for the Facility pursuant to Section 7.2(b), Buyer (or its designee) shall have been recognized (with effect as of the Delivery Term Commencement Date) as the Market Participant for the Facility;

(vi) no earlier than thirty (30) Days prior to, and no later than, the satisfaction or waiver of the last of the conditions set forth in Section 2.3(a) and in this Section 2.3(b), Seller shall have provided to Buyer a certification, in the form attached hereto as Schedule 2.3(b)(viii), from Seller's Principal Accounting Officer (as defined by the rules of the Securities and Exchange Commission) certifying that, to the best of such Principal Accounting Officer's knowledge under accounting standards existing at the time of such certification or that will be in effect during the term of this Agreement, and in accordance with generally accepted accounting principles in the United States (US GAAP), neither this Agreement nor the transactions hereunder or contemplated hereby will result in Buyer or any of its Affiliates being required to recognize on its financial statements a

long-term liability by any means, including through lease, "variable interest entity" or derivative accounting or for any other reason (the matters certified or addressed in this Section 2.3(b)(viii), the "Accounting Treatment" and, such certification, the "Accounting Certification");

(vii) on or before the COD Termination Deadline, Seller has achieved Commercial Operation of the Facility;

(viii) on or before [ ], Seller shall have provided to Buyer evidence reasonably satisfactory to Buyer that Seller has the ability and rights to grant to Buyer access to the Facility and to the books, records, personnel and representatives of the Persons subject to Section 11.7, as Buyer deems necessary or appropriate to exercise its rights under Section 9.5 and Section 11.7; and

(ix) on or before [ ], Seller shall have provided to Buyer an Environmental Assessment with respect to the Facility and the Facility Site that is satisfactory to Buyer in its sole and absolute discretion.[12]

II.4 Efforts to Fulfill Conditions.

(a) (i) Commencing on the Effective Date, and subject to the other terms and conditions of this Agreement, Seller and Buyer each shall, without limiting its other related obligations under this Agreement (including Seller's obligations under Sections 7.2(a)(i), 7.3(a)(ii), 7.3(b), 7.3(c) and 7.6), use Commercially Reasonable Efforts (A) to take, or cause to be taken, all actions, and to do (or cause to be done) all things, that are necessary, proper or advisable to cause the fulfillment of the conditions set forth in Section 2.3(a) and Sections 2.3(b)(iii)-(x) (in the case of Seller) and Sections 2.3(b)(i) and (ii) (in the case of Buyer) and (B) to assist and cooperate with the other in taking or doing the actions and things described in clause (A) above. Seller's obligations to assist and cooperate with Buyer as provided above shall include the obligations (1) to support this Transaction, this Agreement, and the terms hereof fully (including, if requested by Buyer, providing testimony or other information in support thereof) at Buyer's request in any regulatory or similar proceeding, case, action, inquiry, or investigation, whenever occurring after the Effective Date, including in any hearing, discovery or filing involving a Governmental Approval of or relating to the Transaction, this Agreement, or any of the terms hereof, and (2) not to take any action or position or make any Claim in any such proceeding, case, action, inquiry, or investigation that is inconsistent with the foregoing.

(ii) Without limiting Section 1.2(o) and for the avoidance of doubt, each Party's obligations set forth in this Section 2.4(a) and in Section 2.6(a) and Section 2.6(c) shall (until the earlier of termination of this Agreement or satisfaction or waiver of the

[12] **NTD:** If Seller has an Environmental Assessment acceptable to Buyer at the Effective Date, this condition precedent shall be changed to: "on or before [ ], Seller shall have provided to Buyer a bringdown of the Environmental Assessment from the same consultant that issued such Environmental Assessment, which (i) shows no new environmental conditions with respect to the Facility and the Facility Site beyond those identified in the original Environmental Assessment and (ii) is dated no more than one hundred eighty (180) days prior to the Delivery Term Commencement Date."

applicable condition) continue in effect with regard to the substance of each condition, notwithstanding the passage of the date set forth in the applicable condition in Section 2.3.

(b) Without limiting Section 2.4(a), Seller shall use Commercially Reasonable Efforts to submit, on or before ninety (90) Days after the Effective Date, this Agreement with each and every Governmental Authority from which it must obtain a Governmental Approval in order to enter into this Agreement or to perform its obligations hereunder and request that such Governmental Authority provide such Governmental Approval, without modification or conditions, without suspension, and with service hereunder to be effective no later than the Delivery Term Commencement Date.

(c) [Without limiting Section 2.4(a), Buyer shall endeavor to submit, on or before ninety (90) Days after the Effective Date, this Agreement to the LPSC, together with an application for approval of this Agreement or this Transaction, requesting rate recovery of the costs associated with its participation in this Agreement or this Transaction based on a finding that such participation is prudent and in the public interest.][13]

(d) The Parties acknowledge and agree that Seller shall have complied with Section 2.4(b) and Buyer shall have complied with Section 2.4(c), as applicable, if any of the filings described in such sections is delayed beyond the date provided therein as a result of any need to address in such application or resolve any material (in such Party's good faith judgment) legal or regulatory risk or issue prior to submission of such application, including any issue arising from communications with LPSC staff, any issue concerning application sequencing or docket congestion, any issue arising under any other pending action, proceeding, inquiry, or investigation before or being conducted by any Governmental Authority, and any newly issued or promulgated Law or official guidance, in each case subject to the condition that the applicable Party continues to use the efforts applicable to such Party in Section 2.4(b) or Section 2.4(c), as applicable, to submit any such filing notwithstanding such delay.

(e) For the avoidance of doubt, this Section 2.4 shall not limit exercise by Buyer of its sole and absolute discretion with respect to the conditions set forth in Section 2.3(b), as provided for in Section 2.3(b) and related definitions and Schedules.

II.5 Termination for Failure of Conditions.

(a) Subject to Section 2.5(d), each Party shall have the right to terminate this Agreement without liability to either Party arising out of such termination upon notice to the other if any of the conditions set forth in Section 2.3(a) shall not have been satisfied (or waived by Seller in accordance with the requirements of Section 19.8) as of the date specified therein. Such termination right shall remain available until such condition is satisfied or waived.

(b) Subject to Section 2.5(d), each Party shall have the right to terminate this Agreement without liability to either Party arising out of such termination upon notice to the other if any of the conditions set forth in Section 2.3(b) shall not have been satisfied (or waived by Buyer

[13] **NTD:** Subject to removal/modification based on Buyer's expected regulatory filing(s).

in accordance with the requirements of Section 19.8) as of the date specified therein. Such termination right shall remain available until such condition is satisfied or waived.

(c) Subject to Section 2.5(d), upon or after valid delivery or receipt of a notice described in Section 2.6(b), each Party shall have the right to terminate this Agreement without liability to either Party arising out of such termination upon notice to the other. If the terminating Party is also the Party delivering the notice described in Section 2.6(b), such Party may include such notice of termination in the notice described in Section 2.6(b).

(d) Neither Party may terminate this Agreement pursuant to this Section 2.5 (i) if such Party's failure to fulfill its obligations under Section 2.4 or otherwise under this Agreement (including Seller's obligations under Sections 7.2(a)(i), 7.3(a)(ii), 7.3(b), 7.3(c) and 7.6)) is the principal reason that one or more of the conditions set forth in Section 2.3 have not been satisfied or (ii) without limiting the rights of the Parties pursuant to Section 3.8 and Section 15.2, based on the condition set forth in Section 2.3(b)(ix) not being satisfied (or capable of being satisfied) or waived.

(e) Upon the effectiveness of any termination of this Agreement in accordance with this Section 2.5, the Parties shall have no further liabilities or obligations to each other hereunder, except liabilities or obligations that survive termination under Section 19.2; provided, however, that no Termination Payment shall be due hereunder arising out of any such termination and, for the avoidance of doubt, such termination shall not be an Event of Default. For the avoidance of doubt, the termination rights of the Parties in this Section 2.5 shall not limit any other termination rights that may be available to either Party (including any termination rights associated with acts or omissions of the other Party that resulted in one or more of the conditions set forth in Section 2.3 not being satisfied) concurrently with the termination rights of the Parties in this Section 2.5 (including any such termination rights that independently give rise to a Termination Payment or other damages).

II.6 Notice of Satisfaction or Failure of Conditions.

(a) Seller shall provide prompt notice to Buyer of the satisfaction or waiver (in accordance with the requirements of Section 19.8) of the last of the conditions set forth in Section 2.3(a) to be satisfied or waived (such notice, the "Seller Conditions Precedent Notice"), and Buyer shall provide prompt notice to Seller of the satisfaction or waiver (in accordance with the requirements of Section 19.8) of the last of the conditions set forth in Section 2.3(b) to be satisfied or waived (such notice, the "Buyer Conditions Precedent Notice"), but in no event shall such notice be provided later than five (5) Business Days after the occurrence of the satisfaction or waiver of the last of the conditions set forth in Section 2.3(a) or Section 2.3(b), as applicable.

(b) Seller shall give prompt notice to Buyer in the event that a condition set forth in Section 2.3(a), and Buyer shall give prompt notice to Seller in the event that a condition set forth in Section 2.3(b), cannot be satisfied and will not be waived by such notifying Party. The notifying Party shall specify in such notice the condition that cannot be satisfied and will not be waived by the notifying Party.

(c) Each Party shall keep the other reasonably apprised of its progress with respect to satisfaction of the conditions of such Party hereunder.

## ARTICLE III
## COMPLETION

III.1 Commercial Operation. Seller shall achieve Commercial Operation by the Guaranteed Commercial Operation Date. "Commercial Operation" shall be achieved when all of the following conditions have been satisfied or expressly waived in writing (in accordance with the requirements of Section 19.8) by Buyer:

(a) the Facility conforms to Schedule B and has achieved "Substantial Completion" or "Provisional Acceptance" (or equivalent term(s) meaning completion in all material respects, except punch list items that do not 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 a Nameplate Capacity equal to at least the COD Capacity Threshold, and any studies and testing of the Facility required pursuant to the Electric Interconnection Agreement, other Project Documents (including agreements with Lenders) or applicable Laws (including Governmental Approvals) for the commencement of commercial operation shall have been successfully performed and completed;

(b) the Facility (i) successfully completed (no earlier than thirty (30) Days prior to, and no later than, the Commercial Operation Date) its most recent Capacity Demonstration Test at an Available Capacity level equal to at least the COD Capacity Threshold; (ii) has achieved initial synchronization with the Host Utility transmission system, (iii) is available for normal and continuous operation and fully capable of reliably producing the Products and injecting the Contract Energy at the Injection Point for financial delivery to Buyer at the Energy Financial Delivery Point in accordance with Section 7.8 at an Available Capacity level of at least the COD Capacity Threshold and delivering the other physical Products to Buyer at the applicable OP Delivery Point according to this Agreement and (iv) is in compliance with the Electric Interconnection Agreement and applicable Laws;

(c) without limiting clause (f) or clause (n) below, (i) the Deliverability Arrangements have been entered into, and (ii) the interconnection and transmission upgrades, including any Network Upgrades, required by the Deliverability Arrangements (A) have been completed, (B) have been tested in accordance with the Deliverability Arrangements and applicable Laws, (C) are available for normal and continuous operation and fully capable of reliably injecting the Contract Energy at the Injection Point for financial delivery to Buyer at the Energy Financial Delivery Point in accordance with Section 7.8 at an Available Capacity level of at least the COD Capacity Threshold and reliably delivering the other physical Products to Buyer at the applicable OP Delivery Point according to this Agreement and (D) are in compliance with the Deliverability Arrangements and applicable Laws;

(d) (i) the meteorological tower(s) and measurement, telemetry and communications equipment required by this Agreement have been installed, programmed,

commissioned and tested, (ii) the feeds required by Section 8.4(c) has been established and tested and (iii) such equipment and feed have demonstrated that they are fully capable of reliably transmitting real-time data to Buyer according to this Agreement;

(e) Seller is in compliance in all material respects with this Agreement and there are no Events of Default or Potential Events of Default of Seller that have occurred and are continuing;

(f) (i) Seller has obtained all Governmental Approvals, entered into all agreements, made all other arrangements and acquired all other tangible and intangible rights required to construct the Facility and produce and inject the Contract Energy at the Injection Point for financial delivery to Buyer at the Energy Financial Delivery Point in accordance with Section 7.8 at an Available Capacity level of at least the COD Capacity Threshold and produce and deliver the other physical Products to Buyer at the applicable OP Delivery Point according to this Agreement, and otherwise perform its obligations, according to this Agreement (including the agreements and arrangements described more specifically in other clauses of this definition); (ii) such Governmental Approvals, agreements, arrangements and other rights are in full force and effect and not subject to conditions precedent; and (iii) no party thereto is in default thereunder, and no event or circumstance shall have occurred and be continuing that with the passage of time or the giving of notice or both would constitute a default by a party thereunder;

(g) without limiting clause (f) above, (i) the Facility, Contract Capacity, Contract Energy and/or Environmental Attributes (as applicable) are certified and otherwise qualified for, and registered with, all programs or systems that are Applicable Environmental Attribute Programs as of the Commercial Operation Date (subject to the last sentence of Section 4.2(e)), and (ii) Seller is otherwise qualified for, and has entered into all agreements and made all other arrangements (and, without limiting the foregoing, has all necessary accounts) to cause to be issued, and (to the extent not issued directly to Buyer) to obtain and transfer to Buyer, (A) the Environmental Attributes under each Applicable Environmental Attribute Program referenced in clause (i) above and (B) the Guaranteed Environmental Attributes;

(h) without limiting clause (f) above, (i) the Facility, Contract Capacity and/or Contract Energy (as applicable) are certified and otherwise qualified for all Capacity-Related Benefits and Other Electric Products for which the Facility, Contract Capacity and/or Contract Energy is eligible as of the Commercial Operation Date, (ii) Seller is otherwise qualified for and has entered into all agreements and made all other arrangements (and, without limiting the foregoing, has all necessary accounts) (A) to generate and deliver to Buyer at the OP Delivery Point any such Products that are physical in nature and dispatched by Buyer and (B) in the case of any such Products that are not physical in nature (such as ZRCs and other intangible products), to (1) cause to be issued such Products and (2) to the extent not issued directly to Buyer, obtain and transfer to Buyer custody of and title to (or, if not possible, the benefit of, as directed by Buyer) all such Products (including for Buyer or Seller, as applicable, to be able to schedule, offer, bid and settle such Products into the applicable Balancing Authorit(y)(ies));

(i) without limiting clause (f) above, all arrangements for the supply of required electric services to the Facility, including house power and maintenance power, have been

obtained by Seller separate from this Agreement and are available for the supply of such electric services to the Facility;

(j) without limiting clause (f) above, the insurance coverages required by this Agreement at the Commercial Operation Date have been obtained by Seller, and certificates of insurance evidencing such coverages have been obtained and provided to Buyer;

(k) Seller has provided to Buyer copies of the electrical specifications and major design drawings relating to the Facility;

(l) without limiting clause (f) above, (i) Seller shall have posted Performance Assurance meeting the requirements of this Agreement at the Commercial Operation Date and (ii) the Guaranty meeting the requirements of this Agreement at the Commercial Operation Date shall have been executed by Seller Parent Guarantor and delivered to Buyer;

(m) staffing and training of Seller's personnel for the operation, maintenance and asset management of the Facility has been completed;

(n) Seller has in effect Full Deliverability;

(o) without limiting clause (f) above, (i) if, on the Commercial Operation Date, tagging of the Products is required by applicable Balancing Authority rules, procedures and protocols and other applicable Laws or otherwise for Seller to perform its obligations under this Agreement (including as required to generate, provide, deliver and transfer the Products to Buyer according to this Agreement), (A) the Facility is eligible, registered and active for tagging and (B) Seller is registered as a "purchasing selling entity" and subscribed for tag agent service with the Specified Tag Agent, or (ii) otherwise, the Facility has been removed from active tagging and has otherwise ceased tagging; and

(p) the conditions set forth in Section 2.3(b)(vi) (reading, for this purpose, any requirements therein stated as "contracted for" or "will be" or otherwise referring to the future as requirements that must be met currently as of the Commercial Operation Date and not just "contracted for" or "will be" met, etc.) and Section 2.3(b)(vii) have been satisfied and continue to be satisfied, and Seller shall have provided to Buyer a new certification complying with Section 2.3(b)(viii) that is dated as of the Commercial Operation Date.

III.2 Progress Reports.

(a) The Project Schedule is attached as Schedule 3.2(a). The Project Schedule includes schedules for both the development and construction of the Facility. Seller shall provide Buyer with a revision to the Project Schedule as soon as practicable after learning of, but in no event later than ten (10) Business Days after learning of, any change in any date contained therein; provided, however, that if a change in the anticipated COD occurs during the ten (10) Business Days before the anticipated Commercial Operation Date set forth in the then-current Project Schedule, then Seller shall notify Buyer thereof (and provide Buyer with the resulting revised Project Schedule) promptly upon learning of such change.

(b) Seller shall provide Buyer, within ten (10) Business Days following the end of each month from the Effective Date until the COD, a report setting forth in reasonable detail Seller's progress in developing and constructing the Facility (including the Electric Interconnection Facilities), including the status of any Network Upgrades (each, a "Progress Report"). In each Progress Report, Seller shall (i) review the status of each significant element of the Project Schedule, (ii) identify matters known to Seller that, in Seller's reasonable judgment, are expected to adversely affect the Facility or the Project Schedule or materially threaten Seller's ability to meet the Milestones by the applicable Target Dates, (iii) state the actions Seller intends to take to ensure that the Milestones are met by the applicable Target Date, and (iv) if Seller fails to complete any Milestone by the applicable Target Date, the actions Seller is taking and intends to take to ensure that such Milestone is achieved as promptly as possible. In addition to the monthly Progress Reports, Seller shall promptly provide Buyer such information as Buyer may reasonably request regarding the development, designing, engineering, installation, construction, studying and testing of the Facility.

III.3 Milestones. Set forth in the table below are the milestones (each, a "Milestone"), the target dates for achieving each Milestone (each, a "Target Date") and the required dates for achieving each Milestone (each, an "Outside Date") in connection with Seller's development, construction and ownership of the Facility. The Target Date and Outside Date for each Milestone may be extended according to Section 3.6; provided, however, that such dates shall only be extended by one Day for each Day when more than one of the extensions described in Sections 3.6(a) and 3.6(b) apply.

| **Milestone** | **Target Date** | **Outside Date** |
|---|---|---|
| (i) Enter into Electric Interconnection Agreement and other Deliverability Arrangements | [ ] | [ ] |
| (ii) Enter into engineering, procurement and construction contract (or, if the Facility does not have a single engineering, procurement and construction contract, each of the subcontracts that together aggregate the scope of an engineering, procurement and construction contract) for the Facility at a Nameplate Capacity equal to at least the Expected Capacity | [ ] | [ ] |
| (iii) Enter into all debt, equity and equity financing arrangements, in form and substance acceptable to Seller in its sole and absolute discretion, sufficient for Seller to fulfill Seller's Cost Scope (other than Buyer's functions as Market Participant (or | [ ] | [ ] |

| | | |
|---|---|---|
| similar representative) of the Facility pursuant to Section 7.2(b), if applicable) | | |
| (iv) Full mobilization to Facility Site to commence civil and electrical works | [ ] | [ ] |
| (v) Construction permits obtained from relevant Governmental Authorities | [ ] | [ ] |
| (vi) Completion of Interconnection Facilities (as defined in the Provisional Electric Interconnection Agreement) | [ ] | Guaranteed Commercial Operation Date |
| (vii) Initial synchronization of the Facility with the Host Utility transmission system | [ ] | Guaranteed Commercial Operation Date |
| (viii) Mechanical completion of the Facility (substantially all solar modules have been mounted and Inverter Block Units have been installed) | [ ] | Guaranteed Commercial Operation Date |
| (ix) Inverter Block Units that have been installed on the Facility Site as part of the Facility have achieved Commissioning | [ ] | Guaranteed Commercial Operation Date |
| (x) Commercial Operation Date | [ ] | Guaranteed Commercial Operation Date |

III.4 Failure to Achieve Milestones.

(a) Without limiting Section 3.7, Section 3.8 or Section 15.2, if Seller does not, or Buyer in the exercise of its good faith judgment reasonably expects that Seller will not, achieve any Milestone by the corresponding Outside Date, then Buyer shall have the right, at any time thereafter until such Milestone is achieved, to require Seller to implement actions (including acceleration of the work being performed to achieve such Milestone, for example, by using additional shifts, overtime, additional crews or re-sequencing of such work, as applicable) to mitigate or remediate such schedule-related shortfall so as to cause the applicable Milestones to occur as soon as possible (and, if possible, by the corresponding Outside Date). Within ten (10) days after Buyer exercises such right, Seller shall provide to Buyer a written plan describing the actions that Seller will implement to comply with the preceding sentence, which plan shall be subject to Buyer's approval pursuant to Section 3.4(b) only in the event that Seller's failure to achieve the applicable Milestone is reasonably expected to exceed thirty (30) days after the corresponding Outside Date (such plan, as finally approved by Buyer (if required), the "Acceleration Plan"). Upon submission to (and, if required, approval by) Buyer, Seller shall

promptly proceed with completing the Milestone work in the manner specified by the approved Acceleration Plan. Seller shall be responsible for all costs and expenses of implementing the Acceleration Plan.

(b) Within ten (10) days after receipt of any Acceleration Plan requiring Buyer's approval, Buyer shall deliver written approval or disapproval of the Acceleration Plan to Seller, the approval thereof not to be unreasonably withheld or delayed. If Buyer disapproves all or any portion of such Acceleration Plan, Buyer shall approve those portions of such Acceleration Plan that are acceptable and provide comments to those portions of the proposed Acceleration Plan that have been disapproved. Within five (5) days after receipt of Buyer's comments, Seller shall revise such Acceleration Plan to address such comments provided by Buyer and resubmit the revised Acceleration Plan for Buyer's further comments. This procedure shall be repeated until such Acceleration Plan is approved by Buyer.

III.5 COD Notice. Seller shall notify Buyer immediately after Seller has achieved Commercial Operation that the Commercial Operation Date has occurred, which notice shall set forth the Commercial Operation Date, include reasonable evidence to Buyer of the satisfaction of all of the conditions set forth in Section 3.1 (to the extent not waived by Buyer in accordance with Section 19.8) and include a certification to that effect by an authorized officer of Seller familiar with the Facility after due inquiry.

III.6 Extensions.

(a) To the extent Seller is prevented solely by Force Majeure from achieving any Milestone by its corresponding Target Date or Outside Date, such Target Date or Outside Date shall be extended on a day-for-day basis to the extent Seller is so prevented ("Force Majeure Extension"); provided that (i) no Target Date or Outside Date (including the Guaranteed Commercial Operation Date) shall be extended for reasons of Force Majeure for more than one hundred eighty (140) days in the aggregate[14], (ii) Seller complies with the conditions of Section 10.1(a) with respect to such Force Majeure and (iii) Seller provides Buyer the FM Claims Notice as soon as possible after the occurrence of the Force Majeure event and in no event later than ten (10) Days after the occurrence of the event of Force Majeure. If the requirements of clauses (ii) and (iii) of the proviso to the immediately preceding sentence are not met, Seller shall be deemed to have waived (and shall not be entitled to) Force Majeure Extension in connection with the applicable event of Force Majeure.

(b) If an Accounting Treatment Work-Out Period shall have commenced prior to the commencement of the Delivery Term, the Target Dates and Outside Dates for Milestones that have not been achieved by the first day of the Accounting Treatment Work-Out

[14] **NTD:** This draft contemplates a Guaranteed Commercial Operation Date of May 31, 2023, or earlier. Seller may propose in its bid, and this Agreement may include on the Effective Date, a Guaranteed Commercial Operation Date that is up to 140 days after May 31, 2023. If such a date is included in this Agreement, the maximum number of permitted days of delay for Force Majeure Extension will be reduced one day for each day that the Guaranteed Commercial Operation Date is later than May 31, 2023. If the Guaranteed Commercial Operation Date on the Effective Date is earlier than May 31, 2023, the maximum number of permitted days for Force Majeure Extension will be increased on a day-for-day basis, up to a maximum of forty (40) additional days.

Period shall be extended on a day-for-day basis by (i) if the Parties make or enter into the Accounting Treatment Modifications, the number of days from the first day of the Accounting Treatment Work-Out Period until the date that the Parties make or enter into the Accounting Treatment Modifications or (ii) otherwise, the number of days in the Accounting Treatment Work-Out Period ("Accounting Treatment Work-Out Period Extension").

III.7 COD Delay Liquidated Damages. If the Commercial Operation Date does not occur on or before the beginning of hour ending 0100 BA Time on the Guaranteed Commercial Operation Date, Seller shall pay to Buyer liquidated damages, for each day after the Guaranteed Commercial Operation Date until the Commercial Operation Date, in an amount equal to [ ] Dollars ($[ ])[15] ("Daily COD Delay Damages"); provided, however, that Seller's aggregate liability for Daily COD Delay Damages shall be limited to the COD Delay Damages Cap.

III.8 COD Delay Termination Right.

(a) Without limiting Section 15.2, if the Commercial Operation Date does not occur on or before the COD Termination Deadline, then Buyer shall have the right, exercisable by notice to Seller at any time thereafter until the Commercial Operation Date occurs, to:

(i) terminate this Agreement upon notice to Seller (and to receive the Termination Payment); or

(ii) if, at a lower COD Capacity Threshold, Seller would have satisfied all of the conditions to the Commercial Operation Date, require Seller to resize the Expected Capacity to the highest COD Capacity Threshold at which Seller satisfies all of the conditions to the Commercial Operation Date.

(b) If (i) Buyer's right to terminate set forth in Section 3.8(a) applies and Buyer has not elected to terminate within sixty (60) Days after the COD Termination Deadline, (ii) at an Available Capacity level lower than the COD Capacity Threshold (prior to any resizing), Seller has satisfied all of the conditions to the Commercial Operation Date and (iii) Seller is in compliance with its obligation under Section 3.13, Seller shall have the right, exercisable by notice to Buyer and payment of the amount contemplated by Section 3.9 at any time thereafter until the Commercial Operation Date occurs, to resize the Expected Capacity to the highest Available Capacity level (which may be less than the COD Capacity Threshold (prior to any resizing)) at which Seller satisfies all of the conditions to the Commercial Operation Date.

III.9 Capacity Reduction Liquidated Damages. If Buyer requires Seller to, or Seller elects to, resize the Expected Capacity according to Section 3.8, Seller shall pay to Buyer, as liquidated damages, an amount equal to (a) [ ] Dollars ($[ ])[16], multiplied by (b) the number of MW by which (i) the resized Expected Capacity is below (ii) the original Expected Capacity (regardless of the reason for such shortfall, including Force Majeure). Upon such payment, (x) the resizing of the Expected Capacity according to Section 3.8 shall become effective

[15] **NTD:** Amount to be calculated by multiplying the Expected Capacity by $500/MW.

[16] **NTD:** Amount to be provided by Buyer.

and (y) the Annual Expected Energy Quantity and Annual Guaranteed Energy Quantity for each Contract Year shall be deemed adjusted to the P50 Quantity and the P90 Quantity, respectively, for each such Contract Year corresponding to the Final Capacity, as determined (subject to audit and dispute by Buyer) by the same independent engineer that determined the original Annual Expected Energy Quantity and Annual Guaranteed Energy Quantity for each Contract Year (provided that, if Buyer so requests, Seller shall reasonably cooperate with Buyer to mutually agree on another qualified independent engineer) in a confirming report from such independent engineer provided by Seller to Buyer (at Seller's sole cost and expense) concurrently with the payment required by this Section 3.9.

III.10 Nature of Liquidated Damages. **THE PARTIES ACKNOWLEDGE AND AGREE THAT IT IS DIFFICULT OR IMPOSSIBLE TO DETERMINE WITH PRECISION THE AMOUNT OF DAMAGES THAT WOULD OR MIGHT BE INCURRED BY BUYER AS A RESULT OF SELLER'S FAILURE TO ACHIEVE COMMERCIAL OPERATION ON OR BEFORE THE GUARANTEED COMMERCIAL OPERATION DATE OR TO ACHIEVE A CONTRACT CAPACITY EQUAL TO AT LEAST NINETY-FIVE PERCENT (95%) OF THE EXPECTED CAPACITY. IT IS UNDERSTOOD AND AGREED BY THE PARTIES THAT (A) BUYER SHALL BE DAMAGED BY THE FAILURE OF SELLER TO MEET SUCH OBLIGATIONS, (B) IT WOULD BE IMPRACTICABLE OR EXTREMELY DIFFICULT TO FIX THE ACTUAL DAMAGES RESULTING THEREFROM, (C) ANY SUMS THAT WOULD BE PAYABLE UNDER SECTION 3.7 OR SECTION 3.9 ARE IN THE NATURE OF LIQUIDATED DAMAGES, AND NOT A PENALTY, AND ARE FAIR AND REASONABLE, AND SHALL BE PAID REGARDLESS OF THE AMOUNT OF DAMAGES THAT BUYER ACTUALLY SUSTAINS, (D) EACH PAYMENT REPRESENTS A REASONABLE ESTIMATE OF FAIR COMPENSATION FOR THE DAMAGES THAT MAY REASONABLY BE ANTICIPATED FROM SUCH FAILURE, (E) EACH PARTY HEREBY WAIVES ANY RIGHT TO CLAIM TO ANY COURT OR ARBITRAL TRIBUNAL THE ADJUSTMENT OF ANY SUCH SUMS, AND (F) WITHOUT LIMITING SECTION 15.2, ANY SUMS THAT WOULD BE CREDITABLE OR PAYABLE UNDER SECTION 3.7 OR SECTION 3.9 ARE BUYER'S EXCLUSIVE DAMAGES ARISING OUT OF A DELAY IN THE COMMERCIAL OPERATION DATE OR A CAPACITY REDUCTION, AS APPLICABLE, PROVIDED, THAT (I) SELLER ACTUALLY CREDITS OR PAYS BUYER ANY SUCH AMOUNT AND (II) ANY SUCH CREDIT OR PAYMENT SHALL NOT LIMIT BUYER'S RIGHTS OR REMEDIES FOR ANY BREACH, DEFAULT OR EVENT OF DEFAULT OF SELLER UNDER THIS AGREEMENT; PROVIDED, HOWEVER, THAT SELLER AND BUYER AGREE THAT, IF THE CONDITION IN PART (I) OF THE FOREGOING PROVISO IS SATISFIED, NEITHER (X) SELLER'S FAILURE TO ACHIEVE COMMERCIAL OPERATION ON OR BEFORE THE GUARANTEED COMMERCIAL OPERATION DATE NOR (Y) SELLER'S FAILURE TO ACHIEVE A CONTRACT CAPACITY EQUAL TO AT LEAST NINETY-FIVE PERCENT (95%) OF THE EXPECTED CAPACITY SHALL CONSTITUTE, IN AND OF ITSELF, SUCH A BREACH, DEFAULT OR EVENT OF DEFAULT.**

III.11 ZRC Obligation.

(a) Without limiting Section 4.2, in the event that Seller has not transferred to Buyer custody of and title to (or, if not possible, the benefit of, as directed by Buyer) the maximum quantity of ZRCs for the Planning Year (as defined in the MISO Rules) immediately following the Guaranteed Commercial Operation Date for which the Facility would otherwise have qualified (assuming, if the Facility has not achieved Commercial Operation, that the Facility has achieved Commercial Operation at the Expected Capacity) by the date fifteen (15) Days prior to the commencement of the Planning Resource Auction applicable to such Planning Year, Seller shall transfer to Buyer custody of and title to (or, if not possible, the benefit of, as directed by Buyer)

such quantity of ZRCs sourced from resource(s) other than the Facility located within the Buyer LRZ ("Replacement ZRCs") no later than ten (10) Days prior to the commencement of the Planning Resource Auction applicable to such Planning Year; provided, however, that, notwithstanding anything to the contrary in Section 4.2, if Seller satisfies its obligation to provide Replacement ZRCs to Buyer pursuant to this Section 3.12(a), Seller may retain any ZRCs awarded after such obligation is satisfied for such Planning Year with respect to the Facility up to the amount of Replacement ZRCs so provided to Buyer; provided, further, that, for the avoidance of doubt, if Seller receives any ZRCs so awarded with respect to the Facility in an amount greater than the amount of Replacement ZRCs transferred to Buyer pursuant to this Section 3.12(a) (such excess ZRCs, "Excess ZRCs"), Seller shall immediately notify Buyer and, at Buyer's option, either (i) transfer to Buyer custody of and title to (or, if not possible, the benefit of, as directed by Buyer) such quantity of Excess ZRCs or, with Buyer's prior approval, an equal amount of ZRCs sourced from resource(s) other than the Facility located within the Buyer LRZ as soon as reasonably possible, but in no event later than three (3) Days after Buyer's election to receive ZRCs pursuant to this clause (i), or (ii) pay or credit Buyer an amount equal to the quantity of Excess ZRCs multiplied by the Auction Clearing Price resulting from the Planning Resource Auction for such Planning Year applicable to a ZRC from a resource located within the Buyer LRZ. Seller shall include the amount of any payment or credit pursuant to clause (ii) above on the Monthly Invoice for the later of (A) the month in which Buyer elects to receive payment or credit pursuant to clause (ii) above and (B) the month in which such Auction Clearing Price is determined and, if applicable, shall pay such amount to Buyer according to Article XI.

(b) For any Replacement ZRC that Seller does not provide to Buyer (provided that Seller shall first be required to use best efforts to provide such Replacement ZRC) as required by Section 3.11(a), then Seller shall pay or credit Buyer an amount equal to (i) the greater of (A) the Auction Clearing Price resulting from the Planning Resource Auction for such Planning Year applicable to a ZRC from a resource located within the Buyer LRZ and (B) if the applicable Balancing Authority imposes any costs or charges on Buyer as a result of Seller's failure to transfer any Replacement ZRCs to Buyer, including any "capacity deficiency charge" or comparable charge, the amount of all such costs and charges (expressed in $/MW), multiplied by (ii) the amount of Replacement ZRCs Seller so failed to transfer, plus interest on such amount at the Interest Rate accruing from the date on which Replacement ZRCs were required to be transferred to Buyer pursuant to Section 3.11(a) until the date payment is made or the date the Monthly Invoice on which Buyer is credited is delivered to Buyer, as applicable. Seller shall include the amount of any payment or credit pursuant to this Section 3.11(b) on the Monthly Invoice for the month in which the amount of such payment or credit is determined and, if applicable, shall pay such amount to Buyer according to Article XI.

(c) **THE PARTIES ACKNOWLEDGE AND AGREE THAT IT IS DIFFICULT OR IMPOSSIBLE TO DETERMINE WITH PRECISION THE AMOUNT OF DAMAGES THAT WOULD OR MIGHT BE INCURRED BY BUYER AS A RESULT OF SELLER'S FAILURE TO PROVIDE TO BUYER THE REPLACEMENT ZRCS REQUIRED ACCORDING TO SECTION 3.11. IT IS UNDERSTOOD AND AGREED BY THE PARTIES THAT (A) BUYER SHALL BE DAMAGED BY THE FAILURE OF SELLER TO MEET SUCH OBLIGATIONS, (B) IT WOULD BE IMPRACTICABLE OR EXTREMELY DIFFICULT TO FIX THE ACTUAL DAMAGES RESULTING THEREFROM, (C) ANY SUMS THAT WOULD BE CREDITABLE OR PAYABLE UNDER SECTION 3.11(b) ARE IN THE NATURE OF LIQUIDATED DAMAGES, AND NOT A PENALTY, AND ARE FAIR AND REASONABLE, AND SHALL BE PAID REGARDLESS OF THE AMOUNT**

**OF DAMAGES THAT BUYER ACTUALLY SUSTAINS, (D) EACH PAYMENT REPRESENTS A REASONABLE ESTIMATE OF FAIR COMPENSATION FOR THE LOSSES THAT MAY REASONABLY BE ANTICIPATED FROM EACH SUCH FAILURE, (E) THE PARTIES IRREVOCABLY WAIVE THEIR RESPECTIVE RIGHTS TO CLAIM TO ANY COURT OR ARBITRAL TRIBUNAL THE ADJUSTMENT OF ANY SUCH SUMS, AND (F) WITHOUT LIMITING SECTION 15.2, ANY SUMS THAT WOULD BE CREDITABLE OR PAYABLE UNDER SECTION 3.11(b) ARE BUYER'S EXCLUSIVE DAMAGES ARISING OUT OF SELLER'S FAILURE TO PROVIDE TO BUYER THE REPLACEMENT ZRCS REQUIRED ACCORDING TO SECTION 3.11, PROVIDED, THAT (I) SELLER ACTUALLY CREDITS OR PAYS BUYER ANY SUCH AMOUNT AND (II) ANY SUCH CREDIT OR PAYMENT SHALL NOT LIMIT BUYER'S RIGHTS OR REMEDIES FOR ANY BREACH, DEFAULT OR EVENT OF DEFAULT OF SELLER UNDER THIS AGREEMENT; PROVIDED, HOWEVER, THAT SELLER AND BUYER AGREE THAT, IF THE CONDITION IN PART (I) OF THE FOREGOING PROVISO IS SATISFIED, SELLER'S FAILURE TO PROVIDE TO BUYER THE REPLACEMENT ZRCS REQUIRED ACCORDING TO SECTION 3.11 SHALL NOT CONSTITUTE, IN AND OF ITSELF, SUCH A BREACH, DEFAULT OR EVENT OF DEFAULT.**

III.12 Capacity Demonstration Test.

(a) Seller shall, at Seller's expense, cause a Capacity Demonstration Test of the Facility to be conducted at a mutually agreeable date and time, which shall be subject to the last sentence of Section 3.12(b) and no earlier than thirty (30) Days prior to the Commercial Operation Date and no later than the Commercial Operation Date, and, if not otherwise mutually agreed by the Parties prior to fifteen (15) Business Days before the anticipated Commercial Operation Date in the then-current Project Schedule, shall be (subject to the last sentence of Section 3.12(b)) ten (10) Business Days prior to such anticipated Commercial Operation Date. If Seller causes a Capacity Demonstration Test to be conducted according to this Section 3.12 and thereafter the Commercial Operation Date occurs more than thirty (30) Days after the Capacity Demonstration Test, Seller shall cause a new Capacity Demonstration Test to be conducted in accordance with this Section 3.12. The final results of the then most recent Capacity Demonstration Test that was performed in circumstances required by this Section 3.12 shall be used for purposes of determining satisfaction of the conditions to Commercial Operation.

(b) Each Capacity Demonstration Test shall be conducted by [ ][17], unless the Parties agree upon another third-party capacity testing contractor in a writing signed by both Parties. Seller shall require that the Person conducting each Capacity Demonstration Test perform such test in accordance with Accepted Industry Practices, the protocols and the procedures set forth on Schedule 3.12 and any other applicable requirements of this Agreement. Without limiting the generality of the foregoing, each Capacity Demonstration Test shall account for energy losses to the Electric Interconnection Point in accordance with Accepted Industry Practices. Notwithstanding anything to the contrary, no Capacity Demonstration Test shall be scheduled to occur during an Outage or any other Unit Contingency.

[17] **NTD:** Parties to discuss independent testing contractor to be included.

(c) Buyer shall have the right to witness each Capacity Demonstration Test. In addition, during each Capacity Demonstration Test, Seller shall provide Buyer with all raw data collected from such Capacity Demonstration Test upon Buyer's request.

(d) Seller shall be responsible for providing all test instrumentation, equipment, systems, tools, material, labor (including testing specialists), utilities and services necessary to conduct each Capacity Demonstration Test hereunder and, without limiting Section 9.2, shall bear the full costs and expenses to provide the items described above for, and to conduct, each Capacity Demonstration Test, including the costs incurred in connection with the preparation and delivery of the report(s) described in Section 3.12(e).

(e) Seller shall cause the Person conducting each Capacity Demonstration Test to deliver to Buyer a written report that documents, explains and certifies the performance and results of the Capacity Demonstration Test. Such report shall include the calibration records for the test instrumentation. Buyer shall have the right to review and comment on any draft of the test report provided to Seller. Seller shall cause the Person conducting each Capacity Demonstration Test to deliver to Buyer each draft report and the final report promptly upon completion thereof. Seller shall use Commercially Reasonable Efforts to cause such report to be received by Seller and Buyer within five (5) Days after the conclusion of the Capacity Demonstration Test; provided, however, that the results of the Capacity Demonstration Test shall be delivered no later than the Commercial Operation Date.

III.13 Seller's Obligation Regarding Nameplate Capacity. Notwithstanding anything to the contrary, Seller shall use Commercially Reasonable Efforts to achieve Commercial Operation of the Facility at a Nameplate Capacity equal to the Expected Capacity.

## ARTICLE IV
## PURCHASE AND SALE

IV.1 Contract Energy. Subject and according to the terms and conditions herein, including Section 4.5 and Section 7.4, throughout the Delivery Term, Seller shall sell, make available and deliver, and Buyer shall purchase and receive at the Energy Financial Delivery Point in the Applicable Market, all Energy actually generated by the Facility and injected at the Injection Point up to the Maximum Delivered Contract Energy in each applicable MISO Settlement Interval. In consideration of the Delivered Energy during the Delivery Term, Buyer shall make Variable Payments to Seller in accordance with the provisions of Section 5.1.

IV.2 Contract Capacity, Capacity-Related Benefits, Environmental Attributes and Other Electric Products.

(a) Buyer's purchase of Contract Energy according to this Agreement includes the purchase of all Contract Capacity, Capacity-Related Benefits (including any ZRCs, other capacity credits and similar rights and benefits), Environmental Attributes and Other Electric Products during the Delivery Term, the Variable Payment includes all compensation to Seller for such purchase, and no other or further amount shall be payable by Buyer in connection with the purchase of such Products. Throughout the Delivery Term, Buyer shall have the right to dispatch such Products, and Seller shall (at its own expense) generate and deliver to Buyer at the applicable

OP Delivery Point any such Products so dispatched by Buyer; provided, however, that, in the case of any such Products that are not physical in nature (such as ZRCs, other capacity credits, intangible Environmental Attributes and other intangible products), Seller shall, without requirement of any dispatch or other notice from Buyer and at Seller's own expense, (i) cause to be issued any and all such Products for which the Facility, Contract Capacity and/or Contract Energy is eligible, (ii) to the extent not issued directly to Buyer, without limiting Sections 3.11, obtain and transfer to Buyer custody of and title to (or, if not possible, the benefit of, as directed by Buyer) all such Products and (iii) use Commercially Reasonable Efforts to maximize (including operating the Facility and otherwise using Commercially Reasonable Efforts to perform its obligations under this Agreement in a manner that maximizes) the quantity of such Products issued, obtained and transferred to Buyer (or, if not possible, for which the benefit is transferred to Buyer). Without limiting the foregoing, Seller shall (at its own expense) obtain prior to the Delivery Term Commencement Date, and maintain throughout the Delivery Term, Full Deliverability. For all purposes of this Agreement, any Products (such as Capacity-Related Benefits) issued prior to the Delivery Term that relate to the Delivery Term or issued during the Delivery Term, even if relating to the period after the Delivery Term, shall be considered to be Products "during the Delivery Term" and shall belong to Buyer pursuant to this Agreement.

(b) Without limiting Section 4.2(a), Seller shall (at its own expense):

(i) timely execute and file all documents, including any applicable requests for qualification or registration of the Facility for or to provide each of such Products for which the Facility, Contract Capacity and/or Contract Energy is eligible (including ZRCs, other capacity credits and other Capacity-Related Benefits); and

(ii) take all other actions, including identifying and complying with any applicable certification procedures and operating requirements (including required testing and outage reporting and required tagging, scheduling, offering and bidding of the Facility into the MISO Markets);

that are necessary or advisable to qualify or register the Facility for, generate, obtain and transfer to Buyer (or, if not possible, transfer to Buyer the benefit of, as directed by Buyer) all such Products for which the Facility, Contract Capacity and/or Contract Energy is eligible and to otherwise meet Seller's obligations in clause (a) above.

(c) To the extent that, in Buyer's good faith judgment, the acquisition, provision, delivery or maximization of the quantity of any such Product requires modification or amendment of this Agreement (including modification or amendment of the Planned Maintenance coordination and scheduling procedures set forth in Section 9.6) or the development or implementation of, or agreement upon, protocols, procedures, processes, or terms and Buyer so requests, the Parties shall make good faith efforts to negotiate and agree upon such modifications or amendments, and/or develop, agree upon, and implement such protocols, procedures, processes, or terms, in a manner that preserves the relative positions of each Party and is consistent with the allocation of risks, costs and responsibilities hereunder, as expeditiously as practicable. Each Party shall conduct any and all negotiations in connection therewith in good faith and fully consistent with the rights and obligations of Buyer and Seller set forth in this Section 4.2 (including that no other or further amount shall be payable by Buyer to Seller in connection with the qualification or

registration for, or issuance, generation, delivery or transfer of such Products hereunder or other obligation of Seller under this Agreement with respect thereto). If Buyer and Seller do not make such modifications or amendments or agree upon such protocols, procedures, processes, or terms within thirty (30) days after Buyer's request, Buyer may submit the matters in Dispute for resolution in accordance with the dispute resolution processes set forth in Article XVIII.

(d) Seller shall not make a filing or other Claim at FERC or with any other Governmental Authority requesting additional compensation from Buyer or any Affiliate of Buyer for any Contract Capacity, Capacity-Related Benefits (including any ZRCs, other capacity credits and similar rights and benefits), Environmental Attributes or Other Electric Products.

(e) Seller represents and warrants to Buyer that, as of the Effective Date, (i) the Capacity-Related Benefits and/or Other Electric Products for which the Facility, Contract Capacity and/or Contract Energy is eligible are [ ][18] and (ii) the Applicable Environmental Attribute Program[s] [is/are] the Applicable Guaranteed Program. Seller shall notify Buyer promptly upon Seller's becoming aware of (i) the existence of any new (A) Capacity-Related Benefits and/or Other Electric Products for which the Facility, Contract Capacity and/or Contract Energy is eligible from time to time and/or (B) Applicable Environmental Attribute Programs from time to time and (ii) any (A) capacity-related benefits or other electric products ceasing to be Capacity-Related Benefits or Other Electric Products from time to time and/or (B) programs ceasing to be Applicable Environmental Attribute Programs from time to time. Further, for any Products that are physical in nature, Seller shall keep Buyer consistently informed of the availability of such Products by providing notices of such availability on the same basis as Seller provides Generation Forecasts to Buyer. To the extent that, at any time, qualification, registration and/or participation in any Product or Applicable Environmental Attribute Program will disqualify the Facility, Contract Capacity, Contract Energy and/or Environmental Attributes (as applicable) from qualification, registration and/or participation in any other Product(s) or Applicable Environmental Attribute Program(s), Seller shall so notify Buyer and comply with Buyer's instructions with respect to which of such Product(s) and Applicable Environmental Attribute Program(s) to qualify, register and/or participate in (which instructions, to the extent permitted by applicable Law, may include an allocation among multiple Product(s) and/or Applicable Environmental Attribute Program(s)).

(f) For each Capacity-Related Benefit that is sourced from a resource not located within the Buyer LRZ, if (i) the Auction Clearing Price for such Capacity-Related Benefit at the Planning Resource Auction applicable to such Capacity-Related Benefit is different from (ii) the Auction Clearing Price at such Planning Resource Auction for an equivalent capacity-related benefit from a resource located within the Buyer LRZ, then (1) the difference equal to (i) minus (ii) shall be calculated and (2) (X) if positive, Buyer shall pay such difference to Seller, and (Y) if negative, Seller shall pay the absolute value of such difference to Buyer. Seller shall include such amount on the Monthly Invoice for the month in which the results of such Planning Resource Auction are published by MISO, and such amount shall be payable according to Article XI.

[18] **NTD:** Seller to list all eligible Capacity-Related Benefits and Other Electric Products for which the Facility is eligible (e.g., ZRCs, reactive supply and voltage control, etc.).

IV.3 Environmental Attributes.

(a) Without limiting Section 4.2, Seller shall, at its own expense:

(i) by the Delivery Term Commencement Date, (A) cause the Facility, Contract Capacity, Contract Energy and/or Environmental Attributes (as applicable) to be certified and otherwise qualified for and registered with all programs or systems that are Applicable Environmental Attribute Programs as of the Delivery Term Commencement Date (subject to the last sentence of Section 4.2(e)) and (B) otherwise qualify for, and enter into all agreements and make all other arrangements (and, without limiting the foregoing, obtain all necessary accounts) to obtain and transfer to Buyer, (1) the Environmental Attributes under each Applicable Environmental Attribute Programs referenced in clause (A) above and (2) the Guaranteed Environmental Attributes;

(ii) at all times comply with all reporting and other requirements of the Applicable Environmental Attribute Programs and Applicable Guaranteed Programs, including required reporting of the amount and type of Energy generated by the Facility and source of any Replacement EAs; and

(iii) upon the request of Buyer from time to time, (A) deliver or cause to be delivered to Buyer such attestations/certifications of Environmental Attributes and Replacement EAs and other documentation as may be required or advisable in Buyer's reasonable discretion to comply with or otherwise participate in any Applicable Environmental Attribute Program or Applicable Guaranteed Program or to obtain and transfer to Buyer custody of, and give effect to and evidence the title of Buyer (as contemplated by Section 7.7(a)) in, all the Environmental Attributes and Replacement EAs and (B) otherwise provide full cooperation in connection with Buyer's retirement or other use of the Environmental Attributes and Replacement EAs.

(b) The transfer of Environmental Attributes (and any Replacement EAs) to Buyer shall be accomplished by the means specified by Buyer, which may include the documentation described in Section 4.3(a)(iii) and/or by electronic delivery pursuant to any renewable energy or environmental attribute program or monitoring, tracking, certification or trading system designated by Buyer that is an Applicable Environmental Attribute Program (or, in the case of Replacement EAs, that applies to such Replacement EAs), and shall be completed by Seller by the EA Transfer Deadline. For each MW of Contract Capacity or each MWh of Contract Energy injected at the Injection Point for financial delivery to Buyer, as applicable, throughout the Delivery Term (even if some of such Contract Capacity or Contract Energy is produced by fossil fuel or otherwise not generated from photovoltaic solar energy conversion for any reason), Seller shall be required to obtain and transfer to Buyer the Guaranteed Environmental Attributes and any environmental attributes for which, if such MW or MWh were generated by the Facility from photovoltaic solar energy conversion and delivered to Buyer according to this Agreement, such MW or MWh would be eligible (subject to the last sentence of Section 4.2(e)), all by the EA Transfer Deadline. To the extent Seller does not provide Environmental Attributes to satisfy its obligations pursuant to the preceding sentence for any MW of Contract Capacity or MWh of Contract Energy (*e.g.*, because such MW or MWh is produced by fossil fuel or otherwise not generated from photovoltaic solar energy conversion for any reason or, in the case of the

Guaranteed Environmental Attributes, because the Applicable Guaranteed Program is no longer an Applicable Environmental Attribute Program due to the negligence (including gross negligence), fraud, willful misconduct or other act or omission of Seller, its Affiliates or Subcontractors, or any of their respective directors, officers, partners, members, trustees, employees, agents or representatives), then Seller shall satisfy such obligations by providing Replacement EAs for such MW or MWh. For any such Environmental Attribute (or Replacement EA) that Seller does not provide to Buyer (provided that Seller shall first be required to use best efforts to provide such Environmental Attribute or Replacement EA) according to the two immediately preceding sentences by the EA Transfer Deadline, Seller shall pay to Buyer an amount equal to the greater of (i) the Reference EA Compliance Payment applicable to such Environmental Attribute (or Replacement EA) or (ii) the average of at least two (2) price quotes obtained by Buyer from nationally recognized brokers during the first month following the month in which the corresponding MW was recognized or MWh was generated), for the sale and delivery of Replacement EAs that are eligible for the Required Qualified Programs corresponding to such Environmental Attribute (or Replacement EA). Any amounts payable pursuant to the immediately preceding sentence shall be included on the Monthly Invoice covering the month in which the EA Transfer Deadline occurs.

(c) **THE PARTIES ACKNOWLEDGE AND AGREE THAT IT IS DIFFICULT OR IMPOSSIBLE TO DETERMINE WITH PRECISION THE AMOUNT OF DAMAGES THAT WOULD OR MIGHT BE INCURRED BY BUYER AS A RESULT OF SELLER'S FAILURE TO PROVIDE TO BUYER THE ENVIRONMENTAL ATTRIBUTES (AND/OR REPLACEMENT EAS) (I) REQUIRED ACCORDING TO SECTION 4.3(b) FOR EACH MW OF CONTRACT CAPACITY OR EACH MWH OF CONTRACT ENERGY OR (II) THAT WOULD HAVE BEEN REQUIRED ACCORDING TO SECTION 4.3(b) IF SELLER HAD PROVIDED DELIVERED ENERGY TO BUYER AT THE ENERGY FINANCIAL DELIVERY POINT IN EACH CONTRACT YEAR EQUAL TO AT LEAST THE ANNUAL GUARANTEED ENERGY QUANTITY. IT IS UNDERSTOOD AND AGREED BY THE PARTIES THAT (A) BUYER SHALL BE DAMAGED BY THE FAILURE OF SELLER TO MEET SUCH OBLIGATIONS, (B) IT WOULD BE IMPRACTICABLE OR EXTREMELY DIFFICULT TO FIX THE ACTUAL DAMAGES RESULTING THEREFROM, (C) ANY SUMS THAT WOULD BE CREDITABLE OR PAYABLE UNDER SECTION 4.3(b) OR SECTION 6.1 ARE IN THE NATURE OF LIQUIDATED DAMAGES, AND NOT A PENALTY, AND ARE FAIR AND REASONABLE, AND SHALL BE PAID REGARDLESS OF THE AMOUNT OF DAMAGES THAT BUYER ACTUALLY SUSTAINS, (D) EACH PAYMENT REPRESENTS A REASONABLE ESTIMATE OF FAIR COMPENSATION FOR THE LOSSES THAT MAY REASONABLY BE ANTICIPATED FROM EACH SUCH FAILURE, (E) THE PARTIES IRREVOCABLY WAIVE THEIR RESPECTIVE RIGHTS TO CLAIM TO ANY COURT OR ARBITRAL TRIBUNAL THE ADJUSTMENT OF ANY SUCH SUMS, AND (F) WITHOUT LIMITING SECTION 15.2, ANY SUMS THAT WOULD BE CREDITABLE OR PAYABLE UNDER SECTION 4.3(b) OR SECTION 6.1 ARE BUYER'S EXCLUSIVE DAMAGES ARISING OUT OF SELLER'S FAILURE TO PROVIDE TO BUYER THE ENVIRONMENTAL ATTRIBUTES (AND/OR REPLACEMENT EAS) (I) REQUIRED ACCORDING TO SECTION 4.3(b) FOR EACH MW OF CONTRACT CAPACITY OR EACH MWH OF CONTRACT ENERGY OR (II) THAT WOULD HAVE BEEN REQUIRED ACCORDING TO SECTION 4.3(b) IF SELLER HAD PROVIDED DELIVERED ENERGY TO BUYER AT THE ENERGY FINANCIAL DELIVERY POINT IN EACH CONTRACT YEAR EQUAL TO AT LEAST THE ANNUAL GUARANTEED ENERGY QUANTITY OR TO DELIVER DELIVERED ENERGY TO BUYER AT THE ENERGY FINANCIAL DELIVERY POINT IN AN AMOUNT EQUAL TO OR ABOVE THE ANNUAL GUARANTEED ENERGY QUANTITY, PROVIDED, THAT (1) SELLER ACTUALLY CREDITS OR PAYS BUYER ANY SUCH AMOUNT AND (2) ANY SUCH CREDIT OR PAYMENT SHALL NOT LIMIT BUYER'S RIGHTS OR REMEDIES FOR ANY**

**BREACH, DEFAULT OR EVENT OF DEFAULT OF SELLER UNDER THIS AGREEMENT; PROVIDED, HOWEVER, THAT SELLER AND BUYER AGREE THAT, IF THE CONDITION PART (I) OF THE FOREGOING PROVISO IS SATISFIED, SELLER'S FAILURE TO PROVIDE TO BUYER THE ENVIRONMENTAL ATTRIBUTES (AND/OR REPLACEMENT EAS) (X) REQUIRED ACCORDING TO SECTION 4.3(b) FOR EACH MW OF CONTRACT CAPACITY OR EACH MWH OF CONTRACT ENERGY OR (Y) THAT WOULD HAVE BEEN REQUIRED ACCORDING TO SECTION 4.3(b) IF SELLER HAD PROVIDED DELIVERED ENERGY TO BUYER AT THE ENERGY FINANCIAL DELIVERY POINT IN EACH CONTRACT YEAR EQUAL TO AT LEAST THE ANNUAL GUARANTEED ENERGY QUANTITY, IN EITHER CASE, SHALL NOT CONSTITUTE, IN AND OF ITSELF, SUCH A BREACH, DEFAULT OR EVENT OF DEFAULT.**

IV.4 Exclusivity. Seller acknowledges and agrees that the relationship between Buyer and Seller with respect to the Products is exclusive. Except to the extent permitted or required by Section 4.7 or Section 7.4(c)(ii), Seller shall not offer to sell, deliver or make available (for any delivery period during the Delivery Term), or sell, deliver or make available during the Delivery Term, any Products to or for any Person other than Buyer. Without limiting the foregoing, except to the extent permitted or required by Section 4.7 or Section 7.4, even if (a) the available Contract Capacity at any time exceeds the Available Capacity required to achieve the Maximum Delivered Contract Energy for any applicable MISO Settlement Interval during the Delivery Term (including as a result of a curtailment or deemed curtailment by Buyer pursuant to Section 7.4) or (b) Buyer does not dispatch non-Energy physical Products that the Facility is capable of generating, Seller may not offer, sell, deliver or make available the unused or undispatched Contract Capacity or associated Products to or for any Person other than Buyer.

IV.5 Nature of Service. Seller's obligations to make available and deliver to Buyer the Products shall be on a Unit Contingent basis; provided, however, that the foregoing shall not be construed to eliminate, limit, or otherwise restrict Buyer's rights or remedies provided in this Agreement in the event of the occurrence of a Unit Contingency. Without limiting the foregoing and for the avoidance of doubt, in the event of a Unit Contingency, Seller shall be subject to any liquidated damages applicable in the event of a Unit Contingency pursuant to Section 4.3(b) and Section 6.1 and the other requirements of Section 4.3(b) and Section 6.1 in respect of the shortfalls described therein. The burden of establishing the existence and extent of any Unit Contingency shall be on Seller. Except to the extent required by a Unit Contingency or permitted or required by Section 7.4, Seller shall operate (or cause to be operated) the Facility, and shall not interrupt, curtail or otherwise reduce the availability or deliveries from the Facility or otherwise of the Products, such that, at all times during the Delivery Term and whether or not Seller is, for any period, at, above or below the Annual Guaranteed Energy Quantity, Minimum Two Consecutive Contract Year Energy Quantity or Minimum Three Contract Year Energy Quantity or any other production requirement set forth in this Agreement, (i) Contract Energy is actually generated by the Facility, injected at the Injection Point and delivered to Buyer at the Energy Financial Delivery Point in the Applicable Market (up to the Maximum Delivered Contract Energy in each applicable MISO Settlement Interval) and (ii) the required amounts of other Products are provided to Buyer in accordance with this Agreement. Without limiting the foregoing, absent a Unit Contingency, Seller shall not interrupt, curtail or otherwise reduce the availability or deliveries of Contract Energy for which the LMP exceeds the Minimum Market Price in either MISO Market, regardless of prices or other economic conditions at the Electric Interconnection Point or Injection Point. For any Contract Energy interrupted, curtailed or otherwise reduced by Seller in violation of the

immediately preceding sentence, Seller shall pay to Buyer the amount, if positive, equal to (a) the LMP that would have been payable to Buyer pursuant to Section 7.8 (by MISO pursuant to a Financial Schedule or directly by Seller) if such Contract Energy had been generated, minus (b) the Energy Price applicable to such Contract Energy, plus (c) if (i) the LMP for such Contract Energy exceeded the Minimum Market Price for an applicable MISO Settlement Interval in the MISO Day-Ahead Energy Market and (ii) the price at which MISO settles the MISO Real-Time Energy Market at the Injection Point for any MISO Settlement Interval in the MISO Real-Time Energy Market corresponding to such MISO Settlement Interval in the MISO Day-Ahead Energy Market is less than zero, the absolute value of such price at which MISO settles the MISO Real-Time Energy Market at the Injection Point. In addition, Seller shall be required to comply with Section 4.3(b) with respect to any such Contract Energy interrupted, curtailed or otherwise reduced by Seller in violation of the second preceding sentence as if it had been generated by the Facility from photovoltaic solar energy conversion and delivered to Buyer according to this Agreement.

IV.6 Replacement Products.

(a) Except as required by Section 4.3(b) and Section 6.1 with respect to Environmental Attributes, if Seller is not capable of providing the full availability of the Products as required hereunder, Seller shall have no right and shall not be permitted to provide Replacement Products as a substitute or replacement for the unavailable Products without the prior written consent of Buyer. Notwithstanding the foregoing, Seller may make a proposal or offer to Buyer to provide Replacement Products hereunder. In such event, Buyer may accept or reject, in its sole and absolute discretion, any such proposal or offer from Seller.

(b) If Buyer receives a proposal or offer to provide Replacement Products according to Section 4.6(a), and Buyer, in its sole and absolute discretion, accepts such proposal or offer in writing, such Replacement Products shall constitute, for the period for which Buyer has agreed that Seller may provide such Replacement Products and subject to the other terms of such agreement, Replacement Products for all purposes hereunder, and, except to the extent the Parties have agreed otherwise in writing, Seller shall be obligated to provide such Replacement Products according to the terms of this Agreement at no additional cost or expense to Buyer.

IV.7 Inadvertent Imbalance Energy. To the extent that Seller generates Energy from the Facility in excess of the Maximum Delivered Contract Energy and such excess generation is not the result of a Specified Seller Fault Event, Seller shall have the right to sell such excess generation (the excess generation that Seller is entitled to sell, the "Inadvertent Imbalance Energy") for its own account. For the avoidance of doubt, Buyer shall not be required to purchase, and does not purchase, any Inadvertent Imbalance Energy.

IV.8 No QF Put. Notwithstanding anything to the contrary, Seller hereby acknowledges it has no right to deliver, and expressly agrees not to deliver, QF Energy from the Facility to Buyer or any of Buyer's Affiliates at any time during the Delivery Term.

## ARTICLE V
## PRICING AND PAYMENTS

V.1 Variable Payment. Subject to the other terms hereof, for each month of the Delivery Term, Buyer shall pay to Seller the Variable Payment determined in accordance with Schedule 5.1 for Delivered Energy during such month. Buyer shall make Variable Payments monthly in arrears. The Variable Payment (although calculated according to the Delivered Energy) includes all compensation to Seller for the purchase of all Contract Capacity, Contract Energy (except as otherwise provided in Section 4.7 or Section 7.4(c)(ii)), Capacity-Related Benefits (including any ZRCs, other capacity credits and similar rights and benefits), Environmental Attributes and Other Electric Products, and no other or further amount shall be payable by Buyer in connection with such Products.

V.2 Buyer's Payment Obligation. Notwithstanding anything to the contrary, Buyer shall have no obligation to pay for (and shall have no other liability for and shall not be considered in breach or default under this Agreement (and no Event of Default or Potential Event of Default of Buyer shall arise) as a result of) any Energy that, regardless of reason therefor (including Force Majeure or any Reliability Curtailment), has not actually been delivered to Buyer at the Injection Point, except to the extent set forth under Section 7.4.

V.3 Set-off. Notwithstanding any provision of this Agreement to the contrary, all Variable Payments and any other payments pursuant to this Agreement shall be subject to the rights of the Party obligated to make such payment to deduct from or set off against such payment any and all amounts then due and owing to such Party by the other Party, whether under this Agreement or otherwise.

## ARTICLE VI
## GUARANTEED FACILITY PERFORMANCE CHARACTERISTICS

VI.1 Annual Guaranteed Energy Quantity. If, in any Contract Year, Seller does not deliver Delivered Energy to Buyer at the Energy Financial Delivery Point (taking into account, in each applicable MISO Settlement Interval of such Contract Year, only amounts up to the Maximum Adjustment for such applicable MISO Settlement Interval) in an amount equal to or above the Annual Guaranteed Energy Quantity, then, for each MWh of shortfall:

(a) Seller shall pay to Buyer liquidated damages in the amount equal to the product of (i) the positive difference, if any, between (A) the product of (x) 1.80 and (y) the average of the LMPs (expressed in $/MWh) in the MISO Day-Ahead Energy Market applicable for Energy delivered at the Energy Financial Delivery Point for the MISO Settlement Intervals occurring during the hours ending 1000 through 1900 BA Time over the course of such Contract Year minus (B) the Energy Price multiplied by (ii) the MWh of shortfall; and

(b) Seller shall transfer to Buyer, by the end of the first month of the following Contract Year, the Environmental Attributes and/or Replacement EAs that Seller would have been obligated to transfer to Buyer according to Section 4.3 had such Energy been generated and delivered to Buyer according to this Agreement during such Contract Year (assuming, for this purpose, that such delivery would have occurred ratably spread over the duration of such Contract

Year). For any such Environmental Attribute (or Replacement EA) that Seller does not provide to Buyer (provided that Seller shall first be required to use best efforts to provide such Environmental Attribute or Replacement EA) according to the preceding sentence by the end of the first month of the following Contract Year, Seller shall pay to Buyer, as liquidated damages, an amount equal to the greater of (i) the Reference EA Compliance Payment applicable to such Environmental Attribute (or Replacement EA) or (ii) the average of at least two (2) price quotes obtained by Buyer from nationally recognized brokers during the first month of the following Contract Year, for the sale and delivery of Replacement EAs that are eligible for the Required Qualified Programs corresponding to such Environmental Attribute (or Replacement EA). Any amounts payable pursuant to the immediately preceding sentence shall be included on the Monthly Invoice covering the first month of the following Contract Year.

VI.2 Facility Modifications.

(a) Seller represents and warrants that there are no electric generating units or material users of Energy at or connected to the Facility other than the Photovoltaic Modules.

(b) Seller, without Buyer's express prior written consent (which consent shall be in Buyer's sole and absolute discretion), shall not make, or cause or permit to be made, any modification of or change to the Facility (including the Facility Site) or operations thereof (including a change in regulatory status or a change of the Balancing Authority applicable to the Facility) after the Commercial Operation Date that is inconsistent with the requirements of this Agreement or reasonably would be expected to affect (i) the level of Nameplate Capacity, Contract Capacity or Contract Energy, (ii) the tagging, scheduling, offering, bidding, metering or settlement of Contract Capacity, Capacity-Related Benefits, Environmental Attributes, Contract Energy or Other Electric Products, (iii) the representations and warranties set forth in this Agreement (including Section 4.2(e), Section 6.2(a) and Section 7.3(b)), (iv) the Facility's, Contract Capacity's, Contract Energy's or the Environmental Attributes' eligibility for any Applicable Environmental Attribute Program, (v) negatively the type or quantity of Capacity-Related Benefits, Other Electric Products or Environmental Attributes available to Buyer or (vi) in any other manner, Buyer's rights or obligations hereunder. Notwithstanding the foregoing, Buyer's consent shall not be required for (A) maintenance, repair or replacement of facilities or equipment in accordance with Accepted Industry Practices or (B) installation of new Inverter Block Units, installation of new DC collection systems and Photovoltaic Modules within existing Inverter Block Units, or modification of existing Inverter Block Units at the Facility Site to compensate for degradation of the existing Inverter Block Units or to achieve the Annual Expected Energy Quantity; provided, however, that any such installation or modification shall not be performed with the intent or effect of increasing the Nameplate Capacity of the Facility.

## ARTICLE VII
## SCHEDULING AND DELIVERY

VII.1 Forecasting.

(a) Seller shall cause the Forecaster to provide (at Seller's sole expense) to Buyer a generation forecast for the Facility for the immediately succeeding Day in intervals corresponding to the MISO Settlement Intervals for the MISO Market that has the shortest MISO

Settlement Intervals (each a "Generation Forecast"), setting forth, with respect to each such interval, (i) the forecasted amount of Delivered Energy during such interval and (ii) if such forecasted amount is less than the maximum Contract Energy that could be generated by the Facility at such time as a result of any curtailment pursuant to Section 7.4, a Reliability Curtailment, the limit of the Maximum Delivered Contract Energy or any other cause, the amount and cause of such limitation. The forecasted amounts of Delivered Energy and any limitation amounts set forth in each Generation Forecast in respect of any interval shall be the Forecaster's reasonable best estimate of the amount of the Delivered Energy during such interval. Seller shall cause the Forecaster to prepare all such estimates in good faith and following Accepted Industry Practices, including taking into account the operating condition of the Facility, auxiliary load(s), temperature and relative humidity conditions, losses, availability of and other circumstances relating to electric transmission and other relevant factors at such time. Seller acknowledges and agrees that the amount of Annual Guaranteed Energy Quantity, Minimum Two Consecutive Contract Year Energy Quantity and Minimum Three Contract Year Energy Quantity shall not act as a cap on or otherwise affect Seller's estimation of the amount of forecasted Delivered Energy at any time. Seller acknowledges and agrees that at no time during the Delivery Term may the Delivered Energy ever exceed the Maximum Delivered Contract Energy, and, without limiting Seller's rights under Section 4.7, Seller shall operate the Facility accordingly.

(b) Seller shall cause an initial or new (as applicable) Generation Forecast to be furnished to Buyer if Seller failed to furnish an initial Generation Forecast by the Generation Forecast Deadline applicable thereto according to Section 7.1(c)(i) or the then-current Generation Forecast is in error or there is or, to Seller's knowledge, will be a Unit Contingency or other event, occurrence, condition, circumstance or action that, singularly or in combination, (i) reduces, interrupts or increases, or will reduce or interrupt or will increase, any delivery of Delivered Energy to Buyer or (ii) otherwise causes, or will cause, the Generation Forecast then in effect to be inaccurate in any material respect. Each such Generation Forecast shall reflect fully the changed circumstances since the submission of the prior Generation Forecast and state the reason(s) for each modification to the prior Generation Forecast. A new Generation Forecast delivered in accordance with this Section 7.1(b) and the other requirements of this Agreement shall supersede and replace for all purposes the Generation Forecast in effect prior to the delivery of the new Generation Forecast. Any initial or new Generation Forecast to be provided pursuant to this Section 7.1(b) shall be provided on a rolling basis consistent with the applicable Balancing Authority's forecasting requirements.

(c) (i) Seller shall cause Generation Forecasts to be furnished to Buyer, by electronic mail to Buyer's next-day scheduling desk or other electronic transmission acceptable to Buyer in its reasonable discretion, no later than four (4) hours before the deadline for day-ahead tags, schedules, offers and bids applicable to the earliest MISO Settlement Interval included in such Generation Forecast, as set by the largest Balancing Authority that, as of such time, includes the Delivery Portion ("Generation Forecast Deadline").

(ii) If Seller has caused a Generation Forecast to be submitted and is required to cause a new Generation Forecast to be furnished under Section 7.1(b), such Generation Forecast shall be furnished (utilizing the same methodology as specified in the first sentence of Section 7.1(c)(i) for the initial Generation Forecast) immediately after the occurrence (or, to the extent that Seller has prior knowledge thereof, promptly after it has

knowledge) of the event, occurrence, condition, circumstance or action giving rise to such new Generation Forecast; provided, however, that if a Generation Forecast for any interval is furnished after the Generation Forecast Deadline applicable to such interval, Seller shall transmit any required emails to Buyer's current-day scheduling desk in addition to Buyer's next-day scheduling desk and also contact Buyer's scheduling representative telephonically at Buyer's current-day scheduling desk at the telephone number set forth in Schedule 19.1 and advise such representative of the existence of such Generation Forecast and any modifications relative to the prior Generation Forecast.

VII.2 Market Participant.

(a) Subject to Section 7.2(b):

(i) Throughout the term of this Agreement, Seller shall (or shall cause a designee to) act as the Market Participant (or similar representative) for the Facility before the Balancing Authority applicable to the Injection Portion (including any applicable RTO or ISO), to the extent the concept of a Market Participant (or similar representative) for the Facility is applicable in such Balancing Authority. Without limiting the foregoing, Seller shall cause such Balancing Authority to qualify and recognize Seller as the Market Participant or other representative for the Facility before such Balancing Authority as of no later than the Delivery Term Commencement Date (or such later date as of which such concept is applicable) and maintain such qualification and recognition throughout the remainder of the Delivery Term (so long as such concept continues to be applicable).

(ii) As Market Participant (or similar representative) for the Facility before such Balancing Authority, Seller shall (or shall cause its designee to) perform all functions with respect to the Facility before such Balancing Authority, including, to the extent applicable, (A) arranging and performing any Open Access Same Time Information Systems (OASIS) tagging and transmission scheduling, (B) completing and filing all reports required by such Balancing Authority from the Market Participant (or similar representative), (C) subject to Section 7.3(e), settlement with such Balancing Authority, (D) transmitting to such Balancing Authority operational data and coordinating outages, (E) submitting Facility generation estimates, schedules, bids and offers and (F) performing all other activities required of the Market Participant (or similar representative) for the Facility.

(iii) Without limiting Section 9.1(b), Seller shall perform its functions as the Market Participant (or similar representative) for the Facility before such Balancing Authority according to the standards of performance set forth in Section 9.1(b).

(b) Notwithstanding Section 7.2(a), Buyer may, at its sole discretion at any time and from time to time during the term of this Agreement (but not during the period of time commencing one hundred and eighty (180) Days prior to the expected Delivery Term Commencement Date (which date Seller shall communicate to Buyer in writing at least two hundred and ten (210) Days prior to such date) and ending on the Delivery Term Commencement Date), elect to serve (or have its designee serve) as the Market Participant (or similar representative) for the Facility before the Balancing Authority applicable to the Injection Portion

(including any applicable RTO or ISO) during all or part of the Delivery Term. In such event, the Parties, acting reasonably and in good faith, shall agree upon the modifications and amendments of this Agreement required to reflect the case that Buyer is the Market Participant (or similar representative) for the Facility before the Balancing Authority applicable to the Injection Portion and set forth the same as a new Schedule 7.2(b) to this Agreement as expeditiously as practicable; provided, however, that neither Party shall have any obligation to modify or amend the terms of this Agreement that have a net material adverse effect on any of such Party's rights, benefits, risks or obligations under this Agreement after taking into account any reduction in such Party's costs and any elimination, diminution or re-allocation of such Party's risks under this Agreement that would result from such modifications or amendments. Each Party shall conduct any and all negotiations in connection therewith in good faith and fully consistent with the rights and obligations of Buyer and Seller set forth in this Agreement (including Section 7.3(e), Section 7.6 and Section 9.2). If Buyer and Seller do not agree upon and set forth such modifications as a new Schedule 7.2(b) to this Agreement within thirty (30) days after Buyer's request, Buyer may submit the matters in Dispute for resolution in accordance with the dispute resolution processes set forth in Article XVIII. After this Agreement has been modified to include such new Schedule 7.2(b) (whether by agreement of the Parties or Dispute resolution), Seller shall cause the Balancing Authority applicable to the Injection Portion (i) to qualify and recognize Buyer (or its designee) as of the transition date selected by Buyer and notified to Seller (or, if not possible under applicable Balancing Authority rules, procedures and protocols and other applicable Laws, the next date thereafter that is possible under applicable Balancing Authority rules, procedures and protocols and other applicable Laws) and (ii) to terminate such qualification and recognition as of the earlier of (A) the date selected by Buyer and notified to Seller (or, if not possible under applicable Balancing Authority rules, procedures and protocols and other applicable Laws, the next date thereafter that is possible under applicable Balancing Authority rules, procedures and protocols and other applicable Laws) or (B) the end of the Delivery Term (or, if such qualification and recognition is made in advance of the start of the Delivery Term with effect as of the Delivery Term Commencement Date and this Agreement is terminated prior to the Delivery Term Commencement Date, prior to its effectiveness). Immediately upon Buyer (or its designee) becoming the Market Participant (or similar representative) for the Facility before the Balancing Authority applicable to the Injection Portion pursuant to this Section 7.2(b), the provisions set forth in Schedule 7.2(b) shall automatically take effect to modify the terms of this Agreement as set forth therein, and such provisions shall continue in full force and effect for so long as Buyer is the Market Participant (or similar representative) for the Facility before the Balancing Authority applicable to the Injection Portion. While such provisions are in effect, if there is any conflict that cannot reasonably be reconciled between the provisions of Schedule 7.2(b), and the body of this Agreement or any other schedule or exhibit to this Agreement, the provisions of Schedule 7.2(b) shall control and prevail.

VII.3 Other Balancing Authority Matters.

(a) If, as is the case on the Effective Date, (I) the Balancing Authority applicable to the Injection Portion includes an RTO or ISO or (II) tagging, scheduling, offering and/or bidding of the Products with such Balancing Authority (including into any marketplace administered by such Balancing Authority) is otherwise permitted or required, then:

(i) Without limiting Section 7.2(a) (if applicable), Seller shall (or shall cause its designee to): (A) schedule, offer and/or bid the Products with such Balancing Authority at the Injection Point; (B) tag the Products; and (C) settle any such tags, schedules, offers and/or bids with the applicable Balancing Authority(ies), subject to any re-allocation of associated amounts, if applicable, expressly provided in this Agreement (including Section 7.3(e)); provided, however, that Seller shall (or shall cause its designee to) (X) tag, schedule, offer and/or bid the Products pursuant to this Section 7.3(a)(i) only as required to comply with applicable Balancing Authority rules, procedures and protocols and other applicable Laws or otherwise to perform its obligations under this Agreement (including as required to generate, provide, deliver and transfer the Products to Buyer according to this Agreement) and (Y) shall do so in a manner that results in compliance with its obligations under this Agreement (including Section 4.5 and Section 7.4).

(ii) If, at any time, tagging of the Products is required by applicable Balancing Authority rules, procedures and protocols and other applicable Laws or otherwise for Seller to perform its obligations under this Agreement (including as required to generate, provide, deliver and transfer the Products to Buyer according to this Agreement), then, effective as of such time and for the remainder of the Delivery Term (so long as tagging continues to be required as provided above), (A) Seller shall cause the Facility to be eligible, registered and active for tagging and (B) Seller and Buyer each shall be registered as a "purchasing selling entity" and subscribed for tag agent service with the Specified Tag Agent. During any period that tagging is required according to the immediately preceding sentence, Seller shall, no later than the Applicable Tag Deadline for such tag, create and submit to the tag agent service a tag to Buyer in a form compliant with applicable Laws (and the requirements of the Specified Tag Agent) correctly reflecting, for each applicable MISO Settlement Interval, all information required to create a complete and accurate "source-to-sink" tag consistent with Seller's obligations under this Agreement. Further, if, after the creation of such tag, Seller becomes aware that (as a result of an error or for any other reason) such tag does not comply with the immediately preceding sentence, Seller shall, to the extent permitted by applicable Laws, adjust such tag to bring it into compliance. Without limiting Section 4.5, Section 7.3(e), Section 7.6 or Section 9.2(a), Seller shall be responsible for any errors in any tag (and for any failure to perform resulting from any failure to tag or faulty tagging), and, for the avoidance of doubt, the immediately preceding sentence shall not be interpreted as excusing Seller if applicable Laws do not permit Seller to adjust an errant tag. If, at any time after tagging is in effect according to this Section 7.3(a)(ii), tagging is no longer required by applicable Balancing Authority rules, procedures and protocols and other applicable Laws or otherwise for Seller to perform its obligations under this Agreement, Seller shall (even if tagging is permitted) promptly remove the Facility from active tagging and cease tagging pursuant to this Section 7.3(a)(ii).

(iii) In respect of each MISO Settlement Interval for each MISO Market, Buyer shall, unless Buyer has elected pursuant to Section 7.4 to curtail all of the Contract Energy to be delivered from the Facility to Buyer at the Energy Financial Delivery Point for such MISO Settlement Interval, provide to Seller, by electronic mail or other electronic transmission acceptable to Seller in its reasonable discretion, a notice setting forth the Minimum Market Price for each MWh of Contract Energy that may be delivered from the

Facility to Buyer at the Energy Financial Delivery Point during such MISO Settlement Interval in such MISO Market. Buyer shall provide such notice to Seller by the MMP Deadline applicable with respect to such MISO Settlement Interval for such MISO Market.

(b) Resource Designation

(i) Seller represents and warrants to Buyer that, as of the Effective Date, the Facility is eligible for the following resource designations with the Balancing Authority applicable to the Injection Portion: [ ][19]. Seller shall notify Buyer promptly upon (A) the existence of any new resource designations (*e.g.*, capacity resource, behind-the-meter resource, intermittent resource or other type of resource recognized by such Balancing Authority) for which the Facility is eligible from time to time and/or (B) any resource designations for which the Facility ceases to be eligible from time to time. If, as is the case on the Effective Date, the Facility is eligible for one or more resource designations with the Balancing Authority applicable to the Injection Portion, as determined by Buyer in Buyer's good faith judgment, then Buyer shall be entitled to select the resource designation(s) (or for no resource designations to be made) for the Facility in such Balancing Authority and Seller shall not register the Facility with such Balancing Authority except after receipt of notice of Buyer's selected resource designation(s) and in accordance with such designation(s), provided that Buyer's selection(s) comply with applicable Laws, as determined by Buyer in Buyer's good faith judgment. From time to time (but not during the period of time commencing one hundred and eighty (180) Days prior to the expected Delivery Term Commencement Date (which date Seller shall communicate to Buyer in writing at least two hundred and ten (210) Days prior to such date) to and ending on the Delivery Term Commencement Date), Buyer may add, remove or change any such resource designation in accordance with this Section 7.3(b), provided that such addition, removal or change is permitted by applicable Laws at such time, as determined by Buyer in Buyer's good faith judgment. Seller shall cause the applicable Balancing Authority to recognize and give effect to any designation (or addition or removal thereof or change thereto) made by Buyer pursuant to this Section 7.3(b) promptly upon receipt of notice thereof from Buyer (or, in the case of the initial designation by Buyer, such that the Facility has such designation in effect as of the Commercial Operation Date) and maintain the same in effect throughout the remainder of the Delivery Term (except to the extent further modified by Buyer pursuant to this Section 7.3(b)).

(ii) To the extent that, in Buyer's good faith judgment, the implementation of a resource designation selected by Buyer pursuant to this Section 7.3(b) requires modification or amendment of this Agreement or the development or implementation of, or agreement upon, protocols, procedures, processes, or terms and Buyer so requests in a written notification to Seller, the Parties shall make good faith efforts to negotiate and agree upon such modifications or amendments, and/or develop, agree upon, and implement such protocols, procedures, processes, or terms in a manner that preserves the relative positions of each Party and is consistent with the allocation of risks,

[19] **NTD:** Applicable designations to be provided by Buyer. Buyer currently expects the Facility to be registered with MISO as a Dispatchable Intermittent Resource.

costs and responsibilities hereunder, as expeditiously as practicable. Each Party shall conduct any and all negotiations in connection therewith in good faith and fully consistent with the rights and obligations of Buyer and Seller set forth this Agreement (including Section 7.3(e), Section 7.6 and Section 9.2). If Buyer and Seller do not make such modifications or amendments or agree upon such protocols, procedures, processes, or terms within thirty (30) days after Buyer's request, Buyer may submit the matters in Dispute for resolution in accordance with the dispute resolution processes set forth in Article XVIII.

(c) Seller shall cause, on or before the Commercial Operation Date and thereafter through the end of the Delivery Term, (i) the Balancing Authorit(y)(ies) applicable to the Electric Interconnection Point to recognize the Facility as a separate generating resource at the Electric Interconnection Point (and the Electric Interconnection Point as a separate node or other settlement point, with the Facility being the only source of energy injection at the Electric Interconnection Point) for settlement purposes (including that such Balancing Authorit(y)(ies) determine separately for settlement purposes the amount of Products actually generated by the Facility and delivered to the Electric Interconnection Point and, if applicable, recognize the Facility as a separate generating resource for tagging, scheduling, offering and bidding purposes) and (ii) the Electric Interconnection Point to be within the Required Injection Transmission System. In initially making the arrangements contemplated by this Section 7.3(c) (and in any amendment, supplement or other modification of, or waiver or consent with respect to, or settlement of any dispute under or arising out of, such arrangements, to the extent reasonably expected to affect the items described in Section 6.2(b)), Seller shall keep Buyer reasonably apprised of the progress and shall obtain Buyer's approval (not to be unreasonably withheld, conditioned or delayed) prior to entering into same.

(d) Seller shall provide to Buyer (in the form and timeframe reasonably requested by Buyer) all data and other information relating to the Facility, or the delivery of the Products under this Agreement, and take all other actions, necessary or advisable for Buyer to (i) participate fully in any markets (including any marketplace administered by any Balancing Authority) in which Buyer is participating or otherwise realize and maximize the benefits of the Products (including for Buyer to be able to claim credit for the Capacity-Related Benefits toward its resource adequacy (or equivalent) requirements and for the Environmental Attributes (or Replacement EAs) toward any Applicable Environmental Attribute Program or Applicable Guaranteed Program), (ii) otherwise exercise its rights or perform its obligations set forth in this Section 7.3 and in Section 7.6 or (iii) otherwise comply with applicable Laws or its obligations under this Agreement. Without limiting the foregoing, Seller shall provide to Buyer unrestricted "view" access to the MISO web portal for the Facility (or if the MISO web portal is no longer available or unrestricted "view" access is no longer recognized in such portal, the most equivalent access to an equivalent portal that is then available). In addition, to the extent that, in Buyer's good faith judgment, any of the matters described in clauses (i)-(iii) of the preceding sentence require modification or amendment of this Agreement (including modification or amendment of the Planned Maintenance coordination and scheduling procedures set forth in Section 9.6) or the development or implementation of, or agreement upon, protocols, procedures, processes, or terms and Buyer so requests, the Parties shall make such modifications or amendments, and/or shall develop, agree upon, and implement such protocols, procedures, processes, or terms, as expeditiously as practicable. Each Party shall conduct any and all negotiations in connection

therewith in good faith and fully consistent with the rights and obligations of Buyer and Seller set forth in this Agreement. If Buyer and Seller do not agree upon such modifications, amendments, protocols, procedures, processes, or terms within thirty (30) days after Buyer's request, Buyer may submit the matters in Dispute for resolution in accordance with the dispute resolution processes set forth in Article XVIII.

(e) (i) Subject to Section 7.3(e)(ii), Buyer shall be entitled to any and all payments and credits from (but, except as otherwise provided in this Section 7.3(e)(i), not for any settlement at negative prices or other cost, debit, charge or other amount payable to) any applicable Balancing Authority or any other Person for or relating to the Products during the Delivery Term. If any such payments or credits are received by Seller, Seller shall promptly pay such amounts (or cause them to be paid) to Buyer. Further, Buyer shall be responsible:

(A) for payment of the absolute value of any negative LMP in the Applicable Market for any Delivered Energy, provided, for the avoidance of doubt, that, if the Minimum Market Price is zero or higher for both MISO Markets, then no amount shall be payable pursuant to this clause (A) under any circumstances because, if there were a negative LMP in either MISO Market, such MISO Market could not be the Applicable Market; and

(B) if Seller dispatches any other Products that are physical in nature and Seller delivers such Products according to Buyer's dispatch, for settlement at negative prices of such other Products so delivered at the OP Delivery Point with the Balancing Authority applicable to the OP Delivery Point.

(ii) Notwithstanding Section 7.3(e)(i), Seller shall be entitled to any and all payments and credits (A) made in settlement of the Delivered Energy upon injection at the Electric Interconnection Point, (B) for Curtailed Energy (subject to deduction of any such payment or credit pursuant to Section 7.4(c)(ii)(B)(1) from amounts otherwise payable by Buyer to Seller with respect to such Curtailed Energy), and (C) for Inadvertent Imbalance Energy. In addition, without limiting Section 9.2(a), Seller shall be responsible for any and all settlements at negative prices and other costs, debits, charges and other amounts associated with the Products that are not expressly allocated to Buyer pursuant to Section 7.3(e)(i), including for any and all Imbalance Charges.

(iii) Seller shall be entitled to any and all payments and credits for (and shall be responsible for any and all settlements at negative prices and other costs, debits, charges and other amounts associated with) the Products before and after the Delivery Term, and, if any such amounts are received by or assessed against Buyer, Buyer shall promptly pay to Seller all amounts so received by Buyer or Seller shall promptly pay (or cause to be paid) to Buyer all amounts so assessed against Buyer, as applicable.

VII.4 Buyer's Curtailment Rights.

(a) Notwithstanding anything to the contrary, Buyer shall have the right, in its sole and absolute discretion, to curtail some or all of the Contract Energy to be delivered from the Facility to Buyer at the Energy Financial Delivery Point during any MISO Settlement Interval by:

(i) providing Seller notice of a Maximum Delivered Contract Energy for such MISO Settlement Interval by the MMP Deadline applicable with respect to such MISO Settlement Interval for the MISO Day-Ahead Energy Market; or

(ii) requiring Seller to offer the Facility into the MISO Real-Time Energy Market at the Injection Point according to the energy offer curve or other specific instructions of Buyer provided to Seller by the MMP Deadline applicable with respect to such MISO Settlement Interval for the MISO Real-Time Energy Market, provided that offering the Facility according to Buyer's specific instructions is permitted by applicable Balancing Authority rules, procedures and protocols and other applicable Laws.

Buyer may include any curtailment instructions pursuant to clause (i) above or offer instructions pursuant to clause (ii) above in the notice of Minimum Market Price described in Section 7.3(a)(iii). In the case of a Buyer curtailment pursuant to clause (ii) above, Buyer shall be deemed to have curtailed the Contract Energy, if any, that, according to the dispatch instructions from MISO resulting from implementing Buyer's offer instructions to Seller, should not have been generated by the Facility and injected at the Injection Point during such MISO Settlement Interval.

(b) Further, if both the MISO Day-Ahead Energy Market and the MISO Real-Time Energy Market clear with an LMP for any MISO Settlement Interval below the respective Minimum Market Price applicable thereto, Buyer shall be deemed to have curtailed any Contract Energy actually generated or that would have been generated by the Facility and delivered to Buyer at the Energy Financial Delivery Point during such MISO Settlement Interval.

(c) If Buyer exercises or is deemed to have exercised its curtailment rights pursuant to this Section 7.4, then, for any MISO Settlement Interval for which Buyer has exercised or is deemed to have exercised such rights:

(i) Seller shall provide to Buyer a calculation of the quantity of Contract Energy (up to the Expected Maximum Energy Amount) that would have been generated by the Facility and delivered to Buyer at the Injection Point during such hour had Buyer not so exercised its curtailment rights or been deemed to have exercised such rights (determined according to this Agreement and Accepted Industry Practices using Facility availability information, relevant weather conditions such as solar insolation, panel temperature, and other pertinent Facility data for such hour, including, if applicable, wind speed and wind direction) (the "Curtailed Energy"), which calculation shall be subject to audit and dispute by Buyer;

(ii) Buyer shall pay to Seller, for each MWh of such Curtailed Energy, (A) the Energy Price that would have been applicable to such Curtailed Energy, minus (B) either (1) if, using Commercially Reasonable Efforts, Seller could re-sell such Curtailed Energy in the MISO Markets or the energy markets of any other applicable Balancing Authority with an energy market or, if there are no applicable Balancing Authority energy markets, to another purchaser for a price that exceeds the amount in clause (2) below and Buyer does not expressly direct Seller not to re-sell such Curtailed Energy (in which case, Seller may not re-sell such Curtailed Energy), the net revenues received by Seller by re-selling such Curtailed Energy (or that would have been obtained by Seller had it used

Commercially Reasonable Efforts to re-sell such Curtailed Energy) or (2) otherwise, the net costs saved plus any net revenues received by Seller (including, for any Contract Energy that cleared the MISO Day-Ahead Energy Market at the Injection Point, but then was curtailed pursuant to Section 7.4(a)(ii) and not generated, the difference equal to the price at which MISO settled the MISO Day-Ahead Energy Market at the Injection Point minus the price at which MISO settled the MISO Real-Time Energy Market at the Injection Point, expressed in $/MWh, as a result of not generating such Curtailed Energy (or that would have been saved and received by Seller if it had not generated such Curtailed Energy and used Commercially Reasonable Efforts to maximize net costs saved plus net revenues received); provided, however, that the amount determined pursuant to clause (B) above may not be less than zero (0) as a result of the sale of any such Curtailed Energy at negative prices or otherwise (and Buyer will not otherwise be responsible for any such negative amounts if Seller incurs them); provided further that, if the amount payable pursuant to this Section 7.4(c)(ii) is negative, Seller shall pay the absolute value of such amount to Buyer. The initial calculation of any amount payable pursuant to this Section 7.4(c)(ii) shall be performed by Seller in good faith and provided to Buyer (in reasonable detail and with reasonable supporting documentation) and shall thereafter be subject to audit and dispute by Buyer;

(iii) Such Curtailed Energy shall reduce the amount of Annual Guaranteed Energy Quantity as contemplated by clause (b) of the definition of Quantity Adjustment; and

(iv) For the avoidance of doubt, and without limiting Section 1.5, a Reliability Curtailment (A) shall not be considered an exercise (or deemed exercise) of Buyer's rights under this Section 7.4 or a breach, default, or Event of Default or Potential Event of Default by Buyer or otherwise an act or omission of Buyer and (B) shall not give rise to Curtailed Energy or the compensation set forth in this Section 7.4.

VII.5 Deliveries of Capacity-Related Benefits, Environmental Attributes, Contract Energy and Other Electric Products.

(a) Without limiting Section 9.1(b), all Contract Capacity, Contract Energy and physical Other Electric Products provided hereunder shall meet the specifications therefor set forth in the Electric Interconnection Agreement and other applicable Laws (including the MISO Rules). Without limiting its obligations under the Electric Interconnection Agreement or pursuant to applicable Laws (including the MISO Rules), if any Contract Capacity, Contract Energy or physical Other Electric Product provided by Seller hereunder fails to conform to the specifications therefor set forth in the Electric Interconnection Agreement and applicable Laws (including the MISO Rules), then Seller, upon obtaining knowledge thereof, immediately shall exercise reasonable best efforts to correct such non-conformity and the obligations set forth in Section 9.7 shall apply with respect to such non-conformity.

(b) Seller acknowledges and agrees that Buyer may sell, transfer, or convey to any Person(s), as it deems appropriate in its sole and absolute discretion, any Products provided to Buyer hereunder.

VII.6 Interconnection and Transmission Services.

(a) Seller shall, at its own expense, (i) obtain prior to the Delivery Term Commencement Date, and maintain throughout the Delivery Term, Full Deliverability and (ii) otherwise be responsible for, and bear the full risk, losses and costs of, (A) the transmission or transfer of the Contract Energy to the Injection Point and the financial delivery of the Contract Energy actually generated by the Facility and injected at the Injection Point to the Energy Financial Delivery Point (including any basis differential between the Electric Interconnection Point and the Energy Financial Delivery Point) and the transfer of the other Products that are physical in nature to the OP Delivery Point and (B) without limiting Section 4.2 or Section 4.3, obtaining and maintaining any interconnection and transmission arrangements necessary to qualify/register for, generate, obtain, transfer and otherwise provide to Buyer the intangible Products, except for Network Integration Transmission Service (NITS) (as defined in the MISO Rules) for the Expected Capacity, which Buyer shall be responsible to obtain subject to Section 7.6(b). Without limiting the foregoing, all costs of any Network Upgrades or otherwise by this Section 7.6(a) shall be borne by Seller.

(b) Seller acknowledges and agrees, for the avoidance of doubt, that Buyer does not intend to seek, and shall not be required to seek or obtain, any transmission service in connection with this Agreement, except for Network Integration Transmission Service (NITS) (as defined in the MISO Rules) for the Expected Capacity. Seller shall be responsible for, and reimburse Buyer for, any out-of-pocket costs incurred by Buyer to obtain such Network Integration Transmission Service; provided, that, for the avoidance of doubt, at no time shall Seller be responsible for, or be required to reimburse Buyer for, any charges, fees or costs incurred by Buyer pursuant to the rates for NITS service under the MISO Rules.

(c) At all times during the Delivery Term, the requirement of Buyer to accept deliveries of Products hereunder shall be subject to: (i) Buyer's rights under Section 7.4, (ii) the valid and binding orders and directives of Balancing Authorities, other Transmission Providers and Governmental Authorities having jurisdiction and (iii) any other limitation on, or other circumstance relating to, any applicable electric transmission or distribution system or service (including unavailability of transmission or distribution capacity). To the extent that a failure by Buyer is excused by the immediately preceding sentence, such failure shall not constitute or give rise to a breach, default, Event of Default or Potential Event of Default of Buyer.

VII.7 Title and Risk of Loss.

(a) Title to (i) Contract Energy provided to Buyer shall vest in, and transfer to, Buyer at the Energy Financial Delivery Point, (ii) other Products that are physical in nature and provided to Buyer shall vest in, and transfer to, Buyer at the OP Delivery Point and (iii) other Products that are not physical in nature (including Capacity-Related Benefits and Environmental Attributes) and that are provided to Buyer shall vest in, and transfer to, Buyer automatically upon the generation thereof (without limiting Seller's obligations, to the extent not issued directly to Buyer, to obtain and transfer to Buyer custody of and title to (or, if not possible, the benefit of, as directed by Buyer) all such Products as set forth in Section 4.2 and Section 4.3). Seller warrants that, upon delivery thereof at the Energy Financial Delivery Point (in the case of Contract Energy) or upon delivery thereof at the OP Delivery Point (in the case of other Products that are physical

in nature) or upon generation thereof (in the case of other Products that are not physical in nature), Buyer will have and vest in good and valid title to all Products provided hereunder free and clear of all security interests, purchase rights, claims, charges, liens, and other encumbrances or any interest therein or thereto.

(b) Notwithstanding Section 7.7(a), the Parties hereby agree that, as between the Parties, (i) Buyer shall be deemed to be in exclusive possession and control of, and responsible for any damages, sickness or injury, including death, resulting from or caused by, (A) the Contract Energy (to the extent provided to Buyer hereunder) after the Energy Financial Delivery Point and (B) other Products that are physical in nature (to the extent provided to Buyer hereunder) after the OP Delivery Point, and (ii) Seller shall be deemed to be in exclusive possession and control of, and responsible for any damages, sickness or injury, including death, resulting from or caused by, (A) the Contract Energy (to the extent provided to Buyer hereunder) at and prior to the Energy Financial Delivery Point, (B) other Products that are physical in nature (to the extent provided to Buyer hereunder) at and prior to the OP Delivery Point and (C) all other Products at all times. Risk of loss related to (i) the Contract Energy (to the extent provided to Buyer hereunder) shall transfer from Seller to Buyer at the Energy Financial Delivery Point, (ii) other Products that are physical in nature (to the extent provided to Buyer hereunder) shall transfer from Seller to Buyer at the OP Delivery Point and (iii) other Products that are not physical in nature (including Capacity-Related Benefits and Environmental Attributes), to the extent provided to Buyer hereunder, upon receipt by Buyer of title thereto and custody thereof according to this Agreement.

VII.8 Financial Scheduling. For all purposes of this Agreement, the sale and delivery to Buyer at the Energy Financial Delivery Point in the Applicable Market of the Contract Energy actually generated by the Facility and injected at the Injection Point (up to the Maximum Delivered Contract Energy in each applicable MISO Settlement Interval), as well as the payment by Buyer of the amount contemplated by Section 7.3(e)(i)(A) (if applicable), shall be made as follows:

(a) For each MISO Settlement Interval during the Delivery Term, Seller shall prepare and submit to MISO, by the earlier of 1400 BA Time on the Day after the Day in which such MISO Settlement Interval occurs or sixty (60) minutes prior to the E4 Settlement Submission Deadline, a Financial Schedule from Seller (or its designated Market Participant) to Buyer (or its designated Market Participant) covering such MISO Settlement Interval that (i) designates Seller (or its designated Market Participant) as the selling Market Participant and Buyer (or its designated Market Participant) as the buying Market Participant, (ii) reflects, for such MISO Settlement Interval, a quantity of energy equal to the amount of Contract Energy actually generated by the Facility and injected at the Injection Point (up to the Maximum Delivered Contract Energy), if any, during such MISO Settlement Interval, as determined according to Section 8.2, (iii) designates the Injection Point as the Source Point (as defined in the MISO Rules), (iv) designates the Energy Financial Delivery Point as both the Internal Delivery Point and the Sink Point (as each such term is defined in the MISO Rules) and (v) otherwise meets the requirements for an accurate, complete and valid Financial Schedule. To the extent that any information required to prepare and submit such Financial Schedule is not available to Seller (or is not final) by the time Seller is required to submit such Financial Schedule according to this Section 7.8(a) (including as a result of missing information from MISO or subsequent adjustments thereto), Seller shall prepare and submit such Financial Schedule based on the best information that it has at that time.

(b) If, prior to the MISO FinSched Deadline, Seller becomes aware of any error in any then-current Financial Schedule submitted by Seller to MISO pursuant to Section 7.8(a) or receives from MISO any missing information or adjustments to prior information, Seller shall, to the extent permitted by applicable Laws, submit to MISO a modification thereto correcting such error or information as promptly as practicable, but no later than the earlier of (i) thirty (30) minutes after becoming aware of such error or receiving such missing information or adjustment from MISO or (ii) the MISO FinSched Deadline, provided that no such modification shall be considered to cure a failure by Seller to submit a Financial Schedule meeting the requirements of clauses (i)-(v) of the first sentence of Section 7.8(a) (after taking into account the flexibility provided by the last sentence of Section 7.8(a)), and its associated FinSched Notice, by the deadline set forth in the first sentence of Section 7.8(a).

(c) Contemporaneously with submission to MISO of any Financial Schedule (or modification thereto) pursuant to Section 7.8(a) or Section 7.8(b), Seller shall notify Buyer of such submission (the "FinSched Notice").

(d) After Seller submits any Financial Schedule to MISO, Buyer (i) may confirm such Financial Schedule with MISO and (ii) subject to Section 7.8(e) and provided Buyer received a FinSched Notice for such Financial Schedule no later than the Contractual FinSched Submission Deadline for the applicable Financial Schedule, shall confirm such Financial Schedule with MISO by no later than the later of (A) sixty (60) minutes after receipt of the FinSched Notice or (B) twelve (12) hours before the MISO FinSched Deadline for the applicable MISO Settlement Interval (such later time, the "Contractual FinSched Confirmation Deadline").

(e) Financial Schedule Error or Dispute

(i) If Buyer believes a Financial Schedule is inaccurate or, when confirmed by Buyer, would not result in a complete, accurate and valid Financial Schedule or otherwise disputes such Financial Schedule, Buyer may notify Seller by telephone to Seller's [current-day] [next-day][20] scheduling desk. If Buyer so notifies Seller of a dispute, the Parties will use good faith efforts to resolve the dispute as promptly as practicable, but no later than the later of (A) thirty (30) minutes after Buyer's notice to of the dispute to Seller or (B) four (4) hours prior to the Contractual FinSched Confirmation Deadline for such Financial Schedule.

(ii) If Buyer has notified Seller of a dispute over a Financial Schedule and such dispute has not been resolved as of the Contractual FinSched Submission Deadline for such Financial Schedule, but Buyer and Seller have agreed, as of such time, to modify a portion of such Financial Schedule, then Seller shall (A) modify the applicable Financial Schedule accordingly and (B) submit such modified Financial Schedule to MISO, and provide the corresponding FinSched Notice to Buyer according to Section 7.8(c), on or before the Contractual FinSched Submission Deadline for such Financial Schedule. Section 7.8(d) shall then apply to any Financial Schedule submitted according to the immediately preceding sentence (except that, so long as Seller complied

[20] **NTD:** Seller to indicate which scheduling desk should receive notice.

with the immediately preceding sentence, the "subject to Section 7.8(e)" set forth in Section 7.8(d)(ii) shall not apply to such Financial Schedule, even if Buyer is not in agreement with it). Any outstanding dispute relating to such Financial Schedule will then be resolved pursuant to Article XVIII (and, for the avoidance of doubt, if it is determined that such Financial Schedule does not meet the requirements of clauses (i)-(v) of the first sentence of Section 7.8(a) (ignoring, for this purpose, the flexibility provided by the last sentence of Section 7.8(a)), then Section 7.8(f) shall apply thereto). For the avoidance of doubt, the confirmation by Buyer of a Financial Schedule pursuant to this Section 7.8(e)(ii) shall not waive (in whole or in part) or otherwise prejudice any claim or right of Buyer with respect to disputed terms in such Financial Schedule that were not resolved by the Parties as set forth in this Section 7.4(e).

(f) If, for any MISO Settlement Interval, Seller does not submit, and/or Buyer does not confirm, a Financial Schedule (after giving effect to any modifications thereto that are submitted and confirmed) meeting the requirements of clauses (i)-(v) of the first sentence of Section 7.8(a) (ignoring, for this purpose, the flexibility provided by the last sentence of Section 7.8(a)), including as a result of not submitting and/or confirming any Financial Schedule at all, confirming and submitting a Financial Schedule for the wrong MISO Market or the wrong amount of Contract Energy (including because the exact amount of the Contract Energy is not known at the time such Financial Schedule (including modifications thereto) is submitted or because such amount is later adjusted by MISO) or otherwise (including because a dispute over a Financial Schedule is not resolved until after the Contractual FinSched Submission Deadline for such MISO Settlement Interval), then Seller shall include, in the next Monthly Invoice issued under Article XI, an amount equal to the difference (positive or negative) of (i) the net amount (positive or negative) that would have been received by Buyer from MISO in settlement of the Financial Schedule for such MISO Settlement Interval as it should have been submitted and confirmed according to the requirements of clauses (i)-(v) of the first sentence of Section 7.8(a) (ignoring, for this purpose, the flexibility provided by the last sentence of Section 7.8(a)), minus (ii) the net amount (positive or negative) that will actually be received by Buyer from MISO in settlement of the Financial Schedule for such MISO Settlement Interval that was actually submitted and confirmed (if any). The absolute value of such amount shall, if such amount is positive, be paid by Seller to Buyer and, if such amount is negative, shall be paid by Buyer to Seller. Any Contract Energy that was not included in a Financial Schedule, but for which Seller includes in a Monthly Invoice the amount contemplated by this Section 7.8(f) (and pays such amount, if payable by Seller), shall be considered to be sold and delivered to Buyer at the Energy Financial Delivery Point in the Applicable Market. For the avoidance of doubt, the payment by either Party of the amount contemplated by this Section 7.8(f) shall not waive (in whole or in part) or otherwise prejudice any claim or right of Buyer with respect to a failure by Seller to submit a Financial Schedule meeting the requirements of clauses (i)-(v) of the first sentence of Section 7.8(a) (after taking into account the flexibility provided by the last sentence of Section 7.8(a)), and its associated FinSched Notice, by the deadline set forth in the first sentence of Section 7.8(a)

(g) Notwithstanding the foregoing, if the Balancing Authority applicable to the Delivery Portion at any time does not provide for Financial Schedules (or, without limiting Section 1.2(g), a successor thereto or replacement therefor, which may be physical, financial or a combination thereof, in which case such successor or replacement concept would apply and Seller shall effect the sale and delivery in accordance therewith) to effect through such Balancing

Authority the sale and delivery to Buyer at the Energy Financial Delivery Point in the Applicable Market of the Contract Energy actually generated by the Facility and injected at the Injection Point (up to the Maximum Delivered Contract Energy in each applicable MISO Settlement Interval) according to the risk and benefit allocations in this Agreement (namely, with Seller bearing all interconnection, transmission and other delivery costs, losses and risks through the Energy Financial Delivery Point (including any basis differential and other transmission losses and congestion risk between the Electric Interconnection Point and the Energy Financial Delivery Point) and Buyer obtaining the value and benefit of such Contract Energy at the Energy Financial Delivery Point at no cost to Buyer other than payment of the Variable Payment), then Seller shall effect such sale and delivery outside such Balancing Authority by (i) paying to Buyer the LMP in the Applicable Market for any Contract Energy actually generated by the Facility and injected at the Injection Point, up to the Maximum Delivered Contract Energy in each applicable MISO Settlement Interval (or, if such LMP is negative, Buyer shall pay to Seller the absolute value of such LMP as contemplated by Section 7.3(e)(i)(A)) and (ii) without limiting Section 7.6, bearing all interconnection, transmission and other delivery costs, losses and risks through the Energy Financial Delivery Point (including reimbursing Buyer for same, if any of such costs are assessed against Buyer).

VII.9 ARR/FTR. Notwithstanding anything to the contrary herein and without limiting Section 4.2, Seller hereby acknowledges and agrees that all ARR allocations and, if applicable, FTR allocations by any Balancing Authorit(y)(ies) applicable to the Delivery Portion that are associated with, and/or with interconnection and/or transmission service or usage with respect to, the Products (including those associated with NRIS obtained by Seller) and all FTRs and other entitlements derived therefrom or otherwise related thereto, shall exclusively and solely accrue to and be owned by Buyer, including after termination of this Agreement. Seller shall, at its own expense, (i) cause to be issued to Buyer all ARR allocations and, if applicable, FTR allocations associated with (and/or with interconnection and/or transmission service or usage with respect to) the Products (including those associated with NRIS obtained by Seller) and all FTRs and other entitlements derived therefrom or otherwise related thereto and (ii) to the extent not issued directly to Buyer, obtain and transfer to Buyer custody of and title to (or, if not possible, the benefit of, as directed by Buyer) the same. Without limiting the foregoing, Seller shall fully support, and not take any action or position to oppose, such allocations and entitlements and shall timely execute and file all documents and take all other actions necessary or advisable to comply with the immediately preceding sentence.

## ARTICLE VIII
## METERING; QUANTITY DETERMINATIONS; REAL-TIME DATA

VIII.1 Metering. Without limiting Section 3.1, Section 7.3(c), Section 7.6, Section 9.2 or any other provision of this Agreement, as between the Parties, Seller shall be responsible for and bear the full costs of (a) the engineering, procurement of equipment for, design, construction, installation, operation, maintenance, repair, replacement, testing, calibration, security, and integrity of Electric Metering Equipment and (b) any other facilities or arrangements required for recognition by the applicable Balancing Authorities of the Products delivered to Buyer hereunder.

VIII.2 Quantity Determinations.

(a) The amount of Contract Energy that is recognized by the Balancing Authority applicable to the Injection Portion as being actually generated by the Facility and delivered to the Injection Point for settlement purposes shall be deemed to be the amount of Contract Energy actually generated by the Facility and injected at the Injection Point for all purposes of this Agreement. Without limiting Section 4.6, and for the avoidance of doubt, such amount shall not include any quantity of Energy that such Balancing Authority credits to the Facility for settlement purposes (e.g., pursuant to a day-ahead dispatch schedule) but that was not actually generated by the Facility (e.g., imbalance or real-time energy provided by such Balancing Authority).

(b) The amount of Delivered Energy for all purposes of this Agreement shall be deemed to be the lesser of (i) the amount of Contract Energy actually generated by the Facility and injected at the Injection Point, as determined according to Section 8.2(a), (ii) the sum of (A) the amount of Contract Energy that is recognized by the Balancing Authority applicable to the Delivery Portion as being delivered by Seller (or its designated Market Participant) to Buyer at the Energy Financial Delivery Point in the Applicable Market for settlement purposes, provided such delivery was made according to Section 7.8 (whether physically and/or financially), plus (B) any Contract Energy delivered by Seller to Buyer at the Energy Financial Delivery Point outside such Balancing Authority according to Section 7.8(f) or Section 7.8(g), or (iii) the Maximum Delivered Contract Energy.

(c) Any amount recognized by a Balancing Authority for settlement purposes that is used in the determinations set forth in this Section 8.2 shall be adjusted only when such Balancing Authority recognizes such adjustment for settlement purposes. In such event, such adjustment recognized by such Balancing Authority for settlement purposes shall be deemed to adjust the corresponding amount for purposes of this Agreement.

VIII.3 Limitations on Seller's Use of Information. Seller agrees to limit the availability and disclosure of information with respect to tagging, scheduling, offering, bidding, dispatch, settlements, Generation Forecasts, Outages, Unit Contingencies and other limitations and operational information relating to the Facility or this Agreement exclusively to the tagging, scheduling, operations and asset management personnel designated by Seller to Buyer in writing from time to time who are primarily responsible for the day-to-day operation and/or management of the Facility. Seller and such personnel (including any designated Market Participant) may use all such information only for the limited purpose of operating, tagging, scheduling and offering the Facility as contemplated hereunder and performing their respective directly related duties under this Agreement. Without limiting the generality of the foregoing, Seller and such personnel are expressly forbidden from using, directly or indirectly, any such information, or knowledge thereof, (a) in connection with any activity in which Buyer, on the one hand, and Seller (or, if it does not employ its personnel, the employer(s) of such personnel) and/or its (or their) Affiliates, on the other hand, compete or where the knowledge or possession of such information would provide, or would reasonably be expected to provide, Seller (or such employer(s)) and/or its (or their) Affiliates with a competitive advantage or (b) in contravention, violation, or breach of any applicable Law, code of conduct, or binding agreement, including the Confidentiality Agreement. Seller shall be responsible for any unauthorized disclosure or use by personnel designated by Seller

or performing work for or on behalf of Seller or any of its Affiliates of any of the information protected under this Section 8.3.

VIII.4 Real-Time Data.

(a) No later than sixty (60) Days prior to the Commercial Operation Date, Seller shall install one or more stand-alone meteorological stations at the Facility Site and the measurement, telemetry and communications equipment necessary or advisable (according to Accepted Industry Practices) to measure, record, store and provide to Buyer the data required by this Section 8.4 on the basis required by this Section 8.4. Seller shall maintain the same (according to the standards set forth in Section 9.1(b)) until the end of the Delivery Term.

(b) Throughout the Delivery Term, Seller shall measure, record, store and provide to Buyer the data set forth in Schedule 8.4(b) on an around-the-clock basis and in intervals no longer than every ten (10) seconds. In addition, Seller shall provide to Buyer any other data relating to the Facility that Seller elects to measure and record at the Project Site on the same frequency interval basis as Seller receives that data.

(c) On or before the Delivery Term Commencement Date, Seller shall establish a virtual private network (VPN) connection between Seller and Buyer. Following establishment of such VPN connection, Seller shall, throughout the Delivery Term, maintain such connection and make available the data described in Section 8.4(b) to Buyer by DNP protocol in an encrypted format over TCP/IP through such VPN connection. In addition, promptly upon request from Buyer, Seller shall provide, and thereafter maintain throughout the Delivery Term, (i) a substation data feed by DNP serial over fiber optic or other media from Seller's SEL-2032 to Buyer's on-site remote terminal unit. In connection therewith, and without limiting Section 9.5, Seller shall also provide to Buyer, throughout the Delivery Term, a trunk line to the Facility substation, a server rack/UPS and space in server room for Buyer's on-site remote terminal unit and other related communications equipment. Notwithstanding the foregoing, if the equipment, technology or any other aspect contemplated by this Section 8.4(c) becomes antiquated, obsolete, impracticable or outside of Accepted Industry Practices and Buyer so requests, Seller shall modify such aspects as reasonably requested by Buyer to bring them back into then-current equipment and technology, practicability and Accepted Industry Practices.

(d) Within thirty (30) Days after the end of each month, Seller shall provide to Buyer a report that provides the data described in Section 8.4(b) for such month, as well as any other additional information that Buyer reasonably requests regarding the Facility that is collected and maintained by Seller in the ordinary course of Facility operations.

## ARTICLE IX
## OPERATION AND MAINTENANCE; SELLER'S COST SCOPE

IX.1 General Operation and Maintenance Obligations.

(a) As between the Parties, Seller shall have full and complete responsibility for, and (subject to the express rights of Buyer herein and without limiting Seller's obligations to comply with this Agreement) control over, the development, engineering, procurement of equipment for, design, construction, installation, start-up, ownership, leasing, financing, insuring,

operation, maintenance, management, replacement, repair, studying, testing and other use of the Facility (and each part thereof), including the real property interests related thereto.

(b) Seller shall perform (or caused to be performed) the scope described in Section 9.1(a), and all other aspects of the Seller's Cost Scope (other than Buyer's functions as Market Participant (or similar representative) of the Facility pursuant to Section 7.2(b), if applicable), in accordance with (i) Seller's obligations herein, (ii) the Electric Interconnection Agreement, other Deliverability Arrangements, and other Project Documents, (iii) Accepted Industry Practices and all relevant equipment manufacturers' requirements and recommendations, (iv) all Consents and (v) all applicable Laws (including applicable environmental Laws and any Governmental Approvals), including the MISO Rules, the NERC reliability standards promulgated pursuant to 18 C.F.R. Part 39 and any other applicable policies, rules, guidelines, procedures, protocols, standards, criteria and requirements of FERC, any Transmission Provider (including any applicable RTO or ISO) and any ERO. If any of the foregoing standards of performance are inconsistent with each other, Seller shall comply with the most stringent standard of performance. Without limiting the foregoing, during the term of this Agreement, Seller shall (1) obtain and maintain all Governmental Approvals as may be required for the performance of Seller's Cost Scope (other than Buyer's functions as Market Participant (or similar representative) of the Facility pursuant to Section 7.2(b), if applicable) and (2) make available all Contract Energy and other Products that are physical in nature in a form (and with qualities) compliant with the Laws applicable to the Energy Financial Delivery Point and applicable OP Delivery Points, respectively.

IX.2 Seller's Cost Scope.

(a) (i) Without limiting Buyer's obligations to pay the Variable Payment as required by this Agreement, as between the Parties, Seller shall bear all costs and expenses, of any kind or character, arising out of or in connection with Seller's Cost Scope, whether now in effect or at any time in the future coming into effect and whether assessed against Seller or Buyer (or one of their respective Subcontractors or Affiliates), except the amounts expressly allocated to Buyer pursuant to Section 7.3(e)(i) and without limiting Buyer's obligation to any Imbalance Charges that are part of the amount payable by Buyer according to Section 7.4(c)(ii) (if and when applicable).

(ii) Without limiting Section 9.2(a)(i), and notwithstanding anything to the contrary, Seller shall be responsible for (A) except the amounts expressly allocated to Buyer pursuant to Section 7.3(e)(i), all Balancing Authority (including applicable RTO or ISO) and other Transmission Provider membership, transaction and other fees, costs, debits and charges, including (1) the cost of ancillary services and other Balancing Authority services (including regulation), (2) any integration charges, (3) without limiting and subject to the allocations to Buyer under Section 7.6, all interconnection, transmission and other delivery costs, losses and charges (including the cost of any Network Upgrades), (4) any Imbalance Charges (without limiting Buyer's obligation to pay any Imbalance Charges that are part of the amount payable by Buyer according to Section 7.4(c)(ii), if and when applicable), (5) any other BA Penalties and (6) any other settlements, and (B) any similar fees, costs, debits and charges, in each case arising out of or in connection with Seller's Cost Scope (whether now in effect or at any time in the future coming into effect and whether assessed against Seller or Buyer (or one of their respective Subcontractors or

Affiliates)), but excluding any Transmission Provider membership, transaction and similar fees charged to Buyer (or its designated Market Participant) corresponding to the buying Market Participant side of a Financial Schedule submitted and confirmed according to Section 7.8. Without limiting the foregoing, and for the avoidance of doubt, the Parties hereby expressly agree that Seller's responsibility under this Section 9.2(a)(ii) shall include any Balancing Authority and other Transmission Provider fees, costs and charges (including those assessed at the Energy Financial Delivery Point or the OP Delivery Point, as applicable) associated with (X) any tag, schedule (including any Financial Schedule), offer or bid in respect of the Products, including the settlement thereof (subject to any re-allocation of associated amounts, if applicable, expressly provided in this Agreement (including Section 7.3(e)) but excluding any Transmission Provider membership, transaction and similar fees charged to Buyer (or its designated Market Participant) corresponding to the buying Market Participant side of a Financial Schedule submitted and confirmed according to Section 7.8, or (Y) Seller's or Buyer's functions pursuant to Section 7.2.

(iii) For the avoidance of doubt, the term "Balancing Authority," as used in this Section 9.2(a) and in definitions of defined terms used in this Section 9.2(a), includes each Balancing Authority applicable to the Electric Interconnection Point, any OP Delivery Point, the Injection Portion or the Delivery Portion.

(b) If Buyer is invoiced for or otherwise assessed any amount that is the responsibility of Seller under Section 9.2(a) or Section 7.3(e), Seller shall promptly pay such amount to Buyer.

IX.3 Disconnection.

(a) If FERC, the Host Utility, any market monitor, Balancing Authority (including any applicable RTO or ISO), other Transmission Provider, ERO or other Governmental Authority with jurisdiction requires that the Facility or any portion thereof be disconnected from any interconnected electrical system (or requires that provision or delivery of Contract Capacity, Contract Energy or Other Electric Products hereunder otherwise be curtailed, reduced or interrupted), Seller shall be solely responsible for all costs and expenses incurred by Seller due to such disconnection or interruption.

(b) Without limiting any applicable obligations under the Electric Interconnection Agreement, Seller shall exercise reasonable best efforts to correct promptly (or cause the correction promptly of) any condition at the Facility that necessitates the disconnection of the Facility from any interconnected electrical system or otherwise requires that provision or delivery of Contract Capacity, Contract Energy or Other Electric Products hereunder otherwise be curtailed, reduced or interrupted.

IX.4 Testing. Without limiting Section 4.2 or Section 7.3(d), to the extent Buyer is required by applicable Laws (including Balancing Authority rules) to demonstrate the capability of, or otherwise test, the Facility for purposes of capacity qualification, capacity accreditation, resource adequacy determination or for any other purpose (including to meet requirements imposed by Buyer's participation in any reliability group or Balancing Authority (including any

ISO or RTO) or in any marketplace administered by any Balancing Authority (including any ISO or RTO)), Seller shall, at Seller's sole cost and expense, (a) cause such tests (including any deliverability tests and capability tests) to be performed according to applicable requirements and (b) upon request from Buyer, provide the results of such tests (and any information relating thereto) to such reliability group or Balancing Authority or other Person designated by Buyer. In such event, Buyer shall be entitled to receive all Products from the applicable test according and subject to the terms and conditions of this Agreement and shall pay Variable Payments for any Delivered Energy, up to the Maximum Delivered Contract Energy, associated with such test.

IX.5 Access. Throughout the term of this Agreement, Seller shall, upon reasonable prior notice given by Buyer to Seller, provide employees or representatives (including technical or other advisors) of Buyer or its Affiliates accompanied access to the Facility, including all appurtenant electrical equipment and the Facility Site, at all reasonable times and for any reasonable duration, for the purposes of: (i) witnessing, inspecting, reviewing and/or monitoring the development, engineering, procurement of equipment for, design, construction, installation, start-up, operation, maintenance, management, replacement, repair, studying, testing, adjustment and calibration or other use of the Facility, Electric Metering Equipment and all appurtenant electrical equipment, in whole or in part; (ii) without limiting the foregoing, conducting Buyer's own studies and/or tests of the Facility, Electric Metering Equipment and all appurtenant electrical equipment, in whole or in part; (iii) developing, engineering, procuring equipment for, designing, constructing, installing, starting up, operating, maintaining, managing, replacing, repairing, studying, testing, connecting, disconnecting, removing, adjusting and/or calibrating any Buyer check meters, remote terminal units and/or related equipment; and/or (iv) performing any obligation, and/or exercising any right (including its audit rights pursuant to Section 11.7), of Buyer under this Agreement and/or performing any other duty, work, task or function reasonably incidental to its rights or obligations under this Agreement, subject, in each case, to the safety and security (including transmission security) rules, regulations or requirements of Seller then in existence and of general applicability to invited visitors to the Facility Site. Seller shall provide and maintain access roads for access to the Facility Site (including to each Inverter Block Unit), and Buyer shall have free use of such access roads to exercise its rights under this Section 9.5. In exercising such rights, Buyer shall not unreasonably interfere with or disrupt the operation of the Facility, Electric Metering Equipment or any appurtenant electrical equipment and shall comply with all of Seller's security and safety regulations of general applicability at the Facility Site communicated to Buyer.

IX.6 Planned Maintenance.

(a) Subject to any modification or amendment of this Agreement made pursuant to Section 4.2(c) or Section 7.3(d), Planned Maintenance occurring during the Delivery Term shall be coordinated and scheduled in accordance with this Section 9.6. Seller shall perform all Planned Maintenance (including Major Planned Maintenance) in a manner that optimizes the generation and benefits to Buyer of the Contract Energy and other Products (e.g., during off-peak periods and low-irradiance periods) and, without limiting the foregoing, either (i) outside of Daylight Hours or (ii) during the months of October and November only, during Daylight Hours; provided, however, that the foregoing restrictions shall not apply to any Planned Maintenance that Seller is required to perform pursuant to any applicable manufacturer warranty that cannot reasonably be performed by Seller subject to such restrictions.

(b) Seller shall deliver to Buyer a proposed schedule for Planned Maintenance in respect of each Contract Year ("Planned Maintenance Schedule") no later than ninety (90) Days before the start of such Contract Year. Planned Maintenance Schedules submitted by Seller shall (i) comply with the second sentence of Section 9.6(a) and (ii) include reasonably detailed descriptions of the Planned Maintenance to be performed, the Days and times in which each type of Planned Maintenance is scheduled to be performed, the estimated amount(s) of Contract Capacity that will be unavailable due to Planned Maintenance and the total number of hours that Seller expects that the Contract Capacity will be unavailable due to Planned Maintenance. The general form for the Planned Maintenance Schedule is set forth in Schedule 9.6. (The Planned Maintenance descriptions reflected in the general form set forth in Schedule 9.6 are provided for indicative purposes only, and are not necessarily representative of the detail, time periods, or certainty required for a Planned Maintenance Schedule hereunder.)

(c) Buyer shall have the right to disapprove, in its reasonable discretion (provided that Buyer shall have the right to disapprove, in its sole and absolute discretion, any Planned Maintenance proposed by Seller that is inconsistent with the terms of this Agreement), any Planned Maintenance set out in any Planned Maintenance Schedule proposed by Seller for any Contract Year, except for any Planned Maintenance that (i) is scheduled to occur outside of Daylight Hours or during Daylight Hours during the months of October and November or (ii) Seller is required to perform pursuant to any applicable manufacturer warranty and that is scheduled to occur in compliance with Section 9.6(a). If Seller submits its Planned Maintenance Schedule for a Contract Year in accordance with the requirements of this Agreement and Buyer does not disapprove of any Planned Maintenance set out in such Planned Maintenance Schedule by sixty (60) days after submission, then such Planned Maintenance Schedule shall be deemed approved. If Buyer, in the exercise of its discretion as set forth above, disapproves any Planned Maintenance in such Planned Maintenance Schedule within the applicable time period specified above after its submission, Buyer shall notify Seller and the Parties shall use Commercially Reasonable Efforts to agree upon and finalize a mutually acceptable Planned Maintenance Schedule for the applicable Contract Year. Seller shall conduct Planned Maintenance during such Contract Year only in accordance with an agreed Planned Maintenance Schedule; provided, however, that Seller may (A) move Planned Maintenance included in an agreed Planned Maintenance Schedule that is not Major Planned Maintenance, so long as such move is consistent with the terms of this Agreement (including the second sentence of Section 9.6(a)) or, with respect to Major Planned Maintenance, if such Major Planned Maintenance is scheduled to occur outside of Daylight Hours or during Daylight Hours during the months of October and November and (B) schedule and perform Planned Maintenance not reflected in the Planned Maintenance Schedule so long as such Planned Maintenance is scheduled to be performed outside of Daylight Hours or during Daylight Hours during the months of October and November and Seller provides Buyer at least two (2) weeks' prior written notice of such Planned Maintenance; provided further that Buyer shall have the right to advise Seller of periods when Buyer prefers, based on solar irradiance, supply, market and other conditions, that any Major Planned Maintenance be deferred, and Seller shall use Commercially Reasonable Efforts to comply with such request.

(d) Seller shall use Commercially Reasonable Efforts to complete any Planned Maintenance and place the Facility back into full commercial operation as soon as reasonably possible. If Seller determines that any Planned Maintenance scheduled in an agreed Planned Maintenance Schedule no longer needs to be completed or will not consume the entire time

scheduled therefor in the agreed Planned Maintenance Schedule, Seller shall provide (i) a Generation Forecast to Buyer reflecting the forecasted amount of Delivered Energy during each affected interval that takes into account such change and (ii) in the case of any Major Planned Maintenance, a written notice declaring the cessation and termination of the applicable Major Planned Maintenance period (in which event, the Major Planned Maintenance period shall terminate in accordance with the terms of such Generation Forecast and written notice).

IX.7 Outages and Other Limitations. Without limiting its other obligations under this Agreement, Seller shall immediately notify Buyer after obtaining knowledge thereof that Seller is or will be unable to make available or deliver all or part of the Products as contemplated by this Agreement due to an Outage or other limitation, including due to Force Majeure. As soon as practicable, Seller shall notify Buyer of (a) the cause (or if not known, Seller's best estimate of the cause) of the Outage or other limitation, (b) the proposed corrective action, and (c) Seller's best estimate of the expected duration of the Outage or other limitation, if any, which shall be based on the best information obtained by Seller. Seller promptly shall notify Buyer of any expected change in the Outage or other limitation and otherwise shall keep Buyer reasonably informed of its progress in overcoming the Outage or other limitation, including providing reports (no less often than weekly) describing actions taken and to be taken to overcome the Outage or other limitation, the schedule for such actions and the expected date for Seller's resumption of full performance of the obligations affected by the Outage or other limitation. Seller shall give Buyer prompt notice of the time when Seller is reasonably certain that it will be able to, and when it has, overcome its inability to perform any obligation hereunder affected by the Outage or other limitation and resume full performance of its obligations hereunder. Without limiting its other obligations under this Agreement, Seller shall use Commercially Reasonable Efforts to avoid Outages and other limitations limiting the availability or delivery of all or part of the Products and to minimize the duration and effect upon Buyer of any such Outages or other limitations.

IX.8 Insurance. Seller shall maintain or cause to be maintained the insurance described in Schedule 9.8 and shall otherwise comply with the terms and conditions set forth in Schedule 9.8.

IX.9 Accounting Treatment.

(a) No earlier than thirty (30) Days prior to, and no later than, each Contract Year Anniversary Date, Seller shall provide to Buyer a bring-down certification from Seller's Principal Accounting Officer (as defined by the rules of the Securities and Exchange Commission) affirming in all respects that the statements regarding the Accounting Treatment made in the Accounting Certification are true and correct in all respects as of the time such bring-down certification is provided; provided, however, that if an Accounting Treatment Work-Out Period has commenced and is continuing Seller shall not be required to provide such bring-down certification until the day after the expiry of such Accounting Treatment Work-Out Period.

(b) Without limiting Section 9.9(a), and notwithstanding anything to the contrary, if at any time any event, occurrence, condition, circumstance or action results, or (once effective) will result, in Buyer or any of its Affiliates being required to treat this Agreement or the transactions hereunder or contemplated hereby for accounting purposes in a manner that is inconsistent in any respect with the Accounting Treatment, Seller shall promptly notify Buyer and, for a period of time beginning on the earlier of (i) the date Seller so notifies Buyer or (ii) the date

Buyer notifies Seller of any such event, occurrence, condition, circumstance or action (any such notice, an "Accounting Treatment Work-Out Notice"); provided, that Buyer shall have no obligation to so notify Seller, and ending one hundred and eighty (180) Days after such date (such period of time, the "Accounting Treatment Work-Out Period"), Buyer and Seller shall cooperate in good faith to modify or amend this Agreement or enter into alternative arrangements necessary or advisable, in Buyer's reasonable good faith discretion, for Buyer to avoid, minimize or mitigate the risk of such accounting treatment (any such modification, amendment or alternative arrangement once finalized and binding on the Parties, the "Accounting Treatment Modifications"). If Buyer and Seller do not make or enter into the Accounting Treatment Modifications by the end of the Accounting Treatment Work-Out Period, without limiting Section 15.2, Buyer may terminate this Agreement upon notice to Seller (and receive the Termination Payment).

(c) Seller shall provide to Buyer (in the form and timeframe reasonably requested by Buyer, which timeframe shall not be less than ten (10) Business Days from the date of Buyer's request) any information reasonably requested by Buyer (i) to assess the statements made by Seller in the Accounting Certification or in any bring-down certification pursuant to Section 9.9(a) and (ii) in the event the provisions of Section 9.9(b) apply, to comply with the accounting requirements related thereto.

## ARTICLE X
## FORCE MAJEURE; CHANGE IN LAW

X.1 Performance Excused. Subject to Section 3.6(a), to the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under this Agreement, then such Party (the "Affected Party") shall be excused from the performance of its obligations under this Agreement (but not from the payment of liquidated damages or another express measure of damages, if any, set forth in this Agreement that may arise out of such non-performance, unless and except to the extent that Force Majeure is expressly taken into account in the calculation for such express measure of damages provided for herein), provided that (a) the Affected Party gives notice and details of the Force Majeure (in addition to any notices and information required to be provided by Seller under Section 9.7, if applicable), including the basis and particulars of the claim of Force Majeure, its effect on the Affected Party's performance hereunder, its best estimate of its schedule for overcoming the Force Majeure and any other information necessary for the other Party to verify the validity and length of the Force Majeure excuse (the "FM Claims Notice"), to the other Party as soon as practicable, (b) the Affected Party works diligently to resolve the effect of the Force Majeure and resume performance as soon as possible and provides evidence of its efforts promptly to the other Party upon the other Party's written request and (c) in no event shall the suspension of performance be of greater scope or longer duration than the Force Majeure requires (assuming compliance with clause (b) above). The Affected Party shall give the other Party periodic written reports (no less often than weekly) on the status of the Affected Party's efforts to remedy its inability to perform and its best estimate of when it will be able to resume performance. Further, when the Affected Party is able to resume performance of its obligations under this Agreement, the Affected Party shall promptly give the other Party notice to that effect. The Party that is not the Affected Party shall not be required to perform or resume performance of its obligations (including payment obligations) corresponding

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

X.2 Termination.

(a) If Force Majeure prevents performance by Seller, in whole or part, of its material obligations under this Agreement for more than the Requisite Force Majeure Period, Buyer may terminate this Agreement upon notice to Seller without liability to either Party arising out of such termination.

(b) Upon the effectiveness of any termination of this Agreement in accordance with this Section 10.2, the Parties shall have no further liabilities or obligations to each other hereunder, except liabilities or obligations that survive termination under Section 19.2; provided, however, that no Termination Payment shall be due hereunder arising out of any such termination and such termination shall in no event be an Event of Default.

X.3 Change in Law.

(a) The Parties acknowledge the possibility that a change in Law (including in the interpretation thereof) may occur that requires or will require one or both of the Parties to incur additional costs (including Environmental Costs) during the Delivery Term beyond those projected to be incurred by such Party as of the Effective Date. Notwithstanding the foregoing, if such a change in Law occurs, the other Party will not be required to share in, reimburse or otherwise pay all or any portion of such additional costs, except to the extent set forth in Section 10.3(b).

(b) Disallowance Adjustment Events

(i) Notwithstanding anything to the contrary in this Agreement, if at any time, there occurs a Negative Recovery Event arising out of or relating to (A) any negligence (including gross negligence), fraud, willful misconduct or other act or omission of Seller, its Affiliates or Subcontractors, or any of their respective directors, officers, partners, members, trustees, employees, agents or representatives or (B) a breach of Seller's obligations under this Agreement (each such Negative Recovery Event, a "Disallowance Adjustment Event"), then Buyer may, in its sole discretion and absolute discretion from time to time, (X) require Seller to make a lump-sum payment to Buyer, within twenty (20) Days after Buyer's request for payment, equal to the aggregate amount of all payments, costs and expenses disallowed, denied or precluded (or effectively disallowed, denied or precluded) by the applicable Disallowance Adjustment Event (excluding all Buyer-Allocated Disallowance Adjustment Amounts, if any), plus accrued interest on such payments, costs and expenses at the Interest Rate, and/or (B) adjust the payments to be made by Buyer to Seller under this Agreement to an amount equal to the amount that Buyer is authorized to recover from its customers after giving effect to the applicable Disallowance Adjustment Event. For purposes of the foregoing, Buyer shall be entitled to receive payment from Seller and/or reduce the payments to Seller hereunder more than once with respect to any single Disallowance Adjustment Event if the disallowance, denial or preclusion (or effective disallowance, denial or preclusion) of

recovery by such Disallowance Adjustment Event, or effect thereof, is periodic or episodic in nature or otherwise recurs from time to time.

(ii) Notwithstanding anything to the contrary in this Agreement, neither Party nor any Affiliate thereof shall seek, directly or indirectly, a Disallowance Adjustment Event by or before any applicable Governmental Authority, including the LPSC. Further, nothing in this Section 10.3(b) shall limit any other right or remedy of Buyer under this Agreement or at law or in equity.

(iii) The rights of Buyer, and obligations and liabilities of Seller, under this Section 10.3(b) shall survive any expiration or termination of this Agreement.

## ARTICLE XI
## BILLING, PAYMENT AND RELATED RIGHTS AND OBLIGATIONS

XI.1 Monthly Invoices. On or before the tenth (10th) Day of each month (or if the tenth (10th) Day is not a Business Day, then the next Business Day), Seller shall render to Buyer a monthly statement ("Monthly Invoice") (by facsimile or other means conforming to the provisions of Section 19.1 or as otherwise agreed by the Parties) in respect of the immediately preceding month ("Billing Month"). The Monthly Invoice shall set forth (a) the Variable Payment for such Billing Month, (b) any liquidated damages payable by Seller pursuant to Section 3.7, Section 3.9, Section 4.3(b) or Section 6.1, (c) any other amount owed by Buyer to Seller, or vice versa, under the Agreement that has not previously been invoiced and (d) the total amount due by each Party thereunder and the net amount due thereunder. In addition, each Monthly Invoice shall include (1) the amount of each Product provided to Seller, broken down by MISO Settlement Interval, (2) a reasonably detailed description, computation and itemization of the amounts included in such Monthly Invoice, together with reasonable supporting documentation and information, and (3) such other data, material and information as Buyer may reasonably require.

XI.2 Payments.

(a) Subject to Section 5.3 and Section 11.4, Buyer shall pay any net amount shown to be due and owing to Seller on the Monthly Invoice by wire transfer of immediately available funds, in Dollars, to the account specified for payments under or in accordance with Section 19.1, on or before the later of (i) the twentieth (20th) Day of the month in which the Monthly Invoice is rendered to Buyer or (ii) the tenth (10th) Day after Buyer's receipt of the Monthly Invoice, unless such Day is not a Business Day, in which case the due date for payment shall be the next Business Day. If the Monthly Invoice shows (or should show) a net amount due to Buyer from Seller, then Seller shall pay such net amount, by wire transfer of immediately available funds, in Dollars, to an account specified by Buyer under or in accordance with Section 19.1, on or before the twentieth (20th) Day of the month in which the Monthly Invoice is rendered (or required to have been rendered) to Buyer, unless such Day is not a Business Day, in which case the due date for payment shall be the next Business Day.

(b) Without limiting Section 11.4 or other provisions of this Agreement entitling Buyer to invoice or otherwise request or demand payment from Seller, Buyer shall have the right to invoice Seller for any amount owed by Seller arising out of or relating to this

Agreement that has not been included by Seller in a Monthly Invoice. Subject to Section 5.3 and Section 11.4, any amount invoiced by Buyer pursuant to this Section 11.2(b) shall be paid by Seller to Buyer by wire transfer of immediately available funds, in Dollars, to an account specified by Buyer under or in accordance with Section 19.1, on or before twenty (20) Days after receipt by Seller of an itemized invoice from Buyer, setting forth, in reasonable detail, the basis for such payment; provided, however, that, to the extent such amount should have been included in a Monthly Invoice, then, if the due date that would have applied to such amount according to Section 11.1 is earlier than the due date prescribed by this sentence, such earlier due date shall apply to such amount.

(c) All payments under this Section 11.2 shall be deemed made when the above-described wire transfer is received by Seller or Buyer, as the case may be.

XI.3 Delinquent Payments. The unpaid amount of any payment due from either Party under this Agreement shall accrue interest at the Interest Rate from the first Day following the date on which payment is due until the date payment is made.

XI.4 Disputed Payments. If either Party, in good faith, disputes the accuracy of an invoice from the other hereunder, the disputing Party shall provide to the other Party an explanation of the basis for the dispute and shall pay to the other Party the portion of the invoice not in dispute by the due date (but shall not be required to pay the disputed portion). For the avoidance of doubt, a Party may dispute the accuracy of an invoice from the other hereunder after payment has been made in respect of such invoice. Any amount disputed by a Party pursuant to this Section 11.4 that is later conclusively determined (whether by agreement of the Parties or a final, non-appealable determination of a Governmental Authority with jurisdiction) to be properly due and payable shall be paid to the Party owed payment on or before ten (10) Days after such determination, together with interest accrued at the Interest Rate from the first Day following the date on which payment would have been made if not disputed to but excluding the date payment is made.

XI.5 Adjustments. If any audit, inspection or examination reveals any inaccuracy in any statement or invoice hereunder, the necessary adjustments shall be made. Inadvertent underpayments or overpayments shall be paid or returned, with interest accrued at the Interest Rate from the date originally due (or the date of such overpayment) to but excluding the date paid or returned.

XI.6 Records Maintenance.

(a) The Parties acknowledge (i) their mutual desire to minimize disputes over matters related to records, costs, billing and payment hereunder and the reliability or operation and maintenance of the Facility and (ii) that Buyer is a regulated utility whose expenditures and actions are subject to oversight, review, and possible approval or disallowance by Governmental Authorities. Each Party agrees to work with the other Party in good faith, upon the request of the other Party, to develop, establish and improve processes and procedures designed to minimize the likelihood, frequency, cost, and scope of such disputes and to assist the other Party in its dealings with Governmental Authorities, including processes and procedures to maximize the transparency of reimbursable costs and expenses hereunder and to enable Buyer to be able to demonstrate the

reasonableness of the incurrence and payment of such costs and expenses should Buyer desire or be required to do so.

(b) Seller shall keep and maintain, or cause to be kept and maintained, in accordance with the standards of performance set forth in Section 9.1(b), for seven (7) years or such longer period as may be required by any Governmental Authority, accurate records relating to Seller's Cost Scope (other than Buyer's functions as Market Participant (or similar representative) of the Facility pursuant to Section 7.2(b), if applicable). Such records shall include (i) Generation Forecasts, (ii) Buyer's notices pursuant to Section 7.3(a)(iii) and Section 7.4, (iii) data and records establishing or relating to the availability and delivery of the Products, including (A) data and information from any Balancing Authority (including any ISO or RTO) or other Transmission Provider, (B) the records, data and information generated by or from or in respect of the Electric Metering Equipment and any electric metering equipment of Seller or its Affiliates or Subcontractors and calculations therefrom) and (C) data and records establishing or relating to the consumption of Energy by each of the resources, systems, facilities and items within the Facility, (iv) all operations, maintenance and performance data for the Facility, (v) all other information supporting or material to a statement, invoice, or charge hereunder and (vi) any other records required to be kept and maintained in accordance with the standards set forth in Section 9.1(b).

(c) Seller shall notify Buyer of any record required to be kept and maintained under Section 11.6(b) that it desires to discard after the applicable retention period has expired and the date of the intended disposition. Within thirty (30) Days after receipt of such notice, Buyer shall notify Seller whether it elects to take possession of such record. If so, Seller promptly shall deliver such record to Buyer at Buyer's expense. If Buyer does not respond to Seller's notice under this Section 11.6(c) within the applicable thirty (30)-Day period, Seller may discard such record without any further obligation hereunder.

XI.7 Audits. Buyer, acting directly or indirectly through its employees or representatives (including technical, professional or other advisors), shall have the right, upon reasonable prior notice to Seller, (i) to request, audit, inspect, examine, make copies of and/or otherwise obtain the books and records and other materials, items and information of Seller, its Affiliates (and its and their Subcontractors) and any third-party owner(s) of (or other Person(s) from whom Seller obtains its rights to) the Facility and their Affiliates, including the records described in Section 11.6, and (ii) to communicate with the personnel and representatives of any such Persons, in each case to the extent reasonably necessary or appropriate to verify (among other things) the accuracy of any invoice, billing statement, billing entry, cost or charge (or computation thereof) under this Agreement or with respect to the Transaction or Seller's performance under or compliance with the terms and conditions of this Agreement. Seller shall be responsible for causing the Persons subject to the immediately preceding sentence to comply with Buyer's rights therein. All books, records and data, including all copies thereof, provided to Buyer under this Section 11.7 shall be subject to the confidentiality requirements of this Agreement and shall be considered confidential in accordance with Section 19.13.

XI.8 Certain Disputes. Seller shall, at Buyer's reasonable direction and expense for direct, out-of-pocket, un-Affiliated third-party costs reasonably incurred by Seller and approved in advance by Buyer, dispute, settle, appeal or otherwise challenge before any applicable Balancing Authority or Governmental Authority any cost, charge, payment, credit, or computation

thereof by such Balancing Authority or Governmental Authority to the extent such cost, charge, payment, credit or computation (a) is relevant to payments from such Balancing Authority or Governmental Authority or other credits to which Buyer is entitled or costs or charges paid by or invoiced to Buyer hereunder and (b) as between Buyer and Seller, may be disputed only by Seller (or an agent or other representative of Seller in its capacity as such). Without limiting the foregoing or Section 11.7, Seller shall cooperate with Buyer with respect to any such dispute, settlement, appeal, or other challenge, including by providing to Buyer any settlement information and data relating to such dispute, settlement, appeal or other challenge received by Seller from such Balancing Authority or Governmental Authority and not already available to Buyer.

## ARTICLE XII
## CREDIT AND COLLATERAL REQUIREMENTS

XII.1 Financial Information. Buyer may request from Seller the information specified in Schedule 12.1 to be provided by Seller, and Seller shall provide such information to Buyer within the time periods provided therefor and on the terms provided in Schedule 12.1.

XII.2 Performance Assurance and Guaranty. Seller shall deliver (a) the Performance Assurance and (b) the Guaranty to Buyer on or before three (3) Business Days after the Effective Date. From and after delivery of the Performance Assurance and the Guaranty, Seller shall maintain the Performance Assurance and cause the Guaranty to be maintained until the later of (i) two hundred and seventy (270) days after the termination or expiration of this Agreement or (ii) the resolution of all disputes pending pursuant to, in connection with, relating to or arising out of this Agreement and any Performance Assurance or the Guaranty at the end of such two hundred and seventy (270) day period (or thereafter arising during the pendency of any such disputes) (such later date, the "Release Date"); provided, however, that, if this Agreement is terminated due to the failure to satisfy the condition precedent set forth in Section 2.3(b)(i), the Release Date shall be sixty (60) days after such termination. No later than three (3) Business Days following written notification from Buyer to Seller of any draw on any Performance Assurance or the Guaranty, Seller shall replenish the Performance Assurance to an undrawn capacity equal to the Required PA Amount. If, at any time, (A) the Person issuing any Letter of Credit as part of the Performance Assurance at such time ceases to have the total assets or Credit Ratings required by the definition of "Letter of Credit" or becomes Bankrupt or does not honor a draw request that complies with the terms of the Letter of Credit or (B) any such Letter of Credit ceases to be in full force and effect, then Seller shall, within three (3) Business Days thereof, replace the affected Letter of Credit with other Performance Assurance with undrawn capacity equal to the Required PA Amount. In addition to the replacement Performance Assurance that may be required pursuant to the preceding sentence, Seller shall, at any time and from time to time, have the right to replace the Performance Assurance in effect at such time with other Performance Assurance having an undrawn capacity equal to the Required PA Amount. Any Letter of Credit provided as Performance Assurance shall have an expiration date no sooner than 364 days after issuance, and Seller shall extend or replace (with other Performance Assurance with undrawn capacity equal to the Required PA Amount) such Letter of Credit by the date that is thirty (30) days prior to the expiration thereof. If Seller fails to extend or replace any Letter of Credit by the date that is thirty (30) days prior to the expiration thereof or fails to replace any Letter of Credit within the time period required by the fourth sentence of this Section 12.2, Buyer shall be entitled to draw the full amount of the Letter of Credit and treat the proceeds as Performance Assurance in the form of cash.

XII.3 Cash Collateral.

(a) To the extent that Buyer treats the cash proceeds of a Letter of Credit draw as Performance Assurance, Buyer may apply such cash to reduce Seller's obligations under this Agreement upon the same terms and conditions that would have permitted drawing under a Letter of Credit provided by Seller as Performance Assurance. In addition, Buyer shall have the right to pledge, re-hypothecate, assign, invest, commingle or otherwise use cash Performance Assurance, provided that Buyer returns such cash Performance Assurance when and as required by this Agreement (less any amounts applied according to the preceding sentence).

(b) To secure its obligations under this Agreement, Seller hereby grants to Buyer 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 (including any proceeds of a Letter of Credit drawn pursuant to the last sentence of Section 12.2) 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, Buyer, and Seller agrees to take such action as Buyer reasonably requires in order to perfect Buyer'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.

XII.4 Remedies. In addition to and without limiting Buyer's rights under Section 5.3, Section 12.2 or Section 12.3(a), or the terms of any Letter of Credit or the Guaranty, or any other rights or remedies available to Buyer at law or in equity, upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date (in each case, where Seller is the Defaulting Party), Buyer may do any one or more of the following: (a) exercise any of the rights and remedies of a secured party with respect to all cash collateral and any and all proceeds resulting therefrom or from the liquidation thereof, including any such rights and remedies under applicable Law then in effect; (b) exercise its rights of setoff against Seller; (c) draw on any outstanding Letter of Credit or Guaranty issued for its benefit; and (d) liquidate all Performance Assurance then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller. Buyer shall apply the proceeds realized upon the exercise of any such rights or remedies to reduce Seller's obligations under this Agreement (with Seller remaining liable for any amounts owing to Buyer after such application), subject to Buyer's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

XII.5 Credit Changes.

(a) If a Credit Event occurs (i) Seller shall notify Buyer within ten (10) Business Days of the occurrence of such Credit Event, (ii) the Applicable PA Amount Reduction shall be Zero Dollars ($0) and (iii) the aggregate amount of the Performance Assurance required to be delivered to Buyer and maintained pursuant to this Agreement shall be increased (with any then-issued Performance Assurance increased within ten (10) Business Days of the occurrence of such Credit Event) to account for the elimination of the Applicable PA Amount Reduction.

(b) If a Credit Event has occurred but is no longer in effect (i) Seller shall notify Buyer within ten (10) Business Days of the date such Credit Event is no longer in effect, (ii) the Applicable PA Amount Reduction shall be determined in accordance with the definition of

"Applicable PA Amount Reduction", and (iii) the aggregate amount of the Performance Assurance required to be delivered to Buyer and maintained pursuant to this Agreement shall be decreased (with any then-issued Performance Assurance decreased within ten (10) Business Days of the notice provided by Seller pursuant to clause (i) above) to account for the applicability of the Applicable PA Amount Reduction.

(c) If Seller Parent Guarantor has an Accepted Agency Rating and there is a subsequent downgrade by S&P and/or Moody's of one or more of the Seller Parent Guarantor credit ratings that fall within the definition of "Accepted Agency Rating" but the requirements for Seller Parent Guarantor having an Accepted Agency Rating remain satisfied, (i) Seller shall notify Buyer within ten (10) Business Days of the occurrence of such downgrade, (ii) the Applicable PA Amount Reduction shall be reduced as a result of such downgrade if and to the extent the cap on the Applicable PA Amount Reduction specified in the definition of "Applicable PA Amount Reduction" would require an increase to the Performance Assurance provided by Seller, and (iii) if the effect of clause (ii) would require an increase to the Performance Assurance provided by Seller, then within ten (10) Business Days of the downgrade in Seller Parent Guarantor's Accepted Agency Rating, the aggregate amount of the Performance Assurance required to be delivered to Buyer pursuant to this Agreement shall be increased by an amount that will cause the aggregate amount of the Performance Assurance delivered to Buyer pursuant to this Agreement to equal the Required PA Amount.

(d) If there is an improvement in Seller Parent Guarantor's Accepted Agency Rating, or if Seller Parent Guarantor does not have an Accepted Agency Rating and subsequently obtains an Accepted Agency Rating, (i) Seller shall notify Buyer within ten (10) Business Days of the occurrence of such improvement in Seller Parent Guarantor's Accepted Agency Rating, (ii) the Applicable PA Amount Reduction shall be adjusted as a result of such improvement in accordance with the definition of "Applicable PA Amount Reduction" if Seller Parent Guarantor did not have an Accepted Agency Rating immediately prior to such improvement or to the extent such improvement in Seller Parent Guarantor's Accepted Agency Rating increases the cap under the definition of "Applicable PA Amount Reduction" and such increase in the cap results in a reduction in the aggregate amount of Performance Assurance required to be provided by Seller, and (iii) if the effect of clause (ii) above increases the Applicable PA Amount Reduction, the aggregate amount of the Performance Assurance required to be delivered to Buyer pursuant to this Agreement shall be decreased within ten (10) Business Days of such improvement such that the aggregate amount of the Performance Assurance required to be delivered to Buyer pursuant to this Agreement equals the Required PA Amount. Buyer shall cooperate and provide such documentation as may reasonably be required to reduce the aggregate amount of such Performance Assurance.

## ARTICLE XIII
## TAXES

XIII.1 General. Seller and Buyer each shall use Commercially Reasonable Efforts to implement the provisions of and to administer this Agreement in such a manner that produces Tax consequences acceptable to each Party and its Affiliates. If a Party is exempt from any Tax or any other charges of any Governmental Authority that would otherwise be payable under or in connection with this Agreement, such Party shall provide to the other Party upon request a

certificate of exemption or other reasonably satisfactory evidence of exemption. Each Party shall use Commercially Reasonable Efforts to obtain, and shall cooperate with the other Party in its efforts to obtain or maintain, any exemption from or reduction of any such Tax or charge. Nothing herein shall obligate or cause a Party to pay or be liable to pay any Tax or other charge of any Governmental Authority for which it is exempt under applicable Law. Buyer asserts that this Transaction is not subject to any sales, use, gross receipts or other similar Taxes pursuant to the sale-for-resale exemption found in La. Rev. Stat. Ann. §47:301(10)(a). As evidence of its assertion of the exemption, Buyer shall provide Seller an executed sale-for-resale exemption certificate, attached hereto as Schedule 13.1. The Variable Payment does not include any sales, use, gross receipts, or other similar Taxes, and, subject to the applicability and validity of such exemption, Seller shall not bill Buyer for any such Taxes.

XIII.2 Buyer Taxes. Buyer shall be responsible for all sales Taxes (but, for the avoidance of doubt, not gross receipts or similar Taxes) imposed on the sale or transfer of the Products from Seller to Buyer according to this Agreement.

XIII.3 Seller Taxes. Seller shall be responsible for all Taxes imposed on or with respect to the Products at or prior to delivery, sale or transfer thereof to Buyer, except the sales Taxes for which Buyer is responsible under Section 13.2. In addition, and for the avoidance of doubt, Seller shall be responsible for all Taxes imposed on or payable by Seller in connection with the performance of its obligations hereunder or otherwise with Seller's Cost Scope.

XIII.4 Tax Indemnity. The Indemnifying Party shall defend, indemnify, and hold harmless the Indemnitees from and against any and all Claims and Indemnified Losses for any Tax imposed or assessed by any Government Authority that is the responsibility of the Indemnifying Party pursuant to this Article XIII. The Indemnified Party shall give the Indemnifying Party notice, to the extent practicable, of any proposed or actual adjustment or assessment of Taxes within such time as will allow the Indemnifying Party a reasonable period in which to evaluate and timely respond to the underlying adjustment or assessment of Taxes; provided, however, that failure to do so shall not affect the Indemnitees' rights hereunder except to the extent the Indemnifying Party is actually prejudiced thereby. The Indemnifying Party shall be entitled, at the Indemnifying Party's expense, to participate in and, to the extent the Indemnifying Party desires, assume and control the defense of Claims directly relating to such Taxes, provided that the Indemnifying Party shall have acknowledged its obligation to fully indemnify the Indemnified Party in respect of such Taxes, and in the good faith opinion of the Indemnitee and its counsel, such Claim does not involve the potential imposition on such Indemnitee of criminal liability or injunctive or other equitable relief. If the Indemnifying Party shall have assumed and be controlling the defense of Claims directly relating to Taxes in accordance with the foregoing, the Indemnified Party's involvement shall be limited to monitoring the progress of such defense, which shall include (a) receiving copies of all correspondence between the Indemnifying Party and any Governmental Authority imposing or assessing the Taxes; and (b) attending and observing meetings between the Indemnifying Party and said Governmental Authority related to such defense; provided, however, that any costs associated with the Indemnitees' involvement shall be at the Indemnitees' own expense. The Indemnified Party shall supply the Indemnifying Party with such information and documents from the Indemnitees as the Indemnifying Party may reasonably request. For purposes of this Section 13.4, the Indemnifying Party's obligation to indemnify the Indemnitees for Taxes shall include any reasonable costs to defend such Taxes incurred or paid by the Indemnitees so long as

such costs were incurred or paid after the Indemnified Party has provided the Indemnifying Party with the notice of proposed or actual adjustment required under this Section 13.4 and prior to the time when the Indemnifying Party has assumed control of the defense of such Taxes.

XIII.5 Tax Treatment of Agreement. For income tax purposes, the Parties intend that any transactions arising under this Agreement are simply a purchase and sale of electricity, and the Parties shall report any transactions as such. Nothing in this Agreement creates or intends to create a partnership between the Parties. Each Party hereby elects to be excluded from the application of all of the provisions of Subchapter K, Chapter 1, Subtitle A of the Internal Revenue Code of 1986, as permitted under Section 761 thereof and Treasury Regulations Section 1.761-2(b)(2). Each Party agrees to provide evidence of such election as may be required by the Internal Revenue Service, including any returns, statements, or data that may be required by applicable Law. Neither Party shall give any notices or take any action inconsistent with the above election. In making the foregoing election, each Party states that the income derived by such Party from operations hereunder can be adequately determined without the computation of partnership taxable income.

## ARTICLE XIV
## REPRESENTATIONS AND WARRANTIES

XIV.1 Representations of the Parties. As of the Effective Date and as of the Delivery Term Commencement Date, each Party represents and warrants that:

(a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and, with respect to Seller, where the Facility is located, and all other jurisdictions, if any, in which it is engaged in business and the failure to so qualify would have a material adverse effect upon the performance of its obligations hereunder;

(b) the execution, delivery, and performance of this Agreement and the transactions contemplated hereunder are within its powers, have been duly authorized by all necessary limited liability company (in the case of Buyer) or [ ][21] (in the case of Seller) action, and, assuming such Party obtains, (A) in the case of Seller, (1) Seller's Required Consents, (2) Seller's Required Governmental Approvals and (3) Governmental Approvals that are customarily obtained, and Seller anticipates will be timely obtained, in the ordinary course of performance of this Agreement, and (B) in the case of Buyer, (1) Buyer's Required Consents, (2) Buyer's Required Governmental Approvals and (3) Governmental Approvals that are customarily obtained, and Buyer anticipates will be timely obtained, in the ordinary course of performance of this Agreement, do not:

(i) violate, conflict with or result in a breach of any provision of its organizational or governing documents;

(ii) result in a default (or give rise to any right, including any right of termination, purchase, first refusal, cancellation, acceleration or guaranteed payment, or a loss of rights) under, or conflict with, or result in a breach of any of the terms, conditions, or provisions of any note, bond, mortgage, loan agreement, deed of trust, indenture, license,

[21] **NTD:** Insert entity form of Seller.

agreement, or any other instrument or obligation to which it is a party or by which it or any of its assets or properties is bound that, individually or in the aggregate, could reasonably be expected to have a material adverse effect upon the performance of its obligations hereunder;

(iii) result in, or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, or any other charge or encumbrance of any nature (other than as may be contemplated by this Agreement) upon or with respect to any of its assets or properties;

(iv) violate, conflict with or result in a breach of any applicable Law, including any order, writ, judgment, injunction, decree, determination, or award, or any Governmental Approval having applicability to it or its assets or properties that, individually or in the aggregate, could reasonably be expected to have a material adverse effect upon the performance of its obligations hereunder; or

(v) require the Consent of, or the declaration, filing or registration with or notice to, or an order from any Person;

(c) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes a legally valid and binding obligation enforceable against it in accordance with its terms, except as may be limited by any bankruptcy, insolvency, reorganization, moratorium, or other Laws affecting creditors' rights generally and, with regard to equitable remedies, the discretion of the Governmental Authority before which proceedings to obtain same may be pending;

(d) (i) it has obtained all Consents and Governmental Approvals necessary for it to enter into and to perform, in compliance with all applicable Laws, its obligations under this Agreement, except (A) with respect to Seller, (1) Seller's Required Consents, (2) Seller's Required Governmental Approvals and (3) Governmental Approvals that are customarily obtained, and Seller anticipates will be timely obtained, in the ordinary course of performance of this Agreement, and (B) with respect to Buyer, (1) Buyer's Required Consents, (2) Buyer's Required Governmental Approvals and (3) Governmental Approvals that are customarily obtained, and Buyer anticipates will be timely obtained, in the ordinary course of performance of this Agreement, and (ii) all such Consents and Governmental Approvals are in effect;

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

(f) there is no pending or, to its knowledge, credibly threatened (in writing) action or proceeding before any Governmental Authority or arbitrator against it or any of its Affiliates that could reasonably be expected to materially and adversely affect its ability to perform its obligations under this Agreement or that purports to affect the legality, validity, or enforceability of this Agreement;

(g) no Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement;

(h) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, has had complete discretion in seeking and obtaining the advice and counsel of experts relating to specialized subject matter of this Agreement, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement; and

(i) it is a "forward contract merchant" within the meaning of the United States Bankruptcy Code.

XIV.2 Representations of Seller. As of the Effective Date and as of the Delivery Term Commencement Date, Seller represents and warrants that, in connection with this Agreement and the transactions hereunder or contemplated hereby, neither this Agreement nor the transactions hereunder or contemplated hereby would require Buyer or any of its Affiliates to treat this Agreement or the transactions hereunder or contemplated hereby for accounting purposes in a manner that is inconsistent in any respect with the Accounting Treatment.

## ARTICLE XV
## EVENTS OF DEFAULT; REMEDIES

XV.1 Events of Default. An "Event of Default" shall mean, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:

(a) the failure by the Defaulting Party to make when due any payment to the other Party ("Non-Defaulting Party") under this Agreement, to the extent not disputed by the Defaulting Party in good faith pursuant to Section 11.4, and such failure has not been remedied on or before five (5) Business Days after the Defaulting Party's receipt of notice thereof delivered by or on behalf of the Non-Defaulting Party;

(b) any of the representations and warranties herein made by the Defaulting Party is false or inaccurate in any material respect as of the date made or repeated and has not been remedied by the Defaulting Party on or before thirty (30) Days after the Defaulting Party's receipt of notice thereof delivered by or on behalf of the Non-Defaulting Party, it being understood that such default may be remedied by correcting the condition that caused the representation to be false or inaccurate or by fully mitigating the adverse consequences of such false or inaccurate representation or warranty;

(c) in the case of Seller as the Defaulting Party, Seller's failure to perform its obligations in accordance with Article XII, including the failure to provide or maintain the Performance Assurance (or any portion thereof) or the Guaranty;

(d) in the case of Seller as the Defaulting Party, (i) Seller Parent (A) becomes Bankrupt or (B) disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the

validity of its obligations under, the Guaranty, (ii) the Guaranty ceases to be in full force and effect, (iii) any of the representations and warranties made by Seller Parent in the Guaranty is false or inaccurate in any material respect as of the date made or repeated and has not been remedied by Seller Parent on or before three (3) Business Days after Seller Parent's receipt of notice thereof delivered by or on behalf of Buyer, it being understood that such default may be remedied by correcting the condition that caused the representation to be false or inaccurate or (iv) any material breach by Seller Parent of the covenants or other obligations of Seller Parent set forth in the Guaranty that is not remedied by Seller Parent on or before three (3) Business Days after Seller Parent's receipt of notice thereof delivered by or on behalf of Buyer;

(e) the assignment or transfer by the Defaulting Party of this Agreement in whole or in part other than as permitted under Article XIX, unless remedied on or before thirty (30) Days after the Defaulting Party's receipt of notice thereof delivered by or on behalf of the Non-Defaulting Party;

(f) any material breach by the Defaulting Party of the covenants or other obligations of the Defaulting Party set forth in this Agreement (other than any failure listed individually as a separate Event of Default in this Section 15.1) that is not remedied by the Defaulting Party on or before thirty (30) Days after the Defaulting Party's receipt of notice thereof delivered by or on behalf of the Non-Defaulting Party (provided that if the remedy may not be effected within such thirty (30)-Day period and the Defaulting Party uses reasonable efforts to effect such remedy within seventy five (75) days after Defaulting Party's receipt of such notice, then the cure period shall be seventy five (75) days);

(g) the Defaulting Party becomes Bankrupt;

(h) in the case of Seller as the Defaulting Party, Seller or any of its Subcontractors makes any material intentional misrepresentation or omission in any metering report, invoice or Generation Forecast required to be made or furnished by Seller pursuant to this Agreement or Seller's actual fraud, tampering with Buyer-owned facilities or material intentional misrepresentation or misconduct in connection with operation of the Facility or otherwise with Seller's Cost Scope or this Agreement;

(i) in the case of Seller as the Defaulting Party, except as expressly permitted by this Agreement, Seller sells, assigns, or otherwise transfers, or offers or commits to sell, assign, or otherwise transfer, the Contract Capacity, Capacity-Related Benefits, Environmental Attributes, Contract Energy or Other Electric Products, or any portion thereof, to any Person other than Buyer for any period within the Delivery Term;

(j) in the case of Seller as the Defaulting Party, Seller (or any direct or indirect Affiliate of Seller) sells, assigns, or otherwise transfers, or commits to sell, assign, or otherwise transfer, all or a material portion of, or undivided interest in, the Facility (or the direct or indirect equity interests in Seller), including by merger, consolidation or sale of all or substantially all of its assets, other than as permitted under Section 19.5 and Section 19.6;

(k) in the case of Seller as the Defaulting Party, Seller does not deliver to Buyer Delivered Energy in an amount at or above (i) the Minimum Two Consecutive Contract Year

Energy Quantity during each of any two (2) consecutive Contract Years, or (ii) the Minimum Three Contract Year Energy Quantity during each of any three (3) Contract Years;

(l) in the case of Seller as the Defaulting Party, the occurrence and continuation of a default, event of default or other similar condition or event in respect of Seller under, or failure to maintain in effect, one or more Project Documents (in either case, that is reasonably likely to have a material adverse effect on Seller's ability to perform its obligations under this Agreement);

(m) in the case of Seller as the Defaulting Party, Seller abandons the operation of the Facility (or any portion thereof affecting its obligations under this Agreement);

(n) in the case of Seller as the Defaulting Party, the commencement of the Delivery Term is delayed pursuant to clause (1) or clause (2) of the proviso to Section 2.2(b) for a period of one hundred and eighty (180) days or, in the event such delay pursuant to clause (1) of the proviso to Section 2.2(b) is due to Force Majeure, twelve (12) months or more from the date that the Delivery Term would have commenced without the occurrence thereof;

(o) in the case of Seller as the Defaulting Party, Seller fails to maintain in effect any agreement or arrangement required to deliver the Products in accordance with the terms of this Agreement and such failure has not been remedied on or before five (5) Business Days after Seller's receipt of notice thereof delivered by or on behalf of Buyer;

(p) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another Person and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement by operation of law or pursuant to an agreement reasonably satisfactory to the other Party;

(q) in the case of Seller as the Defaulting Party, Seller fails to achieve Commercial Operation of the Facility by the COD Termination Deadline;

(r) in the case of Seller as the Defaulting Party, the failure to maintain any necessary qualification for, or any necessary account to obtain and transfer to Buyer, the Guaranteed Environmental Attributes or any other Environmental Attributes or Capacity-Related Benefits for which the Facility, the Contract Capacity or the Contract Energy is eligible and such failure has not been remedied on or before five (5) Business Days after Seller's receipt of notice thereof delivered by or on behalf of Buyer; or

(s) in the case of Seller as the Defaulting Party, (i) Seller fails to provide to Buyer a bring-down certification from Seller's Principal Accounting Officer in accordance with the requirements of Section 9.9(a) and such failure has not been remedied on or before five (5) Business Days after Seller's receipt of notice thereof delivered by or on behalf of Buyer or (ii) any event, occurrence, condition, circumstance or action results or will result in Buyer or any of its Affiliates being required to treat this Agreement or the transactions hereunder or contemplated hereby for accounting purposes in a manner that is inconsistent in any respect with the Accounting Treatment, and, in the case of clause (ii) (including in the event the conditions in clause (ii) prevent Seller from issuing the bring-down certification described in clause (i)), an Accounting Treatment

Work-Out Notice has been provided to either Party and the Accounting Treatment Work-Out Period has expired.

XV.2 Remedies.

(a) If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the Non-Defaulting Party shall have the right to (i) designate a Day, no earlier than the Day such notice is effective and no later than twenty (20) Days after such notice is effective, as an early termination date (the "Early Termination Date") to accelerate all amounts owing between the Parties and to liquidate and terminate all obligations under this Agreement, (ii) withhold any payments due to the Defaulting Party under this Agreement and (iii) suspend its performance under this Agreement. The Non-Defaulting Party shall calculate, in a commercially reasonable manner and consistent with the terms of this Agreement (including Section 17.1), a Termination Settlement Amount as of the Early Termination Date.

(b) The "Termination Payment" shall be equal to (i) if the Termination Settlement Amount is positive, the Termination Settlement Amount or (ii) otherwise, zero (0). The Termination Payment shall be due and payable by the Defaulting Party to the Non-Defaulting Party if the Termination Payment is positive, but, if zero (0), shall not be due or payable from the Non-Defaulting Party to the Defaulting Party. The Termination Payment is the Non-Defaulting Party's exclusive damages arising out of the early termination of this Agreement (including any loss of the benefit of the bargain or "cover damages" during the unfulfilled term of this Agreement). For the avoidance of doubt, the amount or payment of the Termination Payment shall not discharge or otherwise affect any undischarged liabilities described in Section 19.2, which undischarged liabilities shall be separately due and payable pursuant to the terms thereof.

(c) As soon as practicable after a liquidation and termination, notice shall be given by the Non-Defaulting Party to the Defaulting Party, including the amount, if any, of the Termination Payment and a statement explaining in reasonable detail the calculation of such amount. The Termination Payment shall be payable on or before two (2) Business Days after such notice is effective.

(d) If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall provide to the Non-Defaulting Party, on or before two (2) Business Days after receipt of the Non-Defaulting Party's calculation of the Termination Payment, a detailed explanation of the basis for such dispute.

(e) Notwithstanding anything to the contrary, except for the rights to terminate and suspend expressly set forth in this Agreement, neither Party shall have any right to terminate this Agreement or suspend its performance for any reason. Whether or not this Agreement is terminated, either Party shall have any remedies available to it under this Agreement or at law or in equity in the event of a breach or default by the other Party, except as expressly limited in this Agreement.

XV.3 Suspension of Performance. Notwithstanding any other provision of this Agreement, if an Event of Default shall have occurred and be continuing, the Non-Defaulting Party, upon notice to the Defaulting Party, shall have the right to suspend performance under this

Agreement; provided, however, that in no event shall any such suspension continue longer than ten (10) Business Days unless an Early Termination Date shall have been declared and notice thereof given pursuant to Section 15.2.

## ARTICLE XVI
## INDEMNITY

XVI.1 Indemnification. Subject to Article XVII, Section 13.4 and the other terms of this Agreement, the Indemnifying Party shall defend, indemnify and hold harmless the Indemnitees from and against any and all Claims made, instituted, or threatened by any Person against, and any and all Indemnified Losses suffered or incurred by, the Indemnitees, to the extent arising out of, in connection with, or resulting from:

(i) except to the extent the Indemnified Party under this clause (i) is obligated to indemnify therefor pursuant to clause (v) or (vi) below, the inaccuracy or breach of any of the representations or warranties made herein by the Indemnifying Party,

(ii) except to the extent the Indemnified Party under this clause (ii) is obligated to indemnify therefor pursuant to clause (v) or (vi) below, the Indemnifying Party's or its Subcontractors or any of their respective agents or representatives' negligence, gross negligence, fraud, willful misconduct or breach of any of the Indemnifying Party's obligations under this Agreement,

(iii) in the case of Buyer as the Indemnifying Party, except to the extent Seller is obligated to indemnify therefor pursuant to clause (i) or (ii) above or (v) or (vi) below or Section 17.2, Buyer's possession or control of (A) the Contract Energy (to the extent provided to Buyer hereunder) after the Energy Financial Delivery Point and (B) other Products that are physical in nature (to the extent provided to Buyer hereunder) after the OP Delivery Point,

(iv) in the case of Seller as the Indemnifying Party, except to the extent Buyer is obligated to indemnify therefor pursuant to clause (i) or (ii) above or (vi) below or Section 17.2, Seller's (or any other Person's) receipt, possession or control of (A) the Contract Energy (to the extent provided to Buyer hereunder) at and prior to the Energy Financial Delivery Point, (B) other Products that are physical in nature (to the extent provided to Buyer hereunder) at and prior to the OP Delivery Point and (C) all other Products at all times,

(v) in the case of Seller as the Indemnifying Party, if applicable, Buyer's functions pursuant to Section 7.2(b); or

(vi) in the case of Seller as the Indemnifying Party, Claims made by a third party in respect of the development, engineering, procurement of equipment for, design, construction, installation, start-up, operation, maintenance, management, replacement, repair, studying and testing, ownership, relocation, removal, other use or the failure of, any of the equipment and/or facilities owned or leased by the Indemnifying Party or its Subcontractors;

provided, however, that the Indemnifying Party shall have no indemnification obligation hereunder in respect of any Claim or any loss, liability, damage, cost or expense that would otherwise constitute an Indemnified Loss to the extent caused by the gross negligence, fraud, or willful misconduct of the Indemnitees.

XVI.2 Indemnity Notice. The Indemnified Party shall notify the Indemnifying Party promptly, but in no event later than thirty (30) Days, after receipt of notice of the commencement of any Claim against the Indemnified Party with respect to which the indemnity set forth in Section 16.1 may apply. The Indemnifying Party shall have the right to assume the defense thereof with counsel designated by the Indemnifying Party and reasonably satisfactory to the Indemnified Party; provided, however, that (i) if the defendants in or a party to any such Claim include both an Indemnitee and the Indemnifying Party and the Indemnitee reasonably concludes that there may be legal defenses available to it that are different from or additional to those available to the Indemnifying Party, then each such Indemnitee shall have the right (at the Indemnifying Party's expense) to select separate counsel to assert such legal defenses and to otherwise participate in the defense of the Claim on behalf of such Indemnitee; (ii) if the Claim cannot by its nature be defended solely by the Indemnifying Party, the Indemnitee shall use Commercially Reasonable Efforts to cooperate with the Indemnifying Party in its contest of the Claim and to make available all information and assistance as the Indemnifying Party may reasonably request at the expense of the Indemnifying Party; (iii) the Indemnifying Party shall not be entitled to assume and control the defense of any such Claim without the prior Consent of the Indemnitee if and to the extent such Claim involves the potential imposition of criminal liability on the Indemnitee or may subject the Indemnitee to new or additional regulation; and (iv) the Indemnifying Party shall not, without the prior Consent of the Indemnitee, consent to the entry of any judgment against such Indemnitee or enter into any settlement or compromise that does not include, as an unconditional term thereof, the giving by the claimant or plaintiff to the Indemnitee a release, in form and substance satisfactory to Indemnitee, from all liability in respect of such Claim, except the payment of money that will be paid by the Indemnifying Party.

XVI.3 Defense Not Assumed. If an Indemnified Party shall be entitled to indemnification under this Article XVI as a result of a Claim by a third party and the Indemnifying Party fails to assume the defense thereof, such Indemnitee may at the expense of the Indemnifying Party, contest (or, with the prior consent of the Indemnifying Party, which shall not be unreasonably withheld, conditioned, or delayed, settle) such Claim; provided, however, that no such contest need be made, and settlement or full payment of any such Claim may be made, without the consent of the Indemnifying Party (with the Indemnifying Party remaining obligated to indemnify such Indemnitee under this Article XVI) if an Event of Default as to the Indemnifying Party has occurred and is continuing.

## ARTICLE XVII
## LIMITATIONS ON LIABILITY

XVII.1 Consequential Damages Exclusion; Express Negligence. NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, INDIRECT, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND OR NATURE ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, INCLUDING LOST PROFITS (EXCEPT TO THE EXTENT THAT ANY DIRECT DAMAGES INCLUDE AN ELEMENT OF PROFIT),

LOST SALES OR REVENUES, AND ALL BUSINESS INTERRUPTION DAMAGES, WHETHER BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE (EXCEPT (a) TO THE EXTENT THAT AN INDEMNIFYING PARTY, PURSUANT TO THE PROVISIONS OF SECTION 13.4 OR SECTION 17.2 OR ARTICLE XVI, IS OBLIGATED TO INDEMNIFY AN INDEMNITEE AGAINST THIRD PARTY CLAIMS (INCLUDING, IF APPLICABLE, CLAIMS BY ANY GOVERNMENTAL AUTHORITY) OR (b) AN EXPRESS MEASURE OF DAMAGES HEREIN (INCLUDING AMOUNTS PAYABLE BY SELLER PURSUANT TO SECTION 10.3(b) OR AS LIQUIDATED DAMAGES) INCLUDES CONSEQUENTIAL, INCIDENTAL, SPECIAL OR INDIRECT DAMAGES OR (c) IN THE CASE OF A PARTY'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR INTENTIONAL, BAD FAITH BREACH). THE PARTIES INTEND AND AGREE THAT (i) THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES AND, EXCEPT TO THE EXTENT OTHERWISE PROVIDED IN THE PROVISO TO SECTION 16.1, THE INDEMNITIES IN SECTION 16.1(VI) BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF THE BENEFICIARY THEREOF, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, ACTIVE OR PASSIVE AND (ii) "COVER" DAMAGES REASONABLY INCURRED BY A NON-DEFAULTING PARTY DO NOT CONSTITUTE CONSEQUENTIAL, INCIDENTAL, SPECIAL, INDIRECT, PUNITIVE, OR EXEMPLARY DAMAGES FOR PURPOSES OF THIS AGREEMENT. WITH RESPECT TO THE INDEMNITIES IN SECTION 16.1(i) AND SECTION 16.1(ii), IT IS THE INTENT OF THE PARTIES THAT WHERE, AS BETWEEN THE PARTIES, FAULT IS DETERMINED TO HAVE BEEN JOINT OR CONTRIBUTORY, PRINCIPLES OF COMPARATIVE FAULT WILL BE FOLLOWED AND EACH PARTY SHALL BEAR THE PROPORTIONATE DAMAGE CAUSED BY THAT PARTY'S FAULT.

XVII.2 Government Fines.

(a) Any fines, penalties or other costs incurred by either Party or such Party's employees, agents or representatives or Subcontractors (including their employees, agents or representatives) for non-compliance by such Party, its agents, employees or Subcontractors with the requirements of any applicable Law shall not be reimbursed by the other Party but, as between the Parties, shall be the sole responsibility of such non-complying Party; provided, however, that (i) this Article XVII shall not apply, and Article XVI shall apply, to the extent of any non-compliance arising out of, in connection with, or resulting from the matters described in clauses (i), (ii), (iv), (v) and (vi) of Section 16.1 (to the extent of the other Party's indemnification obligations under Article XVI) and (ii) this Article XVII shall not apply, and other applicable provisions of this Agreement shall apply, with respect to non-compliance with any policy, rule, guideline, procedure, protocol, standard, criterion or requirement of the Host Utility, any market monitor, Balancing Authority (including any applicable RTO or ISO) or other Transmission Provider, including Imbalance Charges for Energy Imbalances.

(b) If such fines, penalties or other costs are assessed against an Indemnitee by any Governmental Authority or court of competent jurisdiction due to the non-compliance by the Indemnifying Party or its employees, agents or representatives or Subcontractors (including their employees, agents or representatives) with any applicable Law, the Indemnifying Party shall indemnify and hold harmless the Indemnitee from and against any and all Claims made, instituted

or threatened against, and any and all Indemnified Losses suffered or incurred by, the Indemnitee, to the extent arising out of, in connection with, or resulting from, such non-compliance.

## ARTICLE XVIII
## DISPUTE RESOLUTION

In the event of any Claim or dispute between the Parties arising out of or relating to this Agreement (each, a "Dispute"), even if such Dispute is extra-contractual in nature, sounds in contract, tort or otherwise or arises under Law, either Party may, by delivering a notice thereof to the other Party, refer the Dispute to senior executives of the Parties in accordance with this Article XVIII. The Parties agree that, on or before three (3) Business Days after receipt of any such notice from Seller to Buyer or vice versa, Seller shall designate a senior executive of Seller or his or her designee to represent Seller and Buyer shall designate a senior executive of Buyer or his or her designee to represent Buyer to attempt to resolve the Dispute. The Parties shall then cause the two designated senior executives or their respective designees to meet at least once and negotiate in good faith until the end of fifteen (15) Days after receipt of the notice of referral of the Dispute to senior executives from Seller to Buyer or vice versa, in the effort to resolve the Dispute. Following (and only following) the conclusion of such fifteen (15)-Day period (whether or not such good faith negotiations have occurred), and subject to the other terms hereof, the Parties may pursue all of their respective rights and remedies under this Agreement and any applicable Law with respect to the Dispute.

## ARTICLE XIX
## MISCELLANEOUS

XIX.1 Notices. Any notice, request, demand, statement, invoice, Consent, explanation, agreement, report, or other communication required under or contemplated by this Agreement shall be (a) made or given in writing by personal delivery, third-party courier, facsimile or certified or registered mail, return receipt requested, postage prepaid, unless otherwise specified herein, (b) addressed as indicated on Schedule 19.1 (subject to the following sentence), and (c) deemed received by the other Party (i) if delivered in person or by a third party courier, on the date so delivered, (ii) if sent by facsimile with confirmation of transmission, on the date sent, unless the facsimile was not sent during normal business hours of the recipient, in which case it will be deemed received on the next Business Day, or (iii) if sent by certified or registered mail, return receipt requested, postage prepaid, to the proper address of the recipient party, on the third (3rd) Business Day after the date mailed. A Party may change or supplement any of its address particulars upon notice delivered by such Party to the other Party reasonably in advance of the date on which such change or supplement shall become effective. If more than one method for sending a communication under this Section 19.1 is used, the earliest notice date of delivery shall control.

XIX.2 Survival. The provisions of Article I (Defined Terms and Interpretation), Article XI (Billing, Payment and Related Rights and Obligations), Article XII (Credit and Collateral Requirements), Article XIII (Taxes), including Section 13.4 (Tax Indemnity), Article XIV (Representations and Warranties), Article XV (Events of Default; Remedies), Article XVI (Indemnity), Article XVII (Limitations on Liability), Article XVIII (Dispute Resolution), Article XIX (Miscellaneous) (other than Section 19.5 and Section 19.6), Section 5.3 (Set-off), Section 7.7(b) (Title and Risk of Loss) (only with respect to losses relating to events, facts,

circumstances or conditions occurring or existing during the Delivery Term), Section 8.2 (Quantity Determinations), Section 8.3 (Limitations on Seller's Use of Information), Section 9.1(b) (General Operation and Maintenance Obligations), Section 10.3(b) (Disallowance Adjustment Events) and Section 12.4 (Remedies), including the rights and obligations of the Parties therein provided, and a Party's undischarged liability in respect of the period prior to termination or expiration (including for unpaid amounts owing under this Agreement in respect of the period prior to termination or expiration and any liability for breach by such Party of this Agreement prior to such termination or expiration), shall survive the termination or expiration of this Agreement.

XIX.3 Expenses. Each Party shall pay its own costs and expenses incurred in connection with the negotiation and execution of this Agreement. Each Party shall reimburse the other for the reasonable out-of-pocket costs and expenses (including reasonable legal fees and expenses) incurred in connection with such other Party's review, negotiation, execution and delivery of any instruments, agreements or documents that may be necessary or appropriate in connection with any assignment or consent (including any consent for the benefit of any Lender of Seller) requested by a Party, its lender or any other Person providing financing to such Party.

XIX.4 Assignment.

(a) Subject to the other terms of this Section 19.4, neither Party may assign this Agreement or its rights or obligations hereunder without the other Party's prior consent, which shall not be unreasonably withheld, conditioned, or delayed.

(b) Either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), collaterally assign, mortgage, hypothecate, pledge, or otherwise encumber all or any portion of its interest in and to this Agreement in favor of a Lender or other Person providing financing to either Party or any of its Affiliates, subject to the terms of Section 19.4(e).

(c) (i) Subject to Section 19.4(d)(i), Buyer may, without the consent of, Seller, transfer or assign its rights, liabilities, and interests in and under this Agreement to (A) an Affiliate of Buyer that is or, after the consummation of a proposed corporate reorganization or restructuring, will be an Entergy Operating Company (or more than one such Entergy Operating Companies), (B) any Person succeeding to all or substantially all of the assets of Buyer, provided that the assignee (1) has a Credit Rating of at least BBB- from S&P or Baa3 from Moody's or (2) has a creditworthiness equal to or higher than that of Buyer as of immediately prior to the assignment, or (C) if all or part of Buyer's obligation to serve retail load is transferred to another Person pursuant to a change in Law (including implementing rules and regulations), such Person. For the avoidance of doubt, in the case of a transfer under sub-clause (A) or (C) of the preceding sentence, a partial transfer of this Agreement to such transferee is permitted.

(ii) Subject to Section 19.4(d)(ii), Seller may, with prior notice to, but without the consent of, Buyer, transfer or assign this Agreement (in whole but not in part) to any Affiliate or other Person succeeding to all or substantially all of the assets of Seller, provided that the assignee (1) is a Qualified Operator, (2) has a creditworthiness equal to or higher than that of Seller as of immediately prior to the assignment and (3) for the

avoidance of doubt, continues to comply with the obligations of Seller to provide and maintain Performance Assurance and the Guaranty according to Article XII (including, for the avoidance of doubt, that all Performance Assurance and the Guaranty continues to be drawable against all obligations of "Seller" hereunder, whether relating to the period before, on or after the date of the assignment).

(d) (i) In order for a transfer or assignment permitted under Section 19.4(c)(i) to be effective, the assignee or transferee must be bound by the terms of this Agreement, and have assumed all of Buyer's obligations under this Agreement, relating to the period from and after the date of assignment or transfer (whether pursuant to an agreement satisfactory to Seller in its reasonable discretion and consistent with the provisions hereof or by operation of law); provided, however, that if there are assignments of Buyer's rights, liabilities and interests in and to this Agreement to multiple assignees pursuant to Section 19.4(c)(i), the liability of each assignee for the liabilities of Buyer hereunder shall be several (but not joint) in proportion to its share of the Products allocated to such assignee. Upon an assignment effectuated in accordance with Section 19.4(c)(i) and made in compliance with this Section 19.4(d)(i), Buyer shall be released from any and all obligations and liabilities hereunder relating to the period from and after the date of assignment in proportion to its share of the Products allocated or assigned to the assignee (and any other obligations and liabilities assumed by the assignee) and Seller shall be deemed to have waived any right of recourse against Buyer with respect to the performance of such assignees or transferees of such obligations and liabilities.

(ii) In order for a transfer or assignment permitted under Section 19.4(c)(ii) to be effective, the assignee must be bound by the terms of this Agreement, and have assumed all of the obligations of Seller under this Agreement, relating to the period from and after the date of assignment (whether pursuant to an agreement reasonably satisfactory to Buyer and consistent with the provisions hereof or by operation of law). Upon any assignment effectuated in accordance with Section 19.4(c)(ii) and made in compliance with this Section 19.4(d)(ii), Seller be released from any and all obligations and liabilities hereunder relating to the period from and after the date of assignment (and any other obligations and liabilities assumed by the assignee) and Buyer shall be deemed to have waived any right of recourse against Seller with respect to such obligations and liabilities.

(e) Promptly after making an encumbrance pursuant to Section 19.4(b), the encumbering Party shall notify the other Party in writing of the name, address, and telephone and facsimile numbers of each Lender or other Person providing financing to which such Party's interest under this Agreement has been encumbered. Such notice shall include the names of the account managers or other representatives of the Lenders or other Persons providing financing to whom all written and telephonic communications may be addressed. After giving the other Party such initial notice, the encumbering Party shall promptly give the other Party notice of any change in the information provided in the initial notice or any revised notice.

(f) Buyer shall make Commercially Reasonable Efforts to provide (i) such consents to collateral assignment, certifications, representations, information or other documents as may be reasonably requested by Seller and are consistent with Schedule 19.4(b)(1) in connection

with the financing of the Facility (each, a "Lender Consent") or (ii) such certifications, representations, information or other documents as may be reasonably requested by Seller and are consistent with Schedule 19.4(b)(2) in connection with the financing of the Facility (including Tax Equity Financing) (each, a "Financing Estoppel"); provided, that in responding to any such request, Buyer shall have no obligation to enter into any agreement that adversely affects any of Buyer's rights or benefits under this Agreement, except to the extent expressly set forth in Schedule 19.4(b)(1) or Schedule 19.4(b)(2), as applicable. Seller shall reimburse, or cause the Lender or Tax Equity Investor, as applicable, to reimburse, Buyer for the direct expenses (including the fees and expenses of counsel) incurred by Buyer in the preparation, negotiation, execution, and/or delivery of the Lender Consent, the Financing Estoppel and any documents requested by Seller, Lender or Tax Equity Investor, as applicable, and provided by Buyer pursuant to this Section 19.4(f).

(g) Notwithstanding anything in this Section 19.4 to the contrary, either Party may subcontract its duties or obligations under this Agreement without the prior written consent of the other Party, provided that no such subcontract shall relieve the subcontracting Party of any of its duties or obligations hereunder.

XIX.5 Buyer's Right of First Refusal.

(a) Seller shall not (and shall not permit any Affiliate to) sell or transfer all or a material portion of, or an undivided interest in, the Facility (or such Affiliate's direct or indirect equity interests in Seller), including by merger, consolidation or sale of all or substantially all of its assets, unless prior to such sale or transfer, Seller provides written notice of such sale or transfer to Buyer that includes a copy of the definitive agreement (which includes the name of proposed transferee) for such sale or transfer. Upon Buyer's receipt of such notice, Buyer shall have the right, for one hundred and twenty (120) days, to enter into (or cause a nominee to enter into) a purchase agreement on substantially the same terms and conditions as set forth in the definitive agreement included in Seller's notice, provided that (i) if such definitive agreement specifies any non-cash consideration, Buyer (or its nominee) may pay the cash equivalent of such non-cash consideration or (ii) if any Governmental Approvals or Consents are required for Buyer to consummate the transaction, Buyer shall have a reasonable period of time to seek and obtain all necessary Governmental Approvals or Consents (with times and on terms consistent with those applicable to Buyer's Required Governmental Approvals and Buyer's Required Consents). Seller shall (1) provide, in a timely manner, information regarding the Facility that is reasonable or customary to allow Buyer to perform due diligence and to otherwise evaluate in good faith the purchase of the Facility and (2) otherwise cooperate in good faith with Buyer in the event Buyer exercises its right to purchase under this Section 19.5(a).

(b) In the event that Buyer does not exercise its right to purchase, then, subject to Section 19.6, Seller (or any Affiliate) shall have the right to consummate the proposed sale or transfer according to the definitive agreement included in Seller's notice to Buyer (excluding any amendments thereto that make such definitive agreement more favorable to the purchaser), provided that such sale or transfer is consummated within one hundred and eighty (180) days after the date that Buyer elects not to exercise its right to purchase (or such right to purchase expires). If Seller does not consummate the proposed sale or transfer in accordance with the preceding sentence within such one hundred and eighty (180) days, Seller shall not (and shall not permit any

Affiliate to) sell or transfer all or a material portion of, or an undivided interest in, the Facility (or such Affiliate's direct or indirect equity interests in Seller), unless prior to such sale or transfer, Seller provides a new written notice of such sale or transfer to Buyer and Section 19.5(a) is applied with respect to such new written notice.

XIX.6 Other Transfer Restrictions. Seller shall not (and shall not permit any Affiliate to) sell or transfer all or a material portion of, or an undivided interest in, the Facility (or such Affiliate's direct or indirect equity interests in Seller), including by merger, consolidation or sale of all or substantially all of its assets, without the prior written consent of Buyer, which consent shall not be unreasonably withheld or delayed, provided that it shall be deemed reasonable for Buyer to withhold its consent if (i) the proposed transferee is not a Qualified Operator, (ii) the proposed transferee has a creditworthiness below that of Seller, (iii) the proposed transferee is a load-serving entity or an Affiliate of a load-serving entity and owns or controls (or an Affiliate thereof owns or controls) 1,000 MW or more of electric generation capacity, (iv) the proposed transferee is, or during the period commencing four (4) years prior to the date of Seller's notice requesting consent to the transfer until the date of the transfer has been, involved in Adverse Litigation, (v) any Performance Assurance provided by Seller prior to such sale or transfer would not remain in effect (or would not continue to be drawable against all obligations of "Seller" hereunder, whether relating to the period before, on or after the date of the transfer) or is not substituted with replacement Performance Assurance meeting the requirements of Article XII, (vi) the Guaranty would not remain in effect or be substituted with a Guaranty acceptable to Buyer in its sole and absolute discretion, or (vii) in the case of a transfer of the Facility (including an undivided interest therein) or portion thereof, Seller does not concurrently assign its rights and obligations under this Agreement to the transferee of the Facility according to Section 19.4 on terms acceptable to Buyer in its sole and absolute discretion. Notwithstanding the foregoing, this Section 19.6 shall not apply to the direct or indirect sale or transfer of all or any portion of the equity interests of Seller or any Affiliate or other direct or indirect equity holder of Seller, whether such equity interests constitute newly issued or previously outstanding equity interests, to Tax Equity Investors in connection with a Tax Equity Financing provided that following the consummation of such sale or transfer Seller is not Controlled by the Tax Equity Investors.

XIX.7 No Third-Party Beneficiaries. Except for the rights and remedies specifically conferred upon Indemnitees under the indemnity provisions hereof, this Agreement is solely between and for the benefit of the Parties and is not intended to, and does not, confer any rights or remedies hereunder upon any Person other than the Parties and their respective successors and permitted assigns.

XIX.8 Waiver. Without limiting Section 19.16, no waiver by a Party of any right of such Party or any duty, obligation, Potential Event of Default, Event of Default or liability of the other Party or any other matter under or arising out of or in connection with, or any provision of, this Agreement shall be effective unless in writing signed by an authorized representative of the waiving Party and designated as a waiver. Further, any such waiver shall not be deemed a continuing waiver, or a waiver with respect to any other matter, except to the extent expressly set forth in such waiver, and shall be limited to its express terms. For the avoidance of doubt, (a) any delay in asserting or enforcing any right under or arising out of or in connection with this Agreement shall not be deemed a waiver of such right, and (b) a failure of a Party to enforce, or to require performance by the other Party of, any provision of this Agreement shall not be construed

to waive such provision, or to affect the validity of this Agreement or any part thereof, or the right of such Party thereafter to enforce each and every provision hereof.

XIX.9 Choice of Law. This Agreement shall be governed by and construed and interpreted in accordance with the Laws of the State of New York without giving effect to principles of conflicts of laws that would require or permit the application of the laws of any other jurisdiction.

XIX.10 Submission to Jurisdiction; Waiver of Jury Trial. Each of the Parties hereby irrevocably and unconditionally:

(a) submits for itself and its property in any legal action or proceeding relating to this Agreement, or for recognition and enforcement of any judgment or award in respect thereof, to the exclusive general jurisdiction of the United States District Court for the Middle District of Louisiana located in the Parish of -East Baton Rouge, State of Louisiana, or, if such court does not have jurisdiction over such action, in the state courts of the State of Louisiana located in the Parish of East Baton Rouge, and, in each case, the appellate courts thereof;

(b) CONSENTS AND AGREES THAT ANY SUCH ACTION OR PROCEEDING MAY BE BROUGHT IN AND ONLY IN SUCH COURTS AND WAIVES ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE VENUE OF ANY SUCH ACTION OR PROCEEDING IN ANY SUCH COURT OR THAT SUCH ACTION OR PROCEEDING WAS BROUGHT IN AN INCONVENIENT FORUM OR ANY SIMILAR OBJECTION 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 indicated on Schedule 19.1 or at such other address of which the other Party shall have been notified pursuant thereto, and agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by applicable Law; and

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

provided, however, that, to the extent that a Party cannot obtain, or can obtain but cannot enforce, a decision from the courts specified in clause (a) above because, even after giving effect to the submission to jurisdiction and waiver of objection to venue in this Section 19.10, no such court has jurisdiction over the other Party or its assets or the subject matter or no such court has the jurisdiction or power to grant the remedy or enforcement sought, the Party may pursue or enforce (as applicable) its remedies in another court.

XIX.11 Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon Buyer and Seller and their respective successors and permitted assigns.

XIX.12 Counterparts. This Agreement may be executed in separate counterparts by the Parties, including facsimile counterparts, each of which when executed and delivered shall be an original, but all of which shall constitute one and the same instrument.

XIX.13 Confidentiality. Neither Party shall disclose, or permit the disclosure by any of its Representatives (as defined in the Confidentiality Agreement) of, the terms or conditions of this Agreement, or any confidential information of the other Party disclosed by such other Party to such Party, directly or indirectly, in connection with the exercise of its rights or the performance of its obligations hereunder, to a third party (including in connection with the issuance of any media or press release or other form of public announcement), other than as permitted under the Confidentiality Agreement. Notwithstanding anything to the contrary herein or in the Confidentiality Agreement, Buyer shall be entitled to disclose to any Governmental Authority as a matter of right, without seeking any confidential treatment therefor, Seller's name, the Delivery Term, the type, nature, and a general description of the Transaction, and amount and type of capacity under contract pursuant to this Agreement.

XIX.14 Entire Agreement. This Agreement and the Confidentiality Agreement contain the entire agreement between the Parties with respect to the matters contained herein and therein, and supersede all negotiations, representations, warranties, commitments, offers, contracts and writings prior to the Effective Date, written or oral (including any agreement, promise, understanding or commitment based upon or made in any term sheet, contract or principal terms summary, bid package or other document prepared or made available by or on behalf of either Party or any communication or correspondence of any kind in connection with the RFP, and each Party confirms that it is not relying upon any inducement, promise, commitment, representation or warranty of the other Party relating to this Transaction, except as specifically set forth herein, in the Confidentiality Agreement, or incorporated by reference herein or therein.

XIX.15 Severability. If any provision of this Agreement shall be held to be invalid or unenforceable by a Governmental Authority with jurisdiction, such provision shall be (i) invalid or unenforceable only to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable any other provision hereof and (ii) revised or reformed, to the maximum extent permitted under applicable Law, in a manner resulting in rights, duties and obligations most closely representing the intention of the Parties as expressed herein.

XIX.16 Amendment. This Agreement may not be amended or otherwise modified except by and as set forth in a written instrument signed by duly authorized representatives of each of the Parties.

XIX.17 No Challenge. Neither Party shall directly or indirectly challenge the equity, fairness, reasonableness or lawfulness of any prices, fees, rates, terms or conditions set forth in or established according to this Agreement, as those prices, fees, rates, terms or conditions may be at issue before any Governmental Authority or arbitrator, if the successful result of such challenge would be to preclude or excuse the performance of this Agreement in accordance with its terms by either Party or to prospectively or retroactively revise such prices, fees, rates, terms or conditions. To the extent that either Party may be called upon by any Governmental Authority to do so, each Party shall support and defend the effectiveness of this Agreement before such Governmental Authority when the substance, validity or enforceability of all or any part of this

Agreement is challenged or called into question before such Governmental Authority. Without limiting the foregoing, neither Party shall seek (directly or indirectly), nor support any third party in seeking, to revise the prices, fees, rates, terms or conditions set forth in or established according to this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act or otherwise. Further, the standard of review for changes to the prices, fees, rates, terms or conditions set forth in or established according to this Agreement proposed by a Party (to the extent that any waiver in this Section 19.17 is unenforceable or ineffective as to such Party), a non-Party or the FERC acting *sua sponte* shall solely be the "public interest" application of the "just and reasonable" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) and clarified by their progeny, including *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 (2008).

XIX.18 Imaged Documents. Any original or copy of a writing may be digitally copied, photocopied, or stored on computer tapes, disks, drives, and other electronic media ("Imaged Document"). An Imaged Document, if introduced as evidence in printed format in any judicial, arbitration, mediation or administrative proceedings, shall be admissible as between the Parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither Party shall object to the admissibility of the Imaged Document on the basis that the same was not originated or maintained in documentary form; provided, however, that nothing herein shall be construed as a waiver of any other objection to the admissibility of such evidence.

XIX.19 Operating Representatives. Prior to the Delivery Term Commencement Date, each Party shall designate a representative for purposes of administering this Agreement (each such representative, an "Operating Representative") by notice to the other Party specifying the designee's name, telephone and fax numbers and e-mail address. A Party may change its Operating Representative upon notice to the other Party. The duties and responsibilities of the Operating Representatives shall include serving as the primary contact for the administration of this Agreement, including establishing and maintaining procedures for such administration and for coordinating the schedule for Planned Maintenance. The Operating Representatives shall have no authority in their capacity as Operating Representatives to amend or otherwise modify this Agreement or bind their respective Parties.

XIX.20 Independent Contractors. Neither Party is a partner, joint venturer, agent or representative of or with the other Party in connection with this Agreement or any of the undertakings set forth herein or transactions contemplated hereby. Nothing in this Agreement is intended or shall be deemed to create an association, trust, joint venture, partnership, or relationship of principal and agent between the Parties or to impose upon either Party any fiduciary, trust, partnership, or similar obligation or liability on either Party. Neither Party shall have any right, power, or authority to enter into any agreement or commitment, act on behalf of, or otherwise bind the other Party in any way.

XIX.21 Further Assurances. The Parties shall execute all such other documents and do all such other things as may be reasonably required in order to effectuate, evidence, and/or confirm the intended purposes of this Agreement.

XIX.22 Recordings. EACH PARTY CONSENTS TO THE CREATION OF A TAPE OR ELECTRONIC RECORDING ("RECORDING") OF ALL TELEPHONE CONVERSATIONS OR OTHER FORMS OF COMMUNICATIONS UNDER THIS AGREEMENT BETWEEN THE PARTIES OR THEIR EMPLOYEES, AGENTS OR REPRESENTATIVES THAT ARE LAWFULLY RECORDED BY THE OTHER PARTY IN THE ORDINARY COURSE OF BUSINESS (SUCH AS COMMUNICATIONS RELATING TO THE OPERATION OF THE FACILITY, INCLUDING CURTAILMENT). ANY SUCH RECORDINGS SHALL BE TREATED AS CONFIDENTIAL INFORMATION SUBJECT TO SECTION 19.13, SHALL BE SECURED AGAINST IMPROPER ACCESS AND, SUBJECT TO APPLICABLE EVIDENTIARY RULES AND PROCEDURES, MAY BE SUBMITTED IN EVIDENCE IN ANY PROCEEDING OR ACTION RELATING TO THIS AGREEMENT. EACH PARTY WAIVES FURTHER NOTICE OF SUCH MONITORING OR RECORDING AND AGREES TO NOTIFY ITS OFFICERS, EMPLOYEES, REPRESENTATIVES AND AGENTS OF SUCH MONITORING OR RECORDING AND TO OBTAIN ANY NECESSARY CONSENT OF SUCH OFFICERS, EMPLOYEES, REPRESENTATIVES OR AGENTS.

XIX.23 Forward Contract. The Parties acknowledge and agree that this Agreement constitutes a "forward contract" within the meaning of the United States Bankruptcy Code.

[Signature page follows]

IN WITNESS WHEREOF, the Parties have caused this Power Purchase Agreement to be executed by their duly authorized representatives as of the Effective Date.

ENTERGY LOUISIANA, LLC

By:_____
Name:
Title:

[SELLER]

By:_____
Name:
Title:

# Schedule A

## Buyer's Required Consents (Outstanding)

## Schedule B

## Facility

Facility Description

[Facility Description]

Facility Site

[Description of Facility Site]

# Schedule C

## Seller's Required Consents (Outstanding)

# Schedule D

## Seller's Required Governmental Approvals (Outstanding)

## Schedule E

## Letter of Credit Bank Asset Amount

The amount of total assets required to be held by a U.S. commercial bank or U.S. branch issuing a Letter of Credit at the time the Letter of Credit is issued is:

(a) for the period beginning on and including the Effective Date through the Delivery Term Commencement Date, the Base Bank Asset Amount; and

(b) for the Contract Year beginning on and including the Delivery Term Commencement Date, the amount determined as follows:

$$\text{Bank Asset Amount}_{DTCY} = \text{Base Bank Asset Amount} * \{1 + [(CPI2 - CPI1) / CPI1]\}$$

where:

$\text{Bank Asset Amount}_{DTCY}$ = Bank Asset Amount for the Contract Year beginning on and including the Delivery Term Commencement Date;

CPI1 = Consumer Price Index for the month in which the Effective Date occurs;

CPI2 = Consumer Price Index for the month in which the Delivery Term Commencement Date occurs; and

(c) for each subsequent Contract Year, the amount determined as follows:

$$\text{Bank Asset Amount}_{CY} = \text{Base Bank Asset Amount} * \{1 + [(CPI2 - CPI1) / CPI1]\}$$

where:

$\text{Bank Asset Amount}_{CY}$ = Bank Asset Amount for the applicable Contract Year after the first Contract Year;

CPI1 = Consumer Price Index for the month in which the Effective Date occurs;

CPI2 = Consumer Price Index for the month in which the Contract Year Anniversary Date that starts such Contract Year occurs.

## Schedule F

## Form of Guaranty

## GUARANTY

**THIS GUARANTY** is entered into as of _____, (the "Effective Date"), by [ ], a [ ] ("Guarantor"), for the benefit of Entergy Louisiana, LLC, a Texas limited liability company ("Guaranteed Party").

### Recitals

A. [Seller], a [ ] ("Seller"), and Guaranteed Party, are parties to that certain Power Purchase Agreement dated as of _____, 20[ ] (the "Agreement").

B. Guarantor is [ ]/[a Lender] of Seller.

### Terms and Conditions

In consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and as an inducement to Guaranteed Party to enter into the Agreement with Seller, Guarantor agrees as follows:

1. Guaranty.

(a) Guarantor absolutely, irrevocably, and unconditionally guarantees (as primary obligor and not merely as surety) to Guaranteed Party, without duplication, and subject to the terms of this Guaranty, the prompt and complete payment as and when due, whether by acceleration or otherwise, of all obligations and liabilities, whether now in existence or hereafter arising, actual or contingent, of Seller to Guaranteed Party under and in accordance with the Agreement and any amendments thereto (each, an "Obligation"). The liability of Guarantor under this Guaranty is a guaranty of payment and not of collection. Guaranteed Party may commence any action or proceeding based upon this Guaranty directly against Guarantor without making Seller a party defendant in such action or proceeding. If Seller fails to pay any Obligation for any reason, Guarantor will pay or cause to be paid such Obligation when due directly for Guaranteed Party's benefit within three (3) business days after receipt of Guaranteed Party's written demand therefor and without Guaranteed Party having to bring any action or proceeding against, or make prior demand on, Seller. All payments hereunder shall be made without reduction, whether by offset, payment in escrow, or otherwise, except to the extent of any defenses to payment or performance which Seller may have under the Agreement, excluding defenses arising out of the bankruptcy, insolvency, dissolution or liquidation of Seller, the power or authority of Seller to enter into the Agreement and to perform thereunder, and the lack of validity or enforceability of the Agreement or any other documents executed in connection with the Agreement. Guarantor is liable for, and shall indemnify Guaranteed Party for Guaranteed Party's reasonable costs and expenses, including, but not limited to, reasonable attorneys' fees, reasonable costs and disbursements incurred in any effort to collect or enforce any of the obligations under this Guaranty, whether or not any lawsuit is filed, and such obligation and any such costs and expenses incurred by Guaranteed Party shall be deemed "Obligations" for purposes of this Guaranty. Notwithstanding the foregoing, Guarantor shall have no obligation to pay any

such costs or expenses if, in any action or proceeding brought by Guaranteed Party giving rise to a demand for payment of such costs or expenses, it is finally adjudicated by a court of competent jurisdiction that Guarantor is not liable to make payment of the Obligations under this Section 1 of this Guaranty.

2. Guarantor's Obligation. Subject to paragraphs 1 and 3, Guarantor's obligations under this Guaranty are absolute and unconditional, shall remain in force until all Obligations have been paid in full, and shall not be released or discharged for any reason whatsoever prior thereto, including, without limitation, by any of the following (whether or not Guarantor shall have any knowledge thereof):

(a) any termination, amendment, modification or other change in the Agreement;

(b) any modification, extension or waiver of any of the terms of the Agreement;

(c) any change in the time, manner, terms or place of payment or performance or in any other term of, all or any of the Obligations, or any other amendment or waiver of or any consent to departure from the Agreement or any other agreement or instrument executed in connection therewith;

(d) any dissolution of Guarantor or any voluntary or involuntary bankruptcy, insolvency, reorganization, arrangement, readjustment, assignment for the benefit of creditors, composition, receivership, liquidation, marshaling of assets and liabilities or similar events or proceedings with respect to Seller, Guarantor or any other guarantor of Seller's obligations, as applicable, or any of their respective property or creditors, or any action taken by any trustee or receiver or by any court in any such proceeding;

(e) any merger, consolidation or other reorganization of Seller, Guarantor or any other guarantor of Seller's obligations into or with any person, or any sale, lease or transfer of any of the assets of Seller, Guarantor or any other guarantor of Seller's obligations to any other person;

(f) any change in the ownership of the capital stock or equity ownership of Seller, Guarantor or any other guarantor of Seller's obligations or any change in the relationship between Seller, Guarantor or any other guarantor of Seller's obligations, or any termination of any such relationship;

(g) any delay or failure by Guaranteed Party to enforce or exercise any right or remedy under the Agreement, or waiver by Guaranteed Party of any such right or remedy;

(h) any transfer, assignment or mortgaging by Guaranteed Party of any interest in the Agreement or this Guaranty; or

(i) the existence, validity, enforceability, perfection, release, or extent of any collateral for such Obligations.

For the avoidance of doubt, this Guaranty and the obligations of Guarantor hereunder shall apply if at any time payment of the Obligations, or any part thereof, is rescinded or must otherwise be returned by Guaranteed Party upon the insolvency, bankruptcy or reorganization of Seller or

otherwise, all as though the payment of such Obligations had not been made. Without limiting the other provisions of this Guaranty, Guaranteed Party shall not be obligated to file any claim relating to the Obligations owing to it in the event that Seller becomes subject to a bankruptcy, reorganization, or a similar proceeding, and the failure of Guaranteed Party to so file shall not affect Guarantor's obligations hereunder.

3. Release and Assignment. Guarantor may not assign this Guaranty or its obligations hereunder without the prior written consent of Guaranteed Party, which consent of Guaranteed Party shall not be unreasonably withheld, conditioned or delayed. The provisions hereof shall inure to the benefit of and be binding upon such permitted successors and assigns.

4. Representations and Warranties. Guarantor hereby represents and warrants to Guaranteed Party that it has all necessary and appropriate powers and authority to execute and perform under this Guaranty and that this Guaranty has been duly executed and delivered by Guarantor and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms.

5. Waivers by Guarantor. Guarantor hereby waives (i) notice of the acceptance of this Guaranty, demand or presentment for payment to Seller or the making of any protest, notice of the amount of the Obligations outstanding at any time, notice of failure to perform on the part of Seller, notice of any amendment, modification or waiver of or under the Agreement, and all other notices or demands not specified hereunder, and (ii) any requirement that Guaranteed Party exhaust any right or take any action against Seller, any collateral security or any other guarantor or surety.

6. Subrogation. Upon payment by Guarantor of any sums to Guaranteed Party under this Guaranty, all rights of Guarantor against Seller arising as a result thereof by way of right of subrogation or otherwise shall be subordinate and junior in right to the right of Guaranteed Party to receive the prior indefeasible payment in full of all the obligations of Seller under the Agreement. If all of the Obligations shall be indefeasibly paid in full, Guaranteed Party will, at Guarantor's request and expense, execute and deliver to Guarantor appropriate documents, without recourse and without representation or warranty, necessary to evidence the transfer by subrogation to Guarantor of an interest in the Obligations resulting from such payment by Guarantor.

7. Limitations of Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS GUARANTY, GUARANTOR SHALL NOT BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, INDIRECT, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND OR NATURE ARISING OUT OF OR IN CONNECTION WITH THIS GUARANTY, INCLUDING LOST PROFITS, LOST SALES OR REVENUES, AND ALL BUSINESS INTERRUPTION DAMAGES, WHETHER BY STATUTE, IN TORT OR CONTRACT, EXCEPT TO THE EXTENT DUE TO GUARANTEED PARTY PURSUANT TO THE AGREEMENT.

8. Miscellaneous

(a) Governing Law; Waiver of Jury Trial. **THIS GUARANTY SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT REFERENCE TO THE CHOICE OF LAW**

**PRINCIPLES THEREOF. GUARANTOR HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO A TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS GUARANTY.**

(b) Waiver of Immunity. To the extent that Guarantor has or hereafter may acquire any immunity from jurisdiction of any court or from any legal process (whether through service or notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise) with respect to Guarantor or Guarantor's property, Guarantor hereby irrevocably waives such immunity in respect of Guarantor's obligations under this Guaranty.

(c) Notices. All notices and other communications under this Guaranty shall be deemed received if sent to the address specified below: (i) on the day received if served by overnight express delivery, and (ii) four (4) business days after mailing if sent by certified, first class mail, return receipt requested. Any party may change its address to which notice is given hereunder by providing notice of same in accordance with this Section 8(c).

To Guaranteed Party: Entergy Louisiana, LLC
4809 Jefferson Highway
Jefferson, LA 70121
Attention: [ ]
Fax: [ ]

Entergy Services, LLC
10055 Grogans Mill Road, Suite 300
The Woodlands, TX 77380
Attention: Assistant General Counsel
Fax: 281-297-3937

To Guarantor: [Guarantor]
[ ]
[ ]
Attn: [ ]

or to such other addresses and/or to the attention of such other persons as Guarantor or Guaranteed Party may designate by written notice to Guaranteed Party or Guarantor, as applicable.

(d) Binding Effect; Assignment; Severability. This Guaranty shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. If any provision of this Guaranty shall be determined to be invalid, illegal, or unenforceable, the validity of the remainder of the Guaranty shall not be affected or impaired in any way.

(e) Headings. The headings contained in this Guaranty are inserted for convenience only and will not affect the meaning or interpretation of this Guaranty.

(f) Amendment; No Waiver. This Guaranty may not be modified or amended except by an instrument in writing signed by Guarantor and Guaranteed Party. Any party hereto may, only by an instrument in writing, waive compliance by the other party hereto with any term or

provision of this Guaranty. The waiver by any party hereto of a breach of any term or provision of this Guaranty shall not be construed as a waiver of any subsequent breach.

(g) Further Instruments. Guarantor agrees to execute, have acknowledged and deliver such other documents and instruments as may be necessary or appropriate to evidence or to carry out the terms of this Guaranty.

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the Effective Date.

[GUARANTOR]

By: _____

Name: _____

Its: _____

## Schedule 1.1.1

## Annual Expected Energy Quantity

| Contract Year | Annual Expected Energy Quantity (MWh) |
|---|---|
| 1 | [ ] |
| 2 | [ ] |
| 3 | [ ] |
| 4 | [ ] |
| 5 | [ ] |
| 6 | [ ] |
| 7 | [ ] |
| 8 | [ ] |
| 9 | [ ] |
| 10 | [ ] |
| 11 | [ ] |
| 12 | [ ] |
| 13 | [ ] |
| 14 | [ ] |
| 15 | [ ] |
| 16 | [ ] |
| 17 | [ ] |
| 18 | [ ] |
| 19 | [ ] |
| 20 | [ ] |

## Schedule 1.1.2

## Annual Guaranteed Energy Quantity

| Contract Year | Annual Guaranteed Energy Quantity (MWh) |
|---|---|
| 1 | [ ] |
| 2 | [ ] |
| 3 | [ ] |
| 4 | [ ] |
| 5 | [ ] |
| 6 | [ ] |
| 7 | [ ] |
| 8 | [ ] |
| 9 | [ ] |
| 10 | [ ] |
| 11 | [ ] |
| 12 | [ ] |
| 13 | [ ] |
| 14 | [ ] |
| 15 | [ ] |
| 16 | [ ] |
| 17 | [ ] |
| 18 | [ ] |
| 19 | [ ] |
| 20 | [ ] |

**Schedule 2.3(b)(viii)**

**Form of Accounting Certification**

**ACCOUNTING CERTIFICATION OF THE AGREEMENT**

**AGREEMENT** – Power Purchase Agreement, dated as of [ ], between Entergy Louisiana, LLC ("Buyer") and [ ] ("Seller")(the "Agreement").

The undersigned individual, being the Principal Accounting Officer of Seller and having responsibilities for financial accounting matters associated with the Agreement, hereby certifies that, to the best of [his/her] knowledge, as of the date hereof, neither the Agreement nor the transactions thereunder or contemplated thereby will require, under the accounting standards existing at the time of this certification or that will be in effect during the term of the Agreement, and in accordance with generally accepted accounting principles in the United States (US GAAP), the recognition of a long-term liability by Buyer or any of its Affiliates on its or any of its Affiliates' financial statements by any means, including through lease, "variable interest entity" or derivative accounting or for any other reason.

Seller understands that Buyer will rely upon this certification, and that Buyer may require further documentation supporting this certification pursuant to the terms of the Agreement.

Any capitalized terms not defined herein shall have the meaning ascribed thereto in the Agreement.

**Confirmation**

The above information (and any attachments) has been completed in full and agrees with our records as of the date hereof.

[SELLER]

By: _____
Name: _____
Title: _____

**Schedule 3.2(a)**

**Project Schedule**

[Attached.]

## Schedule 3.12

## Capacity Demonstration Test Procedures

### PURPOSE

The purpose of the Capacity Demonstration Test is to determine the total generating system capacity of the Facility at the ASTM Reference Conditions. This performance test verifies that the Facility is capable of meeting or exceeding the COD Capacity Threshold (during the month in which the test is executed) at ASTM Reference Conditions.

### REFERENCE DOCUMENTS:

- ASTM E2848-13 - Standard Test Method for Reporting Photovoltaic Non-Concentrator System Performance
- ASTM E2939-13 - Standard Practice for Determining Reporting Conditions and Expected Capacity for Photovoltaic Non-Concentrator Systems

### PROCEDURE

The Capacity Demonstration Test will be executed over a period greater than three (3) days and concluding when three hundred (300) valid data points have been obtained. The valid data points must include data from at least three (3) separate days. Data will be captured at the end of each one (1) minute interval. The Capacity Demonstration Test will continue without interruption unless apparent operational issues affect the validity of plant output criteria. Subject to Section 3.12 of the Agreement, the Capacity Demonstration Test shall not be conducted until at least seven (7) days after the last Inverter Block Unit is placed into service.

Data collection and subsequent calculations of capacity and performance shall conform to ASTM E2848 and E2939.

### PRIMARY TEST INSTRUMENTATION

- Plane-of-Array and GHI pyranometers
- Site level power meter
- Air temperature
- Wind Speed

*Calibration sheets will be submitted separately.

### DATA POINT REJECTION CRITERIA

1. **Startup Failure**
    a. All inverters must be in their on-line state. The data from the revenue meter will not be used until all inverters are on-line.
2. **Generation Equipment failure**

a. If any inverter trips off line, the data generated during the time of the outage will be rejected.

3. **Grid interruption**
    a. If there is a grid interruption and the Facility is unable to export power, the data generated during the time of the outage will be rejected, along with five minutes immediately preceding the failure.
4. **Environmental conditions**
    a. All data occurring with an average irradiance of less than 200 $W/m^2$ and greater than 1000 $W/m^2$ will be rejected.
    b. All data during periods of clipping will be rejected. Clipping will be defined as 98% of nameplate power.
    c. All data during row-to-row shading as calculated by PVSyst or observed during testing will be rejected.
    d. If there is snow on the modules by visual inspection, data will be rejected until it has cleared.
5. **Instrumentation failure**
    a. If any of the primary instrumentation fails, data from that instrument will not be used in the average.
    b. If communications to inverters, met station, or power meter fail, or data historization fails, data will be rejected for that time period.

**NON-CONFORMANCE ITEMS**

- Apparent operational issues encountered during Capacity Demonstration Testing will be recorded as non-conformance items and reported in the Commissioning Log.
- Any retesting or extension requirement due to failures, non-conformance items, or operator intervention will be mutually agreed upon among Seller, Buyer and tester.

**DAILY ACTION ITEMS**

Execute the following items for each day of testing.

- Ensure all pyranometers are clean.
- Confirm all inverters start within a reasonable amount of time of each other.
- Review collected data for any abnormalities.
- Review Alarm Log. Document events and their start/stop times.
- Confirm that any non-conformance items are documented and determine if any necessary actions are required per Accepted Industry Practices.

**RESULT**

The Capacity Demonstration Test is deemed successful if such test complies with these Capacity

Demonstration Test Procedures and the Facility's tested Available Capacity equals or exceeds the COD Capacity Threshold and otherwise meets the requirements set forth in the Agreement, including Section 3.1(b).

**DELIVERABLES**

Following completion of the testing period, tester will transmit to Buyer and Seller the following items within three (3) business days after completion of test.

- Raw data from primary instrumentation, one (1) minute intervals
- Test report
- Commissioning log, specific to testing period

**Schedule 5.1**

**Variable Payments**

$$VPm = \left( \sum_{i=1}^{n} [(EPi)] \right)$$

where:

| | | |
|---|---|---|
| $VP_m$ | = | Variable Payment for the applicable month; |
| $n$ | = | The total number of MWh of Delivered Energy during the applicable month; |
| $i$ | = | Each MWh of Delivered Energy during the applicable month; |
| $EP_i$ | = | The rate set forth below corresponding to the applicable Month (or portion thereof) applicable to MWh of Delivered Energy $i$. |

| For Months in Contract Year | $EP_i$ ($/MWh) |
|---|---|
| 1 | [ ] |
| 2 | [ ] |
| 3 | [ ] |
| 4 | [ ] |
| 5 | [ ] |
| 6 | [ ] |
| 7 | [ ] |
| 8 | [ ] |
| 9 | [ ] |
| 10 | [ ] |
| 11 | [ ] |
| 12 | [ ] |
| 13 | [ ] |
| 14 | [ ] |
| 15 | [ ] |
| 16 | [ ] |
| 17 | [ ] |
| 18 | [ ] |
| 19 | [ ] |
| 20 | [ ] |

provided, however, that, if the Delivery Term Commencement Date occurs prior to June 1, 202[ ][22], $EP_i$ for each Month in Contract Year 1 prior to June 1, 202[ ] shall be equal to (i) $EP_i$ for Months in Contract Year 1 set forth above minus (ii) the Auction Clearing Price for a ZRC resulting from the Planning Resource Auction for the Planning Year in effect on the Delivery Term Commencement Date (expressed in $/MWh); provided, further, that, if the Delivery Term is extended pursuant to the proviso in Section 2.2(c), $EP_i$ for each Month of the last Contract Year resulting from such extension shall be the $EP_i$ for Months in Contract Year 20 set forth above.

For the avoidance of doubt, if Energy delivered to Buyer at the Energy Financial Delivery Point exceeds the Maximum Delivered Contract Energy, Buyer shall have no obligation to pay any amounts with respect to such excess Energy.

[22] **NTD:** If the Guaranteed Commercial Operation Date is prior to June 1 of the year of the Guaranteed Commercial Operation Date, this proviso will be included with using June 1 of the year of the Guaranteed Commercial Operation Date.

## Schedule 8.4(b)

## Real-Time Data

The data points to be measured, recorded, stored and provided by Seller to Buyer shall be at least the following:

Instantaneous Values

- Main Breaker status
- Revenue meter MW
- Revenue meter MVAR
- Number of Inverter Block Units available to generate power (non-faulted)
- Number of Inverter Block Units generating power (connected to grid)
- Total global horizontal irradiance within one plane of array
- Met Station ambient temperature
- Met Station ambient relative humidity
- Met Station precipitation
- Met Station atmospheric pressure
- Surface Temperature of a Photovoltaic Module
- Active Power Limit set point feedback

Counter values

- Revenue Meter MWH
- Revenue Meter MVARH

## Schedule 9.6

## Form of Planned Maintenance Schedule

| Outage Description | Start Date and Hour | End Date and Hour | Total Outage Duration | Contract Capacity Subject to Outage (in MW, per hr) | Available Contract Capacity (in MW, per hr) |
|---|---|---|---|---|---|
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

## Schedule 9.8

## Insurance Requirements

Before the Commercial Operation Date, Seller shall procure and maintain the following minimum insurance, with insurers rated "A-" VII or higher by A.M. Best's Key Rating Guide, that are licensed to do business in Louisiana;

(a) Workers' Compensation Insurance for statutory obligations imposed by applicable laws, including, where applicable, the Alternate Employer Endorsement, the United States Longshoremen's and Harbor Workers' Act, the Maritime Coverage and the Jones Act;

(b) Employers' Liability Insurance, including Occupational Disease, shall be provided with a limit of (i) One Million Dollars ($1,000,000) for bodily injury per accident, (ii) One Million Dollars ($1,000,000) for bodily injury by disease per policy, and (iii) One Million Dollars ($1,000,000) for bodily injury by disease per employee;

(c) Business Automobile Liability Insurance which shall apply to all owned, non-owned, leased, and hired automobiles with a limit of One Million Dollars ($1,000,000) per accident for bodily injury and property damage;

(d) General Liability Insurance which shall apply to liability arising out of premises, operations, bodily injury, property damage, products and completed operations and liability assumed under and insured contract (contractual liability), with a limit of One Million Dollars ($1,000,000) per occurrence, Two Million Dollars ($2,000,000) aggregate. The products and completed operations coverage insurance shall be provided for the duration of any applicable warranty period;

(e) Excess Liability Insurance which shall apply to Employers Liability, Commercial General Liability and Business Automobile Liability Insurance, required in (b), (c), and (d) above, with total limits no less than of Five Million Dollars ($5,000,000) per occurrence and Five Million Dollars ($5,000,000) aggregate, when combined with primary coverages;

(f) Broad Form All-Risk Property Insurance with limits of insurance written on a replacement cost basis, including applicable sublimits for wind, earthquake, and flood exposures.

Such minimum insurance limits may be satisfied either by primary insurance, excess or umbrella insurance, self-insurance or a combination of any of the foregoing.

Except for Workers' Compensation Insurance, Buyer shall be endorsed as an additional insured on Seller's insurance policies required to be maintained under the Agreement and such policies shall provide for a waiver of subrogation in favor of Buyer. All policies of insurance required to be maintained by Seller hereunder shall provide for a severability of interests clause and include a provision that Sellers's insurance policies are to be primary and non-contributory to any insurance that may be maintained by or on behalf of Buyer.

In the event that any policy furnished by Seller provides for coverage on a "claims made" basis, the retroactive date of the policy shall be the same as the effective date of the Agreement, or such other date, as to protect the interest of Buyer. Furthermore, for all policies furnished on a "claims made" basis, Seller's providing of such coverage shall survive the termination of the Agreement and the expiration of any applicable warranty period, until the expiration of the maximum statutory period of limitations in the State of California for actions based in contract or in tort. If coverage is on "occurrence" basis, Seller shall maintain such insurance during the entire term of the Agreement.

Seller shall promptly provide evidence of the minimum insurance coverage required under the Agreement in the form of an ACORD certificate or other certificate of insurance. If any of the required insurance is cancelled or non-renewed, Seller shall within thirty (30) days or, if due to nonpayment of premium, ten (10) days of such cancellation or non-renewal provide written notice to Buyerand file a new certificate of insurance with Buyer, demonstrating that the required insurance coverage to be maintained hereunder has been extended or replaced. Neither Seller's failure to provide evidence of minimum coverage of insurance following Buyer's request, nor Buyer's decision to not make such request, shall release Seller from its obligation to maintain the minimum coverage provided for in this Schedule 9.8.

Seller shall be responsible for covering all deductibles associated with the foregoing insurance coverage.

## Schedule 12.1

## Financial Information

During the period beginning on the Effective Date and ending at the conclusion of the Delivery Term, Seller shall deliver to Buyer:

(a) within sixty (60) days following the end of each fiscal quarter; and

(b) within one hundred twenty (120) days following the end of each fiscal year;

a copy of the audited financial statements of Seller and Seller Parent Guarantor for such fiscal quarter or fiscal year, respectively; provided that, if any such quarterly financial statements are not audited, the unaudited financial statement for such fiscal quarter may be provided.

## Schedule 12.2

## Form of Letter of Credit

**DRAFT DRAFT DRAFT DRAFT DRAFT DRAFT**

LETTER OF CREDIT NO. SXXXXXX PAGE 1

ISSUING BANK:

BENEFICIARY:
ENTERGY LOUISIANA, LLC
10055 GROGANS MILL ROAD
THE WOODLANDS, TX 77380

APPLICANT:
[SELLER]

LETTER OF CREDIT NO: SXXXXXX
ISSUE DATE: [ ] XX, 20[ ]
EXPIRATION DATE: [ ] XX, 20[ ]
EXPIRATION PLACE: AT OUR COUNTERS
AMOUNT: [DOLLAR AMOUNT (IN FIGURES)] USD [DOLLAR AMOUNT (IN WRITING)]

AT THE REQUEST AND FOR THE ACCOUNT OF [SELLER] (THE "APPLICANT"), [ADDRESS], WE, [NAME OF ISSUER] (THE "ISSUER"), HEREBY ESTABLISH, EFFECTIVE IMMEDIATELY, IN FAVOR OF ENTERGY LOUISIANA, LLC (THE "BENEFICIARY"), OUR IRREVOCABLE STANDBY LETTER OF CREDIT NO. SXXXXXX IN THE AGGREGATE AMOUNT OF [DOLLAR AMOUNT SPELLED OUT] UNITED STATES DOLLARS (U.S. $[ ]) (AS SUCH AMOUNT MAY BE REDUCED FROM TIME TO TIME BY PARTIAL DRAWS HEREUNDER, THE "STATED AMOUNT").

WE ARE INFORMED BY THE APPLICANT THAT THIS LETTER OF CREDIT IS BEING ISSUED PURSUANT TO AND IN ACCORDANCE WITH THAT CERTAIN POWER PURCHASE AGREEMENT, DATED [ ], BETWEEN THE APPLICANT AND THE BENEFICIARY (SUCH AGREEMENT, AS MAY BE AMENDED, SUPPLEMENTED OR OTHERWISE MODIFIED FROM TIME TO TIME, THE "AGREEMENT") AND THAT THIS LETTER OF CREDIT IS BEING ISSUED IN FAVOR OF THE BENEFICIARY.

THIS LETTER OF CREDIT IS ISSUED, PRESENTABLE AND PAYABLE AT OUR OFFICE LOCATED AT [ADDRESS] AND, EXCEPT AS PROVIDED BELOW, EXPIRES WITH OUR CLOSE OF BUSINESS ON [ ](THE "EXPIRATION DATE").

IT IS A CONDITION OF THIS LETTER OF CREDIT THAT IT SHALL BE DEEMED AUTOMATICALLY EXTENDED WITHOUT WRITTEN AMENDMENTS FOR PERIODS OF ONE (1) YEAR FROM THE PRESENT EXPIRATION DATE, AND THEREAFTER FOR ONE YEAR FROM EACH FUTURE EXPIRATION DATE, UNLESS AT LEAST SIXTY (60) DAYS PRIOR TO THE THEN APPLICABLE EXPIRATION DATE WE NOTIFY YOU IN WRITING BY REGISTERED MAIL, RETURN RECEIPT REQUESTED, OR COURIER SERVICE THAT WE ELECT NOT TO CONSIDER THIS LETTER OF CREDIT EXTENDED BEYOND THE THEN APPLICABLE EXPIRATION DATE.

THIS LETTER OF CREDIT SHALL FINALLY EXPIRE ON [ ], IF IT HAS NOT PREVIOUSLY EXPIRED IN ACCORDANCE WITH THE PRECEDING PARAGRAPH.

IN THE EVENT THIS LETTER OF CREDIT IS NOT EXTENDED BEYOND THE THEN APPLICABLE EXPIRATION DATE OR IS SCHEDULED TO EXPIRE IN ACCORDANCE WITH THE PRECEDING PARAGRAPH, NOTWITHSTANDING ANYTHING IN THIS LETTER OF CREDIT TO THE CONTRARY, THE BENEFICIARY MAY DRAW ANY OR THE ENTIRE AMOUNT AVAILABLE HEREUNDER BY PRESENTING THE DRAWING DOCUMENTS IN COMPLIANCE WITH THE TERMS AND CONDITIONS OF THIS LETTER OF CREDIT.

FUNDS IN PAYMENT OF A DRAWING UNDER THIS LETTER OF CREDIT ARE AVAILABLE TO THE BENEFICIARY BY PAYMENT AGAINST PRESENTATION (INCLUDING PRESENTATION VIA ELECTRONIC SUBMISSION OR CERTIFIED MAIL) AT THE OFFICE AS STIPULATED HEREINABOVE OF THE BENEFICIARY'S SIGNED AND APPROPRIATELY COMPLETED SIGHT DRAFT(S) IN THE FORM OF EXHIBIT 1 ATTACHED HERETO, THE BENEFICIARY'S SIGNED AND APPROPRIATELY COMPLETED DRAWING CERTIFICATE(S) IN THE FORM OF EXHIBIT 2 ATTACHED HERETO, AND COPIES OF THE ORIGINAL LETTER OF CREDIT AND AMENDMENTS (IF ANY) (COLLECTIVELY, THE "DRAWING DOCUMENTS").

WE SHALL HAVE A REASONABLE AMOUNT OF TIME, NOT TO EXCEED TWO (2) BUSINESS DAYS FOLLOWING THE DATE OF OUR RECEIPT OF THE DRAWING DOCUMENTS, TO EXAMINE SUCH DRAWING DOCUMENTS AND DETERMINE WHETHER TO TAKE UP OR REFUSE SUCH DRAWING DOCUMENTS AND TO INFORM YOU ACCORDINGLY. WE MAY DISHONOR SUCH DRAWING DOCUMENTS ONLY IF THEY DO NOT COMPLY WITH THE TERMS OF THIS LETTER OF CREDIT. WE HAVE NO DUTY OR RIGHT TO INQUIRE INTO THE VALIDITY OF, OR THE BASIS FOR, ANY DRAW. ANY NOTICE OF DISHONOR SHALL STATE ALL DISCREPANCIES UPON WHICH OUR DISHONOR IS BASED.

PARTIAL AND MULTIPLE DRAWINGS ARE PERMITTED HEREUNDER. ANY DRAWING HONORED HEREUNDER BY THE ISSUER SHALL REDUCE THE STATED AMOUNT AVAILABLE FOR DRAWINGS BY THE AMOUNT OF ANY DRAWING HONORED BY THE ISSUER. PRESENTATION OF DRAWING DOCUMENTS FOR AMOUNTS IN EXCESS OF THE AMOUNT OF THIS LETTER OF CREDIT ARE ACCEPTABLE AND NOT DISCREPANT FOR THAT REASON; HOWEVER, THE AMOUNT PAYABLE ON ANY SUCH DEMAND WILL NOT EXCEED THE AMOUNT AVAILABLE UNDER THIS LETTER OF CREDIT.

WE HEREBY ENGAGE WITH YOU THAT ALL DOCUMENTS PRESENTED IN COMPLIANCE WITH THE TERMS OF THIS LETTER OF CREDIT SHALL BE DULY HONORED IF DRAWN AND PRESENTED FOR PAYMENT ON OR BEFORE THE EXPIRATION DATE.

THIS LETTER OF CREDIT IS NOT TRANSFERRABLE, EXCEPT AS SET FORTH IN THIS PARAGRAPH. THIS LETTER OF CREDIT IS TRANSFERRABLE BY THE BENEFICIARY, BUT ONLY IN ITS ENTIRETY, AND MAY BE SUCCESSIVELY TRANSFERRED TO ANY ASSIGNEE OR TRANSFEREE TO WHOM THE BENEFICIARY ASSIGNS OR TRANSFERS THE AGREEMENT IN ACCORDANCE WITH THE TERMS OF THE AGREEMENT. BY OUR EXECUTION AND DELIVERY OF THIS LETTER OF CREDIT, WE ALSO HEREBY ACKNOWLEDGE AND CONSENT, WITHOUT FURTHER CONDITIONS, TO YOUR PRESENT OR FUTURE ASSIGNMENT OF THE PROCEEDS OF ANY DRAWING UNDER THIS LETTER OF CREDIT. TRANSFER OF THIS LETTER OF CREDIT (INCLUDING THE DRAWING RIGHTS HEREUNDER), OR AN ASSIGNMENT OF THE PROCEEDS OF ANY DRAWING HEREUNDER, TO A TRANSFEREE SHALL BE EFFECTED, WITH NO OTHER CONDITIONS, BY THE PRESENTATION TO US OF AN APPROPRIATELY COMPLETED CERTIFICATE SUBSTANTIALLY IN THE FORM OF EXHIBIT 3 ATTACHED HERETO PURPORTEDLY BEARING THE SIGNATURE OF AN AUTHORIZED PERSON FOR THE BENEFICIARY. UPON RECEIPT OF ANY SUCH CERTIFICATE, WE UNDERTAKE TO PROMPTLY EXECUTE THE CONFIRMATION SET FORTH AT THE END OF SUCH CERTIFICATE AND FORWARD THE SAME DIRECTLY TO THE TRANSFEREE (PROVIDED THAT SUCH CONFIRMATION SHALL NOT BE A CONDITION TO THE TRANSFER). WE HAVE NO DUTY OR RIGHT TO INQUIRE INTO WHETHER ANY TRANSFEREE OF THIS LETTER OF CREDIT (INCLUDING THE DRAWING RIGHTS HEREUNDER) IS BUYER'S PERMITTED ASSIGNEE UNDER THE AGREEMENT AND MAY RELY EXCLUSIVELY ON YOUR CERTIFICATE. NOTWITHSTANDING ANY OTHER TERM OR PROVISION IN THIS PARAGRAPH, WE HAVE AND WILL HAVE NO OBLIGATION TO EXECUTE OR DELIVER A TRANSFER NOTICE OR OTHERWISE ACT WITH RESPECT TO ANY PROPOSED TRANSFER OR ASSIGNMENT IF YOU ARE PROHIBITED BY APPLICABLE LAW OR REGULATION FROM REMITTING PROCEEDS OF THIS LETTER OF CREDIT TO, OR OTHERWISE CONDUCTING BUSINESS WITH, THE PROPOSED TRANSFEREE.

ALL BANKING CHARGES ASSOCIATED WITH THIS LETTER OF CREDIT ARE FOR THE ACCOUNT OF THE APPLICANT.

AS USED HEREIN, "BUSINESS DAY" MEANS ANY DAY OTHER THAN A SATURDAY, SUNDAY OR A DAY ON WHICH BANKS IN THE STATE OF [ ] ARE AUTHORIZED OR REQUIRED TO BE CLOSED, AND A DAY ON WHICH PAYMENTS CAN BE EFFECTED ON THE FEDWIRE SYSTEM.

THIS LETTER OF CREDIT IS SUBJECT TO AND GOVERNED BY THE INTERNATIONAL STANDBY PRACTICES, INTERNATIONAL CHAMBER OF COMMERCE (ICC) PUBLICATION NO. 590 ("ISP98"), EXCEPT TO THE EXTENT THAT THE TERMS OF THIS LETTER OF CREDIT ARE INCONSISTENT WITH THE PROVISIONS OF THE ISP98, IN WHICH CASE THE TERMS OF THIS LETTER OF CREDIT SHALL GOVERN. AS TO MATTERS NOT ADDRESSED BY THE ISP98, AND TO THE EXTENT NOT INCONSISTENT WITH THE ISP98, THIS LETTER OF CREDIT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK (INCLUDING, WITHOUT

LIMITATION, ARTICLE 5 OF THE UNIFORM COMMERCIAL CODE OF THE STATE OF NEW YORK) AND APPLICABLE U.S. FEDERAL LAW.

THIS LETTER OF CREDIT, INCLUDING THE EXHIBITS HERETO, SETS FORTH IN FULL THE TERMS OF OUR UNDERTAKING AND SUCH UNDERTAKING SHALL NOT IN ANY WAY BE MODIFIED, AMENDED OR AMPLIFIED BY REASON OF OUR REFERENCE TO ANY AGREEMENTS OR INSTRUMENT REFERRED TO OR IN WHICH THIS LETTER OF CREDIT IS REFERRED TO. ANY SUCH AGREEMENTS OR INSTRUMENT SHALL NOT BE DEEMED INCORPORATED HEREIN BY REFERENCE.

| | |
|---|---|
| _____ | _____ |
| [SIGNATORY] | [SIGNATORY] |
| [TITLE] | [TITLE] |

EXHIBIT 1
[BENEFICIARY LETTERHEAD]
SIGHT DRAFT

[DATE]

[ISSUER]
ATTN:[ ]
[ADDRESS]
[ADDRESS]

RE: IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER S_____

FOR THE VALUE RECEIVED, PAY TO THE ORDER OF ENTERGY LOUISIANA, LLC BY WIRE TRANSFER OF IMMEDIATELY AVAILABLE FUNDS TO THE FOLLOWING ACCOUNT:

[NAME OF ACCOUNT]
[ACCOUNT NUMBER]
[NAME AND ADDRESS OF BANK TO WHICH ACCOUNT IS MAINTAINED]
[ABA NUMBER]
[REFERENCE]

THE FOLLOWING AMOUNT:

[INSERT NUMBER OF DOLLARS IN WRITING] UNITED STATES DOLLARS
(US $[INSERT NUMBER OF DOLLARS IN FIGURES])

DRAWN UPON YOUR LETTER OF CREDIT NO. _____ DATED _____, 20[ ].

ENTERGY LOUISIANA, LLC

BY: _____

NAME: _____

TITLE: _____

EXHIBIT 2
DRAWING CERTIFICATE

[DATE]

[ISSUER]
ATTN:[ ]
[ADDRESS]
[ADDRESS]

RE: IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER _____

LADIES AND GENTLEMEN:

THE UNDERSIGNED, A DULY AUTHORIZED OFFICER OF ENTERGY LOUISIANA, LLC (THE "BENEFICIARY"), AS THE BENEFICIARY OF THE ABOVE-REFERENCED LETTER OF CREDIT (THE "LETTER OF CREDIT"), HEREBY CERTIFIES TO [ISSUER] (THE "ISSUER") WITH RESPECT TO THE LETTER OF CREDIT (THE TERMS DEFINED THEREIN AND NOT OTHERWISE DEFINED HEREIN BEING USED HEREIN AS THEREIN DEFINED) THAT:

1. THE BENEFICIARY AND THE APPLICANT ARE PARTIES TO THAT CERTAIN POWER PURCHASE AGREEMENT, DATED [ ] (AS AMENDED, MODIFIED OR OTHERWISE SUPPLEMENTED FROM TIME TO TIME, THE "POWER PURCHASE AGREEMENT").

[PICK ONE OF THE FOLLOWING ALTERNATIVES FOR PARAGRAPH 2]

[2. AN EVENT OF DEFAULT (AS DEFINED IN THE POWER PURCHASE AGREEMENT) HAS OCCURRED AND IS CONTINUING UNDER THE POWER PURCHASE AGREEMENT WITH RESPECT TO THE APPLICANT.]

OR

[2. AN EARLY TERMINATION DATE (AS DEFINED IN THE POWER PURCHASE AGREEMENT) HAS OCCURRED AND IS CONTINUING UNDER THE POWER PURCHASE AGREEMENT WITH RESPECT TO THE APPLICANT.]

OR

[2. THE APPLICANT IS REQUIRED TO REPLACE THE LETTER OF CREDIT PURSUANT TO THE FOURTH SENTENCE OF SECTION 12.2 OF THE POWER PURCHASE AGREEMENT AND HAS FAILED TO DELIVER A REPLACEMENT ACCORDING TO SUCH PROVISION WITHIN THE TIME PERIOD REQUIRED BY SUCH PROVISION.]

OR

[2. THE LETTER OF CREDIT WILL EXPIRE WITHIN THIRTY (30) DAYS OR LESS FROM THE DATE OF THIS CERTIFICATE AND THE APPLICANT HAS FAILED TO DELIVER REPLACEMENT PERFORMANCE ASSURANCE (AS DEFINED IN THE POWER PURCHASE AGREEMENT) IN ACCORDANCE WITH THE POWER PURCHASE AGREEMENT AND PERFORMANCE ASSURANCE IS STILL REQUIRED FROM THE APPLICANT UNDER THE POWER PURCHASE AGREEMENT.]

3. THE BENEFICIARY IS ENTITLED TO MAKE A DRAWING UNDER THE LETTER OF CREDIT IN THE AMOUNT OF $_____ (THE "DRAW AMOUNT").

IN WITNESS WHEREOF, THE UNDERSIGNED HAS EXECUTED THIS DRAWING CERTIFICATE AS OF THE ___ DAY OF _____, 20___.

ENTERGY LOUISIANA, LLC

BY: _____

NAME: _____

TITLE: _____

EXHIBIT 3
FORM OF TRANSFER NOTICE

*[DATE]*

*[BANK NAME AND ADDRESS]*

RE: IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER _____

LADIES AND GENTLEMEN:

REFERENCE IS MADE TO THAT CERTAIN IRREVOCABLE STANDBY LETTER OF CREDIT NO. _____ (THE "LETTER OF CREDIT") ISSUED BY YOU IN FAVOR OF ENTERGY LOUISIANA, LLC (THE "BENEFICIARY") ON BEHALF OF _____ ("APPLICANT"). THIS TRANSFER NOTICE IS PRESENTED UNDER THE LETTER OF CREDIT. CAPITALIZED TERMS NOT OTHERWISE DEFINED IN THIS TRANSFER NOTICE HAVE THE MEANINGS GIVEN TO THEM IN THE LETTER OF CREDIT.

FOR VALUE RECEIVED, THE BENEFICIARY HEREBY IRREVOCABLY ASSIGNS TO:

LEGAL NAME OF TRANSFEREE:
ADDRESS:

ALL RIGHTS OF THE UNDERSIGNED BENEFICIARY *[PICK FIRST ALTERNATIVE FOR FULL ASSIGNMENT AND SECOND ALTERNATIVE FOR ASSIGNMENT OF PROCEEDS]* [UNDER THE LETTER OF CREDIT IN ITS ENTIRETY] [TO THE PROCEEDS OF ANY DRAWINGS UNDER THE LETTER OF CREDIT, WHICH SHALL BE PAYABLE AS FOLLOWS: [*INSERT ANY APPLICABLE PAYMENT INSTRUCTIONS*]].

THIS ASSIGNMENT SHALL BE EFFECTIVE AS OF _____.

*[INSERT ONLY FOR FULL ASSIGNMENT]* [BY THIS TRANSFER, ALL RIGHTS OF THE UNDERSIGNED BENEFICIARY UNDER SUCH LETTER OF CREDIT ARE ASSIGNED TO THE TRANSFEREE AND THE TRANSFEREE SHALL HAVE THE SOLE RIGHTS AS BENEFICIARY THEREOF, INCLUDING SOLE RIGHTS RELATING TO ANY AMENDMENTS, WHETHER INCREASES OR EXTENSIONS OR OTHER AMENDMENTS AND WHETHER NOW EXISTING OR HEREAFTER MADE. ALL AMENDMENTS ARE TO BE ADVISED DIRECTLY TO THE TRANSFEREE WITHOUT NECESSITY OF ANY CONSENT OF OR NOTICE TO THE UNDERSIGNED BENEFICIARY.]

WE ASK YOU TO EXECUTE THE CONFIRMATION SET FORTH BELOW, AND FORWARD IT DIRECTLY TO THE TRANSFEREE.

IN WITNESS WHEREOF, THE UNDERSIGNED HAS EXECUTED THIS TRANSFER NOTICE AS OF THE _____ DAY OF _____ 20___.

*[INSERT NAME OF THE BENEFICIARY]*

BY: _____
NAME: _____
TITLE: _____

IN WITNESS WHEREOF, THE UNDERSIGNED HAS EXECUTED THIS TRANSFER NOTICE AS OF THE _____ DAY OF _____ 20___, AND HEREBY CONFIRMS THE ASSIGNMENT OF THE LETTER OF CREDIT TO THE TRANSFEREE REFERENCED ABOVE.

*[INSERT BANK NAME]*

BY: _____

NAME: _____
TITLE: _____

## Schedule 13.1

## Sale-for-Resale Exemption Certificate

[Attached.]

## Schedule 19.1

## Notice Addresses and Contact Information

If to Seller to:
Street:
City: Zip:
Attn:
Phone:
Facsimile:
Duns:
Federal Tax ID Number:

Invoices:
Attn:
Phone:
Facsimile:

Scheduling (Current Day):
Attn:
Phone:
Facsimile:
Email:

Scheduling (Day-ahead Scheduling):
Attn:
Phone:
Facsimile:
Email:

Payments:
Attn:
Phone:
Facsimile:

Wire Transfer:
BNK:
ABA:
ACCT:

**Credit and Collections:**
Attn:
Phone:
Facsimile:

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

If to Buyer to:
Street:
City: Zip:
Attn:
Phone:
Facsimile:
Duns:
Federal Tax ID Number:

Invoices:
Attn:
Phone:
Facsimile:

Scheduling (Current Day):
Attn:
Phone:
Facsimile:
Email:

Scheduling (Day-ahead Scheduling):
Attn:
Phone:
Facsimile:
Email:

Payments:
Attn:
Phone:
Facsimile:

Wire Transfer:
BNK:
ABA:
ACCT:

**Credit and Collections:**
Attn:
Phone:
Facsimile:

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

**Schedule 19.4(b)(1)**

**Form of Lender Consent**

CONSENT AND AGREEMENT

This CONSENT AND AGREEMENT (as amended, amended and restated, supplemented or otherwise modified from time to time, this "Consent"), dated as of [_____], is executed by Entergy Louisiana, LLC a Texas limited liability company (together with its successors and assigns, "Contracting Party"), **[_____]**, a **[_____]** (together with its successors and permitted assigns, "Collateral Assignor"), and **[_____]** in its capacity as the collateral agent (together with its successors and assigns in such capacity, "Collateral Agent") for the Secured Parties (as defined in the Financing Agreement described below). Capitalized terms used but not otherwise defined herein shall have the meanings ascribed thereto in the Assigned Agreement.

**RECITALS**

A. Collateral Assignor is developing and constructing and will own, operate, and maintain a [ ] MW AC solar energy project in [_____], [•] (the "Project").

B. Collateral Assignor entered into that certain [Financing Agreement], dated as of [_____] (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Financing Agreement"), with the financial institutions from time to time party thereto as lenders, and [describe other parties to Financing Agreement], pursuant to which, among other things, the [secured parties thereunder] (the "Secured Parties") have agreed to extend financing to the Collateral Assignor with respect to the development, construction, ownership, operation and maintenance of the Project.

C. Collateral Assignor and Contracting Party have entered into that certain Power Purchase Agreement dated as of [_____], (as amended, amended and restated, supplemented or modified from time to time, the "Assigned Agreement").

D. As a condition to the extension of credit under the Financing Agreement, Collateral Assignor has entered into that certain [Security Agreement], dated as of [_____], with Collateral Agent (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Security Agreement"), pursuant to which Collateral Assignor has collaterally assigned and granted to Collateral Agent for the benefit of the Secured Parties a first-priority security interest in all of Collateral Assignor's right, title and interest in, to and under the Assigned Agreement, including all of Collateral Assignor's rights to receive payments under or with respect to the Assigned Agreement and all payments due and to become due to Collateral Assignor under or with respect to the Assigned Agreement, whether as contractual obligations, damages, indemnity payments or otherwise (collectively, the "Assigned Collateral Interest"), as collateral security for

satisfaction of all obligations under the Financing Agreement and the other related financing documents (the "Financing Documents").

E. It is a requirement under the Financing Agreement and the other Financing Documents that Contracting Party and the other parties hereto shall have executed this Consent.

**AGREEMENT**

NOW THEREFORE, in consideration of the foregoing and the mutual agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the parties hereto hereby agree, notwithstanding anything to the contrary in the Assigned Agreement, as follows:

1. Consent and Agreement.

(a) Contracting Party acknowledges and consents to the assignment of the Assigned Collateral Interest as collateral security to Collateral Agent, for the benefit of the Secured Parties, subject and pursuant to the terms hereof.

(b) Each of Collateral Assignor (for the benefit of Contracting Party) and Contracting Party acknowledges and agrees that, upon notice from Collateral Agent to Contracting Party (an "EOD Notice") that an event of default has occurred and is continuing under the Financing Agreement or any other Financing Document (an "EOD"), Collateral Agent shall have the right (but not the obligation) to make all demands that Collateral Assignor is entitled to make, give all notices that Collateral Assignor is entitled to give, take all actions that Collateral Assignor is entitled to take, cure any defaults of the Collateral Assignor, and exercise all other rights of Collateral Assignor under the Assigned Agreement. In the event of any such exercise by Collateral Agent, Contracting Party agrees to accept any such exercise, subject to Section 2 of this Consent.

(c) Contracting Party:

i. without the prior written consent of Collateral Agent (not to be unreasonably withheld, conditioned or delayed), agrees not to (x) cancel or terminate the Assigned Agreement, except as provided in the Assigned Agreement (subject to Section 4 of this Consent) or by operation of law or (y) assign its interest in the Assigned Agreement, unless (i) such assignment is made as provided in the Assigned Agreement and (ii) Contracting Party also assigns this Consent; and

ii. agrees to deliver to Collateral Agent duplicates or copies of all notices of Potential Events of Default, Events of Default or termination that Contracting Party delivers to Collateral Assignor under or pursuant to the Assigned Agreement.

(d) Contracting Party acknowledges and agrees, subject in all respects to the conditions and limitations contained in this Consent (including, without limitation, Section 3

below and the proviso to this Section 1(d)), that none of (i) the assignment of the Assigned Collateral Interest as collateral security to Collateral Agent, for the benefit of the Secured Parties, (ii) the collateral assignment of the (direct or indirect) [membership/equity] interests of Collateral Assignor to Collateral Agent, (iii) the commencement of a foreclosure or other similar enforcement action (any such action, an "Enforcement Action") undertaken by Collateral Agent to enforce the liens described in clauses (d)(i) and (ii) above, (iv) the acquisition of the rights of Collateral Assignor under the Assigned Agreement as a consequence of any Enforcement Action (or acceptance of an absolute assignment of the Assigned Agreement in lieu of an Enforcement Action) by Collateral Agent or a Subsequent Transferee (as defined below), (v) the assignment of the Assigned Agreement to a Subsequent Transferee following an Enforcement Action or following an absolute assignment thereof in lieu of an Enforcement Action or (vi) any direct or indirect change of control of Collateral Assignor as a consequence of any Enforcement Action (or acceptance of an absolute assignment of the Assigned Agreement in lieu of an Enforcement Action) by Collateral Agent (or its assignee), shall:

1. constitute a default by Collateral Assignor under the Assigned Agreement,

2. result in termination of the Assigned Agreement, or

3. violate the anti-assignment or sale or transfer provisions of Sections 19.4, 19.5 and 19.6 of the Assigned Agreement;

provided, however, in the case of each of clauses (iv)-(vi) above, such acquisition, assignment or change of control complies with Sections 19.4, 19.5 and 19.6 of the Assigned Agreement and this Consent, including, without limitation, Section 3, except that, for such purposes, the Contracting Party shall be deemed to have consented to such acquisition, assignment or change of control, and be deemed to have waived its rights pursuant to Sections 19.4, 19.5 and 19.6 of the Assigned Agreement with respect thereto, if (A) Collateral Agent or the Subsequent Transferee, as applicable, is a Qualified Operator or has retained (and agrees in writing with Contracting Party to thereafter maintain) either a Qualified Operator or the operator as of the date of such transfer to operate the Facility, (B) the Subsequent Transferee has a creditworthiness equal to or greater than that of Collateral Assignor, (C) Collateral Agent or the Subsequent Transferee, as applicable, is not a load-serving entity or an Affiliate of a load-serving entity that, in either case, owns or controls (or an Affiliate thereof owns or controls) 1,000 MW or more of electric generation capacity, (D) the Subsequent Transferee is not, and during the period commencing four (4) years prior to such acquisition, assignment or change of control until the date of such acquisition, assignment or change of control has not been, involved in Adverse Litigation, (E) any Performance Assurance provided by Collateral Assignor pursuant to the Assigned Agreement prior to such acquisition, assignment or change of control is substituted with replacement Performance Assurance meeting the requirements of Article XII of the Assigned Agreement, and (F) in connection with any assignment of the Assigned Agreement or transfer of the Facility, as applicable, to Collateral Agent or the Subsequent Transferee, as applicable, Collateral Agent or the Subsequent Transferee,

as applicable, receives transfer of the Facility or assignment of the Assigned Agreement, as applicable (each of such items in (A) through (F), the "Deemed Consent Requirements").

2. Collateral Agent and Collateral Assignor's Acknowledgement. Each of Collateral Agent and Collateral Assignor acknowledges and agrees that (i) upon Collateral Agent's issuance of an EOD Notice, Contracting Party may conclusively rely upon and accept any notice, demand or instruction from, or other action, cure or other exercise of rights of Collateral Assignor under the Assigned Agreement by, Collateral Agent as if the same were from or by Collateral Assignor (with the same being deemed a notice, demand, instruction, action, cure or other exercise by Collateral Assignor and Collateral Assignor being fully responsible therefor), and (ii) Contracting Party shall have and bear no liability to Collateral Agent or Collateral Assignor for actions taken or not taken by Contracting Party in reliance upon such notice, demand, instruction, other action, cure, or other exercise of rights. In the event that Contracting Party receives conflicting notices, demands, instructions, actions, cures or other exercises from any party hereto, the one from the Collateral Agent shall govern.

3. Subsequent Transferee. If Collateral Agent issues an EOD Notice to Contracting Party, commences an Enforcement Action and prosecutes such Enforcement Action to conclusion (or accepts an absolute assignment of the Assigned Agreement in lieu of an Enforcement Action), then, as a condition to the Collateral Agent or a Person other than the Collateral Agent (a "Subsequent Transferee") succeeding to the Assigned Collateral Interest:

(a) Collateral Agent or the Subsequent Transferee (as applicable) shall assume all of Collateral Assignor's rights, obligations (including all obligations to provide Performance Assurance required to be provided by or on behalf of Collateral Assignor) and liabilities under the Assigned Agreement by an assumption agreement for the benefit of Contracting Party (and, in the case of succession by a Subsequent Transferee, the Collateral Agent shall be released from all obligations under the Assigned Agreement so assumed by the Subsequent Transferee);

(b) Collateral Agent or the Subsequent Transferee (as applicable) shall cure all outstanding defaults by Collateral Assignor under the Assigned Agreement that are capable of cure by the Collateral Agent (or its designee) or the Subsequent Transferee (as applicable) by performance or the payment of monetary damages; and

(c) Collateral Agent or the Subsequent Transferee (as applicable) complies with Sections 19.4, 19.5 and 19.6 of the Assigned Agreement) and this Consent, including, without limitation, Section 1(d), except that, for such purposes, the Contracting Party shall be deemed to have consented to any acquisition, assignment or change of control, and be deemed to have waived its rights pursuant to Sections 19.4, 19.5 and 19.6 of the Assigned Agreement, if all of the Deemed Consent Requirements are satisfied.

Subject to the satisfaction of Section 1(d) and clauses (a) through (c) in this Section 3, Contracting Party shall recognize Collateral Agent or the Subsequent Transferee (as applicable) as its counterparty under the Assigned Agreement, and continue to perform its obligations under the Assigned Agreement in favor of Collateral Agent or the Subsequent Transferee (as applicable).

4. Right to Cure. In the event of a Potential Event of Default or Event of Default of Collateral Assignor under the Assigned Agreement (a "PPA Default"):

(a) Contracting Party shall not cancel or terminate the Assigned Agreement until it first gives written notice of such PPA Default to Collateral Agent and affords Collateral Agent a period to cure such PPA Default of:

(i) in the case of a PPA Default pursuant to Section 15.1(a), five (5) Business Days following the expiration of the cure period afforded Collateral Assignor thereunder;

(ii) in the case of a PPA Default pursuant to Section 15.1(b), thirty (30) days following the expiration of the cure period afforded Collateral Assignor thereunder;

(iii) in the case of a PPA Default pursuant to Section 15.1(c), (A) with respect to a Potential Event of Default or a PPA Default for failure to maintain the Performance Assurance (or any portion thereof), three (3) Business Days following notice to Collateral Agent of Collateral Assignor's obligation to replace the Performance Assurance with other Performance Assurance pursuant to the terms of the Assigned Agreement and (B) otherwise, five (5) Business Days following notice to Collateral Agent of such PPA Default;

(iv) in the case of a PPA Default pursuant to Section 15.1(d), thirty (30) days following the expiration of the cure period afforded Collateral Assignor thereunder;

(v) in the case of a PPA Default pursuant to Section 15.1(e), thirty (30) days following the expiration of the cure period afforded Collateral Assignor thereunder;

(vi) in the case of a PPA Default under Section 15.1(f) of the Assigned Agreement, ten (10) Business Days after the date of such PPA Default (provided that the only acceptable cure under this clause (vi) shall be the entry of the Bankruptcy Order (as defined below) on an interim basis within such ten (10) Business Days period of such PPA Default, with the Bankruptcy Order to be approved on a final basis within twenty (20) Business Days of such PPA Default);

(vii) in the case of a PPA Default pursuant to Section 15.1(k), forty-five (45) days following the expiration of the cure period afforded Collateral Assignor thereunder;

(viii) in the case of a PPA Default pursuant to Section 15.1(l), thirty (30) days following the expiration of the cure period afforded Collateral Assignor thereunder;

(ix) the case of a PPA Default pursuant to Section 15.1(n), thirty-five (35) days following the expiration of the cure period afforded Collateral Assignor thereunder; and

(x) in the case of a PPA Default pursuant to Section 15.1(q), thirty-five (35) days following the expiration of the cure period afforded Collateral Assignor thereunder.

For the avoidance of doubt, the cure periods set forth above shall not begin to run for purposes of this Section 4(a) until notice of such PPA Default is given by Contracting Party to Collateral Agent (which may be done concurrently with any such notice to Collateral Assignor under the Assigned Agreement).

(b) During any period in which Contracting Party has suspended performance under the Assigned Agreement with respect to its obligation to take delivery of and purchase Contract Energy, Collateral Assignor shall not be permitted to sell any such Contract Energy to any other Person. For the avoidance of doubt, if, during any period during which Contracting Party has the right to suspend its performance under the Assigned Agreement, (i) Contracting Party does not exercise the suspension rights described in this Section 4(b) with respect to certain Contract Energy and takes delivery of such Contract Energy, Contracting Party shall pay Collateral Assignor for such Contract Energy in accordance with the Assigned Agreement and (ii) Contracting Party receives a Monthly Invoice for Contract Energy that was delivered to Contracting Party pursuant to the Assigned Agreement prior to such period during which Contracting Party has the right to suspend its performance under the Assigned Agreement, Contracting Party shall pay Collateral Assignor for such Contract Energy in accordance with the Assigned Agreement, subject, in the case of either clause (i) or (ii), to the applicable terms of the Assigned Agreement, including, without limitation, Sections 5.3 and 11.4 of the Assigned Agreement.

(c) For purposes of this Section 4, the term "Bankruptcy Order" means an order entered by the United States Bankruptcy Court (the "Bankruptcy Court") having jurisdiction over the case under Title 11 of the United States Code, as amended (the "Bankruptcy Code") in which the Collateral Assignor is the debtor (the "Bankruptcy Case"), in a form reasonably acceptable to Contracting Party that: (i) authorizes Collateral Assignor to grant a lien on Collateral Assignor's property, maintain or provide a letter of credit, or provide adequate assurance of performance (or a combination of the foregoing) in favor of the Contracting Party to secure Collateral Assignor's obligations under the Assigned Agreement, whether such obligations arose before or after the PPA Default under Section 15.1(f) of the Assigned Agreement pending Collateral Assignor's assumption or rejection of the Assigned Agreement in the Bankruptcy Case; *provided* that, if the Performance Assurance required by the Assigned Agreement is in place and maintained by the Collateral Assignor in accordance with the Assigned Agreement, such Performance Assurance shall be deemed to satisfy this clause (i); (ii) subject to the provisions of the Assigned Agreement and Section 4(a), authorizes Contracting Party to terminate, without additional Bankruptcy Court approval, the Assigned Agreement upon a subsequent PPA Default with respect to Collateral

Assignor or the conversion of Collateral Assignor's Bankruptcy Case under chapter 11 of the Bankruptcy Code to a case under chapter 7 of the Bankruptcy Code or the appointment of a trustee in the Bankruptcy Case chapter 11 of the Bankruptcy Code, and to exercise rights of netting or setoff of obligations upon such termination, in each case in accordance with Section 362(b)(6) of the Bankruptcy Code and without regard to whether the amounts to be netted or setoff were incurred prepetition or postpetition; and (iii) provides that the Bankruptcy Order shall be binding on all parties in interest in the Bankruptcy Case, the Collateral Assignor's successors and assigns (including any chapter 7 or chapter 11 trustee appointed in the Bankruptcy Case). Collateral Agent and Contracting Party acknowledge and agree that the Bankruptcy Order may be included as part of or in connection with any order entered in the Bankruptcy Case authorizing Collateral Assignors to obtain financing or use cash collateral. Notwithstanding the foregoing, either Collateral Agent or Contracting Party may seek the entry of the Bankruptcy Order by an appropriate motion filed with the Bankruptcy Court.

(d) Without limiting any of its rights under this Consent, Contracting Party agrees to not object to the Collateral Agent's motion to obtain the Bankruptcy Order.

(e) If (i) possession of the Project through an Enforcement Action is the sole means to cure a PPA Default or (ii) if a PPA Default is not curable by Collateral Agent (such as, for purposes of illustration, failure to deliver a bring-down certification from Seller's Principal Accounting Officer in accordance with the requirements of Section 9.9(a) of the Assigned Agreement (except if such failure is due to the commencement, continuation or expiration of an Accounting Treatment Work-Out Period) and the breach of Section 15.1(h) of the Assigned Agreement), and, in each such case, (A) all other PPA Defaults capable of being cured have been cured by the cure period applicable thereto according to Section 4(a) and (B) by no later than ten (10) Business Days after notice of such PPA Default to Collateral Agent, Collateral Agent has declared an event of default under the Financing Documents, issued an EOD Notice to Contracting Party and commenced foreclosure and any other proceedings necessary to take possession of the Project and assume the Assigned Agreement, then Collateral Agent shall, so long as it is diligently pursuing such proceedings, be allowed a reasonable period of time as necessary to complete such proceedings (and, upon the completion of such proceedings, such PPA Default shall be deemed cured) and such time shall be added to the cure period set forth in Section 4(a) above, provided that the aggregate cure period (including both that set forth in Section 4(a) above and any additional time added pursuant to this Section 4(e)) shall not exceed one hundred twenty (120) days after notice of such PPA Default to Collateral Agent. For the avoidance of doubt and notwithstanding the foregoing, if multiple PPA Defaults have occurred and are continuing and this Section 4(e) applies to at least one, but not all, of them, Contracting Party shall be entitled to cancel or terminate the Assigned Agreement pursuant to the PPA Defaults to which this Section 4(e) does not apply (after expiration of their associated cure periods, if any), even if the cure period (including the extension according to this Section 4(e)) has not yet expired with respect to the other PPA Defaults. Additionally, during such one hundred twenty (120) day period set forth above, the Collateral Agent agrees to provide written updates as to the status of the foreclosure proceedings to the Contracting Party upon the request of the Contracting Party.

5. Replacement Agreement. In the event that the Assigned Agreement is rejected or terminated other than by Contracting Party as a result of a bankruptcy, insolvency or similar proceeding involving Collateral Assignor, then, within thirty (30) days after such rejection or termination, (a) Contracting Party and Collateral Agent shall enter into (or Contracting Party and the Subsequent Transferee, if applicable, shall enter into) a new agreement having identical terms as the Assigned Agreement (including the same Delivery Term Commencement Date and termination date as the Assigned Agreement and subject to any conforming changes necessitated by the substitution of parties and other changes as the parties may mutually agree, each in its sole and absolute discretion) and recognizing and giving effect to the assumption by the Collateral Agent or Subsequent Transferee of all of Collateral Assignor's obligations and liabilities under the Assigned Agreement according to Section 3 above (a "Replacement Agreement"), and (b) Contracting Party shall recognize Collateral Agent or the Subsequent Transferee (as applicable) as its counterparty under the Replacement Agreement, and perform its obligations under the Replacement Agreement, in favor of Collateral Agent or the Subsequent Transferee (as applicable); provided that, Contracting Party's obligation to execute, deliver and perform a Replacement Agreement shall be conditioned upon compliance by Collateral Agent (and/or a Subsequent Transferee, if applicable) with Section 3 above (including, without limitation, the cure by Collateral Agent (or the Subsequent Transferee, if applicable) of any curable default under the Assigned Agreement, as provided in Section 3 above, and compliance with the assignment and transfer restrictions in the Assigned Agreement (including, without limitation, Sections 19.4, 19.5 and 19.6 thereof) and this Consent as if the transaction contemplated by this Section 5 were an assignment of the Assigned Agreement, except that, for such purposes, the Contracting Party shall be deemed to have consented to any acquisition, assignment or change of control, and be deemed to have waived its rights pursuant to Sections 19.4, 19.5 and 19.6 of the Assigned Agreement, if all of the Deemed Consent Requirements are satisfied.

6. No Liability. Contracting Party acknowledges and agrees that neither Collateral Agent nor the Secured Parties (nor any successor(s), assignee(s), designee(s), nor other representative of Collateral Agent or the Secured Parties) shall have any liability or obligation under the Assigned Agreement solely as a result of exercising its rights under this Consent (other than as an assignee thereof (including, without limitation, as a Subsequent Transferee under Section 3 above) or as contemplated by Section 4 above or Section 5 above), nor shall Collateral Agent or the Secured Parties (or any successor(s), assignee(s), designee(s), and other representative of Collateral Agent or the Secured Parties) be obligated or required to perform any of Collateral Assignor's obligations under the Assigned Agreement or to take any action to collect or enforce any claim for payment assigned under the Financing Agreement or any other Financing Document, unless such Person has become an assignee thereof (including, without limitation, as a Subsequent Transferee under Section 3 above) or counterparty to a Replacement Agreement pursuant to Section 5 or as contemplated by Section 4 above.

7. Payment of Monies.

(a) Commencing on the date of this Consent and until directed otherwise by a notice provided by the Collateral Agent or otherwise required by applicable Law, Contracting Party shall make all payments required to be made by it to Collateral Assignor under the Assigned Agreement in the manner and as and when required by the Assigned Agreement directly to the account described immediately below, or to such other Person or at such other address or account as Collateral Agent may from time to time specify in writing to Contracting Party at least fifteen (15) business days in advance of the date of the next payment due to Collateral Assignor under the Assigned Agreement, provided that any payee is a U.S. Person (as defined for purposes of U.S. federal income tax) and any associated address or account is in the U.S. All payments made by Contracting Party shall be accompanied by a statement stating that such payments are made under the Assigned Agreement. Collateral Assignor hereby instructs Contracting Party, and Contracting Party accepts such instructions, to make all payments due and payable to Collateral Assignor under the Assigned Agreement as set forth in the immediately preceding sentence.

ACCOUNT:

Accounts Bank: [_____]

ABA Number: [_____]

Credit: [_____]

Account Name: [_____]

Account #: [_____]

8. Representations and Warranties.

(a) *By Contracting Party*.[23] Contracting Party hereby represents and warrants to Collateral Agent (for the benefit of the Secured Parties), as of the date of this Consent, that:

i. Contracting Party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and all other jurisdictions, if any, in which it is engaged in business and the failure to so qualify would have a material adverse effect upon the performance of its obligations under the Assigned Agreement and this Consent.

ii. The execution, delivery, and performance of the Assigned Agreement and this Consent and the transactions contemplated thereunder and hereunder are within its powers, have been duly authorized by all necessary limited liability company action, and, assuming Contracting Party obtains, (A) Buyer's Required Consents, (B)

[23] Contracting Party shall have the right to qualify the representations contained in this Section as required to render the same true as of the date of the Consent.

Buyer's Required Governmental Approvals and (C) Governmental Approvals that are customarily obtained, and Contracting Party anticipates will be timely obtained, in the ordinary course of performance of the Assigned Agreement and this Consent, do not:

(1) violate, conflict with or result in a breach of any provision of its organizational or governing documents;

(2) result in a default (or give rise to any right, including any right of termination, purchase, first refusal, cancellation, acceleration or guaranteed payment, or a loss of rights) under, or conflict with, or result in a breach of any of the terms, conditions, or provisions of any note, bond, mortgage, loan agreement, deed of trust, indenture, license, agreement, or any other instrument or obligation to which it is a party or by which it or any of its assets or properties is bound that, individually or in the aggregate, could reasonably be expected to have a material adverse effect upon the performance of its obligations under the Assigned Agreement or this Consent;

(3) result in, or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, or any other charge or encumbrance of any nature (other than as may be contemplated by the Assigned Agreement or this Consent) upon or with respect to any of its assets or properties;

(4) violate, conflict with or result in a breach of any applicable Law, including any order, writ, judgment, injunction, decree, determination, or award, or any Governmental Approval having applicability to it or its assets or properties that, individually or in the aggregate, could reasonably be expected to have a material adverse effect upon the performance of its obligations under the Assigned Agreement or this Consent; or

(5) require the Consent of, or the declaration, filing or registration with or notice to, or an order from any Person.

iii. To Contracting Party's actual knowledge, there is no Potential Event of Default or Event of Default of Collateral Assignor under the Assigned Agreement.

iv. There is no Event of Default of Contracting Party under the Assigned Agreement.

v. Each of this Consent, the Assigned Agreement and each other document executed and delivered in accordance with the Assigned Agreement constitutes

a legally valid and binding obligation enforceable against it in accordance with its terms, except as may be limited by any bankruptcy, insolvency, reorganization, moratorium, or other Laws affecting creditors' rights generally and, with regard to equitable remedies, the discretion of the Governmental Authority before which proceedings to obtain same may be pending.

vi. There is no pending or, to its knowledge, threatened action or proceeding before any Governmental Authority or arbitrator against it or any of its Affiliates that could reasonably be expected to materially and adversely affect its ability to perform its obligations under this Consent or the Assigned Agreement or that purports to affect the legality, validity, or enforceability of this Consent or the Assigned Agreement.

vii. Except for [ ], the Assigned Agreement has not been amended or modified by any consensual amendment or modification between Contracting Party and Collateral Assignor.

viii. The Contracting Party has no notice of, and has not consented to, any previous assignment of all or any part of Collateral Assignor's right, title or interest in, to or under the Assigned Agreement.

(b) *By Collateral Assignor*. Collateral Assignor hereby represents and warrants to Contracting Party and Collateral Agent (for the benefit of the Secured Parties), as of the date of this Consent, that:[24]

9. Notices. Any communications between the parties hereto or notices provided herein to be given, may be given to the following addresses:

If to Contracting Party:

[_____]

[_____]

[_____]

[_____]

[24] **NTD:** Collateral Assignor representations and warranties to be included as required by Collateral Agent.

with a copy to:

[_____]

[_____]

[_____]

[_____]

[_____]

- If to Collateral Agent: [_____]

  as Collateral Agent

  [_____]

  [_____]

  [_____]

  [_____]

  [_____]

 If to Collateral Assignor: [_____]

[_____]

[_____]

[_____]

[_____]

[_____]

All notices or other communications required or permitted to be given hereunder shall be in writing and shall be considered as properly given (a) if delivered in person, (b) if sent by overnight delivery service, (c) mailed by first class mail, postage prepaid, registered or certified with return receipt requested or (d) if sent by telecopy. Notice so given shall be effective upon receipt by the addressee, except that communication or notice so transmitted by telecopy or other direct written electronic means shall be deemed to have been validly and effectively given on the day (if a business day and, if not, on the next following business day) on which it is transmitted if transmitted before 5:00 p.m., recipient's time, and if transmitted after that time, on the next following business day; provided, however, that if any notice is tendered to an addressee and the delivery thereof is refused by such addressee, such notice shall be effective upon such tender. Any party shall have the right to change its address for notice hereunder by providing thirty (30) days' prior written notice to the other parties in the manner set forth herein above.

10. Binding Effect; Amendments; Termination.

(a) This Consent shall be binding upon and shall inure to the benefit of (i) Contracting Party and its successors and permitted assigns under the Assigned Agreement, (ii) Collateral Assignor and its successors and permitted assigns under the Assigned Agreement and (iii) Collateral Agent (for the benefit of the Secured Parties) and their respective successors and permitted assigns in the capacity of Collateral Agent or other Secured Party (as applicable). Neither Contracting Party nor Collateral Assignor may assign this Consent to any Person, except to an assignee of the Assigned Agreement. Collateral Assignor may not assign or delegate the Assigned Agreement, unless (i) such assignment or delegation is made as provided in the Assigned Agreement and (ii) Collateral Assignor also assigns this Consent.

(b) This Consent shall terminate upon the earlier to occur of (a) the satisfaction in full of all obligations under the Financing Agreement, the Security Agreement and the related Financing Documents and (b) the termination of the Assigned Agreement in accordance with its terms and the terms of this Consent. Collateral Agent and Collateral Assignor shall notify Contracting Party promptly but no later than three (3) business days after the satisfaction in full of all such obligations described in clause (a) of the preceding sentence. No other termination, amendment, variation or waiver of any provisions of this Consent shall be effective unless in writing and signed by Contracting Party, Collateral Agent and Collateral Assignor.

11. Governing Law. THIS CONSENT SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO PRINCIPLES OF CONFLICTS OF LAWS THAT WOULD REQUIRE OR PERMIT THE APPLICATION OF THE LAWS OF ANY OTHER JURISDICTION (OTHER THAN SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW).

12. Submission to Jurisdiction; Waiver of Jury Trial. Each of Contracting Party, Collateral Assignor and Collateral Agent hereby irrevocably and unconditionally:

(a) submits for itself and its property in any legal action or proceeding relating to this Consent, or for recognition and enforcement of any judgment or award in respect thereof, to the exclusive general jurisdiction of the federal courts of the United States located in the Parish of East Baton Rouge, State of Louisiana, and appellate courts from any thereof;

(b) CONSENTS AND AGREES THAT ANY SUCH ACTION OR PROCEEDING MAY BE BROUGHT IN AND ONLY IN SUCH COURTS AND WAIVES ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE VENUE OF ANY SUCH ACTION OR PROCEEDING IN ANY SUCH COURT OR THAT SUCH ACTION OR PROCEEDING WAS BROUGHT IN AN INCONVENIENT FORUM OR ANY SIMILAR OBJECTION 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 indicated in Section 9 above or at such other address of which such other party shall have been notified pursuant thereto, and agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by applicable Law; and

(d) EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY LITIGATION, ACTION, OR PROCEEDING ARISING OUT OF OR IN CONNECTION WITH THIS CONSENT;

provided, however, that, to the extent that a party hereto cannot obtain, or can obtain but cannot enforce, a decision from the courts specified in clause (a) above because, even after giving effect to the submission to jurisdiction and waiver of objection to venue in this Section 12, no such court has jurisdiction over another party hereto or its assets or the subject matter or no such court has the jurisdiction or power to grant the remedy or enforcement sought, the party may pursue or enforce (as applicable) its remedies in another court.

13. Contracting Party Liability; Consequential Damages Exclusion; Express Negligence. Each of Collateral Agent and Collateral Assignor acknowledges and agrees that Contracting Party shall have no liability for any breach of its obligations under this Consent except in the case of Contracting Party's gross negligence, willful misconduct, or intentional, bad faith material breach. NO PARTY HERETO SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, INDIRECT, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND OR NATURE ARISING OUT OF OR IN CONNECTION WITH THIS CONSENT, INCLUDING LOST PROFITS, LOST SALES OR REVENUES, AND ALL BUSINESS INTERRUPTION DAMAGES, WHETHER BY STATUTE, IN TORT OR CONTRACT, OR OTHERWISE. THE PARTIES INTEND AND AGREE 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 THE BENEFICIARY THEREOF, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, ACTIVE OR PASSIVE.

14. No Waiver; Remedies Cumulative. The waiver of any right, breach or default under this Consent by any party must be made specifically and in writing. No failure or delay on the part of any party hereto in exercising any right, power or privilege hereunder and no course of dealing between or among parties hereto shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other exercise, or the further exercise, of any other right, power or privilege hereunder. No notice to or demand upon any party will entitle such party to any further, subsequent or other notice or demand in similar or any other circumstances. The rights and remedies herein expressly provided are cumulative and not exclusive of any rights or remedies that a party hereto would otherwise have.

15. Severability. If any provision of this Consent shall be held to be invalid or unenforceable by a Governmental Authority with jurisdiction, such provision shall be (i) invalid or unenforceable only to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable any other provision hereof and (ii) revised or reformed, to the maximum extent permitted under applicable Law, in a manner resulting in rights, duties and obligations most closely representing the intention of the parties hereto as expressed herein.

16. Counterparts. This Consent may be executed in any number of counterparts and by different parties hereto on separate counterparts and by electronic transmission and when executed and delivered by all of the parties listed below shall constitute a single binding agreement.

17. Headings. The headings of the sections and subsections of this Consent are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Consent.

18. Interpretation. All references in this Consent to any document, instrument or agreement shall include (a) all contract variations, change orders, exhibits, schedules and other attachments thereto, (b) all documents, instruments or agreements issued or executed in replacement or as predecessor thereto, as amended, modified and supplemented from time to time and in effect at any given time, and (c) all amendments or modifications thereof that are executed and delivered as of the date hereof. In the event of any conflict between the terms, conditions and provisions of this Consent and any other agreement, document or instrument, the terms, conditions and provisions of this Consent shall prevail.

**[SIGNATURE PAGES FOLLOW]**

IN WITNESS WHEREOF, the undersigned, by their officers or representatives thereunto duly authorized, have duly executed this CONSENT AND AGREEMENT as of the date first written above.

**[•]**,

a [•], as Contracting Party

By: _____

[Name and Title]

**[_____]**, a [ ]
, as Collateral Assignor

By: _____

[Name and Title]

*Accepted and Agreed:*

**[_____],** as Collateral Agent

By: _____

[Name and Title]

## Schedule 19.4(b)(2)

## Estoppel Certificate Provisions

In the event Seller finances the construction of the Facility via a Tax Equity Financing, any related estoppel certificate requested by a Tax Equity Investor will contain confirmations from Buyer to such Tax Equity Investor, subject to any exceptions scheduled by Buyer in such estoppel certificate, that:

1. the execution and delivery by Buyer of this estoppel certificate have been duly authorized by all necessary limited liability company action on the part of Buyer and do not require any approvals, filings with or consents from any entity or person which have not previously been obtained or made;

2. this Agreement is unmodified and is in full force and effect and neither an Event of Default or material breach by Buyer nor, to the best of Buyer's actual knowledge, an Event of Default or material breach by Seller, exists and is continuing under this Agreement;

3. a copy of the Agreement attached hereto as Exhibit A constitutes a true and complete copy of the Agreement;

4. to the best of Buyer's actual knowledge, there exists no present event or condition that (either immediately or with the passage of any applicable grace period or giving of notice, or both) would enable Seller or Buyer to terminate or suspend its obligations under this Agreement;

5. Buyer has no actual knowledge of any assignment of any right, title, and interest of Seller in, to and under this Agreement, excluding any assignment in connection with a Tax Equity Financing;

6. this Agreement and the instruments and documents referred to herein constitute the only agreements between Buyer and Seller with respect to the matters and interests described herein and therein and there are no material disputes or legal proceedings between Buyer and Seller with respect to this Agreement;

7. there are no proceedings pending or, to Buyer's actual knowledge, threatened against or affecting Buyer in any court or by or before any other Governmental Authority or arbitration board or tribunal that would reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under, or that purport to affect the legality, validity or enforceability of, this Agreement;

8. as of the date of the estoppel certificate, all amounts actually known by Buyer to be due and owing to Buyer by Seller, if any, under this Agreement have been paid in full when due by Seller;

9. as of the date of the estoppel certificate, all of the representations and warranties made by Buyer under this Agreement are true and correct;

10. Buyer has not assigned any of its right, title and interest or liabilities and obligations in, to, and under this Agreement;

11. Buyer has not received written notice from Seller of any event of Force Majeure that currently exists and is continuing, and to the Buyer's actual knowledge, no event of Force Majeure currently exists and is continuing;

12. as of the date of the estoppel certificate, to the best of Buyer's actual knowledge, Seller does not owe any indemnity payments to Buyer; and

13. if applicable, Commercial Operation of the Facility has occurred, including confirmation of the date on which the Commercial Operation Date occurred.