
FUEL CONVERSION SERVICES AGREEMENT

between

ENTERGY TEXAS, INC.,

and

[●],

dated as of [●]

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Form of Lender Consent

FUEL CONVERSION SERVICES AGREEMENT

THIS FUEL CONVERSION SERVICES AGREEMENT is made and entered into as of [●], [●] (the “Effective Date”), by and between [●], a [●] organized and existing under the laws of the State of [●] (“Seller”), and ENTERGY TEXAS, INC., 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 the Facility; and

WHEREAS, in response to the 2026 Request for Proposals for Combined-Cycle Combustion Turbine Capacity and Energy Resources for Entergy Texas, Inc. (the “RFP”), [●] submitted to Buyer a proposal setting forth commercial terms on which Seller would agree to make available, provide and deliver to Buyer the Products, as well as perform Fuel Conversion Services for Buyer, from the 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 CCCT Tolling Agreement); and

WHEREAS, having concluded such negotiation, Seller wishes to make available, provide and deliver the Products exclusively to Buyer, and perform Fuel Conversion Services exclusively for Buyer, from the Facility for the Delivery Term, and Buyer wishes to receive such Products and Fuel Conversion Services, 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 1 DEFINED TERMS AND INTERPRETATION

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

“Acceleration Plan” has the meaning specified in Section 3.4.

“Accepted Industry Practices” means those practices, methods and acts generally employed or approved by a significant portion of the electric power generation industry in MISO South with respect to assets and properties of a type, size, and geographical location similar to those constituting the Facility 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 electric power generation industry practices, reliability, safety, and the requirements of applicable Laws and permits. 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 electric power generation industry in MISO South 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 Standards” means GAAP and any judicial, regulatory or administrative interpretation thereof.

“Accounting Treatment” has the meaning specified in Section 2.3(b)(vi).

“Accounting Treatment Event” has the meaning specified in Section 9.9(b).

“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).

“ACP Market Disruption Event” has the meaning specified in the definition of “Auction Clearing Price” in this Section 1.1.

“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, (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 One Million Five Hundred Thousand Dollars (\$1,500,000).

“Affected Capacity” means the portion of the Dependable Capacity, if any, that is unavailable during any Reference MISO Settlement Interval due solely and directly to (i) Planned Maintenance or (ii) a lack of available transmission or deliverability service occurring beyond the Electric Interconnection Point within MISO or other applicable Balancing Authority or (iii) an interruption of Gas transportation, except (in the case of clause (ii) or clause (iii), as applicable) to the extent the lack of available transmission or deliverability service or interruption of Gas transportation is due to Force Majeure or the negligence (including gross negligence), fraud, willful misconduct, breach 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 (including any failure to comply with MISO Rules, other applicable Laws, Accepted Industry Practices, the Deliverability Arrangements, the Gas Interconnection Arrangements, any other Project Documents, or this Agreement or any equipment failure or malfunction, or failure to maintain pressure, at or beyond the Gas Delivery Point). For the

avoidance of doubt, the non-dispatch or reduced dispatch of the Facility by MISO or another applicable Transmission Provider or interruption or curtailment of electric transmission or other limitation on Products by MISO or another applicable Transmission Provider, in each case, made in response to offers, bids, plans or schedules submitted to MISO or another applicable Transmission Provider (or otherwise on the basis of price signals), shall not be considered within clause (ii) above under any circumstance.

“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 Fuel Conversion Services Agreement, including the exhibits and schedules hereto.

“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 or any Product is eligible.

“Applicable Final Product Request (No Load)” means, with respect to any MISO Settlement Interval, (a) if the Requested Quantity of Contract Energy with respect to the MISO Day-Ahead Market for such MISO Settlement Interval was positive, then the Final Day-Ahead Product Request applicable to such MISO Settlement Interval, or (b) [otherwise, the Final Real-Time Product Request applicable to such MISO Settlement Interval]¹.

“Applicable Final Product Request (Start)” means, with respect to any Product Commitment Period, (a) if the Requested Quantity of Contract Energy with respect to the MISO Day-Ahead Market for the first MISO Settlement Interval of such Product Commitment Period was positive, then the Final Day-Ahead Product Request applicable to the first MISO Settlement Interval of such Product Commitment Period, or (b) [otherwise, the Final Real-Time Product Request applicable to the first MISO Settlement Interval of such Product Commitment Period]².

“Applicable Market” means, for any applicable MISO Settlement Interval, (a) with respect to any Day-Ahead Product Request or Day-Ahead Delivered Energy, the MISO Day-Ahead Energy Market, or (b) with respect to any Real-Time Product Request or Real-Time Delivered Energy, the MISO Real-Time Energy Market.

“Applicable PA Amount” means the sum of (a) (i) prior to the satisfaction or waiver of the condition set forth in Section 2.3(b)(i), [●] Dollars (\$[●])³, (ii) upon and after the satisfaction or waiver of the condition set forth in Section 2.3(b)(i) until (but excluding) the Commercial

¹ NTD: Remains under Buyer review.

² NTD: Remains under Buyer review.

³ NTD: Enter amount equal to Expected Capacity, multiplied by \$17,500/MW.

Operation Date, [●] Dollars (\$[●])⁴, or (iii) on and after the Commercial Operation Date, [●] Dollars (\$[●])⁵, plus (b) from and after the date of entering into the release of capacity contemplated by Section 7.10(a)(iv), the additional Applicable PA Amount required by Buyer pursuant to Section 7.10(a)(iii), if any.

“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” means, for any Season, the price at which MISO settles the Planning Resource Auction with respect to a ZRC from the Facility (or, if no ZRC from the Facility cleared, a Replacement ZRC) for such Season; 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 Season (in either case, an “ACP Market Disruption Event”), then the Auction Clearing Price for such Season shall be such other reference or index price for such Season as is reasonably acceptable to the Parties (expressed in \$/MW) that reflects as closely as possible the intention of the Parties as expressed herein; provided, further, that if, by thirty (30) Days after the ACP Market Disruption Event, the Parties have not agreed upon such other reference or index price, then either Party may refer the matter for resolution in accordance with the dispute resolution process set forth in Schedule G. As of the Effective Date, the Auction Clearing Price is, for any Season, the Auction Clearing Price (as defined in the MISO Rules) applicable to a ZRC from the Facility (or, if no ZRC from the Facility cleared, a Replacement ZRC) for such Season.

“Availability Notice” means a notice delivered in accordance with and meeting the requirements of Section 7.1.

“BA Penalties” means any penalties, fees, assessments and other costs, debits and charges (in effect at any time) assessed or imposed for non-compliance with any policy, rule, guideline, procedure, protocol, standard, criterion or requirement of any market monitor, Balancing Authority or other Transmission Provider (including the MISO Rules).

“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.

“Balance of Plant Outage” means an Outage of the Facility due to Planned Maintenance on equipment or systems other than the Units that renders unavailable all Capacity and Energy from the Facility.

“Balancing Authority” means the Person(s) responsible for integrating resource plans and maintaining load-interchange-generation balance within a Balancing Authority Area (including

⁴ **NTD**: Enter amount equal to Expected Capacity, multiplied by \$100,000/MW.

⁵ **NTD**: Enter amount equal to Expected Capacity, multiplied by \$200,000/MW.

any applicable RTO or ISO). 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 Electric Interconnection Point (being Entergy Texas, Inc., in its capacity as local Balancing Authority, 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 Entergy Texas, Inc., in its capacity as local Balancing Authority, 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 a petition filed or commenced against it for a proceeding or cause of action under any bankruptcy, insolvency, reorganization, or similar law and such petition is not dismissed within sixty (60) Days of its filing, (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 fall due.

“Base Bank Asset Amount” means Ten Billion Dollars (\$10,000,000,000).

“Billing Month” has the meaning specified in Section 11.1.

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

“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 Conditions Precedent Notice” has the meaning specified in Section 2.6(a).

“Buyer Contractual Make-Whole Payment” means, for any Product Commitment Period, the sum of the Buyer Contractual Make-Whole Payment (DA) and the Buyer Contractual Make-Whole Payment (RT) for such Product Commitment Period.⁶

“Buyer Contractual Make-Whole Payment (DA)” means, for any Product Commitment Period, the difference (if positive) equal to (a) the Buyer Fixed Costs (DA) with respect to such Product Commitment Period, minus (b) the LMP Overage (DA) for such Product Commitment Period. For the avoidance of doubt, if the Buyer Contractual Make-Whole Payment (DA) would otherwise be negative for any Product Commitment Period, the Buyer Contractual Make-Whole Payment (DA) shall be deemed to be zero Dollars for such Product Commitment Period.

“Buyer Contractual Make-Whole Payment (RT)” means, for any Product Commitment Period, the difference (if positive) equal to (a) the Buyer Fixed Costs (RT) with respect to such Product Commitment Period, minus (b) the LMP Overage (RT) for such Product Commitment Period. For the avoidance of doubt, if the Buyer Contractual Make-Whole Payment (RT) would otherwise be negative for any Product Commitment Period, the Buyer Contractual Make-Whole Payment (RT) shall be deemed to be zero Dollars for such Product Commitment Period.

“Buyer Fixed Costs (DA)” means, with respect to any Product Commitment Period, the sum of:

(a) if the Applicable Final Product Request (Start) for such Product Commitment Period is the Final Day-Ahead Product Request applicable to the first MISO Settlement Interval of such Product Commitment Period, then the costs to Buyer associated with the Start-up (including the Start-up Payment and costs of Contract Gas) that commences such Product Commitment Period, as set forth in the Applicable Final Product Request (Start) for such Product Commitment Period; provided, however, that, if the Physically Requested Quantity that commences such Product Commitment Period corresponds to a Requested Quantity that was designated by Buyer as self-scheduled in the Applicable Final Product Request (Start) for such Product Commitment Period, then, unless Seller receives a make-whole payment for Start costs with respect to a commitment period at the Electric Interconnection Point that includes such Product Commitment Period (in whole or in part), the costs described in this clause (a) shall be excluded from Buyer Fixed Costs (DA) for such Product Commitment Period; and

(b) the No Load Offer (as defined in the MISO Rules) costs to Buyer associated with the MISO Settlement Intervals of such Product Commitment Period for which the Applicable Final Product Request (No Load) is the Final Day-Ahead Product Request applicable to such MISO Settlement Interval (i.e., in the aggregate over all such MISO Settlement Intervals of such Product Commitment Period), calculated using, for each such MISO Settlement Interval, the No Load Offer (as defined in the MISO Rules) costs to Buyer set forth in the Applicable Final Product Request (No Load) for such MISO Settlement Interval; provided, however, that, if the Physically Requested Quantity for any such MISO Settlement Interval corresponds to a Requested Quantity that was designated by Buyer as self-scheduled in the Applicable Final Product Request (No Load) for such MISO Settlement Interval, then, unless Seller receives a make-whole payment for No Load Offer (as defined in the MISO Rules) costs with respect to a MISO Settlement Interval at the

⁶ NTD: Buyer Contractual Make-Whole Payment calculation and its sub-components remain under Buyer review.

Electric Interconnection Point that includes such MISO Settlement Interval, the costs described in this clause (b) associated with such MISO Settlement Interval shall be excluded from Buyer Fixed Costs (DA) for such Product Commitment Period.

“Buyer Fixed Costs (RT)” means, with respect to any Product Commitment Period, the sum of:

(a) if the Applicable Final Product Request (Start) for such Product Commitment Period is [the Final Real-Time Product Request applicable to the first MISO Settlement Interval of such Product Commitment Period], then the costs to Buyer associated with the Start-up (including the Start-up Payment and costs of Contract Gas) that commences such Product Commitment Period, as set forth in the Applicable Final Product Request (Start) for such Product Commitment Period; provided, however, that, if the Physically Requested Quantity that commences such Product Commitment Period was designated by Buyer as self-scheduled in the Applicable Final Product Request (Start) for such Product Commitment Period, then, unless Seller receives a make-whole payment for Start costs with respect to a commitment period at the Electric Interconnection Point that includes such Product Commitment Period (in whole or in part), the costs described in this clause (a) shall be excluded from Buyer Fixed Costs (RT) for such Product Commitment Period; and

(b) the No Load Offer (as defined in the MISO Rules) costs to Buyer associated with the MISO Settlement Intervals of such Product Commitment Period for which the Applicable Final Product Request (No Load) is [the Final Real-Time Product Request applicable to such MISO Settlement Interval] (i.e., in the aggregate over all such MISO Settlement Intervals of such Product Commitment Period), calculated using, for each such MISO Settlement Interval, the No Load Offer (as defined in the MISO Rules) costs to Buyer set forth in the Applicable Final Product Request (No Load) for such MISO Settlement Interval; provided, however, that, if the Physically Requested Quantity for any such MISO Settlement Interval was designated by Buyer as self-scheduled in the Applicable Final Product Request (No Load) for such MISO Settlement Interval, then, unless Seller receives a make-whole payment for No Load Offer (as defined in the MISO Rules) costs with respect to a MISO Settlement Interval at the Electric Interconnection Point that includes such MISO Settlement Interval, the costs described in this clause (b) associated with such MISO Settlement Interval shall be excluded from Buyer Fixed Costs (RT) for such Product Commitment Period.

“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-Provided Excess Gas” has the meaning specified in Section 7.10(e).

“Buyer-Settled Shortfall Energy” means, for any MISO Settlement Interval, any shortfall in the Contract Energy generated by the Facility and injected at the Electric Interconnection Point during such MISO Settlement Interval relative to the Requested Quantity of Contract Energy for such MISO Settlement Interval with respect to the MISO Day-Ahead Market, to the extent such shortfall results solely from (a) a reduction in the Physically Requested Quantity of Contract Energy relative to the Requested Quantity of Contract Energy with respect to the MISO Day-Ahead Energy Market, excluding any such reduction due to a Unit Contingency (ignoring, solely

for this purpose, the proviso to the definition of “Unit Contingency”) or other limitation (unless resulting solely from an interruption of Gas transportation within the scope of clause (B) below), or (b) an interruption of Gas transportation, other than, in the case of each of clause (a) and clause (b), to the extent the reduction in the Physically Requested Quantity of Contract Energy or interruption of Gas transportation is due to Force Majeure or the negligence (including gross negligence), fraud, willful misconduct, breach 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 (including any failure to comply with MISO Rules, other applicable Laws, Accepted Industry Practices, the Deliverability Arrangements, the Gas Interconnection Arrangements, any other Project Documents, or this Agreement or any equipment failure or malfunction, or failure to maintain pressure, at or beyond the Gas Delivery Point).

“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 (including the PUCT) 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” means the megawatt output that a generating unit is capable, as of a given moment, of continuously producing and making available at a specified delivery point, taking into account the operating limitations, the operating condition of the unit, the auxiliary load(s), the temperature and relative humidity conditions, and other relevant factors at such time.

“Capacity Demonstration Test” means a test of the Facility to demonstrate the maximum Energy output, as measured at the Electric Interconnection Point (with the Facility at 100% full load), of the Facility, over an aggregate period of four (4) consecutive hours, adjusted to Reference Conditions and conducted in accordance with Accepted Electrical Practices and the terms and conditions of this Agreement.⁷

“Capacity Payment” means the payment to be made by Buyer to Seller pursuant to Section 5.1.

⁷ NTD: Details of Capacity Demonstration Test remain under Buyer review.

“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.

“Check Meters” has the meaning specified in Section 8.3(d).

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

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

“COD Delay Damages Cap” means [●]⁸.

“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.

“Cold Start” means a Start-up of the Facility’s combustion turbine Unit required to be initiated (mechanically) more than forty-nine (49) hours after the previous Shutdown of such combustion turbine Unit.

“Commercial Operation” has the meaning specified in Section 3.1.

“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.

“Completed Start” or “Completed Start-up” means a Start-up required to be undertaken solely as a result of an increase in the Physically Requested Quantity of Contract Energy from 0 MWh to the Minimum Output Level, if (a) Seller was not required to terminate such Start-up pursuant to Section 6.4(b) and (b) during such Start-Up, (i) Seller achieved for a reasonably sustained period an output level from the Facility at the Electric Interconnection Point equal to or greater than the Minimum Output Level for operation of the Facility and (ii) the Facility was released unconditionally for ramping to, and the attainment of, any higher Physically Requested Quantity of Contract Energy according to this Agreement, but excluding, following any Shutdown that is not a Scheduled Shutdown, any such Start-up that occurs during the same Product Commitment Period as such Shutdown (as in effect at the time of such Shutdown) or to commence

⁸ NTD: Insert Daily COD Delay Damages, multiplied by 180 Days.

the next Product Commitment Period (after expiration of the Product Commitment Period in effect at the time of such Shutdown) for which such a Start-up is achieved.

“Compliance Period” means a “control period,” “compliance period” or other equivalent concept describing a period over which compliance with an applicable environmental Law is measured (as defined in the applicable environmental Law).

“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 Dependable Capacity plus any Excess Capacity, expressed in MW.

“Contract Energy” means Energy associated with and provided or to be provided from the Contract Capacity.

“Contract Gas” means Gas provided or to be provided by Buyer, as the context requires, for the performance by Seller of Fuel Conversion Services hereunder. Contract Gas shall include Gas consumed for the generation of Ramp Energy pursuant to Section 4.2(b) but shall exclude, without limitation, Buyer-Provided Excess Gas and any other quantity of Gas (whether or not delivered by Buyer to Seller) that is not consumed in the operation of the Facility by Seller for the generation by the Facility, injection at the Electric Interconnection Point and delivery to Buyer (financially at the Energy Financial Delivery Point in accordance with Section 7.8, in the case of Contract Energy, or at the OP Delivery Point, in the case of other physical Products), of Contract Energy and (as applicable) other physical Products.

“Contract Year” means each of (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 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.

“CP Completion Date” means the first date on which both the Buyer Conditions Precedent Notice and the Seller Conditions Precedent Notice have been delivered (and, in the case of the Buyer Conditions Precedent Notice, not deemed withdrawn according to the last sentence of Section 2.6(a)).

“CPT” or “Central Prevailing Time” or “CT” means the time prevailing in the Central Time Zone of the United States of America.

“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 Person’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.

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

“Daily Price of Gas” means, in respect of each Gas Day, the price, expressed in \$ per MMBtu of Gas, published as the Gas Index for flow on the applicable Gas Day or, if applicable, the replacement price determined pursuant to the following: If a Market Disruption Event has occurred, the Parties shall negotiate in good faith to agree upon a replacement price for the Daily Price of Gas (or upon a method for determining a replacement price for the Daily Price of Gas) for the affected Gas Day, and if the Parties have not so agreed on or before the second Business Day following the affected Gas Day, the replacement price for the Daily Price of Gas shall be the actual average purchase price (including any sales and use taxes on the purchase), plus average price of transportation and delivery, incurred by Seller for Gas used to generate the “DE_i” (as defined in Schedule 5.2) during such Gas Day. For purposes of calculating a replacement price for the Daily Price of Gas, all numbers shall be rounded to three decimal places. If the fourth decimal number is five or greater, then the third decimal number shall be increased by one and if the fourth decimal number is less than five, then the third decimal number shall remain unchanged.

“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, (a) on the Day on which daylight savings time becomes effective, the period shall be twenty-three (23) consecutive hours, and (b) on the Day on which daylight savings time ceases to be effective, the period shall be twenty-five (25) consecutive hours.

“Day-Ahead Availability Notice Deadline” has the meaning specified in Section 7.1(c)(i).

“Day-Ahead Delivered Energy” means, for any MISO Settlement Interval, the lesser of (a) the amount of Contract Energy actually generated by the Facility and injected at the Electric Interconnection Point (up to the Maximum Delivered Contract Energy), if any, during such MISO Settlement Interval, as determined according to Section 8.2, or (b) the Requested Quantity of Contract Energy for such MISO Settlement Interval with respect to the MISO Day-Ahead Market; provided, however, that, whether or not Buyer expressly makes a Product Request therefor (and, as a result, whether or not included in the Maximum Delivered Contract Energy or any Requested Quantity), each of clauses (a) and (b) above shall exclude Ramp Energy.

“Day-Ahead Product Request” has the meaning specified in Section 7.2(b)(i).

“Day-Ahead Product Request Deadline” has the meaning specified in Section 7.2(b)(i).

“Day-Ahead Product Request Notice” has the meaning specified in Section 7.2(b)(i).

“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 Electric Interconnection 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 MISO 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).

“Dependable Capacity” means, with respect to any month, Capacity of the Facility in a quantity equal to the amount set forth as such in Section 6.2, as may be adjusted from time to time pursuant to Section 9.4.

“Direct True-up Gas” means the Gas described in clauses (i)-(iii) of Section 6.3(b).

“Disallowance Adjustment Event” has the meaning specified in Section 10.3(b).

“Dispute” has the meaning specified in Article 18.

“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, (a) if such Environmental Attribute or Replacement EA corresponds to a MW of Contract Capacity or a MWh of Contract Energy, the end of the month following the month in which such MW was made available or such MWh was generated by the Facility or (b) if such Environmental Attribute or Replacement EA is otherwise attributable to the Facility, the earlier of (i) thirty (30) Days after the issuance date established under applicable Law (or under the applicable program), or by the Governmental Authority (or other program administrator), for environmental attributes of the type, and vintage, of such Environmental Attribute or Replacement EA (provided that, for any Emission Allowances subject to the last sentence of Section 4.3(a) that are allocated to the Facility for a Compliance Period and reasonably expected to be required by applicable environmental Laws to be retired by Seller to offset emissions or regulated pollutants from the Facility during that same Compliance Period, this clause (i) shall be deemed to read thirty (30) Days after the end of such Compliance Period) or (ii) ten (10) Business Days prior to the expiration date applicable to environmental attributes of the type, and vintage, of such Environmental Attribute or Replacement EA.

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

“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 inject Contract Energy and Other Electric Products at, 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; and any other metering equipment, communications equipment, or safety equipment.

“Electric Interconnection Point” means the physical point (recognized by MISO as a separate Commercial Pricing Node for the Facility) 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 or produced by the Facility and injected at the Electric Interconnection Point. Unless so utilized by the Balancing Authority applicable to the Electric Interconnection Point, Electric Metering Equipment shall not include any meters that Buyer or Seller may install 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).

“Emission Allowances” means all authorizations to emit specified units of hazardous substances or any other emissions or regulated pollutants during or after a specified year or other period of time, which units are established by a Governmental Authority with jurisdiction under applicable environmental Laws (whether in effect as of the Effective Date or at any time in the future), including under (i) the federal Clean Air Act or other similar state air pollution control and emission reduction program, including any cap and trade program, (ii) any program designed to mitigate impairment of water resources, including coastal and inland waters, navigable waters, surface waters, watersheds, well water or groundwater, or (iii) any other pollution reduction program, in each case regardless of whether the Governmental Authority establishing such authorizations designates such authorizations by the name “allowances” or any other name. Emission Allowances are represented in units that may differ by pollutant and applicable trading program. For the purpose of this Agreement, “Emission Allowance” trading units will be defined by the applicable trading program on a pollutant-by-pollutant basis.

“Emission Demonstration Test” means a test of the Facility to demonstrate the Facility’s emission levels of CO, CO₂, NO_x, SO₂, PM, and any other emission regulated by any air permit(s) for the Facility or applicable Laws, conducted over the entire operating range of the Facility and conducted in accordance with the testing procedure set forth in Schedule H, Accepted Industry Practices and the terms and conditions of this Agreement.

“Energization Date” means the date of initial synchronization of the Facility with the Host Utility transmission system.

“Energization Reference Date” means, as of any time, the earlier of (a) the Expected Energization Date or (b) the Outside Date for the Energization Date.

“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 Buyer’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.ETILD.

“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.

“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 Texas, Inc.

“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 E1527-21, including, if applicable, 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 (CO₂), methane (CH₄) 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.

“Environmental Costs” means all costs and expenses of any kind (including capitalized and non-capitalized costs, legal fees and expenses, and fines, penalties, and interest) incurred in connection with applicable environmental Governmental Approvals or past, present, or future environmental Laws (including compliance or non-compliance therewith) arising out of or relating to the Facility, including all capital costs for pollution mitigation or the installation of emissions control equipment required by any Governmental Approvals or Laws with respect to the Facility, all operating and maintenance (including repair, replacement, removal, inspection, testing, and financing) costs for the operation and maintenance of pollution mitigation or control equipment in connection with the Facility, all costs of permit or other Governmental Approval maintenance fees or emission fees relative to the Facility, all costs of or with respect to Emission Allowances or environmental credits required by applicable Laws or Governmental Approvals to operate (or obtained by or for Seller with respect to) the Facility, including costs relating to the acquisition, purchase, retention, management, administration, sale, conveyance, or transfer of Emission

Allowances or derivatives or other financial products relating thereto, and all costs, including costs of remediation and fines and penalties, associated with the introduction, creation, release, or remediation of hazardous substances to or at the Facility Site or the removal, release, disposal, or transfer of such substances to or at any other site.

“Equivalent Planned Maintenance Hour Cap Amount” means (a) in respect of each Planned Outage described in clauses (i)-(iv) of Section 9.6(e), the lesser of:

- (i) the number of Equivalent Planned Maintenance Hours calculated in accordance with the formula set forth in clauses (i)-(iv) of Section 9.6(e), as applicable, as may be adjusted from time to time pursuant to Section 9.6(f), or
- (ii) the Equivalent Planned Maintenance Hours for such Planned Outage included in the approved Planned Maintenance Schedule established according to Section 9.6;
or

(b) in respect of any other Planned Outage, zero (0) Equivalent Planned Maintenance Hours.

For purposes of clause (a), a Planned Outage shall not be considered to be “described in” Section 9.6(e) if it is not taken at a time permitted by Section 9.6(e).

“Equivalent Planned Maintenance Hours” means (i) the product of (a) the amount of the Dependable Capacity unavailable or limited due to Planned Maintenance, expressed in MW, multiplied by (b) the period for which such Dependable Capacity is so unavailable or limited, expressed in hours (or any portion thereof), divided by (ii) the Dependable Capacity.

“ERIS” means Energy Resource Interconnection Service (as defined in the MISO Rules).

“Event of Default” has the meaning specified in Section 15.1.

“Excess Capacity” means Capacity of the Facility in excess of the Dependable Capacity, if any.

“Expected Capacity” means Capacity of [●]⁹ MW at the Electric Interconnection Point at Reference Conditions.

“Expected Energization Date” means the expected Energization Date, as set forth in the then-current Project Schedule (which has been updated according to Section 3.2).

“Excess Equivalent Planned Maintenance Hour” means, in respect of any Planned Outage, any Equivalent Planned Maintenance Hour of such Planned Outage in excess of those permitted by Section 9.6(e). All Equivalent Planned Maintenance Hours of any Planned Outage other than those described in clauses (i)-(iv) of Section 9.6(e) shall be considered Excess Equivalent Planned Maintenance Hours.

⁹ NTD: Insert nameplate capacity specified by Bidder in its proposal.

“Facility” means the natural gas-fired, combined-cycle power generation facility located on the Facility Site (and, subject to Section 6.5, any modifications or replacements thereto), as further described on Schedule B. The “Facility” includes the Facility Site.¹⁰

“Facility Site” means the site described in Schedule B.

“Failed Start” has the meaning specified in Section 6.4(b)(i).

“Fall Maintenance Period” has the meaning specified in Section 9.6(a).

“FERC” means the Federal Energy Regulatory Commission.

“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 (EFDP) from the Applicable Market for such MISO Settlement Interval.

“Final Day-Ahead Product Request” means, with respect to a MISO Settlement Interval, the Day-Ahead Product Request in effect for such MISO Settlement Interval as of the Day-Ahead Product Request Deadline for such MISO Settlement Interval (for the avoidance of doubt, before giving effect to any modification thereto made by Buyer after the Day-Ahead Product Request Deadline for such MISO Settlement Interval).

“Final Product Request Deadline” has the meaning specified in Section 7.2(b)(ii).

“Final Real-Time Product Request” means, with respect to a MISO Settlement Interval, the Real-Time Product Request in effect for such MISO Settlement Interval as of the Final Product Request Deadline for such MISO Settlement Interval.

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

“FinSched True-up Amount” has the meaning specified in Section 7.8(f)(i).

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

“Force Majeure” means, subject to the exclusions in clauses (i)-(xi) below, any event that meets all of the following criteria: (a) the event occurs after the Effective Date; (b) the event and its effects are not within the reasonable control, directly or indirectly, of the Party claiming Force Majeure (the “Claiming Party”) (or any of its Affiliates or Subcontractors, including its and their respective employees, agents and representatives); (c) the event and its effects are unavoidable or could not be prevented, overcome or removed by the reasonable foresight, efforts and diligence of the Claiming Party (or any of its Affiliates or Subcontractors, including its and their respective employees, agents and representatives); (d) the event and its effects do not result from the negligence, gross negligence, willful misconduct, breach or other fault of the Claiming Party (or any of its Affiliates or Subcontractors, including its and their respective employees, agents and representatives); and (e) the event causes the Claiming Party, despite such Party’s (and its

¹⁰ **NTD:** This Model CCCT Tolling Agreement assumes that Bidder proposes to allocate to Buyer the entire Facility. In the event that Bidder proposes to allocate to Buyer a portion of the Facility, certain provisions of this Model CCCT Tolling Agreement will need to be adjusted.

Affiliates and Subcontractors, including its and their respective employees, agents and representatives) 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 and is not otherwise excluded by clauses (i)-(xi) below, Force Majeure shall include: tornadoes, hurricanes, earthquakes, tsunamis, one hundred (100)-year (or greater) floods, and similar natural disasters of equivalent magnitude (provided that flooding will not be considered Force Majeure except to the extent within or immediately adjacent to the Facility Site and adversely affecting immediate access thereto), wars (whether declared or undeclared) and other armed conflicts, riots, civil disturbances, sabotage, vandalism and terrorism. Notwithstanding anything to the contrary, Force Majeure shall not include:

(i) mechanical failure or other breakdown, flaw, defect, or failure of parts, machinery, equipment, facilities, systems, or other items that is not the direct and proximate result of, provided the applicable event meets all of the criteria described in the first paragraph of this definition and is not otherwise excluded by clauses (ii)-(xi) below, any of the following events: tornadoes, hurricanes, earthquakes, tsunamis, one hundred (100)-year (or greater) floods, or similar natural disasters of equivalent magnitude (provided that flooding will not be considered Force Majeure except to the extent within or immediately adjacent to the Facility Site and adversely affecting immediate access thereto), wars (whether declared or undeclared) or other armed conflicts, riots, civil disturbances, sabotage, vandalism or terrorism;

(ii) without limiting clause (v) of this sentence, sabotage, vandalism or terrorism by the Claiming Party or any of its Affiliates or Subcontractors (including its and their respective employees, agents and representatives);

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

(iv) any event stated in the technical specifications of the Facility, or any component thereof, to be within the tolerance of the Facility or such component thereof;

(v) (A) the failure or other act or omission the Claiming Party or any of its Affiliates or Subcontractors (including its and their respective employees, agents and representatives), including the failure of any such Person to furnish machinery, equipment, parts, labor, materials, consumables (including fuel), services, or other items; (B) any other non-delivery, delayed delivery, shortage or other unavailability of machinery, equipment, parts, labor, materials, consumables (including fuel), services, or other items, including any delay in achieving Full Deliverability (including delays in studies and upgrades) and any interruption or curtailment of electric interconnection or transmission or fuel transportation (including lack of pressure and interruption or curtailment of transportation service by the fuel transporter); or (C) the consequences of any of the foregoing, except, solely in the case of failure of a Subcontractor of the Claiming Party to provide a service or item, if (1) the Claiming Party has a firm contract for the applicable service or item (in the case of electric interconnection service, being NRIS), 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) (x) in any case other than interruption or curtailment of Gas transportation or electric

interconnection or transmission service, the provider, if it were a party hereto, would be entitled to Force Majeure protection under this Agreement as an Affected Party or (y) in any case of interruption or curtailment of Gas transportation or electric interconnection or transmission service, the interruption or curtailment is due to “force majeure” or “uncontrollable force” or similar term as defined under the applicable transporter(s)’ or interconnection provider’s or Transmission Provider’s tariff (for the avoidance of doubt, clause (2)(x) above, rather than clause (2)(y) above, applies to Gas supply events and circumstances to the extent not attributable to Gas transportation);

(vi) any weather event that is not a tornado, hurricane, earthquake, tsunami, one hundred (100)-year (or greater) flood, or similar natural disaster of equivalent magnitude (provided that flooding will not be considered Force Majeure except to the extent within or immediately adjacent to the Facility Site and adversely affecting immediate access thereto);

(vii) 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;

(viii) a Party’s financial inability to perform;

(ix) events that affect the cost of parts, labor, equipment, materials, consumables (including fuel), services, or other items (including additional or changes to Taxes, tariffs, or other fees, charges or costs imposed by Governmental Authorities) or other costs of the Seller’s Cost Scope 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);

(x) labor strikes, slowdowns, or stoppages (A) that are not nationwide or industry-wide or (B) if Seller is the Claiming Party and without limiting clause (v) above, that are initiated or otherwise arise as a result of the conduct or other actions or omissions of Seller or any of its Affiliates or Subcontractors (including its and their respective employees, agents and representatives); or

(xi) without limiting clause (v) above, labor shortages (except to the extent labor was successfully procured and obtained on a firm basis by the Claiming Party and the provider thereof, if it were a party hereto, would be entitled to Force Majeure protection under this Agreement as an Affected Party);

provided, however, that the existence of one or more of the factors listed in the exceptions to clauses (i), (v), (vi), (vi), (x) and (xi) 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 or is excluded under another clause of this sentence; provided, further, for the avoidance of doubt, that the non-dispatch or reduction in the dispatch of the Facility or the interruption or curtailment of electric transmission or other limitation on Products, in each case by a Transmission Provider in response to offers, bids, plans or schedules submitted to a Transmission Provider (or otherwise on the basis of price signals), shall not constitute Force Majeure under any circumstance.

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

“Fuel Adder” means [●]¹¹ (expressed in \$/MMBtu).

“Fuel Conversion Services” means the operation of the Facility, in whole or in part, by Seller in order for Seller to combust Contract Gas received by Seller at the Gas Delivery Point(s) for the generation by the Facility, injection at the Electric Interconnection Point and delivery to Buyer (financially at the Energy Financial Delivery Point in accordance with Section 7.8, in the case of Contract Energy, or at the OP Delivery Point, in the case of other Products), of Contract Energy and (as applicable) other Products.

“Full Deliverability” means (a) the interconnection of the Facility to the MISO Transmission System with NRIS and ERIS for the full Delivery Term, each in an amount equal to at least the Maximum Output Level, (b) deliverability of such capacity on a firm network resource basis to the Energy Financial Delivery Point for the full Delivery Term, and (c) qualification, registration and recognition by MISO 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.

“Full Readiness” means the conditions set forth in clauses (b)(i) and (b)(ii) of the definition of “Completed Start-Up” are achieved.

“GAAP” means 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.

“Gas” or “gas” means natural gas.

“Gas Day” means a period of twenty-four (24) consecutive hours, beginning at 9:00 a.m. CPT, unless otherwise agreed upon by Buyer and Seller; provided, however, that on the Day on which central daylight time becomes effective, the period shall be twenty-three (23) consecutive hours, and on the Day on which central standard time becomes effective, the period shall be twenty-five (25) consecutive hours.

“Gas Delivery Point” means the physical point(s) at which the Facility is connected with the interconnecting Transporter(s) and Gas, including Contract Gas, is delivered or provided to Seller and measured, as more fully described in the Gas Interconnection Arrangements.

“Gas Imbalance” means, during any period of time, the difference between the amount of Gas nominated, scheduled, or otherwise required to be delivered through a Transporter and the actual amount of Gas delivered through such Transporter.

¹¹ **NTD:** To be specified by Buyer based on the location of the Facility. Please note that the Fuel Adder may not be a static number, but, rather, will be formulated to reflect Buyer’s actual costs.

“Gas Index” means the index for the applicable Gas Day published by S&P Global Platt’s *Gas Daily* (in the internet publication currently accessed through *www.platts.com*) in the table entitled “Final Daily Price Survey” under the column heading “Midpoint” for gas to flow at [●].¹²

“Gas Interconnection Arrangements” means any and all agreements and arrangements with the interconnecting Transporter(s) or other rights and obligations under applicable Law or applicable tariffs that govern the interconnection of the Facility with the structures, facilities, equipment, auxiliary equipment, devices, and apparatus of the interconnecting Transporter(s), including any applicable rights or obligations set out in any Gas operational balancing arrangements at the Gas Delivery Point.

“Gas Interconnection Facilities” means all structures, facilities, equipment, auxiliary equipment, devices, and apparatus, including pipelines, Gas Metering Equipment, other metering equipment, communications equipment, and safety equipment, directly or indirectly required and installed or required to be installed to interconnect the Facility with the interconnecting Transporter(s) and to enable the interconnecting Transporter(s) to deliver and the Facility to receive Gas at the Gas Delivery Point(s), as the same may be more fully described in the Gas Interconnection Arrangements.

“Gas Lateral Transportation Arrangements” means, if applicable, the Gas Transportation Arrangements that govern the transportation of Contract Gas from the point(s) of interconnection with existing mainline(s) (as selected by Buyer according to Section 7.10(a)) to the Gas Delivery Point, including any applicable rights or obligations set out in any Gas transportation precedent agreement or service agreement with respect to such transportation of Contract Gas.

“Gas Metering Equipment” means Gas meters and associated equipment, including check meters, if any, utilized by the interconnecting Transporter(s) in determining the volumes and characteristics of Gas delivered to the Gas Delivery Point(s) and the date and time of delivery of all such Gas. Gas Metering Equipment shall not include, for purposes of this Agreement, any meters that Buyer may install, own and maintain to check the accuracy and reliability of the Gas Metering Equipment.

“Gas Transportation Arrangements” means any and all agreements and arrangements with the applicable Transporter(s) or other rights and obligations under applicable Law or applicable tariffs that govern the transportation of Contract Gas from [●]¹³ to the Gas Delivery Point, including any applicable rights or obligations set out in any Gas transportation precedent agreement or service agreement with respect to such transportation of Contract Gas. For the avoidance of doubt, the Gas Transportation Arrangements include any Gas Lateral Transportation Arrangements.

“Governing Standards” has the meaning specified in Section 8.3(g).

¹² **NTD:** To be specified by Buyer based on the location of the Facility.

¹³ **NTD:** Buyer to specify liquid supply point(s) based on the location of the Facility.

“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, state, regional, municipal, local, foreign, or other governmental body; any governmental, quasi-governmental, regulatory or administrative agency, commission, subdivision, body or other authority (including FERC, any ERO, any Market Monitor, any Balancing Authority and any other Transmission Provider) exercising or entitled to exercise any administrative, executive, judicial, legislative, police, policy, regulatory, or Taxing authority or power; or, without limiting the foregoing, any court or governmental tribunal.

“Guaranteed Commercial Operation Date” means [●]¹⁴, as may be extended according to Section 3.6(a) and 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 Section 3.6(a) and Section 3.6(b) apply.

“Guaranteed Heat Rate” means, with respect to any hour, the Heat Rate applicable according to Schedule 6.3 to the Physically Requested Quantity of Contract Energy during such hour; provided, however, that if, as a result of a Unit Contingency (ignoring, solely for this purpose, the proviso to the definition of “Unit Contingency”) or other limitation, the Physically Requested Quantity of Contract Energy was limited for such hour and such limitation resulted in a higher Heat Rate being applicable according to Schedule 6.3, the Guaranteed Heat Rate shall be the Heat Rate that would have been applicable according to Schedule 6.3 to the Physically Requested Quantity of Contract Energy that would have occurred for such hour absent such limitation; provided, further, that if, during such hour, the Contract Energy actually generated by the Facility and injected at the Electric Interconnection Point is less than or more than the Physically Requested Quantity of Contract Energy for such hour and the Heat Rate applicable according to Schedule 6.3 to the amount of Contract Energy actually generated by the Facility and injected at the Electric Interconnection Point during such hour (if such amount had been the Physically Requested Quantity of Contract Energy for such hour) is lower than the Heat Rate applicable according to Schedule 6.3 to the Physically Requested Quantity of Contract Energy for such hour, the Guaranteed Heat Rate shall be the Heat Rate applicable according to Schedule 6.3 to the amount of Contract Energy actually generated by the Facility and injected at the Electric Interconnection Point during such hour.

“Guaranteed Start Fuel” means the following amount of Gas during each hour of the Maximum Start-up Period for each type of Start:

Type of Start	Cold Start	Warm Start	Hot Start
Start-Up Hour 1	[●] MMBtu	[●] MMBtu	[●] MMBtu
<i>[add additional row(s) for any additional Start-Up Hour(s) of the Maximum Start-up Period for the applicable type of Start]</i>			

¹⁴ **NTD:** Insert date specified by Bidder in its proposal.

“Heat Rate” means the amount of Gas in MMBtu required to produce one (1) MWh of Energy. All Heat Rates specified hereunder shall be “HHV.”

“Heat Rate Demonstration Test” means a test of the Facility to demonstrate the Facility’s Tested Heat Rate, as measured both (i) with the Facility at 100% full load with duct firing and (ii) with the Facility at 100% full load without duct firing, and conducted in accordance with the testing procedure set forth in Schedule I, Accepted Industry Practices and the terms and conditions of this Agreement.

“Host Utility” means the Person that owns and/or leases the portion of the electrical transmission system within the MISO Transmission System that is directly interconnected to the Facility. As of the Effective Date, the Host Utility is Entergy Texas, Inc., in its capacity as the owner of regulated transmission and distribution functions.

“Hot Start” means a Start-up of the Facility’s combustion turbine Unit required to be initiated (mechanically) on or before eight (8) hours after the previous Shutdown of such combustion turbine Unit.

“Imaged Document” has the meaning specified in Section 19.16.

“Imbalance Charges” means all penalties, fees, assessments and other costs, debits and charges (whether now or later existing) assessed or imposed for (a) Gas Imbalances, including Gas resale losses on under-consumed Gas, increased Gas purchase costs of over-consumed Gas, other settlement charges and other charges, compensation, or settlements pursuant to an applicable tariff or rate schedule or a Transporter’s balance or nomination requirements, or (b) 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 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.

“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 (or its Indemnitee(s)) being indemnified 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 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.

“Independent Market Consultant” has the meaning specified in Schedule G.

“Injection Portion” means the portion of the MISO Transmission System in which the Electric Interconnection Point is located.

“Interconnection Agreements” means the Electric Interconnection Agreement and the Gas Interconnection Arrangements.

“Interest Rate” means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* 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 (b) the maximum rate permitted by applicable Law.

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

“Law” means any statute, law, rule, regulation, ordinance, Order, treaty, code, or other applicable legislative or administrative action of any Governmental Authority (including, to the extent applicable, foreign Governmental Authorities), whether now or later existing, 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, any other Transmission Provider and any 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) or refinancing 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.

“Lender Consent” has the meaning specified in Section 19.4(e).

“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 a specified Commercial Pricing Node for such MISO Settlement Interval; provided, however, that, in the case neither such price nor any successor price for the specified Commercial Pricing Node any longer exists in MISO or such price (or any successor price) for the specified Commercial Pricing Node is unavailable for any MISO Settlement Interval (in either case, an “LMP Market Disruption Event”), then the LMP for such Commercial Pricing Node 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; provided, further, that if, by thirty (30)

Days after the LMP Market Disruption Event, the Parties have not agreed upon such other reference or index price, then either Party may refer the matter for resolution in accordance with the dispute resolution process set forth in Schedule G. 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 specified Commercial Pricing Node 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 specified Commercial Pricing Node.

“LMP (EFDP)” means, for any MISO Settlement Interval in each MISO Market, the LMP at the Energy Financial Delivery Point for such MISO Settlement Interval in such MISO Market.

“LMP (EIP)” means, for any MISO Settlement Interval in each MISO Market, the LMP at the Electric Interconnection Point for such MISO Settlement Interval in such MISO Market.

“LMP Market Disruption Event” has the meaning specified in the definition of “LMP” in this Section 1.1.

“LMP Overage (DA)” means, for any Product Commitment Period, the amount (expressed in Dollars) calculated as follows:

$$LMPO (DA) = \sum_{i=1}^n (DAREV_i - DAMMP_i)$$

where:

LMPO (DA) = LMP Overage (DA) for the applicable Product Commitment Period

n = total number of MWh of Day-Ahead Delivered Energy during the applicable Product Commitment Period, excluding any such MWh of Day-Ahead Delivered Energy corresponding to a Requested Quantity that was designated by Buyer as self-scheduled in the Applicable Final Product Request (No Load) for the MISO Settlement Interval in which such MWh of Day-Ahead Delivered Energy was generated and injected at the Electric Interconnection Point

i = each MWh of Day-Ahead Delivered Energy during the applicable Product Commitment Period described in “n” above

DAREV_i = the net amount (positive or negative) received by Buyer from MISO in settlement of the Financial Schedule submitted pursuant to Section 7.8 (or from Seller pursuant to the payment of the FinSched True-up Amount (ignoring, for this purpose, the deduction of the Variable Payments in clauses (A)(2) and (B)(2) of the definition of FinSched True-up Amount)) for MWh of Day-Ahead Delivered Energy *i*

DAMMP_i = the Minimum Market Price for the MISO Settlement Interval in which MWh of Day-Ahead Delivered Energy *i* was generated by the Facility and injected at the

Electric Interconnection Point, as specified by Buyer in the Final Day-Ahead Product Request associated with MWh of Day-Ahead Delivered Energy *i*

“LMP Overage (RT)” means, for any Product Commitment Period, the amount (expressed in Dollars) calculated as follows:

$$LMPO (RT) = \sum_{j=1}^m (RTREV_j - RTMMP_j)$$

where:

LMPO (RT) = LMP Overage (RT) for the applicable Product Commitment Period

m = total number of MWh of Real-Time Delivered Energy during the applicable Product Commitment Period, excluding any such MWh of Real-Time Delivered Energy corresponding to a Physically Requested Quantity that was designated by Buyer as self-scheduled in the Applicable Final Product Request (No Load) for the MISO Settlement Interval in which such MWh of Real-Time Delivered Energy was generated and injected at the Electric Interconnection Point

j = each MWh of Real-Time Delivered Energy during the applicable Product Commitment Period described in “*m*” above

RTREV_{*j*} = the net amount (positive or negative) received by Buyer from MISO in settlement of the Financial Schedule submitted pursuant to Section 7.8 (or from Seller pursuant to the payment of the FinSched True-up Amount (ignoring, for this purpose, the deduction of the Variable Payments in clauses (A)(2) and (B)(2) of the definition of FinSched True-up Amount)) for MWh of Real-Time Delivered Energy *i*

RTMMP_{*j*} = the Minimum Market Price for the MISO Settlement Interval in which MWh of Real-Time Delivered Energy *i* was generated by the Facility and injected at the Electric Interconnection Point, as specified by Buyer in the Final Real-Time Product Request associated with MWh of Real-Time Delivered Energy *i*

“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, 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 but taking into account Gains), resulting from termination of this Agreement, determined in a commercially reasonable manner.

“Market Disruption Event” means, with respect to the Gas Index or any replacement price specified in the definition of the Daily Price of Gas, any of the following events: (i) the failure of the publisher or other applicable data source to announce or publish the index or other information necessary for determining the Daily Price of Gas for any Gas Day; (ii) any other temporary or permanent discontinuance or unavailability of the index or other information necessary for determining the Daily Price of Gas for any Gas Day; (iii) the failure of trading to commence or the permanent discontinuation or material suspension of trading on any exchange or market acting as the basis for the Daily Price of Gas on the trade date on which the Daily Price of Gas is based; (iv) any other temporary or permanent closing of any exchange or market acting as the basis for the Daily Price of Gas on the trade date on which the Daily Price of Gas is based; or (v) the Parties agree that a material change in the formula for or the method of determining the Gas Index or any applicable replacement price has occurred.

“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.

“Marks” has the meaning specified in Section 19.8.

“Maximum Delivered Contract Energy” means the maximum aggregate amount of Contract Energy that Seller is permitted to generate and inject at the Delivery Point at any moment in time. The Maximum Delivered Contract Energy shall be, at any point in time, the Physically Requested Quantity of Contract Energy.

“Maximum Guaranteed Heat Rate” means, for any hour, the Heat Rate, expressed in MMBtu of Gas per MWh, equal to one hundred three percent (103.00%) of the Guaranteed Heat Rate.

“Maximum Output Level” means [●]¹⁵ MW.

“Maximum Start-up Period” means the maximum period of time permitted hereunder for achievement of a Completed Start-up measured from the mechanical commencement of such Start-up, as set forth in Section 6.2(a)(i).

“Milestone” means any of the milestones in the Project Schedule.

“Minimum Guaranteed Heat Rate” means, for any hour, the Heat Rate, expressed in MMBtu of Gas per MWh, equal to ninety-seven percent (97.00%) of the Guaranteed Heat Rate.

¹⁵ **NTD:** Enter an amount that equals or exceeds the sum of (a) the maximum net MW output of the Facility in new and clean condition (based on calculated heat balance values between ambient dry bulb temperatures referenced to ASHRAE Handbook [Fundamentals] values of 0.4% and 99.6% occurrence for the Facility Site) plus (b) one percent (1%) of such net MW output.

“Minimum Market Price” means, with respect to any Product for a MISO Settlement Interval in a given MISO Market, the lowest LMP (EFDP) at which Buyer is willing, in the context of such MISO Market, to take delivery of such Product at the Energy Financial Delivery Point or OP Delivery Point (as applicable) during such MISO Settlement Interval, as provided by Buyer to Seller pursuant to a Product Request Notice.

“Minimum Output Level” means the minimum amount of Capacity at the Electric Interconnection Point of the Facility that must be available under the terms of this Agreement in order to permit Buyer to make a Product Request from the Facility and to count the available Contract Capacity of the Facility as being available for purposes of Product Requests and determinations of Monthly Availability, including determinations of Affected Capacity. The Minimum Output Level is specified in Schedule F.

“Minimum ZRC Requirement” means ninety-six percent (96.00%) of the Expected Capacity.

“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 an 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 the five (5)-minute interval for the MISO Real-Time Energy Market.

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

“MISO Transmission System” means the Transmission System (as defined in the MISO Rules).

“MMBtu” means one million Btu.

“Monthly Availability” has the meaning specified in Schedule 6.1.

“Monthly Availability Requirement” has the meaning specified in Section 6.1(a).

“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.

“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 arising out of or in connection with this Agreement.

“NERC” means the North American Electric Reliability Corporation.

“Network Upgrades” means 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 Electric Interconnection Point.

“Operating Representative” has the meaning specified in Section 19.17.

“Operating Restrictions” means the physical and contractual operating limitations and restrictions for making a Product Request from the Facility set forth in Schedule F.

“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 quick start, reactive power production, reactive power absorption, voltage control, regulation and frequency response, contingency response capability, 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 the Contract Energy.

“Outage” means an interruption or reduction in the availability of the Contract Capacity, the performance of Fuel Conversion Services or other operation of the Facility, or the physical injectability of Contract Energy (or any other Energy from the Facility) at the Electric

Interconnection Point or the deliverability of the other Products (or any other products from the Facility) to the OP Delivery Point, whether due to maintenance (planned or unplanned) of the Facility (or any portion thereof), the interruption or curtailment of transmission or fuel transportation service, any order or directive of any fuel transporter, Host Utility, Balancing Authority or other Transmission Provider, FERC, any ERO, or any Market Monitor, or otherwise.

“Outside Date” has the meaning specified in Section 3.3.

“Outside FM Non-Performance Period” means, if the period of Seller non-performance, in whole or part, of its material obligations under this Agreement as a result of Force Majeure commences: (a) prior to the [●]¹⁶ Contract Year Anniversary Date, twelve (12) months, or (b) on or after the [●]¹⁷ Contract Year Anniversary Date but prior to the [●]¹⁸ Contract Year Anniversary Date, nine (9) months, or (c) on or after the [●]¹⁹ Contract Year Anniversary Date, six (6) months.

“Over-generated Contract Energy” means, for any period, (a) the amount of Contract Energy actually generated by the Facility and injected at the Electric Interconnection Point during such period, minus (b) “DE_i” (as defined in Schedule 5.2) for such period.

“Performance Assurance” means credit support in the Applicable PA Amount in the form of one or more of the following: a Letter of Credit or other security acceptable to Buyer in its sole and absolute discretion.

“Person” means any individual, Governmental Authority, corporation, limited liability company, partnership, limited partnership, joint venture, estate, trust, association, unincorporated organization, bank, financial institution, fund or other entity.

“Physically Requested Quantity” means the Requested Quantity with respect to the MISO Real-Time Energy Market.

“Planned Maintenance” means maintenance of the Facility that (i) is scheduled in advance with Buyer in accordance with Section 9.6, (ii) is included in the approved Planned Maintenance Schedule established according to Section 9.6, (iii) has a predetermined start date and expected duration, and (iv) includes 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 Electric Interconnection Point or the deliverability of the other Products at the OP Delivery Point. For the avoidance of doubt, any Equivalent Planned Maintenance Hours that exceed the duration included in the applicable Planned Maintenance Schedule (or otherwise exceed the Equivalent Planned Maintenance Hour Cap Amount) shall nonetheless be considered “Planned Maintenance” but shall be Excess Equivalent Planned Maintenance Hours.

¹⁶ **NTD**: Insert number of Contract Year Anniversary Date that commences the second third of the Delivery Term (rounded to the nearest Contract Year).

¹⁷ **NTD**: Insert number of Contract Year Anniversary Date that commences the second third of the Delivery Term (rounded to the nearest Contract Year).

¹⁸ **NTD**: Insert number of Contract Year Anniversary Date that commences the last third of the Delivery Term (rounded to the nearest Contract Year).

¹⁹ **NTD**: Insert number of Contract Year Anniversary Date that commences the last third of the Delivery Term (rounded to the nearest Contract Year).

“Planned Maintenance Schedule” has the meaning specified in Section 9.6(b)(i).

“Planned Outage” means each Outage for Planned Maintenance included in the approved Planned Maintenance Schedule established according to Section 9.6. For the avoidance of doubt, any Equivalent Planned Maintenance Hours of any Planned Outage that exceed the Equivalent Planned Maintenance Hours included in the applicable Planned Maintenance Schedule (or otherwise exceed the Equivalent Planned Maintenance Hour Cap Amount) shall nonetheless be considered part of the “Planned Outage” but shall be Excess Equivalent Planned Maintenance Hours.

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

“Planning Year” 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.

“Product Commitment Period” means a contiguous period for which there is a positive Physically Requested Quantity (excluding Ramp Energy, whether or not Buyer expressly makes a Product Request therefor (and, as a result, whether or not included in the Physically Requested Quantities)) for the performance of Fuel Conversion Services (as applicable) and delivery or provision of physical Products hereunder.

“Product Request” and the correlative terms “makes,” “made,” and “making” a Product Request mean the request by Buyer for performance of Fuel Conversion Services (as applicable) and delivery or provision of Products under this Agreement.

“Product Request Components” means, for any MISO Settlement Interval, (a) the quantity of Contract Energy and physical Other Electric Products requested for delivery in such MISO Settlement Interval (which may be a curve of various quantities depending on the LMP (EFDP) for the applicable Product), (b) either (i) the Minimum Market Price(s) for such quantit(y)(ies) or (ii) that the Product Request is self-scheduled, (c) the costs to Buyer associated with any Start-up (including the Start-up Payment and costs of Contract Gas), and (d) the No Load Offer (as defined in the MISO Rules) costs to Buyer.

“Product Request Notice” means a notice delivered to Seller by or on behalf of Buyer in which Buyer makes a Product Request from the Facility pursuant to Section 7.2(b).

“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 are bound relating to the ownership, leasing, financing, insuring, development, engineering, procurement of equipment for, design, construction, installation, 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 Deliverability Arrangements, the Gas Interconnection Arrangements, and the Gas Transportation 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 each of the Units and the Facility from the electrical systems to which it is connected consistent with Accepted Industry Practices.

“PUCT” means the Public Utility Commission of Texas.

“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 successfully operating power generation generally similar to the Facility (including as to size and technology).

“Ramp Energy” means any Energy produced during the Start-Up Period of any Start-Up and during the Shutdown Period of any Shutdown; provided, however, that any such Energy produced during any MISO Settlement Interval for which the Physically Requested Quantity is at the Minimum Output Level or higher shall not be considered Ramp Energy.

“Real-Time Delivered Energy” means, for any MISO Settlement Interval, the difference (if positive) equal to (a) the amount of Contract Energy actually generated by the Facility and injected at the Electric Interconnection Point (up to the Maximum Delivered Contract Energy), if any, during such MISO Settlement Interval, as determined according to Section 8.2, minus (b) the Day-Ahead Delivered Energy; provided, however, that, whether or not Buyer expressly makes a Product Request therefor (and, as a result, whether or not included in the Maximum Delivered Contract Energy), clause (a) above shall include any Ramp Energy.

“Real-Time Product Request” means, for any MISO Settlement Interval, any Product Request in effect after the Day-Ahead Product Request Deadline for the Day in which such MISO Settlement Interval occurs. For the avoidance of doubt, to the extent the Final Day-Ahead Product Request is not modified after the Day-Ahead Product Request Deadline, it shall also be deemed to be a Real-Time Product Request, but broken down by MISO Settlement Intervals applicable to the MISO Real-Time Energy Market, as described in the second proviso to Section 7.2(b)(ii).

“Recording” has the meaning specified in Section 19.20.

“Reference Conditions” means 97° Fahrenheit and 56% relative humidity.

“Reference EA Compliance Payment” means, with respect to any Environmental Attribute, the highest “alternative compliance payment” or equivalent concept applicable among the Applicable Environmental Attribute Programs corresponding to such Environmental Attribute.

“Reference MISO Settlement Interval” means the MISO Settlement Interval corresponding to the MISO Market that has the shortest MISO Settlement Interval.

“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, 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 or other limitation or shortcoming (including any scheduled or unscheduled outage) on, or other circumstance relating to, any electric transmission or distribution system, energy deliverability, or fuel transportation, 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, in respect of the Facility, any MW of Contract Capacity or any 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 the Facility or, if such MW or MWh were generated by the Facility, injected at the Electric Interconnection 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 4.3(d)).

“Replacement Price” has the meaning specified in Schedule G.

“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 a corresponding Product pursuant to Section 4.8.

“Replacement ZRCs” has the meaning specified in Section 4.3(f)(i).

“Requested Quantity” has the meaning specified in Section 7.2(b)(iv)(B).

“RFP” has the meaning specified in the second recital.

“Rolling 12 Month Availability” means, as of the end of any month, the average of the Monthly Availabilities during the Rolling 12 Month Period ending with such Month.

“Rolling 12 Month Availability Requirement” means eighty-five percent (85.00%).

“Rolling 12 Month Period” means, as of the end of any month (or portion thereof) within the Delivery Term, the twelve (12)-Month period that includes such month (or portion thereof) and the preceding eleven (11) months that occurred during the Delivery Term; provided, however, that, during the first Contract Year, the measurement of the Rolling 12 Month Period will begin at

the end of the sixth (6th) full month of such Contract Year, at which time and thereafter for the remainder of the first Contract Year, the Rolling 12 Month Period will be determined using the period then elapsed in the Delivery Term.

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

“Run Hour” has the meaning given to the term “run hours” (or similar term) for purposes of manufacturers’ recommendations and warranties of the applicable Unit(s).

“S&P” means Standard & Poor’s Financial Services LLC.

“SAC Rating” means, with respect to any Season in respect of the Facility, the amount of capacity (expressed in MW) on a “seasonal adjusted capacity” (commonly referred to as “SAC”) basis (or such other basis utilized at such time by the applicable Balancing Authority for capacity accreditation that may be applied by Buyer as described below in this definition) accredited for such Season by the applicable Balancing Authority for the Facility at the Electric Interconnection Point that may be applied by Buyer toward the resource adequacy (or equivalent) requirements applicable to Buyer (currently represented in MISO by ZRCs).

“Scheduled Shutdown” means a Shutdown required to be undertaken solely as a result of a decrease in the Physically Requested Quantity of Contract Energy from the Minimum Output Level to 0 MWh.

“Season” has the meaning given to such term in the MISO Rules (or such other interval utilized by the applicable Balancing Authority at the applicable time for capacity accreditation of the Facility that may be applied by Buyer toward the resource adequacy (or equivalent) requirements applicable to Buyer).

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

“Seller-Caused Accounting Treatment Event” has the meaning specified in Section 9.9(b).

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

“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 7.3, (d) the generation, provision and delivery (including financial delivery) of the Products, and performance of Fuel Conversion Services, according to this Agreement (including, as applicable, tagging, scheduling, offering and bidding into the Balancing Authority applicable to the Injection Portion, any required Financial Schedules to Buyer and the settlement of all of the foregoing) 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.

“Shutdown” means the actual shutdown of the Facility’s combustion turbine Unit to 0 MW. A shutdown of the Facility’s steam turbine Unit shall not constitute a Shutdown.

“Shutdown Period” means, in respect of any Shutdown, the period of time from the mechanical commencement of such Shutdown to the point at which Shutdown occurs. The Shutdown Period excludes any hour during which the Contract Energy generated by the Facility and injected at the Electric Interconnection Point is greater than or equal to the Minimum Output Level multiplied by one (1) hour (measured over the course of the entire hour as a whole).

“Specified Seller Fault Event” means (a) the gross negligence, fraud or willful misconduct of, or the intentional withholding, diversion, over or under generation, over or under production, or over or under-forecasting of any Product or Fuel Conversion Services by, Seller or 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 (including Section 4.6, Section 7.4(a), and Section 9.1(b)).

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

“Spring Maintenance Period” has the meaning specified in Section 9.6(a).

“Start-up” or “Start” means a start-up of the Facility’s combustion turbine Unit from a Shutdown of such combustion turbine Unit. A Start-up or Start may be a Cold Start, Warm Start or Hot Start. A start-up of the Facility’s steam turbine Unit shall not constitute a Start-up.

“Start-Up Hours” means the hours during the Start-Up Period of a Start-Up, excluding any such hours in excess of the Maximum Start-up Period.

“Start-up Payment” means a payment to Seller pursuant to Section 5.3 in respect of each Completed Start.

“Start-up Period” means, in respect of any Start-up, the period of time from the mechanical commencement of such Start-up to the point at which Full Readiness is achieved or such Start-up is terminated. The Start-up Period excludes any hour during which the Contract Energy generated by the Facility and injected at the Electric Interconnection Point is greater than or equal to the Minimum Output Level multiplied by one (1) hour (measured over the course of the entire hour as a whole).

“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.

"Summer Months" means the months of June, July, and August.

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

"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 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 property (including assessments, fees and other charges based on the use or ownership of real property, property tax, and ad valorem tax), personal property, occupation, payroll (including withholding and social security), employment, unemployment, severance, production, emissions, environmental, generation, first use, conversion, processing, carbon, fuel, energy, transmission, distribution, utility, gross receipts, license, privilege, sales, use, excise, transfer, registration, transaction, and stamp taxes, import duties, tariffs and other charges, customs broker fees and other similar costs of importation, value-added (including 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.

"Test Hours" means the hours during (a) any testing prior to the Delivery Term Commencement Date in respect of which Buyer exercises its option in this Section 9.4(e), (b) any Capacity Demonstration Tests pursuant to Section 9.4(a)(ii), and (c) any testing performed pursuant to Section 9.4(h).

"Tested Heat Rate" means (a) for the portion of a Heat Rate Demonstration Test performed with the Facility at 100% full load with duct firing, (i) the total fuel consumption of the Facility during such portion of the Heat Rate Demonstration Test divided by (ii) the Energy associated with the Dependable Capacity and (b) for the portion of the Heat Rate Demonstration Test performed with the Facility at 100% full load without duct firing, (i) the total fuel consumption of the Facility during such portion of the Heat Rate Demonstration Test divided by (ii) the maximum output level set forth for operation of the Facility without duct firing in the table in Schedule 6.3 applicable to the period during which such Heat Rate Demonstration Test is conducted.

"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.

“Transporter(s)” means any gas pipeline through which Gas delivered to the Facility is transported (including, for the avoidance of doubt, gas pipelines not directly interconnected to the Facility through which Gas delivered to the Facility is transported).

“Unit” means any of the two (2) electric generating units at the Facility, as more particularly described in Schedule B.²⁰

“Unit Contingent” or “Unit Contingency” means that Seller’s failure to deliver the Products intended to be supplied from the Facility and perform Fuel Conversion Services is excused to the extent that the Facility is unavailable to produce and deliver the applicable Products and perform Fuel Conversion Services (as applicable) due to (a) Planned Maintenance, (b) Force Majeure, (c) forced Outage, (d) a Reliability Curtailment, (e) an interruption of Gas transportation, or (f) any other event or circumstance (but excluding economic considerations) that affects the Contract Capacity so as to prevent Seller from performing its obligations hereunder, provided that the applicable event or circumstance described in clauses (a)-(f) of this definition is not a result of a Specified Seller Fault Event. For the avoidance of doubt and notwithstanding anything to the contrary, the non-dispatch or reduced dispatch of the Facility by MISO or other applicable Transmission Provider or interruption or curtailment of electric transmission or other limitation on Products 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. The foregoing definition and concept shall not be construed to waive or limit Buyer’s rights or remedies in this Agreement in the event of a Unit Contingency; without limiting the foregoing, in the event of a Unit Contingency, Seller shall nonetheless be subject to the subtraction of “VPD_m” in the calculation of the Variable Payment according to Schedule 5.2 (to the extent set forth therein) and to the consequences of Section 4.3(f), Section 6.1 and Section 6.3 in respect of the circumstances described therein.

“Unplanned Outage” means an Outage that is not a Planned Outage.

“Variable Payment” means the payment to be made by Buyer to Seller pursuant to Section 5.2 in consideration of the Fuel Conversion Services and injection and delivery of associated Delivered Energy during the relevant month.

²⁰ **NTD:** This Model CCCT Tolling Agreement assumes a 1x1 configuration. If the proposed Facility does not have a 1x1 configuration, certain provisions of this Model CCCT Tolling Agreement will need to be adjusted.

“Warm Start” means a Start-up of the Facility’s combustion turbine Unit required to be initiated (mechanically) more than eight (8) hours, but not more than forty-nine (49) hours, after the previous Shutdown of such combustion turbine Unit.

“Winter Months” means the months of December, January, and February.

“ZRC” means a Zonal Resource Credit (as defined in the MISO Rules) (or such other Capacity-Related Benefit utilized by the applicable Balancing Authority at the applicable time for capacity accreditation of the Facility that may be applied by Buyer toward the resource adequacy (or equivalent) requirements applicable to Buyer) corresponding to the zone in which the Energy Financial Delivery Point is located.

“ZRC Transfer Deadline” has the meaning specified in Section 4.3(f)(i).

1.2 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 Energy 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 a term defined in, or other provision of, a particular Law) means such Law 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.

(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) If any conflict 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 7.3(b) (if and when applicable according to Section 7.3(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, 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, (iii) all amounts expressed in MW shall be rounded to the nearest thousandth of a MW, and (iv) all amounts expressed in MMBtu shall be rounded to the nearest millionth of an MMBtu. Notwithstanding the foregoing, amounts of Contract Capacity, Contract Energy, and Other Electric Products shall be rounded in accordance with the rounding methodology utilized by the Balancing Authority(ies) applicable to the Delivery Portion for settlement purposes.

(n) All references in this Agreement to heat rate or heat content are deemed to be in higher heating value (HHV).

(o) 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.

(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 “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 Section 2.5(a)) 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) and the first sentence of Section 2.5(a). Also, for purposes of determining satisfaction or fulfillment (and continued satisfaction or fulfillment) of the conditions in Section 2.3(b)(vi) and Section 2.3(b)(xiii), the references to the Delivery Term Commencement Date therein shall be construed to refer to the expected Delivery Term Commencement Date as of the time of determination, using the most current information known at such time.

(r) The term “eligible” means eligible or would be eligible but for the negligence (including gross negligence), fraud, willful misconduct, breach 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.

1.3 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.

1.4 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.

1.5 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 or any of its Affiliates for any purpose arising out of or relating to this Agreement.

ARTICLE 2

TERM

2.1 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).

2.2 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 earlier 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 CP Completion Date; provided, however, that if, as of the Day-Ahead Availability Notice 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 Electric Interconnection 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 Dependable Capacity, (2) (A) any of the conditions to Commercial Operation or (B) any of the conditions in Sections 2.3(b)(iii)-(x) or (xii)-(xiii) cease to be satisfied (i.e., in each case, would not be satisfied if satisfaction of such condition was determined as of the Day-Ahead Availability Notice 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), including because a change in the Delivery Term Commencement Date causes the Accounting Certification to be outside the timeframe required by Section 2.3(b)(vi) or the bringdown provided pursuant to Section 2.3(b)(xiii) to be outside the timeframe required by Section 2.3(b)(xiii), or (3) there is an Event of Default or Potential Event of Default of Seller (each of the circumstances described in clauses (1)-(3) above, a “Delivery Delay Condition”), then, unless this Agreement has been terminated in accordance with the terms hereof or Buyer otherwise elects in writing, 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 [●] ([●]th)²¹ Contract Year Anniversary Date; provided, however, that if such Day falls on a Day that is not the last Day of a Planning Year, 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 last Day of the Planning Year in which such date occurs, 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) Except as otherwise provided by Section 9.4(e), Seller shall not sell Products prior to the Delivery Term Commencement Date, and Buyer shall not be required to purchase any Products prior to the Delivery Term Commencement Date.

2.3 Conditions Precedent to Commencement of Delivery Term.

(a) Without limiting Section 2.2(b), the commencement of the Delivery Term shall be subject to the satisfaction of each of the following conditions, except to the extent Seller waives such conditions:

²¹ NTD: Delivery Term of [ten (10) to twenty (20)] years based on Bidder’s proposal.

(i) on or before [●], Seller has in place all of Seller's Required Governmental Approvals; and

(ii) on or before [●], Seller has in place all of Seller's Required Consents.

(b) Without limiting Section 2.2(b), the commencement of the Delivery Term shall be subject to the satisfaction (and continued satisfaction as of the CP Completion Date) of each of the following conditions, except to the extent Buyer waives such conditions:

(i) on or before [●], Buyer has in place all of Buyer's Required Governmental Approvals, none of such Buyer's Required Governmental Approvals are subject to or contain any terms or conditions unacceptable to Buyer in its sole and absolute discretion, and all of such Buyer's Required Governmental Approvals are final and not subject to appeal or otherwise subject to challenge;

(ii) on or before [●], Buyer has in place all of Buyer's Required Consents, all of which are in full force and effect and on terms and conditions acceptable to Buyer in its sole and absolute discretion;

(iii) on or before [●], (A) Seller has in place 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) according to the Deliverability Arrangements and the then-current Project Schedule (which has been updated according to Section 3.2), Full Deliverability will be effective no later than the Target Date therefor (provided that, following initial satisfaction of this condition as written, the reference to "Target Date" in this clause (D) shall be read as "Outside Date" for purposes of determining continuing satisfaction of this condition);

(iv) on or before [●], (A) Seller has in place all final and binding Gas Interconnection Arrangements and Gas Transportation Arrangements on terms and conditions in compliance with Section 7.10(a), (B) the Gas Interconnection Arrangements and Gas Transportation 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) according to the Gas Interconnection Arrangements and Gas Transportation Arrangements and the then-current Project Schedule (which has been updated according to Section 3.2), Gas interconnection according to the Gas Interconnection Arrangements and firm Gas transportation service according to the Gas Transportation Arrangements will be effective no later than the Target Date therefor (provided that, following initial satisfaction of this condition as written, the reference to "Target Date" in this clause (D) shall be read as "Outside Date" for purposes of determining continuing satisfaction of this condition);

(v) on or before [●], (A) according to the Electric Interconnection Agreement, applicable Law and the then-current Project Schedule (which has been updated according to Section 3.2) and with effect on or before the Energization Reference Date: (1) the Balancing Authority(ies) applicable to the Electric Interconnection Point will 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 Authority(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), (2) the Electric Interconnection Point will be (and is contracted to be) within the Buyer LRZ, (3) the local Balancing Authority applicable to the Facility will be Entergy Texas, Inc., in its capacity as local Balancing Authority, and (4) if required according to Section 7.3, on or before [●], either Seller (or its designee) or Buyer (or its designee) (as required by Section 7.3(b)) will be recognized as the Market Participant for the Facility in accordance with Section 7.3(b), and (B) (1) all final and binding agreements and other arrangements (including the Electric Interconnection Agreement) necessary to give effect to the foregoing are in place and in full force and effect and not subject to conditions precedent, and (2) no party thereto is in default thereunder;

(vi) no earlier than thirty (30) Days prior to, and no later than ten (10) Business Days prior to, the Delivery Term Commencement Date, Seller has provided to Buyer a certification, in the form attached hereto as Schedule 2.3(b)(vi), 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 as in effect at the time of such certification or that have been published or adopted on or prior to the time of such certification with an effective date during the term of this Agreement, neither this Agreement nor the transactions 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)(vi), the "Accounting Treatment" and, such certification, the "Accounting Certification");²²

(vii) on or before three (3) Business Days after the Effective Date, Seller has in place in favor of Buyer the Performance Assurance required to be delivered by Seller pursuant to Section 12.2 and the same is in full force and effect;

(viii) on or before [●], (A) Seller has in place the insurance coverages required by Schedule 9.8, (B) such coverages are valid and binding and in full force and

²² **NTD:** If Bidder proposes to allocate to Buyer the entire Facility, this Model CCCT Tolling Agreement, as written, will not receive the desired Accounting Treatment (and Seller will not be able to give the Accounting Certification, as required by the RFP). In that event, Bidder should indicate in the "Special Considerations" section of its Proposal Package any adjustments strictly required to achieve the Accounting Treatment.

effect, and (C) Seller has delivered to Buyer a certificate of insurance evidencing such coverages in accordance with Schedule 9.8;

(ix) on or before the Outside Date therefor, Seller has in full force and effect Full Deliverability (including that the interconnection and transmission upgrades, including any Network Upgrades, required by the Deliverability Arrangements are complete, tested and in commercial operation);

(x) on or before the Outside Date therefor, Gas interconnection according to the Gas Interconnection Arrangements and firm Gas transportation service according to the Gas Transportation Arrangements are in full force and effect (including that any upgrades, including by applicable Transporter(s), required for Gas interconnection according to the Gas Interconnection Arrangements and firm Gas transportation service according to the Gas Transportation Arrangements are complete, tested and in commercial operation);

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

(xii) on or before [●], Seller has caused to be performed, completed and 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; and

(xiii) no earlier than one hundred eighty (180) Days prior to the Delivery Term Commencement Date, Seller has caused to be performed, completed and provided to Buyer a bringdown of the Environmental Assessment that was provided pursuant to Section 2.3(b)(xii) from the same consultant that issued such Environmental Assessment that (A) shows no new environmental conditions with respect to the Facility or the Facility Site beyond those identified in the original Environmental Assessment delivered pursuant to Section 2.3(b)(xii) and (B) is dated no more than one hundred eighty (180) Days prior to the Delivery Term Commencement Date, and no other Environmental Assessment or bringdown thereof has been provided by Seller to Buyer thereafter that fails to comply with clauses (A) and (B) of this Section 2.3(b)(xiii).

If Buyer elects (in its sole and absolute discretion) to waive any of the conditions set forth in Section 2.3(b), then, unless and except to the extent expressly set forth in such waiver, such waiver shall be construed to be a limited waiver of such condition(s) for purposes of delivery of the Buyer Conditions Precedent Notice and occurrence of the CP Completion Date (and commencement of the Delivery Term) only and shall not be a waiver of, or otherwise limit or relieve, Seller's obligations to satisfy such condition(s) (or to comply with any other covenant herein that corresponds or otherwise relates to such condition(s)).

2.4 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, use Commercially Reasonable Efforts (A) to take all actions, and to do 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)-(xiii) (in the case of Seller) and Sections 2.3(b)(i)-(ii) and, to the extent required of Buyer by Section 7.10(a), Section 2.3(b)(iii) (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 and this Agreement at Buyer's request in any regulatory or similar proceeding, case, action, inquiry, or investigation, whenever occurring after the Effective Date 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. Each Party shall keep the other reasonably apprised of its progress with respect to satisfaction of the conditions of such Party hereunder.

(ii) Without limiting Section 1.2(q) 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 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 otherwise in accordance herewith.

(c) Without limiting Section 2.4(a) and subject to Section 2.4(d), Buyer shall endeavor to submit, on or before ninety (90) Days after the Effective Date, this Agreement to the PUCT, 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.

(d) Notwithstanding anything to the contrary, Buyer shall have complied with Section 2.4(c) if any of the filings described in such section are delayed beyond the date provided therein as a result of any need to address in such application or resolve any material (in Buyer's good faith judgment) legal or regulatory risk or issue prior to submission of such application, subject to the condition that Buyer continues to use Commercially Reasonable Efforts to submit any such filing notwithstanding such delay.

(e) With respect to the conditions in Section 2.3(b)(xii)-(xiii), Seller shall promptly provide to Buyer any bringdown or new Environmental Assessment obtained by Seller on or prior to the Delivery Term Commencement Date after the initial Environmental Assessment or any bringdown submitted to Buyer for purposes of such conditions.

(f) 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.

2.5 Termination for Failure of Conditions.

(a) Subject to Section 2.5(d), each Party shall have the right to terminate this Agreement upon notice to the other if any of the conditions set forth in Section 2.3 shall not have been satisfied (or waived by the applicable Party) as of the date specified therein. Such termination right shall remain available until such condition is satisfied or waived.

(b) [Reserved]

(c) Subject to Section 2.5(d), upon or after delivery or receipt of a notice described in Section 2.6(b), each Party shall have the right to terminate this Agreement 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) Notwithstanding the foregoing, 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 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)(xi) not being satisfied (or capable of being satisfied) or waived.

(e) Termination of this Agreement by either Party in accordance with this Section 2.5 shall be without Termination Payment or other liability to either Party arising out of such termination. 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. The termination rights of the Parties in this Section 2.5 shall not limit any other termination rights or remedies that may be available to either Party under this Agreement (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).

2.6 Notice of Satisfaction or Failure of Conditions.

(a) Seller shall provide prompt notice to Buyer when all conditions set forth in Section 2.3(a) have been satisfied or waived (and continue to be satisfied or waived) (such notice, the "Seller Conditions Precedent Notice"), and Buyer shall provide prompt notice to Seller when all conditions set forth in Section 2.3(b) have been satisfied or waived (and continue to be satisfied or waived) (such notice, the "Buyer Conditions Precedent Notice"), provided that, in each case, such notice shall be provided no later than five (5) Business Days after all conditions set forth in Section 2.3(a) or Section 2.3(b), as applicable, have been satisfied or waived (and continue to be satisfied or waived). If, after issuance of the Buyer Conditions Precedent Notice by Buyer until the issuance of the Seller Conditions Precedent Notice by Seller (if it has not already occurred), Buyer obtains knowledge that any of the conditions set forth in Section 2.3(b) cease to be satisfied, Buyer shall notify Seller thereof and the Buyer Conditions Precedent Notice shall be deemed

withdrawn, whereupon this Section 2.6(a) shall again apply if and when all conditions set forth in Section 2.3(a) again have been satisfied or waived (and continue to be satisfied or waived).

(b) Each Party shall give prompt notice to the other Party if a condition set forth in Section 2.3(a) or Section 2.3(b), as applicable to such Party, cannot be satisfied and will not be waived by such notifying Party, which notice shall specify the condition.

ARTICLE 3 COMPLETION²³

3.1 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 (and continue to be satisfied as of the Commercial Operation Date) or expressly waived by Buyer:

(a) (i) the Facility conforms to Schedule B; (ii) the Facility has achieved “Substantial Completion” (or equivalent term meaning completion in all material respects, except punch list items that do not materially adversely affect the ability of the Facility to operate as intended) under its engineering, procurement and construction contract (or, if the Facility does not have a single engineering, procurement and construction contract, under each of the subcontracts that together aggregate the scope of an engineering, procurement and construction contract) at a nameplate capacity equal to the Expected Capacity; and (iii) any studies and testing of the Facility required pursuant to the Electric Interconnection Agreement, Gas Interconnection Arrangements, other Project Documents (including agreements with Lenders) or Governmental Approvals for the commencement of commercial operation shall have been successfully performed and completed;

(b) the Facility (i) has successfully completed (no earlier than thirty (30) Days prior to, and no later than, the Commercial Operation Date) (A) its most recent Capacity Demonstration Test at a Dependable Capacity level equal to at least the COD Capacity Threshold, (B) its most recent Heat Rate Demonstration Test with Tested Heat Rates equal to or less than the corresponding Maximum Guaranteed Heat Rates without producing emissions in excess of the levels set forth in the following clause (C), all in a single Heat Rate Demonstration Test, and (C) its most recent Emission Demonstration Test at emissions levels and rates below the levels and rates (1) set forth in Schedule H for the emissions set forth in Schedule H and (2) the lesser of those permitted under (x) air permit(s) for the Facility or (y) applicable Laws for emissions not included in Schedule H but required by such air permit(s) or applicable Laws, with successful completion for all tested emissions occurring simultaneously,²⁴ (ii) is synchronized with the Host Utility transmission system, (iii) is available for normal and continuous operation and fully capable of reliably performing the Fuel Conversion Services, producing the Products, injecting the Contract Energy and other physical Products at the Electric Interconnection Point and delivering the same to Buyer at the OP Delivery Point (or, in the case of Contract Energy, for financial delivery to Buyer at the Energy Financial Delivery Point in accordance with Section 7.8) at a power output

²³ **NTD:** If Bidder proposes an existing resource, this Article 3 (and associated definitions and cross-references) will be deleted. Certain other provisions of this Model CCCT Tolling Agreement may also need to be adjusted.

²⁴ **NTD:** Scope of required testing (including whether any additional reliability or functionality testing is required) remains under Buyer review.

level of at least the COD Capacity Threshold, and (iv) is in compliance with the Electric Interconnection Agreement, Gas Interconnection Arrangements and applicable Laws;

(c) without limiting clause (g) or clause (i) below, (i) Seller has in place the Deliverability Arrangements, and (ii) the interconnection and transmission upgrades, including any Network Upgrades, required by the Deliverability Arrangements (A) are complete, (B) are 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 Electric Interconnection Point for financial delivery to Buyer at the Energy Financial Delivery Point in accordance with Section 7.8 at a power output 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) without limiting clause (g) below, (i) Seller has in place the Gas Interconnection Arrangements and the Gas Transportation Arrangements on terms and conditions in compliance with Section 7.10(a) and (ii) any upgrades, including by applicable Transporter(s), required for Gas interconnection according to the Gas Interconnection Arrangements and firm Gas transportation service according to the Gas Transportation Arrangements (A) are complete, (B) are tested in accordance with the Gas Interconnection Arrangements and Gas Transportation Arrangements and applicable Law, (C) are available for normal and continuous operation and fully capable of reliably transporting and delivering Gas to the Facility in quantities and with qualities sufficient for Buyer to comply with its obligations under this Agreement and (D) are in compliance with the Gas Interconnection Arrangements, the Gas Transportation Arrangements and applicable Laws;

(e) the communications and telemetry equipment required by this Agreement has been programmed, installed, commissioned and tested and has demonstrated that it is fully capable of reliably transmitting real-time data to Buyer according to this Agreement;

(f) 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;

(g) (i) Seller has in place all Governmental Approvals, all agreements, and all other arrangements and acquired all other tangible and intangible rights required to construct the Facility, perform the Fuel Conversion Services, operate the Facility, produce and inject the Contract Energy at the Electric Interconnection Point and financially delivery the same to Buyer at the Energy Financial Delivery Point in accordance with Section 7.8 at a power output level of at least the COD Capacity Threshold, produce and deliver the other physical Products to Buyer at the applicable OP Delivery Point according to this Agreement, and otherwise performs its obligations under and according to this Agreement; (ii) such Governmental Approvals, agreements and other arrangements and rights are in full force and effect and not subject to conditions precedent; and (iii) no party thereto is in default thereunder;

(h) without limiting clause (g) 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 4.3(e)), and (ii) Seller is otherwise qualified for, and has in place all agreements and other arrangements (and, without limiting the foregoing, has all necessary accounts) to cause to be issued, and to obtain and transfer to Buyer, the Environmental Attributes under each such Applicable Environmental Attribute Program;

(i) without limiting clause (g) above, (i) the Facility, Contract Capacity, and 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 in place all agreements and 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 for which there is a Physically Requested Quantity 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 Authority(ies));

(j) without limiting clause (g) above, Seller has in place and in full force and effect separate from this Agreement all arrangements for the supply of required electric services to the Facility, including house power and maintenance power, and all such arrangements are available for the supply of such electric services to the Facility;

(k) Seller has in effect (i) Full Deliverability, (ii) Gas interconnection according to the Gas Interconnection Arrangements, and (iii) firm Gas transportation service according to the Gas Transportation Arrangements;

(l) without limiting clause (g) 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, (A) the Facility is 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 is removed from active tagging and is otherwise no longer tagging;

(m) the Performance Assurance required at the Commercial Operation Date pursuant to this Agreement has been posted by Seller in accordance with the requirements of this Agreement; and

(n) the conditions set forth in Section 2.3(b)(v) (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 Section 2.3(b)(viii) have been satisfied and continue to be satisfied.

3.2 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 promptly notify Buyer of any change in the Project Schedule and shall provide Buyer with a revision to the Project Schedule as soon as practicable thereafter; provided, however, that, even though Seller shall promptly include in the Project Schedule and notify Buyer of its actually expected date of completion for each Milestone, the Target Dates and Outside Dates for the Milestones shall not be updated other than according to Section 3.6.

(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 and any upgrades (including by applicable Transporter(s)) required for Gas interconnection and Gas transportation service (each, a "Progress Report"). In each Progress Report, Seller shall (i) review the status of each Milestone of the Project Schedule, update its actually expected date of completion for each Milestone (if applicable), otherwise revise the Project Schedule (if applicable), and specifically discuss any change in the Project Schedule, (ii) without limiting the foregoing, 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.

3.3 Milestone Dates. The Project Schedule sets forth the target dates for achieving each Milestone (each, a "Target Date") and the required dates for achieving each Milestone (each, an "Outside Date").

3.4 Failure to Achieve Milestones. If Seller does not achieve any Milestone by the corresponding Outside Date, or if any event or circumstance could reasonably be expected to cause Seller to 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) 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 (such approval not to be unreasonably withheld or delayed) only if 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"). Seller shall promptly proceed with completing the Milestone work in the manner specified by the Acceleration Plan. Seller shall be responsible for all costs and expenses of implementing the Acceleration Plan.

3.5 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) and include a certification to that effect by an authorized officer of Seller familiar with the Facility after due inquiry.

3.6 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 and eighty (180) Days in the aggregate (for all Force Majeure). However, as a condition to any Force Majeure Extension, Seller must (i) comply with all conditions of Section 10.1(a) with respect to such Force Majeure event and (ii) provide Buyer the FM Claims Notice as soon as practicable after, but no later than ten (10) Days after, the occurrence of the Force Majeure event.

(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 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”).

3.7 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 (\$[●])²⁵ (“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.

3.8 COD Delay Termination Right.

(a) 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 terminate this Agreement upon notice to Seller (and to receive the Termination Payment).

(b) Seller’s Rights

²⁵ **NTD**: Insert amount equal to the product of \$300/MW times the Expected Capacity.

(i) If (A) 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, (B) at a COD Capacity Threshold lower than the COD Capacity Threshold (prior to any resizing), Seller has satisfied all of the conditions to the Commercial Operation Date and (C) without limiting clause (B) above or Section 3.1(a), Seller has constructed to a nameplate capacity for the Facility equal to the Expected Capacity, then Seller shall have the right, exercisable by notice to Buyer and payment of the liquidated damages amount required by Section 3.9 at any time thereafter until the Commercial Operation Date occurs, to resize COD Capacity Threshold to the greater of (1) [●] MW and (2) the highest level at which Seller satisfies all of the conditions to the Commercial Operation Date.

(ii) If (A) Buyer's right to terminate set forth in Section 3.8(a) applies and Buyer has not elected to terminate within one (1) year after the COD Termination Deadline, (B) without limiting Section 3.1(a), Seller has constructed to a nameplate capacity for the Facility equal to the Expected Capacity and (C) Seller demonstrates to Buyer's reasonable satisfaction that it is not possible to satisfy all of the conditions to the Commercial Operation Date at a COD Capacity Threshold equal to or greater than the minimum COD Capacity Threshold specified in Section 3.8(b)(i)(1), then Seller shall have the right, exercisable by notice to Buyer and payment to Buyer of the Termination Payment, to terminate this Agreement.

3.9 Capacity Reduction Liquidated Damages. If the COD Capacity Threshold is resized according to Section 3.8, Seller shall pay to Buyer, as liquidated damages, an amount equal to (a) [●] Dollars (\$[●])/MW²⁶, multiplied by (b) the difference of the Expected Capacity minus the resized COD Capacity Threshold. Upon Seller's payment of the liquidated damages required by this Section 3.9(a) and Buyer's receipt of such report from the independent engineer, the resizing of the COD Capacity Threshold according to Section 3.8 shall become effective.

ARTICLE 4 PRODUCTS

4.1 Contract Capacity. Subject to the terms and conditions herein, throughout the Delivery Term, Seller shall make available to Buyer the Contract Capacity at the OP Delivery Point. In consideration thereof, Buyer shall make Capacity Payments to Seller in accordance with the provisions of Section 5.1. For the avoidance of doubt, in no event shall the offer by Seller to Buyer or Buyer's making a Product Request for Excess Capacity result in any Capacity Payments to Seller in excess of those contemplated by Section 5.1.

4.2 Contract Energy.

(a) Subject to the terms and conditions herein, throughout the Delivery Term, Seller shall perform Fuel Conversion Services to generate and produce from the Contract Capacity, inject at the Electric Interconnection Point and deliver financially to Buyer, and Buyer shall receive, at the Energy Financial Delivery Point in the Applicable Market, any Physically Requested Quantity of Contract Energy. In consideration of the Fuel Conversion Services (as

²⁶ **NTD**: Insert amount equal to the present value of one hundred twenty percent (120%) of the Option Premium payable over the course of the Delivery Term.

described in Section 4.5) and injection and delivery of associated Delivered Energy during the Delivery Term, Buyer shall make Variable Payments and Start-up Payments to Seller in accordance with and subject to the provisions of Section 5.2 and Section 5.3, respectively.

(b) Notwithstanding anything to the contrary, whether or not Buyer expressly makes a Product Request therefor (and, as a result, whether or not included in the Maximum Delivered Contract Energy or any Physically Requested Quantity), (i) Seller shall inject at the Electric Interconnection Point, and deliver financially to Buyer, all Ramp Energy, but (ii) Ramp Energy shall be deemed not to be “DE_i” for purposes of Schedule 5.2. Without limiting the foregoing, Buyer shall not make Variable Payments in accordance with the provisions of Section 5.2 with respect to Ramp Energy.

4.3 Capacity-Related Benefits, Environmental Attributes, and Other Electric Products.

(a) Buyer’s right to Contract Capacity according to this Agreement includes the right to all Capacity-Related Benefits, Environmental Attributes and Other Electric Products during the Delivery Term, and the Capacity Payment includes all compensation to Seller for such Products. With respect to the Delivery Term, Buyer shall have the right to make Product Requests for such Products (in the case of physical Other Electric Products, according to Section 7.2), and Seller shall generate (if applicable, by performing Fuel Conversion Services) and deliver to Buyer at the applicable OP Delivery Point any such Products for which Buyer so makes a Product Request (in the case of physical Products, to the extent there is a Physically Requested Quantity); provided, however, that, in the case of any such Products that are not physical in nature, Seller shall, without requirement of any Product Request from Buyer, (i) cause to be issued any and all such Products, (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) all such Products and (iii) use Commercially Reasonable Efforts to maximize the quantity of such Products issued and transferred to Buyer. For all purposes of this Agreement, any Products issued prior to or during (or, if relating (in whole or in part) to the Delivery Term (or a portion thereof), after) the Delivery Term, even if relating (in whole or in part) to the period before or after the Delivery Term, shall be considered to be Products “during the Delivery Term” and shall belong to Buyer pursuant to this Agreement. Notwithstanding the foregoing, Buyer shall not be entitled to, and Seller may retain, Emission Allowances allocated to the Facility for a Compliance Period that are required by applicable environmental Laws to be, and are, retired by Seller to offset emissions or regulated pollutants from the Facility during that same Compliance Period (meaning, for the avoidance of doubt, that any such Emission Allowances that would otherwise be banked for a future Compliance Period are not subject to this sentence and belong to, and shall be provided to, Buyer).

(b) Without limiting Section 4.3(a), Seller shall (at its own expense) timely execute and file all documents and take all other actions that are necessary or advisable to qualify or register the Facility, the Contract Capacity and the Contract Energy 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, the Contract Capacity and/or the 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 4.3 (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 18.

(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 Product.

(e) Seller shall notify Buyer if qualification, registration and/or participation in any Product or Applicable Environmental Attribute Program will disqualify the Facility (and/or any portion thereof) and/or the 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), and Seller shall 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.

(f) ZRC Obligations

(i) Without limiting this Section 4.3, for any Planning Year commencing on or after the Guaranteed Commercial Operation Date (whether or not the Commercial Operation Date has occurred), Seller shall transfer to Buyer custody of and title to (or, if not possible, the benefit of, as directed by Buyer) at least a quantity of ZRCs, for (and covering the entirety of) each Season thereof, equal to the higher of (A) the Minimum ZRC Requirement or (B) the SAC Rating for the Facility (which, for the avoidance of doubt, may be greater than the Expected Capacity) for such Season (if any), all by the earliest of (1) 1200 CPT on the March 5 immediately preceding the applicable Planning Year, (2) ten (10) Business Days before any MISO deadline applicable to the filing of any MISO resource adequacy plan for such planning year, (3) ten (10) Business Days before the commencement of the Planning Resource Auction applicable to such Planning Year, and (4) ten (10) Business Days before any applicable MISO deadline regarding the use of capacity credits to satisfy MISO's resource adequacy requirements (the "ZRC Transfer Deadline"), even if the ZRC Transfer Deadline occurs before the Delivery Term Commencement Date; provided, however, that, to the extent Seller does not provide ZRCs from the Facility to satisfy its obligations pursuant to this Section 4.3(f)(i), Seller shall satisfy such obligations by providing to Buyer (by the ZRC Transfer Deadline)

ZRCs of equivalent or higher market and compliance/qualification value sourced from resource(s) other than the Facility (which, for the avoidance of doubt, must correspond to the zone in which the Energy Financial Delivery Point is located) (“Replacement ZRCs”) for the applicable Season(s). Notwithstanding anything to the contrary in this Section 4.3, if Seller satisfies its obligation to provide ZRCs to Buyer pursuant to this Section 4.3(f)(i) with Replacement ZRCs for any applicable Season, Seller may retain any ZRCs subsequently awarded with respect to the Facility corresponding to (including being for the same Season as), and up to the amount of, the Replacement ZRCs so provided to Buyer.

(ii) For any ZRCs that Seller does not provide to Buyer by the ZRC Transfer Deadline as required by Section 4.3(f)(i) for any reason, Seller shall pay to Buyer, for each Season for which there is such a deficiency, an amount equal to (A) the greater of (1) the Auction Clearing Price for such Season, annualized as necessary to yield the aggregate amount that would be payable to cover one (1) MW of ZRCs for the entirety of such Season, or (2) if Buyer (as Market Participant for its load), despite good faith efforts, does not procure, for such Season, sufficient Replacement ZRCs to replace the ZRCs that Seller did not provide and is assessed costs or charges for failure to cover its resource adequacy requirements, the amounts of such costs and charges, including any “capacity deficiency charge” (which could be “cost of new entry” (CONE)), non-compliance charge, and any other cost or charge, on average for each MW of ZRCs in the applicable Season that Buyer did not replace (in the case of either (1) or (2), expressed in \$/MW), multiplied by (B) the quantity of ZRCs (expressed in MW) that Seller so failed to provide to Buyer for such Season, plus interest on such product at the Interest Rate accruing from the ZRC Transfer Deadline until the date payment is made. Any amounts payable pursuant to the immediately preceding sentence shall be included by Seller on the Monthly Invoice covering the month in which the ZRC Transfer Deadline occurs (but, if not so included, may be invoiced by Buyer to Seller according to Section 11.2(b)).

(iii) Buyer’s rights to the Contract Capacity according to this Agreement includes all ZRCs required to be provided by Seller according to this Section 4.3(f), and the Capacity Payment includes all compensation to Seller therefor.

(g) If providing any Other Electric Product requires a material physical modification to the Facility (including the addition of any equipment), Seller shall not be required to provide such Other Electric Product; provided, however, that if Buyer agrees to pay Seller the reasonable, out-of-pocket cost of making such modification, Seller shall promptly make such modification (provided the making of such modification and such modification will not interfere with the operation of the Facility in any material respect), and Seller shall then be required to provide such Other Electric Product with no other or further amount payable by Buyer to Seller in connection with the acquisition, provision, delivery, or receipt of such Other Electric Product.

4.4 Environmental Attributes.

(a) Without limiting Section 4.3 or Section 4.4(b), Seller shall, at its own expense:

(i) by the Energization Date (or such earlier time as may be necessary or advisable to qualify for, cause to be issued, and obtain and transfer to Buyer, all applicable Environmental Attributes to which Buyer is entitled according to Section 4.3(a)) and at all times thereafter, (A) cause the Facility and the Contract Capacity, Contract Energy, and/or Environmental Attributes (as applicable) to be certified and otherwise qualified for, and registered with, all Applicable Environmental Attribute Programs (subject to the last sentence of Section 4.3(e)) and (B) otherwise qualify for, and have in place all agreements and other arrangements (including all necessary accounts) to cause to be issued, and to obtain and transfer to Buyer, the Environmental Attributes under each Applicable Environmental Attribute Program;

(ii) at all times comply with all reporting and other requirements of the Applicable Environmental Attribute Programs; and

(iii) upon the request of Buyer from time to time, (A) deliver 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 to obtain and transfer to Buyer custody of, and give effect to and evidence the title of Buyer 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) Environmental Attribute Transfer Obligations

(i) In respect of the Facility, each MW of Contract Capacity, and each MWh of Contract Energy injected at the Electric Interconnection Point for financial delivery to Buyer (or as otherwise required by Section 4.6 or Section 7.8(f)) from the Energization Date through the end of the Delivery Term, but subject to the last sentence of Section 4.3(a), Seller shall cause to be issued, and obtain and transfer to Buyer, by the EA Transfer Deadline, all Environmental Attributes for which the Facility or such MW or such MWh is eligible under the Applicable Environmental Attribute Programs (subject to the last sentence of Section 4.3(e)); provided, however, that, if any such Environmental Attributes have not been issued, obtained by Seller and transferred to Buyer by the EA Transfer Deadline for any reason, Seller shall satisfy such obligations by transferring to Buyer (by the EA Transfer Deadline) Replacement EAs therefor. Notwithstanding anything to the contrary in Section 4.3, if Seller satisfies its obligation to cause to be issued, and obtain and transfer to Buyer, Environmental Attributes pursuant to this Section 4.4(b)(i) with Replacement EAs, Seller may retain any Environmental Attributes subsequently awarded with respect to the Facility or the applicable MW of Contract Capacity or MWh of Contract Energy (as applicable) corresponding to (including being for

the same vintage as), and up to the amount of, the Replacement EAs so transferred to Buyer.

(ii) 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 4.4(a)(iii) and/or 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)).

(iii) For any Environmental Attribute that Seller does not cause to be issued, and obtain and transfer to Buyer (or transfer to Buyer a Replacement EA therefor), by the EA Transfer Deadline as required by Section 4.4(b)(i), Seller shall pay to Buyer an amount equal to the greater of (A) the Reference EA Compliance Payment or (B) the average of at least two (2) price quotes obtained by Buyer from nationally recognized brokers at any time during the month in which the EA Transfer Deadline occurred or the next succeeding month, for the sale and delivery of Replacement EAs corresponding to such Environmental Attribute, plus interest on such greater amount at the Interest Rate accruing from the EA Transfer Deadline until the date payment is made. Any amounts payable pursuant to the immediately preceding sentence shall be included by Seller on the Monthly Invoice covering the month in which the EA Transfer Deadline occurs (but, if not so included, may be invoiced by Buyer to Seller according to Section 11.2(b)).

4.5 Fuel Conversion Services. Subject to the terms and conditions herein, during the Delivery Term, Seller shall perform the Fuel Conversion Services for Buyer, and, in consideration thereof and of the injection and delivery of Delivered Energy (as described in Section 4.2), Buyer shall make Variable Payments and Start-Up Payments to Seller in accordance with the provisions of Section 5.2 and Section 5.3, respectively.

4.6 Exclusivity. Seller agrees that the relationship between Buyer and Seller with respect to the Products is exclusive. Seller shall not offer to sell, deliver or make available, or sell, deliver or make available, any Products during the Delivery Term to or for any Person other than Buyer, including any Products during the Delivery Term for which Buyer does not make a Product Request or that otherwise go unused.

4.7 Nature of Service. Seller's obligations to make available, provide and deliver to Buyer the Products and to perform the Fuel Conversion Services shall be on a Unit Contingent basis; provided, however, that the foregoing shall not be construed to waive or limit Buyer's rights or remedies in this Agreement in the event of a Unit Contingency. Without limiting the foregoing, in the event of a Unit Contingency, Seller shall nonetheless be subject to the subtraction of "VPD_m" in the calculation of the Variable Payment according to Schedule 5.2 (to the extent set forth therein) and to the consequences of Section 4.3(f), Section 6.1 and Section 6.3 in respect of the circumstances 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, Seller shall operate the Facility, and shall not interrupt, curtail, withhold or otherwise reduce the availability or deliveries from the Facility or otherwise of the Products or the performance of the Fuel Conversion Services, such that, at all times during the Delivery Term, (a) Contract Energy is

actually generated by the Facility, injected at the Electric Interconnection Point and delivered to Buyer at the Energy Financial Delivery Point in the Applicable Market (up to the Maximum Delivered Contract Energy) at the Physically Requested Quantities and (b) 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, withhold or otherwise reduce the availability or deliveries of Products or the Fuel Conversion Services required to be provided to Buyer in accordance with this Agreement, regardless of prices or other economic conditions at the Electric Interconnection Point, whether or not the Monthly Availability is, for any period, at, above, or below the applicable Monthly Availability Requirement, or otherwise. For each MWh of Physically Requested Quantity of Contract Energy that is not generated by the Facility and injected at the Electric Interconnection Point, unless such shortfall resulted solely and directly from a Unit Contingency, Seller shall pay to Buyer the amount, if positive, equal to (a) the LMP (EFDP) 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, injected and delivered financially to Buyer at the Energy Financial Delivery Point minus (b) the sum of (i) the marginal Variable Payment (which, for the avoidance of doubt, excludes VPD_m) that would have been applicable to such Contract Energy and (ii) the product equal to (A) the Guaranteed Heat Rate applicable to such Contract Energy, multiplied by (B) the Daily Price of Gas for the Gas Day in which such shortfall occurs plus the Fuel Adder, plus (c) only if the price at which MISO settles the MISO Real-Time Energy Market at the Electric Interconnection Point for any interval(s) in which such Contract Energy would have been generated and injected is less than zero, then, calculated over such interval(s), the absolute value of such price at which MISO settles the MISO Real-Time Energy Market at the Electric Interconnection Point. In addition, Seller shall be required to comply with Section 4.4(b) with respect to any such Contract Energy as if it had been generated by the Facility, injected at the Electric Interconnection Point and delivered financially to Buyer at the Energy Financial Delivery Point according to this Agreement.

4.8 Replacement Products.

(a) Except as required by Section 4.4(b) with respect to Environmental Attributes and by Section 4.3(f) with respect to ZRCs, if Seller is not capable of providing the full availability of the Products as required hereunder, Seller shall not be permitted to provide Replacement Products as a substitute or replacement for the unavailable Products without the prior written consent of Buyer, in Buyer's sole and absolute discretion.

(b) If Seller makes an offer to provide Replacement Products for Buyer's consideration according to Section 4.8(a), and Buyer, in its sole and absolute discretion, accepts such 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, permitted 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 in accordance with the terms of this Agreement for the period agreed upon by Buyer, at no additional cost to Buyer. Subject to the foregoing and except to the extent the Parties have agreed otherwise in writing, replacement Capacity so provided as a permitted Replacement Product shall be treated as Contract Capacity for all purposes under this Agreement, including Monthly Availability calculations.

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

ARTICLE 5 PRICING AND PAYMENTS

5.1 Capacity Payment. Subject to the other terms hereof, for each month of the Delivery Term, Buyer shall pay to Seller the Capacity Payment determined in accordance with Schedule 5.1. Buyer shall make Capacity Payments monthly in arrears. If the Delivery Term Commencement Date is a date that does not fall on the first Day of a month or the date on which the Delivery Term expires or terminates pursuant to this Agreement is a date that does not fall on the last Day of a month, then the Capacity Payment in respect of the month in which such Delivery Term Commencement Date falls or the Delivery Term expires or terminates shall be prorated by a factor equal to (i) the number of full Days in such month in which the Delivery Term is in effect divided by (ii) the total number of Days in such month. For the avoidance of doubt, in no event shall the existence or provision to Buyer of Capacity-Related Benefits, Environmental Attributes or non-physical Other Electric Products in excess of the Dependable Capacity (including in a case where the scalar applied to the intermediate SAC Rating for the Facility is greater than one (1)) result in any additional Capacity Payments (or other payments) to Seller.

5.2 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 5.2 for the Fuel Conversion Services associated with, and delivery of, the Delivered Energy during such month; provided, however, that, if the Variable Payment is negative, then Seller shall pay the absolute value of the Variable Payment to Buyer. The applicable Party shall make Variable Payments monthly in arrears. Seller acknowledges that, subject to the proviso to Section 7.2(a), Buyer is under no obligation to make a Product Request for any Contract Energy at any time, and if there are no Physically Requested Quantities of Contract Energy in a month during the Delivery Term, either no Variable Payment shall be due for such month or, if "VPD_m" is positive in the calculation of the Variable Payment for such month according to Schedule 5.2, the Variable Payment shall be payable by Seller to Buyer. Notwithstanding anything to the contrary, Buyer shall have no obligation to pay for (and shall have no other liability for) any Energy that, regardless of reason therefor, is not "DE_i" (as defined in Schedule 5.2). Neither the subtraction of "VPD_m" in the calculation of the Variable Payment according to Schedule 5.2 nor anything else in Schedule 5.2, this Section 5.2 or otherwise herein shall be construed to waive or limit Buyer's rights or remedies under Section 6.1(b) or for the Event of Default of Seller described in Section 15.1(j), Buyer's other rights or remedies provided in this Agreement in the event of the occurrence of a Unit Contingency, or Buyer's other rights or remedies for any event of circumstance that does not qualify as a Unit Contingency.

5.3 Start-up Payment. Subject to the other terms hereof, for each month of the Delivery Term, Buyer shall pay to Seller the Start-up Payment determined in accordance with Schedule 5.3 for Completed Start-ups during such month, including associated Fuel Conversion Services. Buyer shall make Start-up Payments monthly in arrears. Seller acknowledges that Buyer is under no obligation to make Product Requests that result in a minimum number of Start-ups or Completed Start-ups over any time period in the Delivery Term, and if, in a month during the

Delivery Term, no Completed Start-ups are required as a result of Buyer's Product Requests or no such Start-ups become Completed Start-ups, no Start-up Payment shall be due for such month.

5.4 Set-off. Notwithstanding any provision of this Agreement to the contrary, Variable Payments, Start-up 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; provided, however, that Buyer may not deduct from, or set-off against, any Capacity Payments any amounts payable by Seller.

ARTICLE 6 GUARANTEED FACILITY PERFORMANCE CHARACTERISTICS

6.1 Availability Requirements.

(a) Notwithstanding anything to the contrary herein (including Section 4.7), the Monthly Availability shall be at least ninety-eight percent (98%) for each Summer Month (or portion thereof) and Winter Month (or portion thereof) of the Delivery Term and ninety-six percent (96%) for each other month (or portion thereof) of the Delivery Term (in either case, the "Monthly Availability Requirement"). Without limiting Section 5.2, if the Monthly Availability in any month of the Delivery Term is less than the corresponding Monthly Availability Requirement, the Variable Payment payable by Buyer in respect of such month shall include the subtraction of "VPD_m" for such month in accordance with Schedule 5.2.

(b) Notwithstanding anything to the contrary herein (including Section 4.7), the Rolling 12 Month Availability shall be at least the Rolling 12 Month Availability Requirement in each Rolling 12 Month Period, and if the Rolling 12 Month Availability is less than the Rolling 12 Month Availability Requirement as of the end of any month (or portion thereof) during the Delivery Term, an Event of Default shall have occurred with respect to Seller pursuant to Section 15.1(j), and Buyer may exercise its rights and remedies pursuant to Article 15.

6.2 Dependable Capacity. As of the Effective Date, the Dependable Capacity is the Expected Capacity. The Dependable Capacity may be adjusted from time to time pursuant to Section 9.4.

6.3 Guaranteed Heat Rate; Other True-ups.

(a) In the event that, in any hour, the Facility's actual Gas consumption for such hour (excluding Direct True-up Gas), expressed in actual MMBtu of Gas consumed, is:

(i) greater than the Maximum Guaranteed Heat Rate for such hour multiplied by "DE_i" (as defined in Schedule 5.2) for such hour, Seller shall pay to Buyer an amount equal to the product of (A) (1) the quantity of Gas (expressed in MMBtu) consumed by the Facility in such hour minus (2) the quantity of Gas (expressed in MMBtu) equal to the Maximum Guaranteed Heat Rate for such hour multiplied by "DE_i" (as defined in Schedule 5.2) for such hour, and (B) the sum equal to the Daily Price of Gas for the Gas Day in which such hour occurs plus the Fuel Adder; or

(ii) lower than the Minimum Guaranteed Heat Rate for such hour multiplied by “DE_i” (as defined in Schedule 5.2) for such hour, Buyer shall pay to Seller an amount equal to the product of (A) (1) the quantity of Gas (expressed in MMBtu) equal to the Minimum Guaranteed Heat Rate for such hour multiplied by “DE_i” (as defined in Schedule 5.2) for such hour minus (2) the quantity of Gas (expressed in MMBtu) consumed by the Facility in such hour, and (B) the sum equal to the Daily Price of Gas for the Gas Day in which such hour occurs plus the Fuel Adder.

Notwithstanding anything to the contrary, the following hours and volumes of Gas required to operate the Facility during such hours shall be excluded from all calculations under this Section 6.3(a): (x) the Start-Up Hours during any Start-Up and (y) any hour of any Shutdown Period corresponding to a Scheduled Shutdown. For the avoidance of doubt, the calculations under this Section 6.3(a) shall apply for any hours of a Start-up Period that are not Start-up Hours.

(b) Direct True-up Gas

(i) For the amount of Gas, in any hour that is not part of a Start-up Period or a Shutdown Period, equal to (A) the aggregate quantity of Gas (expressed in MMBtu), including Buyer-Provided Excess Gas (if any), consumed by the Facility in such hour, multiplied by (B) a fraction, (1) the numerator of which is the Over-generated Contract Energy during such hour and (2) the denominator of which is the aggregate amount of Contract Energy actually generated by the Facility and injected at the Electric Interconnection Point during such hour: Seller shall pay to Buyer an amount equal to the higher of (I) the product of (x) the quantity of such Gas (expressed in MMBtu) and (y) the sum equal to the Daily Price of Gas for the Gas Day in which such hour occurs plus the Fuel Adder or (II) the product of (x) the amount of the Over-generated Contract Energy during such hour (expressed in MWh) and (y) the weighted-average LMP (EIP) in the MISO Real-Time Energy Market (calculated on a weighted-average based on the quantity of the Over-generated Contract Energy during each MISO Settlement Interval of such hour) during such hour (provided that this clause (II) shall not apply in respect of any Over-generated Contract Energy during such hour generated by Seller and injected at the Electric Interconnection Point solely to comply with MISO’s dispatch instructions at the Electric Interconnection Point for MISO Settlement Interval(s) occurring during such hour for which (Q) the LMP (EIP) in the MISO Real-Time Energy Market exceeds the Minimum Market Price specified by Buyer in the Final Real-Time Product Request for such MISO Settlement Interval, but (R) the LMP (EFDP) in the MISO Real-Time Energy Market for such MISO Settlement Interval is less than such Minimum Market Price);

(ii) For the aggregate quantity of Gas (expressed in MMBtu) consumed by the Facility in any Start-up Hour of a Start that is not a Completed Start or a Shutdown Period for a Shutdown that is not a Scheduled Shutdown, Seller shall pay to Buyer an amount equal to the product of (A) the quantity of such Gas (expressed in MMBtu) and (B) the sum equal to the Daily Price of Gas for the Gas Day in which such hour occurs plus the Fuel Adder; and

(iii) With respect to the aggregate quantity of Gas (expressed in MMBtu) consumed by the Facility in the Start-up Hours of a Completed Start, (A) if such quantity

of Gas exceeds one hundred three percent (103.00%) of the aggregate Guaranteed Start Fuel applicable during such Start-up Hours, Seller shall pay to Buyer an amount equal to the product of (1) (x) the quantity of Gas (expressed in MMBtu) consumed by the Facility during such Start-up Hours minus (y) the quantity of Gas (expressed in MMBtu) equal to one hundred three percent (103.00%) of the aggregate Guaranteed Start Fuel applicable during such Start-up Hours, multiplied by (2) the sum equal the Daily Price of Gas for the Gas Day in which such Start-up Hours occur (calculated on a weighted-average based on the quantity of Gas consumed during the Start-up Hours in each Gas Day if such Start-up Hours span more than one Gas Day) plus the Fuel Adder, or (B) if such quantity of Gas is less than ninety-seven percent (97.00%) of the aggregate Guaranteed Start Fuel applicable during such Start-up Hours, Buyer shall pay to Seller an amount equal to the product of (1) (x) the quantity of Gas (expressed in MMBtu) equal to ninety-seven percent (97.00%) of the aggregate Guaranteed Start Fuel applicable during such Start-up Hours minus (y) the quantity of Gas (expressed in MMBtu) consumed by the Facility during such Start-up Hours, multiplied by (2) the sum equal the Daily Price of Gas for the Gas Day in which such Start-up Hours occur (calculated on a weighted-average based on the quantity of Gas consumed during the Start-up Hours in each Gas Day if such Start-up Hours span more than one Gas Day) plus the Fuel Adder.

(c) For each Product Commitment Period, Seller shall pay to Buyer the Buyer Contractual Make-Whole Payment (if any).

(d) All payments pursuant to this Section 6.3 shall be paid monthly in arrears.

6.4 Maximum Start-up Period.

(a) The Maximum Start-up Period shall be as set forth below:²⁷

<u>Type of Start</u>	<u>Maximum Start-up Period</u>
Hot Start	[●]
Warm Start	[●]
Cold Start	[●]

For all purposes of this Agreement, regardless of when the mechanical commencement of the applicable Start-Up actually occurs, the Maximum Start-up Period for such Start-Up shall be measured from the later of (i) Buyer’s providing the Applicable Final Product Request with respect to the Product Commitment Period requiring such Start-Up or (ii) the point in time that is the Maximum Start-up Period before the start of the first hour following such Start-Up during which the Physically Requested Quantity equals or exceeds (in the aggregate over the entire course of such hour) the quantity equal to the Minimum Output Level multiplied by one (1) hour.

²⁷ **NTD:** Insert Maximum Start-up Periods specified by Bidder in its proposal.

(b) If, in the case of any Start, Full Readiness is not achieved within the Maximum Start-up Period, then, subject to Section 6.4(c):

(i) Seller shall terminate the Start (any such Start, a “Failed Start”) and submit a new Availability Notice pursuant to Section 7.1 indicating that the entire amount of Contract Capacity associated with such Failed Start is unavailable during all Reference MISO Settlement Intervals covered by the Availability Notice(s) then in effect; and

(ii) the entire Dependable Capacity associated with such Failed Start shall be deemed to be unavailable in the Reference MISO Settlement Interval(s) from and after the later of the point in time described in clause (i) or (ii) under Section 6.4(a) and, for the avoidance of doubt, in any subsequent Reference MISO Settlement Interval until such Dependable Capacity is again available and Seller has submitted a new Availability Notice (subsequent to the Availability Notice described in Section 6.4(b)(i)) according to Section 7.1 (including Section 7.1(d)) indicating that such Dependable Capacity is again available for Product Requests (and all subject to the re-application of this Section 6.4(b) or the application of Section 6.4(c)(iii) during any subsequent Start).

(c) (i) In the case of any Start where Full Readiness is not achieved within the Maximum Start-up Period, Buyer may, notwithstanding Section 6.4(b), instruct Seller not to terminate such Start and grant Seller an extension of the period to achieve Full Readiness with respect to such Start (such extension to be of an amount of time selected by Buyer in its sole and absolute discretion). For the avoidance of doubt, if Buyer does not make an election to the contrary pursuant to this Section 6.4(c)(i), then Section 6.4(b) shall apply with respect to the Start.

(ii) If Buyer makes an election pursuant to Section 6.4(c)(i), then, to the extent Seller’s compliance with such election would not cause Seller, in Seller’s good faith judgment, to be in breach of its obligations under Section 9.1(b), Seller shall comply with such election. If (and only if) (A) Buyer makes such an election, (B) the Start is continued and (C) Full Readiness is achieved within the extended period granted to Seller under this Section 6.4(c), then Section 6.4(b) shall not apply in respect of such Start; provided however, only that portion of the Dependable Capacity for which Contract Energy was actually generated by the Facility and injected at the Electric Interconnection Point shall be considered actually available during any hours of the Start-Up Period that are not Start-Up Hours. If Buyer makes an election pursuant to Section 6.4(c)(i) but either the condition in Section 6.4(c)(ii)(B) or in Section 6.4(c)(ii)(C) does not hold true, then Section 6.4(b) shall apply. Any adjustment to Buyer’s Product Request (and to any Physically Requested Quantities) resulting from an election pursuant to this Section 6.4(c)(i) shall be considered a decrease in such Product Request (and such Physically Requested Quantities) resulting from a Unit Contingency or other limitation for all purposes of this Agreement.

(d) Without limiting its obligations under Section 7.1 and Section 9.7, if there is a Failed Start as described in Section 6.5(b), Seller shall advise Buyer’s schedulers when the issue(s) causing or giving rise to the Failed Start have been remedied and to what extent the Contract Capacity associated with such Failed Start is available for Product Requests.

6.5 Facility Modifications.

(a) Seller represents and warrants that there are no (i) Gas interconnections with any Transporter(s) or any other Person for the delivery of Gas to the Facility except as described in Schedule B, (ii) (A) spurs, feeds, or laterals from, or interconnections with, the Gas Interconnection Facilities except for spurs, feeds, or laterals to the Units (including the associated duct burners), or (B) except as described in clause (A), spurs, feeds, or laterals either to or from, or Gas interconnections with, the Facility or (iii) electric generating units or material users of Energy or Gas at or connected to the Facility other than the Units.

(b) Seller, without Buyer's prior written consent, in Buyer's sole and absolute discretion, shall not make any modification to the Facility or operations thereof after the Effective Date that is inconsistent with the requirements of this Agreement or does not conform with the Facility description set forth in Schedule B or reasonably would be expected to affect (i) the nameplate Capacity, Contract Capacity, or Contract Energy, (ii) the tagging, scheduling, offering, bidding, metering or settlement of any Product, (iii) the representations and warranties of Seller set forth in this Agreement (including Section 6.5(a)), (iv) eligibility for any Applicable Environmental Attribute Program, (v) negatively the type or quantity of Capacity-Related Benefits, Other Electric Products, or Environmental Attributes or (vi) in any other manner, Buyer's rights, benefits or obligations hereunder.

ARTICLE 7 PRODUCT REQUESTS AND DELIVERY

7.1 Availability Notices.

(a) Content of Availability Notices

(i) In accordance with this Section 7.1, Seller shall furnish to Buyer Availability Notices in substantially the form of Schedule 7.1(a) setting forth, with respect to the period or periods to which the Availability Notice relates:

(A) the actual amount of Dependable Capacity available in each Reference MISO Settlement Interval;

(B) the actual amount of Excess Capacity available in each Reference MISO Settlement Interval;

(C) the actual amount of Contract Capacity available without duct firing in each Reference MISO Settlement Interval;

(D) if any of the Contract Capacity is unavailable in any Reference MISO Settlement Interval, the reason(s) therefor; and

(E) whether the actual amount of Contract Capacity available in any Reference MISO Settlement Interval includes the capability to inject Contract Energy at the Electric Interconnection Point for the full operating range between

the Minimum Output Level and the full available Contract Capacity and, if not, the available operating range(s) and reason(s) for such unavailability.²⁸

(ii) The “actual amount” of Dependable Capacity, Excess Capacity and Contract Capacity without duct firing set forth in each Availability Notice in respect of any Reference MISO Settlement Interval (and whether such “actual amount” includes the capability described in Section 7.1(a)(i)(E)) shall be Seller’s reasonable best estimate (taking into account Section 4.6 and any other applicable provisions of this Agreement) of the amount of the applicable Capacity that will be available during such Reference MISO Settlement Interval. Seller shall prepare all such estimates following Accepted Industry Practices, including taking into account the Operating Restrictions, the operating condition of the Facility, the Facility’s energy requirements, 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 Dependable Capacity specified in the denominator of the Monthly Availability calculation shall not act as a cap on or otherwise affect Seller’s estimation of the amount of available Contract Capacity at any time.

(iii) If the actual amount of Dependable Capacity available in a Reference MISO Settlement Interval is less than the Minimum Output Level for operation of the Facility, Seller’s Availability Notice in respect of such Reference MISO Settlement Interval shall specify that the availability of the Dependable Capacity in such Reference MISO Settlement Interval is zero (0) MW.

(iv) Seller acknowledges and agrees that at no time during the Delivery Term may the Dependable Capacity declared, or deemed available hereunder, ever exceed the full amount of the Dependable Capacity or, without Buyer’s prior consent, the Contract Energy generated by the Facility and injected at the Electric Interconnection Point and delivered financially to Buyer at the Energy Financial Delivery Point in accordance with Section 7.8 ever exceed the Maximum Delivered Contract Energy, and Seller shall submit Availability Notices and operate the Facility accordingly.

(v) For all purposes of this Agreement, the Contract Capacity that is available shall be deemed available first as Dependable Capacity and then as Excess Capacity.

(b) Seller shall furnish a new Availability Notice to Buyer if the then-current Availability Notice is in error or there is or will be a Unit Contingency or other event, occurrence, condition, circumstance or action that, singularly or in combination, (i) reduces or interrupts or (subject to Section 7.1(d)) increases, or will reduce or interrupt or (subject to Section 7.1(d)) will increase, any delivery of Contract Energy and Other Electric Products to Buyer or (subject to Section 7.1(d)) otherwise results, or will result, in the availability of the Dependable Capacity, Excess Capacity or Contract Capacity without duct firing being more or less than that declared in the Availability Notice, or (ii) subject to Section 7.1(d), changes the capability of the Facility to

²⁸ **NTD:** This Model CCCT Tolling Agreement assumes a continuous operating range from the Minimum Output Level to the full Dependable Capacity (with no separate Minimum Output Level for duct firing that requires that creates a gap and, as a result, the need to address different configurations).

inject Contract Energy at the Electric Interconnection Point for the full operating range between the Minimum Output Level and the full available Contract Capacity or (iii) subject to Section 7.1(d), causes, or will cause, the Availability Notice then in effect to be inaccurate in any material respect. Each such new Availability Notice shall be substantially in the form of Schedule 7.1(a), reflect fully the changed circumstances since the submission of the prior Availability Notice and state the reason(s) for each modification to the prior Availability Notice. A new Availability Notice delivered in accordance with this Section 7.1(b) and the other requirements of this Agreement shall supersede and replace for all purposes the Availability Notice in effect prior to the delivery of the new Availability Notice.

(c) Timing and Delivery of Availability Notices

(i) Seller shall furnish Availability Notices to Buyer, by electronic mail to Buyer's day-ahead scheduling desk or other electronic transmission acceptable to Buyer in its reasonable discretion, at or (subject to the proviso to the next following sentence) before 0700 CPT on the Business Day immediately prior to the first Day to which such Availability Notice relates (the "Day-Ahead Availability Notice Deadline"). Seller may, in its sole and absolute discretion, satisfy the requirements of the preceding sentence by submitting the Availability Notice for a Day in advance of the Day-Ahead Availability Notice Deadline for such Day and/or submitting a single Availability Notice for multiple Days in advance of the Day-Ahead Availability Notice Deadline for the earliest Day included therein; provided, however, that Seller may not submit an Availability Notice for a Day more than seven (7) Days in advance of the Day-Ahead Availability Notice Deadline for the first Day in the Month in which such Day occurs (e.g., no submission earlier than 0700 BA Time on June 23, 2030, for any Day in July 2030), and, for the avoidance of doubt, Seller shall nonetheless be required to update any such Availability Notices according to Section 7.1(b). If, in respect of any Day, Seller fails to furnish an Availability Notice by the Day-Ahead Availability Notice Deadline for such Day, then, subject to Section 7.1(d), the Dependable Capacity, Excess Capacity and Contract Capacity without duct firing set forth as available in the Availability Notice for such Day shall be deemed to be zero (0) MW.

(ii) If Seller has submitted an Availability Notice and is required to furnish a new Availability Notice under Section 7.1(b), such Availability Notice shall be furnished (utilizing the same methodology as specified in the first sentence of Section 7.1(c)(i) for the initial Availability Notice) immediately after the occurrence (or, to the extent it has prior knowledge thereof, promptly after it has knowledge) of the event, occurrence, condition, circumstance or action giving rise to such new Availability Notice; provided, however, that if an Availability Notice for a Day is furnished after the Day-Ahead Availability Notice Deadline for such Day, Seller shall transmit any required emails to Buyer's current-day scheduling desk instead of Buyer's next-day scheduling desk and also contact Buyer's scheduling representative telephonically at the telephone number set forth in Schedule 19.1 and advise such representative of the existence of such Availability Notice and any modifications relative to the prior Availability Notice.

(iii) If Seller becomes aware after the Final Product Request Deadline in respect of any Reference MISO Settlement Interval that the actual amount of Dependable

Capacity available in such Reference MISO Settlement Interval was lower than the amount for such Reference MISO Settlement Interval stated in the Availability Notice for such Reference MISO Settlement Interval, Seller promptly shall notify Buyer's Energy Analysis and Reporting Group in writing of such discrepancy and the reason(s) therefor. In addition, to the extent any Monthly Availability calculations were issued to Buyer with the incorrect available Dependable Capacity, Seller shall revise the applicable Monthly Availability calculations to reflect the correct amount of available Dependable Capacity and, to the extent Buyer is due payment, include the amount of such payment as a credit to Buyer applied against the amount payable by Buyer pursuant to the Monthly Invoice following the month in which Seller becomes aware of such error, provided that, if the amount of such credit exceeds the amount payable by Buyer pursuant to such Monthly Invoice, then Seller shall pay such excess to Buyer.

(d) Changes after Day-Ahead Availability Notice Deadline

(i) Irrespective of the actual availability of the Dependable Capacity in any Reference MISO Settlement Interval, Seller may not, in any Availability Notice furnished after the Day-Ahead Availability Notice Deadline therefor, (A) increase the amount of Dependable Capacity available in such Reference MISO Settlement Interval (but may increase the amount of Excess Capacity) from that set forth in the Availability Notice then in effect for such Reference MISO Settlement Interval or (B) increase the available operating range described in Section 7.1(a)(i)(E).

(ii) If, in respect of any Reference MISO Settlement Interval, during the period after the Day-Ahead Availability Notice Deadline but prior to the Final Product Request Deadline for such Reference MISO Settlement Interval, Seller becomes aware that the availability of the Dependable Capacity or operating range described in Section 7.1(a)(i)(E) in such Reference MISO Settlement Interval will be greater than that declared available for such Reference MISO Settlement Interval in the Availability Notice for such Reference MISO Settlement Interval and is not permitted to submit a new Availability Notice therefor pursuant to clause (i) above, Seller shall nonetheless immediately provide to Buyer a new Availability Notice according to Section 7.1(c)(ii) reflecting such increase to afford Buyer the opportunity to make Product Requests for Contract Energy and Other Electric Products from the additional available Dependable Capacity or operating range. To the extent that, in any Availability Notice furnished after the Day-Ahead Availability Notice Deadline therefor, Seller increases the amount of Dependable Capacity or operating range available in such Reference MISO Settlement Interval from that set forth in the Availability Notice then in effect for such Reference MISO Settlement Interval, then, whether or not Buyer makes Product Requests for (and/or the Physically Requested Quantities include) Contract Energy and Other Electric Products from the additional available Dependable Capacity or operating range, for all purposes of this Agreement (including Monthly Availability determinations hereunder), such Availability Notice shall be deemed to reflect only the amount of Dependable Capacity available and/or the operating range described in Section 7.1(a)(i)(E) set forth for such Reference MISO Settlement Interval in the last Availability Notice in effect for such Reference MISO Settlement Interval that was furnished before the Final Product Request Deadline.

7.2 Product Requests for Physical Products.²⁹

(a) Throughout the Delivery Term, Buyer shall have the right to make Product Requests (including the right to modify any existing Product Requests) for the performance of Fuel Conversion Services (as applicable) and delivery to Buyer (financially at the Energy Financial Delivery Point in accordance with Section 7.8, in the case of Contract Energy, or at the OP Delivery Point, in the case of other physical Products) of Contract Energy and physical Other Electric Products from time to time as Buyer deems appropriate in its sole and absolute discretion, subject to [(i) Buyer’s observance of the Operating Restrictions and]³⁰ (ii) Buyer’s compliance with the other limitations on Product Requests set forth in this Section 7.2; provided, however, that to the extent that, at the applicable time, there is a “must-offer” or similar obligation under the MISO Rules that expressly requires Seller to offer any such Products into either or both of the MISO Markets for economic dispatch by MISO and Seller notifies Buyer of (and, in reasonable detail, of the extent of) such requirement at least thirty (30) Days in advance, Buyer shall make (and, to the extent so required and notified by Seller, not modify) Product Requests for such Products as and to the extent Buyer is permitted to do so by this Agreement. To the extent the Facility is capable, from time to time, of reduced Operating Restrictions and, as a result, Seller could allow Buyer greater Scheduling flexibility, Seller shall make such increased capability available to Buyer.

(b) Product Requests

(i) Buyer may, at or before 0800 CPT on the Day immediately prior to the Day for which delivery is scheduled (the “Day-Ahead Product Request Deadline”), make a Product Request (or modify an existing Product Request) for the performance of Fuel Conversion Services (as applicable) and delivery to Buyer (financially at the Energy Financial Delivery Point in accordance with Section 7.8, in the case of Contract Energy, or at the OP Delivery Point, in the case of other physical Products) of Contract Energy and physical Other Electric Products during all or a portion of any Day subsequent to such Day (“Day-Ahead Product Request”). To make a Day-Ahead Product Request, Buyer shall furnish to Seller a Product Request Notice, in substantially the form set forth in Schedule 7.2(b)(i), in respect of such Day-Ahead Product Request (a “Day-Ahead Product Request Notice”), at or before the Day-Ahead Product Request Deadline, specifying, for each MISO Settlement Interval applicable to the MISO Day-Ahead Energy Market of such Day, the Product Request Components for such MISO Settlement Interval. For the avoidance of doubt, Buyer may, in its sole and absolute discretion, submit Day-Ahead Product Request Notices more than one (1) Day in advance of the Day on which delivery is scheduled and submit Day-Ahead Product Request Notices for multiple Days.

(ii) Buyer may submit to Seller, in respect of any Day, the initial Product Request Notice after the Day-Ahead Product Request Deadline for such Day or may modify a Day-Ahead Product Request Notice or any other previously submitted Product Request Notice by submitting a new Product Request Notice for such Day to Seller; provided, however, that such Product Request Notice shall be submitted to Seller (A) if

²⁹ **NTD:** Structure of Product Requests still under review by Buyer.

³⁰ **NTD:** Remains under Buyer review.

such Product Request Notice requires a Completed Start that was not already required by any Product Request Notice already in effect, at least the Maximum Start-Up Period before the start of the Reference MISO Settlement Interval in which such Completed Start is required to be achieved (meaning the start of the first hour of a Completed Start-Up during which Seller is requested to generate (in the aggregate over the entire course of such hour) output equal to at least the Minimum Output Level multiplied by one (1) hour) or (B) otherwise, with timing consistent with the maximum ramp rates applicable according to the Operating Restrictions (the “Final Product Request Deadline”); provided, further, that (1) if such Product Request Notice is submitted after the Day-Ahead Product Request Deadline, such Product Request Notice shall be broken down by MISO Settlement Intervals applicable to the MISO Real-Time Energy Market (as opposed to the MISO Settlement Interval applicable to the MISO Day-Ahead Energy Market, as contemplated by Section 7.2(b)(i)), and (2) to the extent the Final Day-Ahead Product Request is not modified after the Day-Ahead Product Request Deadline, Buyer shall be deemed for all purposes of this Agreement to have submitted the same Product Request to Seller after the Day-Ahead Product Request Deadline, but broken down by MISO Settlement Intervals applicable to the MISO Real-Time Energy Market as described in clause (2) above. A new Product Request Notice delivered by Buyer hereunder in respect of any Day shall supersede and replace for all purposes the previous Product Request Notice in effect for such Day.

(iii) The submission by Buyer of a Product Request Notice that does not comply with the requirements hereof (or any failure of Buyer to submit a Product Request Notice that is required hereby) shall not constitute or give rise to a breach, default, Event of Default or Potential Event of Default of Buyer, but the Product Request Notice will automatically be deemed to be issued and/or reduced or increased, as applicable, to the nearest level (and for the minimum time period) that results in such Product Request Notice being in compliance with the requirements of this Agreement.

(iv) Notwithstanding anything to the contrary:

(A) unless, in its Product Request ultimately in effect for a MISO Settlement Interval for an Applicable Market (being the Final Day-Ahead Product Request for such MISO Settlement Interval for the MISO Day-Ahead Energy Market and the Final Real-Time Product Request for such MISO Settlement Interval for the MISO Real-Time Energy Market), Buyer expressly designated a particular quantity of Product for such MISO Settlement Interval as self-scheduled, then:

(1) the request of such quantity of Product shall be deemed made by Buyer subject always to the condition that, for such MISO Settlement Interval, the LMP (EFDP) in such Applicable Market is greater than the Minimum Market Price specified by Buyer in such Product Request for such quantity; and

(2) if such condition is not satisfied for such MISO Settlement Interval, then Buyer’s Product Request for such Product at such quantity level shall be deemed to be 0 MWh for such MISO Settlement

Interval in such Applicable Market (rather than the level specified in Buyer’s Product Request) *ab initio* for all purposes of this Agreement; and

(B) the “Requested Quantity” of each Product for a MISO Settlement Interval with respect to each of the MISO Day-Ahead Energy Market and MISO Real-Time Energy Market shall be the highest quantity level of such Product remaining in the Final Day-Ahead Product Request and Final Real-Time Product Request, respectively, after application of clause (A) above.

(c) For purposes of assisting Buyer with its planning, Seller estimates that the average Contract Energy generated by the Facility and injected at the Electric Interconnection Point during each hour of the Maximum Start-up Period will be as follows in the following cases:

Type of Start	Cold Start	Warm Start	Hot Start
Start-Up Hour 1	[●] MWh	[●] MWh	[●] MWh
<i>[add additional row(s) for any additional Start-Up Hour(s) of the Maximum Start-up Period for the applicable type of Start]</i>			

7.3 Market Participant.

(a) Subject to Section 7.3(b):

(i) To the extent applicable in any Balancing Authority applicable to the Injection Portion (as is the case on the Effective Date), Seller shall (or shall cause a designee to) act as the Market Participant (or similar representative) for the Facility before such Balancing Authority. 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 Energization Date (or, if such concept is not applicable at such time, 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 of the Market Participant (or similar representative) 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 7.4(e), settlement with such Balancing Authority, (D) transmitting to such Balancing Authority operational data and coordinating outages, and (E) submitting Facility generation estimates, schedules, bids and offers, all according to the standards of performance set forth in Section 9.1(b).

(b) Notwithstanding Section 7.3(a), Buyer may, at its sole discretion and from time to time (but not during the period of time commencing one hundred and eighty (180) Days prior to the Expected Energization 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 during all or part of the Delivery Term. In such event, the Parties, acting reasonably and in good faith and fully consistent with the rights and obligations of Buyer and Seller in this Agreement, shall agree upon the modifications and amendments of this Agreement required to reflect the case that Buyer is the Market Participant and set forth the same as a new Schedule 7.3(b) 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. If Buyer and Seller do not agree upon and set forth such modifications as a new Schedule 7.3(b) within thirty (30) Days after Buyer's request, Buyer may submit the matters in Dispute for resolution in accordance with Article 18. After this Agreement has been modified to include such new Schedule 7.3(b), Seller shall cause the Balancing Authority applicable to the Injection Portion (i) to qualify and recognize Buyer (or its designee) as the Market Participant (or similar representative) for the Facility 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 so possible) 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 so possible) or (B) the end of the Delivery Term. 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 7.3(b), the provisions set forth in Schedule 7.3(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 such Market Participant (or similar representative) for the Facility. While such provisions are in effect, if there is any conflict that cannot reasonably be reconciled between the provisions of Schedule 7.3(b) and the other terms of this Agreement, the provisions of Schedule 7.3(b) shall control and prevail.

7.4 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 7.3(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 Electric Interconnection Point; (B) tag the Products; and (C) settle any such schedules, offers, bids and/or tags with the applicable Balancing Authority(ies), subject to any re-allocation of associated amounts, if applicable, expressly provided in this Agreement; provided, however, that Seller shall (or shall cause its designee to) (1) tag, schedule, offer and/or bid the Products pursuant to this Section 7.4(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 and

(2) without limiting Section 9.1(b), shall do so in a manner that results in compliance with its obligations under this Agreement (including Article 4 and Section 7.5). Without limiting the foregoing, the non-dispatch or reduced dispatch of the Facility by MISO or another applicable Transmission Provider or interruption or curtailment of electric transmission or other limitation on Products by MISO or another applicable Transmission Provider, in each case, made in response to schedules, offers, bids or tags submitted to MISO or another applicable Transmission Provider (or otherwise on the basis of price signals), such that Seller does not generate from the Facility, inject at the Electric Interconnection Point and deliver to Buyer (financially at the Energy Financial Delivery Point in accordance with Section 7.8, in the case of Contract Energy, or at the OP Delivery Point, in the case of other physical Products) all Physically Requested Quantities, shall be considered a breach by Seller hereunder, and the Dependable Capacity in excess of the Delivered Energy shall be considered unavailable for all purposes of this Agreement.

(ii) During all times that 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, (A) Seller shall cause the Facility to be 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, and (C) Seller shall, no later than the Applicable Tag Deadline, 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. If Seller becomes aware that 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. 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). If, at any time after tagging is in effect, 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 7.4(a)(ii).

(b) Resource Designation

(i) Seller represents and warrants to Buyer that, as of the Effective Date, the Facility is eligible for the following resource designation(s) with the Balancing Authority applicable to the Injection Portion: [●]. Seller shall notify Buyer promptly upon (A) the existence of any new resource designations for which the Facility is eligible and/or (B) any resource designations for which the Facility ceases to be eligible. Buyer shall be entitled to select the resource designation(s) (or for no resource designations to be made) for the Facility, and Seller shall not register the Facility with the Balancing Authority except in accordance with such designation(s) selected by Buyer. From time to time (but not during the period of time commencing one hundred and eighty (180) Days prior to the Expected Energization 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 7.4(b). 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 7.4(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).

(ii) To the extent that, in Buyer's good faith judgment, the implementation of a resource designation selected by Buyer pursuant to this Section 7.4(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, 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 Agreement (including Section 7.4(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 18.

(c) Seller shall cause, on or before the Energization Date and thereafter through the end of the Delivery Term, (i) the Balancing Authority(ies) applicable to the Electric Interconnection Point to recognize, according to the Electric Interconnection Agreement and applicable Law, 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 Authority(ies) determine separately for settlement purposes the amount of Products actually generated by the Facility and injected at the Electric Interconnection Point and, if applicable, recognize the Facility as a separate generating resource for tagging, scheduling, offering and bidding purposes), (ii) the Electric Interconnection Point, according to the Electric Interconnection Agreement and applicable Law, to be (and to be contracted to be) within the Buyer LRZ, and (iii) the local Balancing Authority applicable to the Facility to be Entergy Texas, Inc., in its capacity as local Balancing Authority. Seller shall keep Buyer reasonably apprised of the progress with respect to arrangements contemplated by this Section 7.4(c) and, to the extent not already in place as of the Effective Date, 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 in which Buyer is participating or otherwise realize and maximize the benefits of the Products, (ii) otherwise exercise its rights or perform its obligations set forth in this Section 7.4 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 18.

(e) Settlement Matters

(i) Subject to Section 7.4(e)(ii), Buyer shall be entitled to any and all payments and credits from (but, except as otherwise provided in this Section 7.4(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, and/or the Fuel Conversion Services (including any associated Start-ups or Shutdowns), for which Buyer makes a Product Request (or otherwise required to be provided to Buyer hereunder) during the Delivery Term, including any revenue sufficiency guarantee and other make-whole payments, even if such payments or credits are part of settlement with respect to points (including the Electric Interconnection Point) other than the Energy Financial Delivery Point or applicable OP Delivery Point. If any such payments or credits are received by Seller (or its designee), Seller shall promptly pay such amounts (or cause them to be paid) to Buyer. Further:

(A) Buyer shall be responsible for payment of the absolute value of any negative LMP (EFDP) in the Applicable Market for any Day-Ahead Delivered Energy and Real-Time Delivered Energy; and

(B) if Buyer makes a Product Request for any Other Electric Products that are physical in nature and Seller delivers such Products to Buyer at the OP Delivery Point according to the Physically Requested Quantities and this Agreement, Buyer shall be responsible for settlement at negative prices of such Other Electric Products so delivered to Buyer at the OP Delivery Point with the Balancing Authority applicable to the OP Delivery Point.

(ii) Notwithstanding Section 7.4(e)(i), Seller shall be entitled to any LMP (EIP) paid in settlement of the Contract Energy upon injection at the Electric Interconnection Point and, without limiting Seller’s obligations to make Buyer Contractual Make-Whole Payments under Section 6.3(c) (if applicable), to any make-whole payment for Start costs and No Load Offer (as defined in the MISO Rules) costs in settlement at the

Electric Interconnection Point. 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 7.4(e)(i). Without limiting the foregoing, Seller shall be responsible for any and all Imbalance Charges for Energy Imbalances; provided, however, that, for each MWh of Buyer-Settled Shortfall Energy in any MISO Settlement Interval during the Delivery Term, Buyer shall pay to Seller the LMP (EFDP) for such MISO Settlement Interval in the MISO Real-Time Energy Market minus the LMP (EFDP) applicable to such MISO Settlement Interval in the MISO Day-Ahead Energy Market (provided that, if such difference is negative for any such MWh of Buyer-Settled Shortfall Energy, Seller shall pay to Buyer the absolute value of such difference).

(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 (but taking into account the penultimate sentence of Section 4.3(a) with respect to which Products are considered to be “during the Delivery Term” and, thus, within the scope of Section 7.4(e)(i) and not this Section 7.4(e)(iii)), 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.

7.5 Deliveries of Products.

(a) Subject to the other terms and conditions hereof, Seller shall make available all Contract Capacity, and shall deliver all Products for which Buyer makes a Product Request hereunder (or otherwise required to be provided to Buyer hereunder), to Buyer in accordance with the requirements of this Agreement (including the applicable Product Request Notice, if any, and Section 7.2(b)(iv)).

(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. Without limiting its obligations under the Electric Interconnection Agreement and other applicable Laws, if any Contract Capacity, Contract Energy, or physical Other Electric Products provided by Seller hereunder fail to conform to the specifications therefor set forth in the Electric Interconnection Agreement and applicable Laws, then Seller, upon obtaining knowledge thereof, shall immediately notify Buyer and 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.

(c) Buyer may sell, transfer, or convey to any Person(s), in its sole and absolute discretion, any Products provided to Buyer hereunder.

7.6 Interconnection and Transmission Services.

(a) Seller shall, at its own expense, (i) obtain prior to the Energization Date, and maintain thereafter through the end of 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 Electric Interconnection Point and the financial delivery of the Contract Energy actually generated by the Facility and injected at the Electric Interconnection 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) obtaining and maintaining any interconnection and transmission arrangements necessary for clause (i) or clause(ii)(A) of this Section 7.6 or to qualify/register for, generate, obtain, transfer and otherwise provide to Buyer the intangible Products (including ZRCs). All costs of any Network Upgrades and other additions, modifications and upgrades at or beyond the Electric Interconnection Point, and all other costs otherwise required or incurred to perform and comply with this Section 7.6(a), shall be borne by Seller.

(b) Buyer does not intend to seek, and shall not be required to seek or obtain, any transmission service in connection with this Agreement.

(c) The requirement of Buyer to accept deliveries of Products hereunder shall be subject to: (i) the valid and binding orders and directives of Balancing Authorities, other Transmission Providers and Governmental Authorities having jurisdiction and (ii) 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.

7.7 Title and Risk of Loss.

(a) Buyer shall and retain have title to Contract Energy and other Products that are physical in nature and generated for delivery to Buyer automatically upon the generation thereof, both before and after the Electric Interconnection Point, Energy Financial Delivery Point and OP Delivery Point (as applicable), subject to Section 7.5(c). Title to Products that are not physical in nature to be provided to Buyer shall vest in, and transfer to, Buyer automatically upon the issuance or other generation thereof. Seller warrants that, upon generation thereof, Buyer will have and vest in good and valid title to all Products to be provided hereunder, free and clear of all security interests, purchase rights, claims, charges, liens, and other encumbrances or any interest therein or thereto.

(b) Title to Contract Gas shall at all times remain with Buyer, both before and after delivery of the Contract Gas to the Gas Delivery Point. [Title to Buyer-Provided Excess Gas (if any) shall pass from Buyer to Seller at the Gas Delivery Point.]³¹

(c) Notwithstanding Section 7.7(a) and Section 7.7(b), 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 provided to Buyer after the Energy Financial Delivery Point, (B) other Products that are physical in nature provided to Buyer after the OP Delivery Point and (C) Contract Gas prior to the Gas

³¹ NTD: Still under review by Buyer.

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 provided to Buyer at and prior to the Energy Financial Delivery Point, (B) other Products provided to Buyer that are physical in nature at and prior to the OP Delivery Point, (C) Contract Gas at and after the Gas Delivery Point, and (D) all other Products and Gas (excluding Contract Gas but including Buyer-Provided Excess Gas, if any) at all times. Risk of loss related to (i) the Contract Energy provided to Buyer shall transfer from Seller to Buyer at the Energy Financial Delivery Point, (ii) other Products provided to Buyer that are physical in nature shall transfer from Seller to Buyer at the OP Delivery Point, (iii) other Products provided to Buyer that are not physical in nature shall transfer from Seller to Buyer upon receipt by Buyer of title thereto and custody thereof according to this Agreement, (iv) Contract Gas shall transfer from Buyer to Seller at the Gas Delivery Point, and (v) all other Products and Gas (excluding Contract Gas but including Buyer-Provided Excess Gas, if any) shall at all times be with Seller.

7.8 Financial Scheduling. For all purposes of this Agreement, the delivery to Buyer at the Energy Financial Delivery Point in the Applicable Market of the Day-Ahead Delivered Energy and Real-Time Delivered Energy, as well as the payment by Buyer of the amount contemplated by Section 7.4(e)(i)(A) (if applicable), shall be made as follows:

(a) For each MISO Settlement Interval during the Delivery Term, Seller shall use best efforts to prepare and submit to MISO, by the earlier of 1400 BA Time on the third Business 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) for each Applicable Market 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 (A) for the MISO Day-Ahead Energy Market, the amount of Day-Ahead Delivered Energy, if any, during such MISO Settlement Interval, or (B) for the MISO Real-Time Energy Market, the amount of Real-Time Delivered Energy, if any, during such MISO Settlement Interval, (iii) designates the Electric Interconnection 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 it has at that time. In the event, despite its best efforts, Seller is unable to prepare and submit to MISO a Financial Schedule in accordance with the first sentence of this Section 7.8(a) for a MISO Settlement Interval by the E4 Settlement Submission Deadline, Seller shall (i) promptly notify Buyer by telephone to Buyer's current-day scheduling desk that it has not submitted a Financial Schedule (or modification thereof) and (ii) prepare and submit to MISO a Financial Schedule that meets the requirements of clauses (i)-(v) of the first sentence of this Section 7.8(a) as soon as possible but in no event later than six (6) hours before the MISO FinSched Deadline.

(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 second sentence of Section 7.8(a)), and its associated FinSched Notice, by the applicable deadline set forth in 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] [day-ahead]³² 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 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 with the immediately preceding sentence, the “subject to Section 7.8(e)” set forth in

³² **NTD:** Seller to indicate which scheduling desk should receive notice.

Section 7.8(d) 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 18 (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 second 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 7.8(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 second sentence of Section 7.8(a)) for any reason, 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:

(i) if such circumstance occurred (in whole or in part) as a result of Seller's breach of this Agreement and the FinSched True-up Amount is positive, Seller shall pay to Buyer the amount equal to (A)(1) 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 second sentence of Section 7.8(a)), minus (2) the Variable Payment (excluding VPD_m) that would have been paid by Buyer to Seller for such MISO Settlement Interval if the Financial Schedule had been submitted and confirmed in such manner, minus (B)(1) 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), minus (2) the Variable Payment (excluding VPD_m) actually paid by Buyer to Seller for such MISO Settlement Interval in accordance with the manner in which the Financial Schedule was actually submitted and confirmed (such amount, whether positive or negative, the "FinSched True-up Amount");

(ii) if such circumstance occurred solely as a result of Buyer's breach of this Agreement and the FinSched True-up Amount is negative, Buyer shall pay to Seller the absolute value of the FinSched True-up Amount; or

(iii) if such circumstance neither occurred (in whole or in part) as a result of Seller's breach of this Agreement or solely as a result of Buyer's breach of this Agreement (including where 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), then (A) if the FinSched True-up Amount is positive, Seller shall pay to Buyer the FinSched True-up Amount, or (B) if the FinSched True-up Amount is negative, Buyer shall pay to Seller the absolute value of the FinSched True-up Amount.

Seller shall include, in the next Monthly Invoice issued under Article 11, the FinSched True-up Amount (or absolute value thereof), if payable by either Party according to this Section 7.8(f). 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. Without limiting the foregoing, in such event, Seller shall be required to comply with Section 4.4(b) with respect to any such Contract Energy as if it had been generated by the Facility, injected at the Electric Interconnection Point and delivered financially to Buyer at the Energy Financial Delivery Point according to this Agreement. 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 second sentence of Section 7.8(a)), and its associated FinSched Notice, by the applicable deadline set forth in 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 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 delivery in accordance therewith) to effect through such Balancing Authority the 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 Electric Interconnection 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 the Parties shall cooperate in good faith to implement an equitable arrangement consistent with the intended allocation of rights, obligations, costs, and benefits with respect to physical delivery of Contract Energy as otherwise required under this Agreement.

7.9 ARR/FTR. All ARR allocations and, if applicable, FTR allocations by any Balancing Authority(ies) applicable to the Injection Portion or 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, provided, however, that in no event shall Buyer be obligated at any time during the Contract Term to seek any such entitlements (including ARRs and, if applicable, FTRs) derived

from or otherwise related to the Facility. 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.

7.10 Scheduling and Delivery of Fuel.³³

(a) Gas Interconnection and Transportation Arrangements

(i) The Transporter(s) for Contract Gas (including the interconnecting Transporter(s) at the Gas Delivery Point), and the point(s) of interconnection with the existing mainline(s) of such Transporter(s), shall be as selected by Buyer in its sole and absolute discretion, provided that Buyer shall select from the agreed options set forth in Schedule 7.10(a)(i). Subject to the other terms and conditions hereof, Buyer shall negotiate the Gas Transportation Arrangements (other than the Gas Lateral Transportation Arrangements), and the terms and conditions of such Gas Transportation Arrangements shall be as negotiated by Buyer in its sole and absolute discretion. Upon the negotiation of such Gas Transportation Arrangements by Buyer, Seller shall promptly (but in no event more than ten (10) Business Days after negotiation thereof by Buyer) enter into such Gas Interconnection Arrangements with the applicable Transporter(s).

(ii) Without limiting Section 7.10(b) or Section 9.1, Seller shall negotiate, enter into and maintain in effect the Gas Interconnection Arrangements and the Gas Lateral Transportation Arrangements and shall do so in a manner that (A) respects the Transporter(s) for Contract Gas (including the interconnecting Transporter(s) at the Gas Delivery Point), and the point(s) of interconnection with the existing mainline(s) of such Transporter(s), selected by Buyer pursuant to Section 7.10(a)(i), (B) provides sufficient capacity and compression for the delivery of Contract Gas as required hereunder when the Facility is operating at the Maximum Output Level through the end of the Delivery Term and, in the case of the Gas Lateral Transportation Arrangements, provides for Firm Gas Transportation (as defined in the applicable Transporter's then effective tariff, general terms and conditions or statement of operating conditions) for such capacity, and (C) otherwise enables the Parties' compliance with their obligations herein (including having completion and online dates consistent with the applicable Target Dates).

(iii) From and after entering into the Gas Interconnection Arrangements and Gas Transportation Arrangements, Seller shall at all times (in the case of the Gas Transportation Arrangements, even during the release of capacity contemplated by Section 7.10(a)(iv)), at its own expense, (A) perform and observe all of the covenants and

³³ **NTD:** This Section 7.10 (and related provisions of this Model CCCT Tolling Agreement) are subject to adjustment by Buyer based on the location of the Facility and potentially available Gas supply and transportation (and/or to take into account the specific structure contemplated for the Gas Transportation Arrangements).

agreements of Seller contained in, and otherwise comply with, the Gas Interconnection Arrangements and Gas Transportation Arrangements (including providing any credit support required of Seller thereunder and complying with obligations with respect to operation and maintenance of equipment and maintenance of pressure at and beyond the Gas Delivery Point), excluding (for the avoidance of doubt) any obligations assumed by Buyer pursuant to the release of capacity contemplated by Section 7.10(a)(iv) until re-released to Seller pursuant to Section 7.10(a)(v), (B) without Buyer's prior written consent (in Buyer's sole and absolute discretion), not amend, waive or otherwise modify, or consent to the amendment, waiver or other modification of, or terminate or assign, any Gas Interconnection Arrangement, Gas Transportation Arrangement or provision of any of the foregoing (provided that Seller may modify any Gas Interconnection Arrangement or Gas Lateral Transportation Arrangement so long as it continues to comply with Section 7.1(a)(ii) and, in the case of any Gas Lateral Transportation Arrangements, the modification does not adversely affect Buyer in respect of the period of release of capacity to Buyer contemplated by Section 7.10(a)(iv)), and (C) as directed by Buyer, take any and all action as may be reasonably necessary promptly to exercise, enforce and preserve any rights of or affecting, and to collect any and all sums due to, Buyer under the Gas Transportation Arrangements relating to the period of release of capacity to Buyer contemplated by Section 7.10(a)(iv). Without limiting the foregoing, Seller shall at all times (even during the release of capacity contemplated by Section 7.10(a)(iv)), at its own expense, maintain the credit support required of Seller under the Gas Transportation Arrangements (if any) to permit the automatic re-release of the capacity thereunder by Buyer to Seller according to Section 7.10(a)(v) (including the full release of Buyer from any and all obligations and liabilities under any Gas Transportation Arrangements); provided, however, that, if the Gas Transportation Arrangements and terms of the release of capacity contemplated by Section 7.10(a)(iv) do not provide for such automatic re-release, then Buyer shall have the right to require additional an Applicable PA Amount, effective as of the date of entering into the release of capacity contemplated by Section 7.10(a)(iv), in the amount calculated by Buyer at such time in a commercially reasonable manner to secure Seller's payment of the amount contemplated by Section 7.10(a)(v) in the event Seller does not comply with Section 7.10(a)(v) upon expiration or termination of this Agreement.

(iv) By 0700 CPT on (but not before) the Business Day immediately prior to the expected Delivery Term Commencement Date (or, if Buyer exercises its option in Section 9.4(e), the Expected Energization Date), Seller shall make a non-recallable release to Buyer through the end of the Delivery Term, on terms and conditions acceptable to Buyer in its reasonable discretion, of the capacity under the Gas Transportation Arrangements, effective as of the expected Delivery Term Commencement Date (or, if Buyer exercises its option in Section 9.4(e), as of the Expected Energization Date), and thereafter shall maintain in full force and effect, and (without limiting the foregoing) shall not limit, suspend, recall or terminate, such release; provided, however, that, under the terms of such release, Seller shall retain (without recourse by the applicable Transporter(s) to Buyer), and Buyer shall not assume or be responsible for, the payment obligations of shipper under the Gas Lateral Transportation Arrangements (if any).

(v) Upon expiration or termination of this Agreement, Buyer shall re-release back to Seller the capacity under the Gas Transportation Arrangements, effective as of such expiration or termination, and (if required) Seller shall accept such re-release. To the extent not accomplished automatically by such re-release, Seller shall assume (and obtain the full release of Buyer from) any and all obligations and liabilities under any Gas Transportation Arrangements, effective as of such expiration or termination. Without limiting the foregoing, Seller shall provide any credit support that may be required by each applicable Transporter in order to cause such Transporter to accept such assumption (and full release of Buyer). In the event Seller does not comply with this Section 7.10(a)(v) upon expiration or termination of this Agreement, then, without limiting any other right or remedy (or measure of damages) of Buyer under this Agreement or at law or in equity, Seller shall pay to Buyer the present value of the remaining payments due under the Gas Transportation Arrangements with respect to the period after such expiration or termination under the end of the respective terms of the Gas Transportation Arrangements.

(b) Seller shall, at its own expense, obtain (except for the negotiation of the Gas Transportation Arrangements (other than the Gas Lateral Transportation Arrangements) required of Buyer pursuant to Section 7.10(a)(i)) prior to the Energization Date (without limiting any requirements of Section 7.10(a)), and maintain (except for any obligations assumed by Buyer pursuant to the release of capacity contemplated by Section 7.10(a)(iv) until re-released to Seller pursuant to Section 7.10(a)(v)) thereafter through the end of the Delivery Term, Gas interconnection for the Facility according to the Gas Interconnection Arrangements and firm Gas transportation service according to the Gas Transportation Arrangements (each of which Gas Interconnection Arrangements and Gas Transportation Arrangements shall at all times comply with Section 7.1(a)). All costs of any upgrades, including by applicable Transporter(s), required for Gas interconnection according to the Gas Interconnection Arrangements and firm Gas transportation service according to the Gas Transportation Arrangements, and all other costs otherwise required or incurred to perform and comply with this Section 7.10(b), shall be borne by Seller (except for any obligations assumed by Buyer pursuant to the release of capacity contemplated by Section 7.10(a)(iv) until re-released to Seller pursuant to Section 7.10(a)(v)).

(c) Subject to the other terms and conditions hereof (including Section 7.10(a), Section 7.10(b) and Section 9.4(e)), Buyer shall be responsible for and bear the full costs of the procurement, transportation, nomination, and delivery of Contract Gas up to the Gas Delivery Point(s) for the performance of Fuel Conversion Services by Seller hereunder, and Seller shall receive and accept such Contract Gas at the Gas Delivery Point(s). The supplier(s) and Transporter(s) of such Contract Gas and other Persons providing services with respect to Contract Gas shall be as selected by Buyer, and the terms of service with such supplier(s), Transporter(s), or Persons shall be as agreed to by Buyer, in each case in its sole and absolute discretion (subject to the proviso to the first sentence of Section 7.10(a)(i) and to Seller's right (and obligation) to negotiate, and right to modify, the Gas Lateral Transportation Arrangements according (and subject) to Section 7.1(a)(ii) and Section 7.1(a)(iii)). Buyer's sole and exclusive liability to Seller for any failure of Buyer to deliver Contract Gas to a Gas Delivery Point as required by this Agreement shall be the payment of the Imbalance Charges, if any, for Gas Imbalances to the extent provided in Section 7.10(f) and for the payment for Buyer-Settled Shortfall Energy (if applicable) according to the proviso to the last sentence of Section 7.4(e)(ii).

(d) Seller shall, and shall cause its Subcontractors (including Seller's and its Subcontractors' respective employees, agents and representatives) to, (i) cooperate and timely provide all materials and information requested by Buyer to facilitate Buyer's ability to make timely arrangements for and to procure, transport, nominate, and deliver Contract Gas to the Gas Delivery Point(s) in connection with this Agreement, including confirming nominations in accordance with the requirements of the applicable Transporter(s) or other requirements applicable to such nominations made by or for Buyer pursuant to this Agreement, (ii) operate and maintain the Gas Interconnection Facilities in accordance with the requirements of the Gas Interconnection Arrangements, (iii) serve as the point operator for the Facility, and (iv) otherwise comply with the obligations applicable to Seller under the Gas Interconnection Arrangements or in connection with the transportation of Gas to and/or within the Facility.

(e) Without limiting Section 9.1 or Section 9.2(a), Seller shall have sole responsibility for and bear the full costs of (i) the transportation and delivery of Contract Gas from and after the Gas Delivery Point(s) to the Facility and (ii) the arrangement, procurement, transportation, nomination, delivery, storage, use, loss and disposition of Gas (other than Contract Gas) and any other fuel necessary or advisable for the performance of its obligations hereunder or otherwise for the Facility at all times before, during and after the Delivery Term. Notwithstanding the foregoing, Buyer may (in its sole and absolute discretion), but shall not be obligated to, provide Gas (the "Buyer-Provided Excess Gas") (i) prior to the Delivery Term Commencement Date, if Buyer does not exercise its option in Section 9.4(e) but (e.g., as a result of a delay in the Delivery Term Commencement Date) the release of capacity contemplated by Section 7.10(a)(iv) has occurred, (ii) for any over-generation of Products above the Physically Requested Quantities (excluding Ramp Energy but including Products in excess of the Physically Requested Quantities according to clause (ii) of the last sentence of Section 9.4(h)), and/or (iii) for purposes other than Fuel Conversion Services. If Buyer (in its sole and absolute discretion) provides Buyer-Provided Excess Gas, the Buyer-Provided Excess Gas shall be at Seller's cost, expense and risk, and Buyer shall have no liability whatsoever to Seller for any failure to deliver any Buyer-Provided Excess Gas. Seller shall promptly pay to Buyer the actual cost of Gas (including the price of transportation of such Gas, Taxes, and the other costs incurred to deliver such Gas to the Gas Delivery Point(s)) incurred by Buyer in respect of Buyer-Provided Excess Gas, except that the Buyer-Provided Excess Gas described in clause (ii) above shall be compensated as Direct True-up Gas pursuant to clause (i) of Section 6.3(b). Seller acknowledges that Contract Gas (and Buyer-Provided Excess Gas, if any) delivered by Buyer to the Gas Delivery Point(s) will be delivered at the pressure then in effect in the pipeline of the Transporter(s) immediately upstream of or at such Gas Delivery Point.

(f) Notwithstanding anything to the contrary, Seller shall be responsible and pay for all Imbalance Charges relating to Gas Imbalances (regardless of whether assessed against Seller or Buyer) arising out of or in connection with this Agreement, provided that, except to the extent the deviation resulted from a Unit Contingency (ignoring, solely for this purpose, the proviso to the definition of "Unit Contingency") or other limitation not included in the Availability Notice in effect at the Day-Ahead Availability Notice Deadline for the Day in which the applicable hour occurs or increased availability of the Contract Capacity pursuant to Availability Notices submitted after such Day-Ahead Availability Notice Deadline, Buyer shall be responsible for any Imbalance Charges for Gas Imbalances resulting solely from (i) in hours that are not Start-up Hours or Test Hours, Buyer submitting nominations to the interconnecting Transporter(s) that are not

equal to the product of (A) the Physically Requested Quantity of Contract Energy, multiplied by (B) the associated Guaranteed Heat Rate (ignoring, for this purpose only, the second proviso to the definition of Guaranteed Heat Rate and the first proviso to the definition of Guaranteed Heat Rate as it relates to limitations known to Buyer at the time of nomination) or (ii) in Start-up Hours that are not Test Hours, Buyer submitting nominations to the interconnecting Transporter(s) that are not equal to the Guaranteed Start Fuel or (iii) in Test Hours, Buyer submitting nominations to the interconnecting Transporter(s) that are not equal to the quantity of Contract Gas to be required for such Test Hour in Seller's notice pursuant to Section 9.4(i).

ARTICLE 8

METERING; QUANTITY DETERMINATIONS; REAL-TIME DATA

8.1 Energy Metering. 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 the 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.

8.2 Energy Quantity Determinations.

(a) The amount of Contract Energy that is recognized by the Balancing Authority applicable to the Injection Portion as being actually generated or produced by the Facility and delivered to the Electric Interconnection Point for settlement purposes (but not including any quantity of Energy that such Balancing Authority credits to the Facility that was not actually generated by the Facility) shall be deemed to be the amount of Contract Energy actually generated or produced by the Facility and injected at the Electric Interconnection Point for all purposes of this Agreement.

(b) The amount of Delivered Energy for all purposes of this Agreement shall be deemed to be the least of (i) the amount of Contract Energy actually generated by the Facility and injected at the Electric Interconnection Point, as determined according to Section 8.2(a), (ii) 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 pursuant to Section 7.8 at the Energy Financial Delivery Point in the Applicable Market(s) for settlement purposes, 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.

8.3 Gas Metering and Gas Quantity Determinations.

(a) Seller shall be responsible for and bear the full costs of the engineering, procurement of equipment for, design, construction, installation, operation, maintenance, repair, replacement, testing, calibration, security, and integrity of (i) the Gas Metering Equipment and

(ii) any other facilities required for recognition by the interconnecting Transporter(s) of the Gas delivered to the Gas Delivery Point hereunder.

(b) The amount of Gas recognized by the interconnecting Transporter(s) as delivered to the Gas Delivery Point for settlement purposes shall be deemed to be the amount of the total Gas deliveries to the Gas Delivery Point for all purposes of this Agreement. Any adjustment to such amount recognized by the interconnecting Transporter(s) shall be made and settled in accordance with the methodologies recognized by the interconnecting Transporter(s) for settlement purposes, and only any adjustment to such amount recognized by the interconnecting Transporter(s) for settlement purposes shall be deemed to adjust such amount for purposes of this Agreement. To the extent that a statement or invoice from the interconnecting Transporter(s) (or, without limiting the foregoing, the amount of Gas recognized by the interconnecting Transporter(s) as delivered to the Gas Delivery Point for settlement purposes) may be disputed only by Seller as the point operator, then, to the extent any such dispute affects this Agreement, Seller shall (i) notify Buyer (and keep Buyer reasonably apprised) of any such dispute, (ii) not initiate, respond to or settle any such dispute without Buyer's consent and (iii) upon written request from Buyer, shall pursue such dispute.

(c) Seller shall record data from the Gas Metering Equipment (including volume and pressure measurements and temporal recordings) in electronic format consistent with the requirements of Section 8.3(e) and shall make the same available to Buyer.

(d) At its option and expense, Buyer may install and operate one or more check meters ("Check Meters") to check the accuracy and reliability of the Gas Metering Equipment hereunder. Check Meters shall be for verification purposes and shall not be used for the measurement of Gas, except as provided in Section 8.3(g) or in the methodologies recognized by the interconnecting Transporter(s) for settlement purposes (with respect to the amount of Gas recognized by the interconnecting Transporter(s) as delivered to the Gas Delivery Point).

(e) All Gas Metering Equipment, whether owned by Seller or by a third party, shall be capable of performing the measurements described herein (including in Section 9.6) and installed, operated, maintained, repaired, calibrated, tested, and secured by or on behalf of Seller, and data and information therefrom shall be recorded, maintained, stored, secured, and retrieved, in accordance with AGA and ANSI standards and the other requirements of this Agreement.

(f) Subject to the terms of the Gas Interconnection Arrangements, each Party shall have the right to receive reasonable advance notice with respect to, and to be present at the time of, any installation, cleaning, changing, repair, removal, inspection, testing, calibration, or adjustment of any of the Gas Metering Equipment or Check Meters, irrespective of whether the Gas Metering Equipment is owned or operated by the other Party or a third party. Seller shall provide to Buyer such reasonable advance notice with respect to the Gas Metering Equipment, and Buyer shall provide to Seller such reasonable advance notice with respect to any Check Meters. Seller shall make available to Buyer and its designees all data, records, and charts relating to the Gas Metering Equipment that are in the possession or control of Seller or any of Seller's Affiliates for inspection and verification.

(g) The following provisions in this Section 8.3(g) shall apply to the extent such provision(s) do not conflict with Section 8.3(b), or any provision regarding gas metering device requirements (including provisions for adjustment for inaccurate meters) under the Gas Interconnection Arrangements and applicable Laws (collectively, the “Governing Standards”), to a degree that such conflict that cannot reasonably be reconciled. To the extent such a conflict exists, the provision in conflict with the provision in this Section 8.3(g) shall be deemed to apply for purposes of this Agreement *mutatis mutandis*.

(i) Except to the extent waived by Buyer, Seller shall inspect, test, and calibrate, or cause to be inspected, tested, and calibrated, all Gas Metering Equipment periodically, but no less frequently than once each Contract Year, at a time mutually convenient for Seller and Buyer. Seller shall provide Buyer with reasonable advance notice of, and permit Buyer’s representatives to witness and verify, such inspections, tests and calibrations, and shall test following any adjustments made thereto in accordance with Section 8.7(g)(iii).

(ii) In addition to the other inspections and tests required under Section 8.7(g)(i), upon not less than ten (10) Days prior notice by Buyer, Seller shall perform additional inspections or tests of any of the Gas Metering Equipment in accordance with accepted Gas industry practices. Seller and Buyer shall agree on a mutually convenient time for such inspections or tests, and Seller shall permit Buyer’s representatives to inspect or witness such testing of any of the Gas Metering Equipment. The actual expense of any such requested additional inspection or testing shall be borne by Buyer, unless, upon such inspection or testing, the Gas Metering Equipment shall be found to register inaccurately by more than one percent (1.00%) or such lower percentage as may be established by the applicable Governing Standards, in which event the expense of the requested additional inspection or testing shall be borne by Seller.

(iii) When any test shall show a measurement error of more than one percent (1.00%) or such lower percentage as may be established by the applicable Governing Standards, such Gas Metering Equipment shall immediately be adjusted, repaired, replaced, and/or re-calibrated at the sole expense of Seller.

(iv) If the Gas Metering Equipment fails to register, or if the measurements made by the Gas Metering Equipment shall be found upon testing to be inaccurate by more than one percent (1.00%) or such lower percentage as may be established by the applicable Governing Standards, then Section 8.3(b) shall apply. To the extent that any adjustments are made according to Section 8.3(b) and such adjustments affect amounts previously billed, Seller shall use the adjustments as determined in accordance with Section 8.3(b) to re-compute the amount due under such previous bills and shall subtract the previous bills from such re-computed amount. If the difference is a positive number, such difference shall be paid by Buyer to Seller. If the difference is a negative number, such difference shall be paid by Seller to Buyer. Payment of such difference shall be made by means of a credit or an additional charge on the next Monthly Invoice rendered pursuant to Section 11.1 after such re-determination.

8.4 Limitations on Seller's Use of Information. Seller agrees to limit the disclosure of information with respect to Buyer's Product Requests, the Physically Requested Quantities, the tagging, scheduling, offering, bidding, dispatch by the applicable Balancing Authority(ies), Gas nominations, confirmations and deliveries, settlements, availability (including Availability Notices), Heat Rate, Start costs and fuel, Planned Maintenance, forced Outages, other Unit Contingencies, and other limitations and operational information relating to the Facility or this Agreement exclusively to the personnel designated (including any designated Market Participant) 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 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, and in no event shall use 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 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 violation 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 or performing work for Seller or any of its Affiliates of any of the information protected under this Section 8.4.

8.5 Real-Time Data.

(a) No later than sixty (60) Days prior to the Expected Energization Date, Seller shall install 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, and on the basis required by, this Section 8.5. Seller shall maintain such equipment and data thereafter through the end of the Delivery Term (according to the standards set forth in Section 9.1(b)).

(b) From and after the Energization Date through the end of the Delivery Term, Seller shall measure, record, store and provide to Buyer the data set forth in Schedule 8.5(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 Facility Site on the same frequency interval basis as Seller receives that data.

(c) On or before the Energization Date, Seller shall establish a virtual private network (VPN) connection between Seller and Buyer for automatic generation control from MISO. Following establishment of such VPN connection, Seller shall, through the end of the Delivery Term, maintain such connection and make available the data described in Section 8.5(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 through the end of the Delivery Term, (i) a substation data feed by DNP serial over fiber optic or other media from Seller's remote terminal unit to Buyer's on-site remote terminal unit. In connection therewith, Seller shall also provide to Buyer, through the end of 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 8.5(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 8.5(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 9 OPERATION AND MAINTENANCE; SELLER'S COST SCOPE

9.1 General Operation and Maintenance Obligations.

(a) Subject to the Parties' rights and obligations hereunder, Seller shall have full and complete responsibility for, and 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.

(b) Seller shall perform 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 7.3(b), if applicable), in accordance with (i) Seller's obligations herein (including in a manner that results in compliance with such obligations, including Article 4 and Section 7.5), (ii) the Deliverability Arrangements, (iii) the Gas Interconnection Arrangements and Gas Transportation Arrangements, (iv) Accepted Industry Practices and all relevant equipment manufacturers' requirements and recommendations, (v) all Consents and (vi) all applicable Laws and Governmental Approvals. If the foregoing standards of performance are inconsistent but one is more stringent than the other(s) (such that all can be complied with by complying with the most stringent standard of performance), Seller shall comply with the most stringent standard of performance. If two or more of the foregoing standards of performance are in conflict such that it is impossible to comply with all of them concurrently, Seller shall promptly notify Buyer of the conflict, and Buyer shall resolve such conflict in its sole and absolute discretion; provided, however, that, to the extent the requirements of applicable Laws are in conflict with one or more other standards of performance (such that it is impossible to comply with all of them concurrently), Seller shall comply with applicable Laws and not any such other standards of performance that are in conflict with applicable Laws (such that it is impossible to comply with applicable Law and such other standards of performance concurrently); provided, further, that the foregoing shall not be construed to waive or limit Buyer's rights or remedies herein (including the subtraction of "VPD_m" in the calculation of the Variable Payment according to Schedule 5.2 (to the extent set forth therein) and the consequences of Section 4.3(f), Section 4.4(b), Section 4.7, Section 6.1 and Section 6.3 in respect of the circumstances described therein) for any non-compliance by Seller with its obligations herein (including Article 4 and Section 7.5) resulting from any such conflict, nor to excuse or otherwise relieve Seller therefor. Seller shall (1) obtain and maintain all Governmental Approvals as may be required for the performance of Seller's Cost Scope 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 Electric Interconnection Point, Energy Financial Delivery Point and OP Delivery Points, as applicable. Without limiting the foregoing or Section 7.5(b), Seller shall operate the Facility electrically in parallel with the Host Utility transmission system and MISO Transmission System and shall deliver the Products in a form appropriate for such systems.

(c) Without limiting Section 9.1(b), Seller acknowledges and agrees that, without Buyer's prior consent and agreement, at no time during the Delivery Term may the Contract Energy actually generated by the Facility, injected at the Electric Interconnection Point and delivered financially to Buyer at the Energy Financial Delivery Point in accordance with Section 7.8 ever exceed the Maximum Delivered Contract Energy, subject to Section 4.2(b).

9.2 Seller's Cost Scope.

(a) (i) 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 or in the future in 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 7.4(e)(i) or Section 7.10 (in each case, if and when applicable). Without limiting the foregoing, the costs and expenses for which Seller shall be responsible shall include: (A) amounts payable and cost of performance under any of the Project Documents; (B) salaries, employee compensation, independent contractor and agent fees, costs, and expenses, employee or labor costs and expenses, and general administrative and management costs; (C) costs for the procurement, storage, operation, maintenance, repair, removal, testing, cleaning, replacement, and/or adjustment of tools, materials, fuels, parts, equipment, systems, items, chemicals, supplies, inventories, consumables, utility services (including water, water discharge, waste disposal, station power, *etc.*) and related costs; (D) insurance premiums and other insurance or surety-related costs; (E) Taxes for which Seller is responsible under Section 13.3; (F) costs of defending, prosecuting, or settling, or other costs incurred or payments made in respect of, any of pending or threatened Claim related to the Facility (including the real property interests related thereto), including fines, judgments, and legal fees and expenses; (G) capital expenditures, including all costs of major inspections, unscheduled or scheduled major maintenance of the Facility and all work on account of Outages, equipment malfunctions, errors, failures, or contingencies (including overhaul costs); (H) payments under operating leases, (I) consulting, legal, management, accounting, and other professional fees; (J) costs and fees incurred to obtain and maintain all Governmental Approvals or Consents relating to the Facility or its ownership, leasing, financing, insurance, development, engineering, equipment procurement, design, construction, installation, operation, maintenance, management, replacement, repair, studying, testing or other use or Seller's rights or obligations under this Agreement; (K) Environmental Costs; (L) costs of administrative, janitorial, cleaning, guard, and security services; (M) amounts arising out of or relating to any applicable financing documents with respect to the Facility, whether for principal reduction, interest, the withholding of Taxes, the establishment and maintenance of collateral and other credit support, the payment of premiums, fees, and other charges (including letter of credit, success, availability, origination, commitment, inspection, and agency fees), or any other fee, charge, cost, or expense, whether such amount is payable, in whole or in part, to

Lenders or other third parties, pursuant to such financing documents; (N) rent and other costs under any leases of real or personal property; (O) costs required to be incurred by the interconnection customer under the Electrical Interconnection Agreement and costs relating to the provision or delivery (including financial delivery) of Products to the Energy Financial Delivery Point or OP Delivery Point (as applicable); (P) actual Start-up and Shutdown costs, except as otherwise expressly set forth in Section 7.10; (Q) costs relating to Gas and other fuel, including acquisition, storage, and transportation, except as otherwise expressly set forth in Section 7.10; and (R) amounts deposited in any reserve account in respect of the foregoing.

(ii) Notwithstanding anything to the contrary, Seller shall be responsible for (A) except the amounts expressly allocated to Buyer pursuant to Section 7.4(e)(i), all Balancing Authority 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) all interconnection, transmission and other delivery costs, losses and charges (including the cost of any Network Upgrades), (4) any Imbalance Charges, (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 or in the future in 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, 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 7.4(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 7.3.

(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 7.4(e), Seller shall promptly pay such amount to Buyer.

9.3 Disconnection.

(a) If FERC, the any Transporter or fuel provider, the Host Utility, any market monitor, Balancing Authority, 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 any Gas or fuel transportation system (or requires that provision or delivery of Gas, fuel, or any Product otherwise be curtailed, reduced or interrupted), Seller shall be solely responsible for all costs and expenses incurred by Seller due to such disconnection (or curtailment, reduction or interruption).

(b) Seller shall exercise reasonable best efforts to correct promptly any condition at the Facility that necessitates the disconnection of the Facility or any of the Units from any interconnected electrical system or Gas or fuel transportation system or otherwise requires that provision or delivery of Gas, fuel, or any Product otherwise be curtailed, reduced or interrupted.

9.4 Capacity Demonstration Tests; Other Testing.

(a) Capacity Demonstration Tests

(i) 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 9.4(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 by thirty (30) Days prior to the anticipated Commercial Operation Date in the then-current Project Schedule, shall be (subject to the last sentence of Section 9.4(b)) fifteen (15) Days prior to such anticipated Commercial Operation Date. If 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 9.4. The final results of the then most recent Capacity Demonstration Test shall be used for purposes of determining satisfaction of the conditions to Commercial Operation and to determine the Dependable Capacity that will be in effect on the Delivery Term Commencement Date.

(ii) In addition to the Capacity Demonstration Tests required to be conducted by Seller pursuant to Section 9.4(a)(i), Buyer shall have the right to have the Dependable Capacity re-determined through Capacity Demonstration Tests at any time and from time to time after the fifth Contract Year Anniversary Date upon at least ten (10) Business Days' prior notice to Seller. Any Capacity Demonstration Test performed pursuant to this Section 9.4(a)(ii) shall be conducted on the date and at the time specified by Buyer in such notice. Any Capacity Demonstration Test conducted pursuant to this Section 9.4(a)(i) shall be at Buyer's expense for the Person (if such Person is not Seller) that conducts the Capacity Demonstration Test (including the costs of the report described in Section 9.4(f)).

(b) Unless otherwise mutually agreed upon by both Parties in writing, each Capacity Demonstration Test shall be conducted by [●]; provided, however, that, if [●] is unavailable or unwilling to conduct the Capacity Demonstration Test, the Capacity Demonstration Test shall be conducted by [●]; provided further that, if [●] is also unavailable or unwilling to conduct the Capacity Demonstration Test, the Capacity Demonstration Test shall be conducted by

[●]. Each Capacity Demonstration Test shall be performed in accordance with Accepted Industry Practices, the protocols and the procedures set forth on Schedule 9.4 and any other applicable requirements of this Agreement. Each Capacity Demonstration Test shall account for energy losses to the Electric Interconnection Point in accordance with Accepted Industry Practices. No Capacity Demonstration Test shall be scheduled to occur during any Unit Contingency or other Outage.

(c) Buyer shall have the right to witness each Capacity Demonstration Test and any other testing required by this Agreement. Seller shall provide Buyer, upon Buyer's request, with all raw data collected from a Capacity Demonstration Test and any other testing required by this Agreement.

(d) Seller (i) shall provide all test instrumentation, equipment, systems, tools, material, labor, utilities (other than provision of Contract Gas by Buyer, to the extent provided in Section 9.4(e) and Section 9.4(h), if and as applicable) and services necessary to conduct each Capacity Demonstration Test and any other testing required by this Agreement, subject to Section 9.4(a)(ii), and (ii) without limiting any obligation of Buyer to pay Variable Payments for "DE_i" (as defined in Schedule 5.2) in connection with such testing (to the extent provided in Section 9.4(e) and Section 9.4(h), if and as applicable), shall bear the full Operation and Maintenance Costs and any other costs to provide the items described above for, and otherwise to conduct, each Capacity Demonstration Test (including the costs incurred in connection with the preparation and delivery of the report(s) described in Section 9.4(f)) and any other testing required by this Agreement.

(e) For any Capacity Demonstration Tests pursuant to Section 9.4(a)(ii), Buyer shall (i) subject to Seller's compliance with the notice requirements set forth in this Section 9.4(i), (A) make Product Requests from the Facility according to the quantities of each Product to be delivered during the applicable Capacity Demonstration Test, as set forth in Seller's notices pursuant to Section 9.4(i), and (B) provide, subject to the other terms hereof, any associated Contract Gas, (ii) be entitled to all Products from the applicable Capacity Demonstration Test to the extent of the Physically Requested Quantities and otherwise subject to, and in accordance with, this Agreement (including financial delivery to Buyer of Contract Energy at the Energy Financial Delivery Point in accordance with Section 7.8) and (iii) pay Variable Payments for "DE_i" (as defined in Schedule 5.2) in connection with such test. For any Capacity Demonstration Tests pursuant to Section 9.4(a)(i) and any other testing required by this Agreement prior to the Delivery Term Commencement Date, Buyer shall have the option (in its sole and absolute discretion), but shall not be obligated, to receive all Products from the applicable test to the extent of the Physically Requested Quantities and otherwise subject to, and in accordance with, this Agreement (including financial delivery to Buyer of Contract Energy at the Energy Financial Delivery Point in accordance with Section 7.8). If Buyer exercises such option, Buyer (i) shall, subject to Seller's compliance with the notice requirements set forth in this Section 9.4(i), (A) make Product Requests from the Facility according to the quantities of each Product to be delivered during the applicable test, as set forth in Seller's notices pursuant to Section 9.4(i), and (B) provide, subject to the other terms hereof, any associated Contract Gas, but (ii) shall not be required to pay Variable Payments (or Start-up Payments), in connection with such test. If Buyer does not exercise such option, Seller (without limiting Section 9.4(d)) shall provide any Gas required for such test and may sell any or all Products from the applicable test to MISO.

(f) Seller, at its expense, 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 and that includes the calibration records for the test instrumentation. Seller, at its expense, shall cause the Person conducting each Capacity Demonstration Test to deliver to Buyer each draft of the report and the final report promptly upon completion thereof, and Buyer shall have the right to comment on each draft report. 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.

(g) In the absence of manifest error, beginning at the start of the month immediately following each successfully completed Capacity Demonstration Test, the Dependable Capacity determined pursuant to such Capacity Demonstration Test shall replace the Dependable Capacity in effect prior to such Capacity Demonstration Test. The Dependable Capacity determined pursuant to such Capacity Demonstration Test shall be the maximum Energy output, as measured at the Electric Interconnection Point (with the Facility at 100% full load), of the Facility over an aggregate period of four (4) consecutive hours, adjusted to Reference Conditions, during such Capacity Demonstration Test, rounded down to the next whole MW; provided, however, that, regardless of the result of such Capacity Demonstration Test, the Dependable Capacity may never exceed the lesser of (i) the Expected Capacity or (ii) if applicable, the Capacity level to which the COD Capacity Threshold was re-sized according to Section 3.8.

(h) Without limiting Section 4.3, to the extent either Party is required by applicable Laws to demonstrate the capability of, or otherwise test, the Facility (or any portion thereof) after the Delivery Term Commencement Date for purposes of capacity qualification or for any other purpose (including to meet requirements imposed by Buyer's participation in any reliability group or Balancing Authority or in any marketplace administered by any Balancing Authority), then Seller shall, at Seller's sole cost and expense, (a) cause such 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 any Person designated by Buyer. Seller shall provide Buyer reasonable advance notice of, and (without limiting Section 9.4(c)) the right to witness, any such tests. For any such test required pursuant to Laws applicable solely to Buyer, Buyer shall (i) subject to Seller's compliance with the notice requirements set forth in Section 9.4(i), (A) make Product Requests from the Facility according to the quantities of each Product to be delivered during the applicable test, as set forth in Seller's notices pursuant to Section 9.4(i), and (B) provide, subject to the other terms hereof, any associated Contract Gas, (ii) be entitled to all Products from the applicable test to the extent of the Physically Requested Quantities and otherwise subject to, and in accordance with, this Agreement (including financial delivery to Buyer of Contract Energy at the Energy Financial Delivery Point in accordance with Section 7.8) and (iii) pay Variable Payments for "DE_i" (as defined in Schedule 5.2) in connection with such test. For any other testing required by this Section 9.4(h), (i) Buyer (A) may, but shall not be obligated to, make Product Requests from the Facility in its sole and absolute discretion (subject to the proviso to Section 7.2(a)), and (B) to the extent makes such Product Requests, shall (1) provide, subject to the other terms hereof, any associated Contract Gas, (2) be entitled to all Products from the applicable test to the extent of the Physically Requested Quantities and otherwise subject to, and in accordance with, this Agreement (including financial delivery to Buyer of Contract Energy at

the Energy Financial Delivery Point in accordance with Section 7.8) and (3) pay Variable Payments for “DE_i” (as defined in Schedule 5.2) in connection with such test (i.e., the ordinary course provisions of this Agreement with respect to Product Requests, Contract Gas, receipt of Products and payment shall apply as if no testing was happening), and (ii) to the extent the Physically Requested Quantities are insufficient to carry out such other testing according to applicable Laws, Seller (without limiting Section 9.4(d)) shall provide any Gas required for, and may sell to MISO, any or all Products required to carry out the applicable test according to applicable Laws in excess of the Physically Requested Quantities.

(i) In connection with any Capacity Demonstration Tests pursuant to Section 9.4(a)(ii) and any testing prior to the Delivery Term Commencement Date in respect of which Buyer exercises its option in this Section 9.4(e) and any testing performed pursuant to Section 9.4(h), Seller shall, without limiting Section 7.1, provide Availability Notices according to Section 7.1; provided, however, that Seller shall also include in such Availability Notices: (i) the quantity of each Product to be delivered (including financial delivery to Buyer of Contract Energy at the Energy Financial Delivery Point in accordance with Section 7.8) in each Reference MISO Settlement Interval of the applicable test and (ii) the quantity of Contract Gas to be required for each hour of such test.

9.5 Access. Seller shall, upon reasonable prior notice given by Buyer to Seller, provide employees or representatives of Buyer or its Affiliates accompanied access to the Facility at all reasonable times and for any reasonable duration, for the purposes of: (a) witnessing, inspecting, reviewing or performing any obligation, and/or (b) exercising any right of Buyer under this Agreement. In exercising such rights, Buyer shall not unreasonably interfere with or disrupt the operation of the Facility or Electric Metering Equipment and shall comply with all of Seller’s security and safety regulations of general applicability at the Facility Site communicated to Buyer.

9.6 Planned Maintenance.

(a) Seller shall coordinate and schedule in accordance with this Section 9.6 all planned maintenance of the Facility that includes 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 Electric Interconnection Point or the deliverability of the other Products at the OP Delivery Point occurring during the Delivery Term. Seller may schedule and conduct such planned maintenance (i) only during the months of March and April (the “Spring Maintenance Period”) and October and November (the “Fall Maintenance Period”), (ii) without limiting Seller’s obligations under Section 4.3(f) or otherwise Buyer’s rights or remedies herein in the event of a shortfall in SAC Rating, only with the exercise of Commercially Reasonable Efforts to obtain exemptions therefor for capacity accreditation purposes (including calculation of SAC Rating) and (iii) only to the extent included in the approved Planned Maintenance Schedule established according to this Section 9.6; provided, however, that, so long as the planned maintenance starts on the predetermined start date established according to such Planned Maintenance Schedule, a Planned Outage may, subject to Section 9.6(d), exceed the duration set forth in such Planned Maintenance Schedule, but any excess Equivalent Planned Maintenance Hours shall be considered Excess Equivalent Planned Maintenance Hours.

(b) Submission of Planned Maintenance Schedules

(i) Seller shall deliver to Buyer its proposed schedule for Planned Maintenance (“Planned Maintenance Schedule”) on or before (A) in respect of each Spring Maintenance Period all or part of which occurs during the Delivery Term, September 1 of the calendar year preceding such Spring Maintenance Period and (ii) in respect of each Fall Maintenance Period all or part of which occurs during the Delivery Term, February 1 of the calendar year in which such Fall Maintenance Period will begin.

(ii) Planned Maintenance Schedules submitted by Seller shall include (A) reasonably detailed descriptions of the Planned Maintenance to be performed, (B) the Days and times in which each type of Planned Maintenance is scheduled to be performed, (C) the estimated amount(s) of Dependable Capacity and Excess Capacity that will be unavailable due to each Planned Maintenance, (D) the estimated level of Dependable Capacity and Excess Capacity, if any, to be available during each Planned Maintenance, (E) whether the actual amount of Contract Capacity to be available during each Planned Maintenance (if any) includes the capability to inject Contract Energy at the Electric Interconnection Point for the full operating range between the Minimum Output Level and the full available Contract Capacity (and, if not, the available operating range(s)), and (F) the total number of Equivalent Planned Maintenance Hours that Seller expects that the Dependable Capacity will be unavailable due to Planned Maintenance.

(iii) The general form for Planned Maintenance Schedules is set forth in Schedule 9.6(b). The Planned Maintenance descriptions reflected in Schedule 9.6(b) are provided for indicative purposes only, are not necessarily representative of the detail, time periods, or certainty required for a Planned Maintenance Schedule hereunder, and are not binding on either Party.

(c) Buyer shall have the right to disapprove, in its reasonable discretion, any Planned Maintenance set out in any Planned Maintenance Schedule, provided that Buyer shall have the right to disapprove, in its sole and absolute discretion, any Planned Maintenance proposed by Seller for any period that is not a Planned Maintenance Period or that is otherwise inconsistent with the terms of this Agreement. If Buyer does not disapprove of any Planned Maintenance set out in a Planned Maintenance Schedule by sixty (60) Days after submission under Section 9.6(b), then such Planned Maintenance Schedule shall be deemed approved. If Buyer notifies Seller of its disapproval of any Planned Maintenance within the applicable time period, the Parties shall use Commercially Reasonable Efforts to agree upon a mutually acceptable Planned Maintenance Schedule for the applicable Contract Year. Seller shall conduct Planned Maintenance only in accordance with an agreed Planned Maintenance Schedule.

(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) an Availability Notice to Buyer reflecting such availability and declaring the cessation and termination of the applicable Planned Maintenance period, and the Planned Maintenance period

shall terminate in accordance with the terms of such Availability Notice. For the avoidance of doubt, if Planned Maintenance for a Planned Outage is completed in fewer hours than the applicable Equivalent Planned Maintenance Hour Cap Amount, Seller shall not be entitled to apply any of the unused Equivalent Planned Maintenance Hours associated with such Planned Outage toward any other Planned Outage.

(e) This Section 9.6(e) sets forth the calculation to determine, subject to Section 9.6(f), clause (a)(i) of the definition of “Equivalent Planned Maintenance Hour Cap Amount” for each type of Planned Outage described below:³⁴

(i) one hot gas path inspection may be performed for the Facility’s combustion turbine Unit after every 15,000 Run Hours of such Unit for up to 336 Equivalent Planned Maintenance Hours for each inspection; provided, however, that this clause (i) shall not apply during multipliers of Run Hours when clause (ii) below applies;

(ii) one major inspection may be performed for the Facility’s combustion turbine Unit after every 60,000 Run Hours of such Unit for up to 840 Equivalent Planned Maintenance Hours for each inspection;

(iii) (A) a steam turbine “minor” inspection may be performed for the Facility’s steam turbine Unit after every 30,000 Run Hours of such Unit for up to 672 Equivalent Planned Maintenance Hours for each “minor” inspection, and (B) a steam turbine “major” overhaul may be performed for the Facility’s steam turbine Unit after every 60,000 Run Hours of such Unit for up to 840 Equivalent Planned Maintenance Hours for each “major” overhaul; provided, however, that clause (A) above shall not apply during multipliers of Run Hours when clause (B) above applies; and

(iv) Balance of Plant Outages may be performed concurrently with the Planned Outages under clauses (i)-(iii) above, provided that no Equivalent Planned Maintenance Hours other than those permitted in clauses (i)-(iii) above shall be permitted for such Balance of Plant Outages;

provided, however, that, if the number of Run Hours indicated above are expected by Seller to occur during periods other than the Spring Maintenance Period or Fall Maintenance Period, Seller shall schedule, in accordance with Section 9.6(b), as Planned Maintenance any performance of such inspection or overhaul, as the case may be, during the Spring Maintenance Period or Fall Maintenance Period immediately preceding or immediately following their occurrence, notwithstanding the foregoing limitations; provided, further, that (1) in the event that two or more of the Planned Outages under clauses (i)-(iv) are expected to occur within the same twelve (12)-month period according to the parameters set forth above, Seller shall use Commercially Reasonable Efforts to schedule all such Planned Outages to occur and run concurrently for the maximum possible time during the same maintenance period, *e.g.*, the Spring Maintenance Period or the Fall Maintenance Period, and, in order to do so, may take the affected Planned Outages earlier or later than they would be taken according to the foregoing limitations and (2) for the avoidance of doubt, if, during any hour, more than one of the Planned Outages described in this

³⁴ **NTD:** Permitted Planned Maintenance remains under Buyer review.

Section 9.6(e) are occurring concurrently, such hour shall accrue against the Equivalent Planned Maintenance Hour Cap Amount for all of such Planned Outages. Notwithstanding the foregoing, the second preceding proviso and clause (1) of the immediately preceding proviso shall not apply if the result of giving effect thereto would be the acceleration of maintenance otherwise to be performed by or for Seller after the expiration of the Delivery Term to a date during the Delivery Term.

(f) Notwithstanding Section 9.6(e), if Seller submits a proposed Planned Maintenance Schedule in which the Equivalent Planned Maintenance Hours required to perform a Planned Outage described in Section 9.6(e), as shown in such Planned Maintenance Schedule, exceed the amount calculated according to Section 9.6(e) for such Planned Outage due to additional time required to perform new non-elective actions mandated as a result of a technical information letter (TIL), a Technical Services Bulletin (TSB), or other similar technical document of general applicability to customers of [●]³⁵ or its Affiliates issued after the Effective Date, Seller advises Buyer of the basis for such increase in the Proposed Maintenance Schedule and provides to Buyer such materials and information as Buyer may reasonably request in order to enable Buyer to confirm that the increase proposed by Buyer is due to the cause described above, and, provided the increase has been so verified by Buyer (acting reasonably), the amount calculated according to Section 9.6(e) shall be increased to the extent of such excess.

(g) On or before September 1 of each calendar year, Seller shall deliver to Buyer a non-binding forecast for Planned Maintenance (setting forth all of the details required for, and in the form of, the Planned Maintenance Schedule, as described in Section 9.6(b)) in respect of the Planned Maintenance Periods to occur during the three calendar years immediately following such date (to the extent that such Planned Maintenance Periods will occur during the Delivery Term). If Buyer, in its reasonable discretion, objects to or disapproves any Planned Maintenance noted in such forecast, Buyer shall notify Seller and the Parties shall use Commercially Reasonable Efforts to agree upon and finalize mutually acceptable modifications to such non-binding forecast for Planned Maintenance that address Buyer's concerns. The Parties acknowledge their mutual desire to minimize disputes over Planned Maintenance Schedules, and, in furtherance of the foregoing, Seller agrees to use Commercially Reasonable Efforts to prepare each proposed Planned Maintenance Schedule pursuant to Section 9.6(b) for each calendar year in a manner consistent with the last non-binding forecast for Planned Maintenance applicable to such calendar year that was agreed by the Parties pursuant to this Section 9.6(g).

9.7 Outages and Other Limitations. Seller shall immediately notify Buyer if Seller is or will be unable to make available or deliver all or part of the Products, or perform the Fuel Conversion Services, pursuant to this Agreement due to an Outage or other limitation, including due to Force Majeure. As soon as practicable, Seller shall notify Buyer of the cause(s) of, the proposed corrective action for, and the expected duration of the Outage or other limitation, which shall be based on the best information obtained by Seller. Seller shall promptly 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 progress reports no less often than weekly that discuss corrective actions and the schedule for Seller's resumption of full performance of the affected obligations. Seller shall promptly notify

³⁵ NTD: Insert name of turbine manufacturer.

Buyer when Seller resumes full performance of its obligations hereunder. Seller shall use Commercially Reasonable Efforts to avoid Outages and other limitations limiting the availability or delivery of any Product and to minimize the duration and effect upon Buyer of any such Outages or other limitations.

9.8 Insurance. Seller shall maintain the insurance described in Schedule 9.8 and shall otherwise comply with the terms and conditions set forth in Schedule 9.8.

9.9 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) If 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 contemplated hereby for accounting purposes in a manner that is inconsistent in any respect with the Accounting Treatment (an "Accounting Treatment Event"), Seller shall promptly notify Buyer. Likewise, if Buyer or its independent auditor determines in good faith that there has been an Accounting Treatment Event, Buyer may notify Seller (provided that Buyer shall have no obligation to so notify Seller). For a period (the "Accounting Treatment Work-Out Period") of one hundred and eighty (180) Days beginning on the earlier of the date either Party provides a notice to the other pursuant to this Section 9.9(b) (an "Accounting Treatment Work-Out Notice"), Buyer and Seller shall cooperate in good faith to 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 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, then Buyer may terminate this Agreement upon notice to Seller without Termination Payment or other liability to either Party arising out of such termination; provided, however, that, in the case of an the Accounting Treatment Event arising out of or relating to any negligence (including gross negligence), fraud, willful misconduct, breach 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 (a "Seller-Caused Accounting Treatment Event"), the Seller-Caused Accounting Treatment Event shall be considered an Event of Default of Seller under Section 15.1(q), and, without limiting Section 15.2 or Section 15.3 (or any other rights or remedies available to Buyer), Buyer may terminate this Agreement under Section 15.2 (in which case Seller shall owe the Termination Payment to Buyer). Upon the effectiveness of any termination 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.

(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) if the provisions of Section 9.9(b) apply, to comply with the accounting requirements related thereto.

ARTICLE 10 FORCE MAJEURE; CHANGE IN LAW

10.1 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 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.

10.2 Termination.

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

(b) Upon the effectiveness of any termination 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.

10.3 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) Negative Recovery 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 any negligence (including gross negligence), fraud, willful misconduct, breach 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 (each such Negative Recovery Event, a “Disallowance Adjustment Event”), then Buyer may, in its sole discretion and absolute discretion from time to time, (A) 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 (including unrecovered costs to replace Products not provided to Buyer by Seller under this Agreement), 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 of recovery by such Disallowance Adjustment Event, or effect thereof, 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 Negative Recovery Event by or before any applicable Governmental Authority, including the PUCT. 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.

ARTICLE 11 BILLING, PAYMENT AND RELATED RIGHTS AND OBLIGATIONS

11.1 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 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 Capacity Payment, the Variable Payment and the Start-up Payment for the Billing Month, (b) any amount payable pursuant to Section 6.3, (c) any other amount owed by Buyer to Seller, or vice versa, under the Agreement that has not

previously been invoiced, (d) the total amount due by each Party thereunder and (e) the net amount due thereunder; provided, however, that, without limiting the proviso to Section 5.5, in calculating the net amount due under a Monthly Invoice, the Capacity Payments due and owing by Buyer to Seller on the Monthly Invoice shall not be reduced by the amount of any amounts due and owing by Seller to Buyer, and, to the extent such amounts due and owing by Seller to Buyer are not set-off, netted or otherwise deducted from any other amounts due and owing by Buyer to Seller on the Monthly Invoice, such amounts due and owing by Seller to Buyer shall be paid by Seller to Buyer according to the second sentence of Section 11.2(a) or according to Section 11.2(b), as applicable. In addition, each Monthly Invoice shall include (1) the amount of each Product provided to Seller (including the amount of the Dependable Capacity and Excess Capacity made available), broken down by Reference MISO Settlement Interval, (2) the number and times of Completed Starts, (3) the Gas consumed by the Facility in each hour determined according to Section 8.3(b), (4) a reasonably detailed description, computation and itemization of the amounts included in such Monthly Invoice, together with reasonable supporting documentation and information, and (5) such other data, material and information as Buyer may reasonably require. With respect to any period starting from when an ACP Market Disruption Event or LMP Market Disruption Event occurs until a Replacement Price is determined by agreement of the Parties or by the Independent Market Consultant according to Schedule G, payments dependent on the implicated Auction Clearing Price or LMP, respectively, will be calculated, invoiced and made in the interim based on, respectively, (x) the Auction Clearing Price for the applicable Season for the Planning Year immediately before the Planning Year in which the ACP Market Disruption Event occurred or (y) the LMP at the applicable Commercial Pricing Node in the applicable MISO Market for the applicable MISO Settlement Interval(s) for the Day immediately before the Day on which the LMP Market Disruption Event occurred. When a Replacement Price is determined by agreement of the Parties or by the Independent Market Consultant, the amounts paid by either Party to the other Party under this Agreement during the period described in the preceding sentence shall be adjusted to reflect the Replacement Price so determined. If either Party owes payment to the other based upon this adjustment, payment will be made by the owing Party with interest accruing at the Interest Rate from the date the adjusted amount would have been due (or the date paid in the case of an overpayment) until the date the adjusted amount is paid (or refunded in the case of an overpayment).

11.2 Payments.

(a) Subject to Section 5.4 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 or includes (or should include) any amounts due and owing by Seller to Buyer that may not be fully set-off, netted or otherwise deducted from any amounts due and owing by Buyer to Seller on the Monthly Invoice, then Seller shall pay such net amount or amounts due and owing by Seller to Buyer (as applicable), by wire transfer of immediately available funds, in Dollars, to an account specified by Buyer 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) 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 5.4 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 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.

11.3 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.

11.4 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.

11.5 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.

11.6 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 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. Such records shall include (i) Availability Notices, (ii) Buyer's Product Request Notices, (iii) Gas nominations, confirmations, and deliveries, (iv) data and records establishing or relating to the availability and delivery of the Products, including (A) data and information from any Balancing Authority 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, (v) data and records establishing or relating to the receipt of Contract Gas and Gas other than Contract Gas at the Gas Delivery Point and the consumption of Gas by each of the resources, systems, facilities and items within the Facility, (vi) all operations, maintenance and performance data for the Facility (including data and information generated by or from or in respect of the Electric Metering Equipment and the Gas Metering Equipment or as otherwise contemplated by Article 8, the Heat Rate of the Facility, Starts, Start types, Completed Starts, Start-Up times, run times of the Units, Shutdowns, Scheduled Shutdowns, Shutdown periods, and the records, data, material, and information developed or obtained in connection with Section 7.10), (vii) all other information supporting or material to a statement, invoice, or charge hereunder, (viii) information related to Seller's compliance with the reliability requirements set forth in Attachment B-1 to Schedule B attached hereto, and (ix) 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 shall promptly 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.

11.7 Audits. Buyer, acting directly or indirectly through its employees or representatives, shall have the right, upon reasonable prior notice to Seller, (a) to request, audit, examine, make copies of and/or otherwise obtain the books and records and other materials 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 (b) 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) (i) the accuracy of any invoice, billing statement, cost or charge (or computation thereof) under this Agreement or with respect to the Transaction or (ii) Seller's performance under or compliance with the terms and conditions of this Agreement including

compliance with the reliability requirements set forth in Attachment B-1 to Schedule B attached hereto. 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.

11.8 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 Governmental Authority any cost, charge, payment, credit, or computation thereof by such Governmental Authority to the extent such cost, charge, payment, credit or computation (a) is relevant to payments from such 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 Governmental Authority and not already available to Buyer.

ARTICLE 12

CREDIT AND COLLATERAL REQUIREMENTS

12.1 Financial Information. Upon Buyer's request, Seller shall provide to Buyer the information specified in Schedule 12.1 to be provided by Seller, within the applicable time periods and on the terms provided in Schedule 12.1.

12.2 Performance Assurance. Seller shall deliver the Performance Assurance to Buyer on or before three (3) Business Days after the Effective Date. From and after delivery of the Performance Assurance, Seller shall maintain, or cause to be maintained, the Performance Assurance 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 arising out of this Agreement that may be pending 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"). Without limiting the foregoing, no later than the date an increase in the Performance Assurance is required pursuant to the definition of Applicable PA Amount, Seller shall increase the amount of the Performance Assurance to an undrawn capacity equal to such increased Applicable PA Amount. In addition, no later than three (3) Business Days following written notification from Buyer to Seller of any draw on any Performance Assurance, Seller shall replenish the Performance Assurance to an undrawn capacity equal to the Applicable PA Amount. To effect any such increase in Applicable PA Amount or replenishment, Seller shall (i) cause the Performance Assurance then in effect and held by Buyer to be amended or amended and restated, by written document reasonably acceptable to Buyer, to reflect a face amount that results in a then-current undrawn Performance Assurance amount that equals the Applicable PA Amount then required, (ii) delivering one or more replacement instruments of Performance Assurance that result in a then-current undrawn Performance Assurance amount that equals the Applicable PA Amount then required, or (iii) delivering one or more additional instruments of Performance Assurance in face amounts that

result in a then-current undrawn Performance Assurance amount that equals the Applicable PA Amount then required; provided, however, that, in no event shall Seller be entitled to provide more than two (2) Letters of Credit at any one time to satisfy its obligations under this Section 12.2. If, at any time, (A) the Person issuing any Letter of Credit as part of the Performance Assurance 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 Applicable PA Amount. Seller shall, from time to time, have the right to replace the Performance Assurance in effect with other Performance Assurance having an undrawn capacity equal to the Applicable PA Amount. Any Letter of Credit provided as Performance Assurance shall have an expiration date no sooner than three hundred and sixty-four (364) Days after issuance, and Seller shall extend or replace (with other Performance Assurance with undrawn capacity equal to the Applicable 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 sixth 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.

12.3 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.

12.4 Remedies. In addition to and without limiting Buyer’s other rights and remedies under this Agreement, under the terms of any Letter of Credit, or otherwise available at law or in equity, upon the 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; (b) exercise its rights of setoff against Seller; (c) draw the full amount of any outstanding Letter of Credit 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 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.

ARTICLE 13 TAXES

13.1 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 Tex. Tax Code Ann. §151.151. 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 Capacity Payment, the Variable Payment and the Start-up Payment do 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.

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

13.3 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, 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.

13.4 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 13. 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.

13.5 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 fuel conversion services into 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 14 REPRESENTATIONS AND WARRANTIES

14.1 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 corporate (in the case of Buyer) or [●] (in the case of Seller) action, and, assuming such Party obtains Seller's Required Consents, Buyer's Required Consents, Seller's Required Governmental Approvals, as applicable, Buyer's Required Governmental Approvals, and

Governmental Approvals that are customarily obtained, and such Party 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 of termination) under, 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 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.

14.2 Representations of Seller. As of the Effective Date and as of the Delivery Term Commencement Date, Seller represents and warrants that (i) in connection with this Agreement and the transactions hereunder or contemplated hereby, neither this Agreement nor the transactions 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 and (ii) the Facility shall be composed of Units and other parts, machinery, equipment, facilities, systems, or other items that are new and unused at the time of incorporation into the Facility. As of the Effective Date, Seller represents and warrants that (i) the Capacity-Related Benefits and/or Other Electric Products are [●], and (ii) the Applicable Environmental Attribute Program[s] [is/are] [●].

ARTICLE 15 EVENTS OF DEFAULT; REMEDIES

15.1 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 12, including the failure to provide or maintain the Performance Assurance (or any portion thereof);

(d) the assignment or transfer by the Defaulting Party of this Agreement in whole or in part other than as permitted under Article 19, 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;

(e) 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);

(f) the Defaulting Party becomes Bankrupt;

(g) 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 Availability Notice 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;

(h) 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, any of the Products, or any portion thereof, to any Person other than Buyer for any period prior to or within the Delivery Term;

(i) 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;

(j) in the case of Seller as the Defaulting Party, the Rolling 12 Month Availability is less than the Rolling 12 Month Availability Requirement as of the end of any Month;

(k) 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);

(l) in the case of Seller as the Defaulting Party, the commencement of the Delivery Term is delayed (i) pursuant to clause (1) or clause (2)(A) of the proviso to Section 2.2(b) for a period of one hundred and eighty (180) Days or, if 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, or (ii) pursuant to clause (2)(B) of the proviso to Section 2.2(b) for a period of five (5) Business Days;

(m) 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;

(n) 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;

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

(p) 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 Environmental Attributes or Capacity-Related Benefits for which the Facility, the Contract Capacity and/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;

(q) 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) (for a reason other than an Accounting Treatment Event that is not a Seller-Caused Accounting Treatment Event) 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) (A) a Seller-Caused Accounting Treatment Event occurs (including if the Seller-Caused Accounting Treatment Event prevents Seller from issuing the bring-down certification described in clause (i)), (B) an Accounting Treatment Work-Out Notice has been provided to either Party and (C) the Accounting Treatment Work-Out Period has expired; or

(r) in the case of Seller as the Defaulting Party, Seller's failure to perform its obligations in accordance with Section 7.10(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.

15.2 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 pursuant to Section 15.3. The Non-Defaulting Party shall calculate, in a commercially reasonable manner and consistent with the terms of this Agreement, 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.

15.3 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 16 INDEMNITY

16.1 Indemnification. Subject to 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, (B) other Products that are physical in nature (to the extent provided to Buyer hereunder) after the OP Delivery Point, and (C) Contract Gas before the Gas 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 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, (C) Contract Gas at and after the Gas Delivery Point, and (D) all other Products and Gas at all times;

(v) in the case of Seller as the Indemnifying Party, if applicable, Buyer's functions pursuant to Section 7.3(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.

16.2 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.

16.3 Defense Not Assumed. If an Indemnified Party shall be entitled to indemnification under this Article 16 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 16) if an Event of Default as to the Indemnifying Party has occurred and is continuing.

ARTICLE 17 LIMITATIONS ON LIABILITY

17.1 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 16, 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 3.7, SECTION 3.9, SECTION 4.3(f)(ii), SECTION 4.4(b), SECTION 4.7, SECTION 6.3, SECTION 7.8(f), SECTION 7.10(a)(v), SECTION 10.3(b), SECTION 15.2(b) OR THE SUBTRACTION OF

“VPD_m” IN THE CALCULATION OF THE VARIABLE PAYMENT ACCORDING TO SCHEDULE 5.2) 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 PROVISIO TO SECTION 16.1, THE INDEMNITIES IN SECTION 13.4, SECTION 16.1(iv), SECTION 16.1(v), SECTION 16.1(vi), AND SECTION 17.2 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. TO THE EXTENT OF AN EXPRESS MEASURE OF DAMAGES HEREIN (NCLUDING AMOUNTS PAYABLE BY SELLER PURSUANT TO SECTION 3.7, SECTION 3.9, SECTION 4.3(f)(ii), SECTION 4.4(b), SECTION 4.7, SECTION 6.3, SECTION 7.8(f), SECTION 7.10(a)(v), SECTION 10.3(b), SECTION 15.2(b) OR THE SUBTRACTION OF “VPD_m” IN THE CALCULATION OF THE VARIABLE PAYMENT ACCORDING TO SCHEDULE 5.2), THE PARTIES ACKNOWLEDGE AND AGREE THAT THE EXACT DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THE EXPRESS MEASURE OF DAMAGES HEREIN CONSTITUTES A REASONABLE APPROXIMATION OF THE HARM OR LOSS, IS NOT A PENALTY, AND SHALL BE PAID REGARDLESS OF THE AMOUNT OF DAMAGES ACTUALLY SUSTAINED BY THE RECIPIENT OF SAME.

17.2 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 17 shall not apply, and Article 16 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 16) and (ii) this Article 17 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 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 18 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, then, except as otherwise provided in Schedule G, 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 13. On or before three (3) Business Days after receipt of any such notice from Seller to Buyer or vice versa, each Party shall designate a senior executive or his or her designee to represent the Party to attempt to resolve the Dispute. The two designated representatives shall 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, 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 19 MISCELLANEOUS

19.1 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; provided, however, that routine correspondence may be delivered via electronic mail, in which case, such electronic mail shall be deemed received by the other Party on the date sent, unless the electronic mail was not sent during normal business hours of the recipient, in which case it shall be deemed received on the next Business Day. 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.

19.2 Survival. The provisions of Article 1 (Defined Terms and Interpretation), Article 11 (Billing, Payment and Related Rights and Obligations), Article 12 (Credit and Collateral Requirements), Article 13 (Taxes), including Section 13.4 (Tax Indemnity), Article 14 (Representations and Warranties), Article 15 (Events of Default; Remedies), Article 16 (Indemnity), Article 17 (Limitations on Liability), Article 18 (Dispute Resolution), Article 19 (Miscellaneous) (other than Section 19.5 and Section 19.6), Section 5.4 (Set-off), Section 7.7(c) (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 8.4 (Limitations on Seller's Use of Information), Section 9.1(b) (General Operation and Maintenance Obligations), Section 10.3(b) (Negative Recovery 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.

19.3 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 requested by a Party, its lender or any other Person providing financing to such Party.

19.4 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. 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.

(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. Promptly after making an encumbrance pursuant to this 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 such Lender or other Person providing financing, including the account managers or other representatives to whom all written and telephonic communications may be addressed, and shall promptly provide updates of any change in such information.

(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 that acquires the entire Facility from Seller according to Section 19.5 and Section 19.6.

(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 pursuant to an agreement reasonably satisfactory to Buyer and consistent with the provisions hereof; provided, however, that, notwithstanding such transfer or assignment (and regardless of the scope of the obligations of Seller assumed by the assignee therein), Events of Default (and Potential Events of Default) of Seller, whether before or after the transfer or assignment, shall be determined taking into account all obligations of "Seller" hereunder and other relevant events or circumstances (in each case, whether relating, in whole or in part, to the period before, on or after the date of the transfer or assignment), including for purposes of Article 12, Article 15 and the Performance Assurance (which, even after the transfer or assignment, shall be drawable against all obligations of "Seller" hereunder and other relevant events or circumstances, in each case, whether relating, in whole or in part, to the period before, on or after the date of the transfer or assignment). 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) Buyer shall make Commercially Reasonable Efforts to provide such consents to collateral assignment or other documents as may be reasonably requested by Seller and are consistent with Schedule 19.4(e) in connection with the financing of the Facility (each, a “Lender Consent”); provided, however, that 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(e). Seller shall reimburse Buyer for the direct expenses (including legal fees) incurred by Buyer in the preparation, negotiation, and/or delivery of the Lender Consent.

19.5 Buyer’s Right of First Refusal.

(a) Seller shall not (and shall not permit any direct or indirect equity holder of Seller to) sell or transfer all or a material portion of, or an undivided interest in, the Facility (or such holder’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. 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 the applicable direct or indirect equity holder of Seller) shall have the right to consummate the proposed sale or transfer according to the same definitive agreement included in Seller’s notice to Buyer (without any amendment or other modification 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, then this Section 19.5 shall apply again to any sale or transfer by Seller (or any direct or indirect equity holder of Seller) of all or a material portion of, or an undivided interest in, the Facility (or such holder’s direct or indirect equity interests in Seller), including by merger, consolidation or sale of all or substantially all of its assets.

19.6 Other Transfer Restrictions. Seller shall not (and shall not permit any direct or indirect equity holder of Seller to) sell or transfer all or a material portion of, or an undivided interest in, the Facility (or such holder'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 the transferor as of immediately prior to the sale or transfer, (iii) the proposed transferee (A) is a load-serving entity or an Affiliate of a load-serving entity and (B) together with its Affiliates, owns or controls 1,000 MW or more of electric generation capacity, (iv) the proposed transferee or one of its Affiliates 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) without limiting Section 19.4(d)(ii), the proposed transferee does not provide (or maintain in place) Performance Assurance according to Article 12 that, even after the sale or transfer, is drawable against all obligations of "Seller" hereunder and other relevant events or circumstances (in each case, whether relating, in whole or in part, to the period before, on or after the date of the transfer or assignment), (vi) the sale or transfer does not comply with Section 19.5, or (vii) in the case of a sale or transfer of all or a portion of, or an undivided interest in, the Facility, (A) the sale or transfer is of a portion of, or undivided interest in, the Facility (and not the entire Facility) or (B) Seller does not concurrently assign its rights and obligations under this Agreement to the transferee of the Facility according to Section 19.4.

19.7 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.

19.8 Naming Rights. Seller grants to Buyer the exclusive right to name the Facility, including the right to name the Facility on behalf of a third party, during the term of this Agreement, subject to Seller's compliance with an applicable Laws relating to the naming of the Facility, including any applicable rules, policies, guidelines, and requirements of MISO, FERC, NERC, and SERC. Seller agrees that Buyer or such third party may also include graphics, trade dress, logos, or other marks of Buyer or such third party ("Marks") wherever the name of the Facility will appear, provided such Marks comply with applicable Laws, including trademark, tradename, copyright, patent, and intellectual property Laws. Upon Buyer's reasonable prior written request, Seller will use the Marks on any indoor and outdoor signage placed by Seller at the Facility Site or on the other real property, billboards and posters, websites, advertisements in any medium, written presentations or descriptive materials and anywhere else the Facility's proper name would usually and customarily be displayed in connection with the Facility. Buyer grants (or, with respect to third-party Marks, will cause such third party to grant) Seller a non-exclusive, non-transferable, non-assignable, revocable right and license for the duration of the term of the Agreement to use the Marks. Seller will comply with any usage guidelines regarding the Marks provided by Buyer. Buyer may modify or change the Marks altogether upon at least ninety (90) Days' prior written notice to Seller, and Seller shall comply with any such modification or change. Upon the termination or expiration of this Agreement or revocation of the foregoing right and license by Buyer, Seller will immediately cease and discontinue all further use of the Marks.

19.9 Waiver. 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, under this Agreement shall be effective unless in writing signed by an authorized representative of the waiving Party and designated as a waiver, and any such waiver shall not be deemed a continuing waiver, except to the extent expressly set forth in such waiver. 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 right of such Party thereafter to enforce each and every provision hereof.

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

19.11 Submission to Jurisdiction; Waiver of Jury Trial. Except to the extent otherwise provided in Schedule G, 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 federal courts of the United States located in the County of Harris, State of Texas, or, if such court does not have jurisdiction over such action, in the state courts of the State of Texas located in the County of Montgomery, 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 19.11, 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.

19.12 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.

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

19.14 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, to a third party, other than as permitted under the Confidentiality Agreement; provided, however, that Buyer shall be entitled to disclose to any Governmental Authority, 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.

19.15 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 communication or correspondence of any kind in connection with the solicitation of generation resources).

19.16 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.

19.17 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.

19.18 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).

19.19 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.

19.20 Operating Representatives. Prior to the Delivery Term Commencement Date (or, if Buyer exercises its option in Section 9.4(e), the Energization 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.

19.21 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.

19.22 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.

19.23 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. ANY SUCH RECORDINGS SHALL BE TREATED AS CONFIDENTIAL INFORMATION SUBJECT TO SECTION 19.11, 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.

19.24 Forward Contract. 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 Fuel Conversion Services Agreement to be executed by their duly authorized representatives as of the Effective Date.

ENTERGY TEXAS, INC.

By: _____
Name:
Title:

[●]

By: _____
Name:
Title:

Schedule A

Buyer's Required Consents (Outstanding)

[to come]

Schedule B

Facility

Facility Description

[to be provided by Seller]

The Units:

<i><u>Unit</u></i>	<i><u>Manufacturer</u></i>	<i><u>Type</u></i>	<i><u>Serial No.</u></i>
CT	[•]	[•]	[•]
STG	[•]	[•]	[•]

In addition, the Facility shall satisfy the resilience requirements set forth in Attachment B-1 attached hereto.

Facility Site

[to be provided by Seller]

Attachment B-1

Resilience Requirements for the Facility

1. Without limiting any of the other terms of this Agreement, including the obligation of the Facility or Seller to comply with applicable Laws, including the FERC Order Approving Extreme Cold Weather Reliability Standard EOP-012-3 And Directing Data Collection (Issued September 18, 2025), 192 FERC ¶ 61,229, the Facility must meet each of the following minimum design criteria:

Seismic: Occupiable and non-occupiable structures at and components of the Facility must be designed in accordance with the seismic design requirements of the 2021 International Building Code ("IBC 2021") and the American Society of Civil Engineers ("ASCE") 7 Guides ("ASCE 7"), using the following parameters:

Importance Factor (IE): 1.25
Risk Category: III
Seismic Design Category: C.

Wind: Occupiable and non-occupiable structures at and components of the Facility must be designed for wind loads in accordance with IBC 2021 and ASCE 7, using the following parameters:

Wind Exposure Category: C
Risk Category: III.

Snow: Structures must be designed for snow loads in accordance with ASCE 7 using the following parameter:

Risk Category: III.

Ice: Structures and components forming part of the Facility that are sensitive to the effects of ice accumulation, including, without limitation, transmission wires and related support structures, switchyard structures, etc., must be designed to withstand the effects of ice accretions formed by freezing rain, drizzle, snow, in-cloud icing, and similar events. Atmospheric ice loads must be calculated in accordance with the applicable provisions of ASCE 7, using the following parameters:

Ice Thickness: 1.00 in Ice
Wind Gust Speed: 30 mph
Concurrent Ice Temperature: 15°F.

Freeze Protection: The fluid temperature in any pipe, tubing, instrumentation, or other items forming part of the Facility and sensitive and subject to the effects of freezing temperatures must be maintained above 40°F, unless a higher temperature is required to be maintained due to the properties of or process applicable to the subject fluid by Laws, codes, standards, manufacturer requirements and recommendations, or other elements of the performance standard. The determination of the specific freeze protection measures that should apply or be implemented for

any such pipe, tubing, instrumentation, or other item must be based on a time-to-freeze evaluation conducted in accordance with the performance standard and be designed to protect all pipes and components or related items against a 72-hour freeze event with an average ambient temperature of 20°F and a 20 mph wind speed. Among other things, the results of any final time-to-freeze evaluation performed for any such pipe tubing, instrumentation, or other item must not show or indicate that more than 25% of the fluid in any cross-section of such pipe, tubing, instrumentation, or other item would freeze.

2. Foundations located at or serving the Facility Site must be elevated above ground to prevent any equipment, parts, systems, or other items (excluding the foundation itself) of the Facility from coming in contact with surface water or runoff. The nominal finish site grade elevation at the project site must be higher than the 500-year flood site elevation for the Facility Site at the location of the applicable portion of the Facility and each foundation for the project must be a minimum of 6" higher than the nominal finish site grade elevation at the location of the applicable foundation.

3. If the Facility or a portion thereof (including any ancillary structure) is exposed to known or reasonably foreseeable woodland, forest, or grassland fire hazards (as determined by industry accepted natural hazard modeling software), the Facility Site must be designed, and the Facility must be located and built, with sufficient separation to prevent the spread of offsite fire to onsite structures or the spread of fire from onsite structures to adjacent woodland, forest, or grassland areas. For woodland and forest hazards, the separation between the nearest Facility equipment and the closest wood line must be evaluated based on the typical maximum growth of neighboring trees but must never be less than 150 feet. For grassland fire hazards, the separation from the nearest Facility equipment to the closest edge of the grassland fire hazard must be a minimum of 100 feet.

4. For any equipment, system, or item specified in the Approved Vendor List attached hereto as Appendix A that is incorporated into the Facility, such equipment, system, or item must be manufactured by a legal entity that is identified hereto as a pre-approved manufacturer of such equipment, system, or item or has been otherwise approved in writing by Buyer as a pre-approved manufacturer of such equipment, system, or item for the Facility.

5. The Facility, including all equipment, materials, components, items, and auxiliary facilities and systems, must be designed, procured, constructed, commissioned, and tested in accordance with the most recently established applicable codes and standards. In the event of a conflict between the requirements of such applicable codes and standards (or other Laws), the most stringent requirement shall govern and control. If any code or standard (or other Law), including any code or standard (or other Law) expressly referenced in this Attachment B-1 or any other provision of this Agreement, applicable to the Facility, including any equipment, material, component, or auxiliary facility or system, is superseded by another code or standard (or other Law), the more stringent standard or code (or other Law) will apply.

6. The following design standards:

- automatic generation control
- evaporative cooling or inlet chilling
- control technology for air emissions from the resource must include both a NO_x and CO catalyst
- net unit heat rate of no greater than 7,000 Btu/kWh (HHV) (Summer Conditions) at full output without duct-firing (if included as part of the Facility)
- heat rejection systems for the resource that are based on a mechanical or natural draft cooling tower, a once-through cooling system, a closed-loop cooling pond, or an air-cooled condenser
- main condenser and heat rejection systems sufficiently sized to permit all combustion turbines to operate at or near full load with a complete bypass of the steam turbine
- all combustion turbine designs must incorporate air-cooled combustors
- two (2) x 100% boiler feed pumps on each HRSG
- two (2) x 100% or three (3) x 50% condensate pumps
- two (2) 100% air compressors to satisfy both service and instrument air requirements
- vacuum pumps for condenser air evacuation
- a demineralized water system capacity sufficient to support cyclic operation
- redundancy of the on-site natural gas compressors such that the loss of one compressor will not limit the output or restrict the operation of the resource
- if the resource has a multi-HRSG configuration, HRSG water and steam-side double block-and-bleed isolation valve configuration that allows maintenance to be performed on an isolated (offline) HRSG.

Eligible resource equipment and design may NOT include steam injection for power augmentation, a single shaft combined-cycle design, or high-fogging equipment (e.g., overspray, wet compression, spray inter-cooling).

Appendix A to Attachment B-1

Approved Vendor List³⁶

Equipment	Approved Supplier	Clarifications or Restrictions
Actuators (Motor Operated Valves)	Auma	
Actuators (Motor Operated Valves)	Betis	
Actuators (Motor Operated Valves)	EFACEC	
Actuators (Motor Operated Valves)	Lightning Elimination Consultants	
Actuators (Motor Operated Valves)	Rosemount Analytical (Emerson)	
Actuators (Motor Operated Valves)	Unisorb Industrial Grout	
Air Cooled Heat Exchangers (Fin Fan Cooler)	Alfa Laval	
Air Cooled Heat Exchangers (Fin Fan Cooler)	GE - Prolec	
Air Cooled Heat Exchangers (Fin Fan Cooler)	Hatch Inc.	
Air Cooled Heat Exchangers (Fin Fan Cooler)	Manning & Lewis	
Air Cooled Heat Exchangers (Fin Fan Cooler)	SPX (Copes/Vulcan)	
Anemometer	Gerdau Ameristeel	
Aqueous Ammonia System	Aether.dbs	
Aqueous Ammonia System	Chemithon	
Aqueous Ammonia System	Gill Instruments	
Aqueous Ammonia System	Ingeteam	
Aqueous Ammonia System	Johnson Controls	
Aqueous Ammonia System	VDM	
Aqueous Ammonia System	Volta	
Attemperators (HP and HRH Desuperheaters)	Control Components Inc. (CCI)	
Attemperators (HP and HRH Desuperheaters)	FirstSolar	
Attemperators (HP and HRH Desuperheaters)	Kone	
Attemperators (HP and HRH Desuperheaters)	Schuff Steel Company	
Auxiliary Cooling Tower	ATS	
Auxiliary Cooling Tower	ESS Metron	
Auxiliary Cooling Tower	Evapco	
Auxiliary Cooling Tower	Gutor/Schneider North America	
Auxiliary Cooling Tower	Integrated Flow Solutions	
Auxiliary Cooling Tower	RESCO	
Auxiliary Cooling Tower	SPX Heat Transfer, Inc.	

³⁶ NTD: Approved Vendor List remains under Buyer review.

Equipment	Approved Supplier	Clarifications or Restrictions
Batteries	BYD	
Batteries	LG	
Batteries	PACS	
Batteries	SAMCO	
Batteries, Chargers	Seasafe, Inc.	
Bus, Iso-Phase	Alfa Standard	
Bus, Iso-Phase	Alstom	
Bus, Iso-Phase	AZZ Calvert	
Bus, Iso-Phase	Crescent Power Systems	PDCs
Bus, Iso-Phase	Gaumer Process	
Bus, Iso-Phase	GE	
Bus, Iso-Phase	Hirschfeld	
Bus, Iso-Phase	TBEA	
Bus, Non-segregated Phase	ABB	
Bus, Non-segregated Phase	AZZ Calvert	
Bus, Non-segregated Phase	Cape Electric	
Bus, Non-segregated Phase	Custom Power Chloride	
Bus, Non-segregated Phase	GE	
Bus, Non-segregated Phase	SPX-Marley	
Bus, Non-segregated Phase	Techibus (formerly ABB)	
Cathodic Protection	Accurate Corrosion Control	
Cathodic Protection	BK Corrosion	
Cathodic Protection	Corrpro	
Cathodic Protection	Janus Fire Systems	
Cathodic Protection	Masterflow	
Chemical Feed Pumps	Global Chem Feed	
Chemical Feed Pumps	Johnson March Systems, Inc.	
Chemical Feed Pumps	Midstates/Midco Supply Co.	
Chemical Feed Pumps	Progressive Water Treatment	
Chemical Feed Pumps	PTTI	
Chemical Feed Pumps	RECO	
Chemical Feed Pumps	Siemens Water Technologies	
Chemical Feed Pumps	US Electrical	
Chillers	Carrier	

Equipment	Approved Supplier	Clarifications or Restrictions
Chillers	SteelFab	
Chillers	Tracer Construction, LLC	
Chillers	Trina	
Chillers	Yokogawa	
Chromatograph	ABB	
Chromatograph	AC Systems Integration	
Chromatograph	Agilent Technologies	
Chromatograph	Cyberex (UPS & Chargers)	
Chromatograph	Rolled Alloy Corp	
Chromatograph	Shoals	
Chromatograph	Yingli	
Circuit Breakers, 138 kV and 345 kV	ABB	
Circuit Breakers, 138 kV and 345 kV	GE	
Circuit Breakers, 138 kV and 345 kV	Hitachi	
Circuit Breakers, 138 kV and 345 kV	Minco	
Circuit Breakers, 138 kV and 345 kV	Siemens	
Circuit Breakers, Generator	ABB	
Circuit Breakers, Generator	GE	
Circuit Breakers, Generator	Hitachi	
Circuit Breakers, Generator	Siemens	
Coatings	Ameron	
Coatings	Carboline	
Coatings	Powerware (UPS & Chargers)	
Coatings	Shambaugh and Sons	
Coatings	Texas Systems & Controls, Inc.	
Combiner Recombiner Boxes	Bentek	
Combiner Recombiner Boxes	Sherwin Williams	
Combiner Recombiner Boxes	Solar Turbines International Co.	
Communications Equipment	FTI Industries	
Communications Equipment	Mogas	
Communications Equipment	Rexnord	
Compressors, Air-Screw Type Oil-less Rotary	Atlas Copco	
Compressors, Air-Screw Type Oil-less Rotary	Gamewell	
Compressors, Air-Screw Type Oil-less Rotary	Industeel	

Equipment	Approved Supplier	Clarifications or Restrictions
Compressors, Air-Screw Type Oil-less Rotary	Johnson March Systems, Inc.	
Compressors, Air-Screw Type Oil-less Rotary	Klemp Corp	
Compressors, Air-Screw Type Oil-less Rotary	Suez / GE Water & Process Technologies	
Compressors, Gas	Atlas Copco Comptec, LLC	
Compressors, Gas	Electrical Power Products	
Compressors, Gas	Kobelco	
Compressors, Gas	Mitsubishi	
Compressors, Gas	Siemens - Cerberus Pyrotronics	
Compressors, Gas	Snap-Lock (Mechanical type)	
Concrete	Lithonia	To be mutually agreed upon by EPC Contractor and
Condenser	American Exchanger Services	
Condenser	Fortune	
Condenser	GO (Proximity type)	
Condenser	Holophane-Petrolux	
Condenser	M&I Electric	
Condenser	Spectrum Systems	
Condenser	TECO-Westinghouse	
Continuous Emissions Monitoring (CEMS)	Altech	
Continuous Emissions Monitoring (CEMS)	Cemtek Environmental	
Continuous Emissions Monitoring (CEMS)	Cherokee Instruments	
Continuous Emissions Monitoring (CEMS)	Cummins	
Continuous Emissions Monitoring (CEMS)	Eppley Laboratory	
Continuous Emissions Monitoring (CEMS)	Motorola	
Continuous Emissions Monitoring (CEMS)	Special Metals Corp	
Continuous Emissions Monitoring (CEMS)	TEI	
Continuous Emissions Monitoring (CEMS)	Thermal Engineering Internat'l	
Control Drives - Electric	ABB	
Control Drives - Electric	Beck	
Control Drives - Electric	Universal Valve	

Equipment	Approved Supplier	Clarifications or Restrictions
Couplings	Fairbanks Morse Controllers	
Couplings	Kaeser Compressors	
Couplings	Research Cottrell Cooling	
Couplings	Thermon	
Couplings	Zachry	
Cranes	Accent Sales & Service Co.	
Cranes	ACCO	
Cranes	American Crane	
Cranes	Crown Technical Systems	
Cranes	Daniel Industries	
Cranes	Eaton Hayward	
Cranes	Komline Sanderson	
Cranes	KOSO	
Cranes	Merril Iron	
Cranes	Ohio Gratings	
Cranes	Temp-Pro	
Cranes	Viex/GEA	
Cranes	Whaley Constructors, LLC	
Data Logger	Campbell Scientific	
Data Logger	Kiewit Off Shore (KOS)	
DCS (Distributed Control Systems)	Emerson (Fisher)	Ovation System
Disconnects	ABB	
Disconnects	Dupont	
Disconnects	Siemens	
Disconnects	Simplex Grinnell	
Disconnects	Square D	
Drives, Variable Speed Fluid Coupling	Howden	
Drives, Variable Speed Fluid Coupling	Pepperill & Fuchs (Proximity type)	
Drives, Variable Speed Fluid Coupling	Vogt Power	
Duct Burner Flame Scanners	Coen	
Duct Burner Flame Scanners	Flygt-Xylem	
Duct Expansion Joints	Bachmann	
Duct Expansion Joints	Cembell Industries	
Duct Expansion Joints	Five Star	

Equipment	Approved Supplier	Clarifications or Restrictions
Duct Expansion Joints	Foster Wheeler	
Duct Expansion Joints	Kaw Valve and Fitting	
Duct Expansion Joints	Panasonic	
Expansion Joints, Non-Metallic	McTighe Industrial	
Expansion Joints, Non-Metallic	Nooter-Eriksen	
Expansion Joints, Non-Metallic	Pascor	
Expansion Joints, Non-Metallic	Primary Flow Signal, Inc.	
Expansion Joints, Non-Metallic	Risen	
Fans	Baron	
Fans	Chicago Blower	
Fans	Clarage	
Fans	Honeywell - Notifier	
Fans	RM Industrial Products	
Fans	Titan Fabricators	
Filters, Slurry, Vacuum Dewatering	EIM	
Filters, Slurry, Vacuum Dewatering	Kohler	
Fire Detection Systems	ANSUL	
Fire Detection Systems	Chemetron	
Fire Detection Systems	Cutler-Hammer (Eaton)	
Fire Detection Systems	FE Moran	
Fire Detection Systems	Fenwal	
Fire Detection Systems	Game Change	
Fire Detection Systems	Honeywell	
Fire Detection Systems	Keystone Electrical	
Fire Detection Systems	Prominent	
Fire Detection Systems	Siemens	
Fire Detection Systems	Sigma Thermal	
Fire Protection Systems	American Fire Technologies	
Fire Protection Systems	Continental	
Fire Protection Systems	Falk	
Fire Protection Systems	James C. White	
Fire Protection Systems	Sentry	
Fire Protection Systems	Sulzer Pumps	
Fire Protection Systems	VFC/Lightning Protection Systems	
Fire Protection Systems	Waukesha	
Fire Protection Systems	Wolseley/Ferguson	
Fittings, Compression Type, Tube	CRS Crane Systems	

Equipment	Approved Supplier	Clarifications or Restrictions
Fittings, Compression Type, Tube	JA Solar	
Fittings, Compression Type, Tube	Norflex	
Fittings, Compression Type, Tube	PAPCO Industries	
Fittings, Compression Type, Tube	Sure Flow Equipment Inc.	
Fuel Gas Electric Startup Heaters	Aether.dbs	
Fuel Gas Electric Startup Heaters	Chromalox	
Fuel Gas Electric Startup Heaters	Engines	
Fuel Gas Electric Startup Heaters	Gardner Denver	
Fuel Gas Electric Startup Heaters	Gastech	
Fuel Gas Electric Startup Heaters	Integrated Flow Solution	
Fuel Gas Electric Startup Heaters	Sigma	
Fuel Gas Electric Startup Heaters	TerraSmart	
Fuel Gas Electric Startup Heaters	Waters Equipment	
Fuel Gas Separator/Filter	Aether.dbs	
Fuel Gas Separator/Filter	Anderson	
Fuel Gas Separator/Filter	Control Center LLC	
Fuel Gas Separator/Filter	Gastech	
Fuel Gas Separator/Filter	Gaumer	
Fuel Gas Separator/Filter	Integrated Flow Solution	
Fuel Gas Separator/Filter	Mitsubishi-Hitachi	
Fuel Gas Separator/Filter	PDM	
Fuel Gas Separator/Filter	Peerless	
Fuel Gas Separator/Filter	Texas Systems & Controls, Inc.	
Fuel Gas Startup Heaters, Water Bath	Aether.dbs	
Fuel Gas Startup Heaters, Water Bath	Exide for Batteries	
Fuel Gas Startup Heaters, Water Bath	Gastech	
Fuel Gas Startup Heaters, Water Bath	HDR (Inverters)	
Fuel Gas Startup Heaters, Water Bath	NEM	
Fuel Gas Startup Heaters, Water Bath	Sigma Thermal	
Fuel Gas Startup Heaters, Water Bath	Thenec	
Gas Turbine Generator	Mitsubishi Heavy Industries	Project-Specific
Grating and Stair Tread	American Grating	
Grating and Stair Tread	Carolina Grating Co.	
Grating and Stair Tread	Fisher	
Grating and Stair Tread	Ideematec	
Grating and Stair Tread	Kipp and Zonen	
Grating and Stair Tread	O'Brien Corporation	

Equipment	Approved Supplier	Clarifications or Restrictions
Grating and Stair Tread	Screening Systems, international (
Grout, Cementitious	Chemrex MBT Embecco	
Grout, Cementitious	Fisher Tank	
Grout, Cementitious	Marley	
Grout, Cementitious	Unirac	
Grout, Epoxy	Chemrex MBT Masterflow	
Grout, Epoxy	Five Star	
Heat Exchangers, Plate & Frame	Alfa Laval	
Heat Exchangers, Plate & Frame	API Heat Transfer	
Heat Exchangers, Plate & Frame	APV	
Heat Exchangers, Plate & Frame	Cembell Industries	
Heat Exchangers, Plate & Frame	GEA	
Heat Exchangers, Plate & Frame	Goulds	
Heat Exchangers, Plate & Frame	Islip Flow Controls	
Heat Exchangers, Plate & Frame	MSI	
Heat Exchangers, Plate & Frame	SPX Cooling Technologies	
Heat Exchangers, Plate & Frame	Trane	
Heat Exchangers, Plate & Frame	Tranter	
Heat Exchangers, Plate & Frame	VFP Fire Systems	
Heat Exchangers, Plate & Frame	York	
Heat Exchangers, Shell & Tube	Atlas Industries	
Heat Exchangers, Shell & Tube	Dixie Southern (Triple S&P)	
Heat Exchangers, Shell & Tube	Holtec	
Heat Exchangers, Shell & Tube	ITT Standard	
Heat Exchangers, Shell & Tube	Magnetrol	
Heat Exchangers, Shell & Tube	SPX Heat Transfer, Inc.	
Heat Exchangers, Shell & Tube	Stebbins	
Heat Exchangers, Shell & Tube	Structural Steel Services	
Heat Exchangers, Shell & Tube	Thermal Engineering Internationa	
Heat Exchangers, Shell & Tube	Yuba	
Heat Recovery Steam Generator (HRSG)	AE&E Group	
Heat Recovery Steam Generator (HRSG)	Forney	
Heat Recovery Steam Generator (HRSG)	Foster Wheeler	
Heat Recovery Steam Generator (HRSG)	Hitachi	
Heat Recovery Steam Generator (HRSG)	JMS Southeast	

Equipment	Approved Supplier	Clarifications or Restrictions
Heat Recovery Steam Generator (HRSG)	Nelson	
Heat Recovery Steam Generator (HRSG)	Nooter/Eriksen	
Heat Recovery Steam Generator (HRSG)	Virginia Transformer	
Heat Tracing	Bartec	
Heat Tracing	Chromalox	
Heat Tracing	Nclave	
Heat Tracing	Newpoint Therma	
Heat Tracing	Thermo-Electric	
Heat Tracing	Toshiba	
Heat Tracing	Turbine Air Systems	
HV Circuit Breakers	ABB	
HV Circuit Breakers	GEA/PHE	
HV Circuit Breakers	Mitsubishi	
HV Circuit Breakers	Siemens	
HV Disconnect Switch	Parker	
HV Disconnect Switch	Southern Power	
Instrument Flow Nozzles	Daniel	
Instrument Flow Nozzles	Fluid Engineering	
Instrument Flow Nozzles	Tranter PHE	
Instrument Panels	Harger Lightning Protection	
Instrument Panels	Harris Rebar	
Instrument Panels	Holtec	
Instrument Panels	John H. Carter	
Instrument Panels	Mercer Rubber	
Instrument Panels	SOR	
Instrumentation - Misc Valves & Fittings	Cumberland Valve and Fitting	
Instrumentation - Misc Valves & Fittings	James C. White	
Instrumentation - Misc Valves & Fittings	Kap-Flex	
Instrumentation - Misc Valves & Fittings	O'Brien Corporation	
Instrumentation - Misc Valves & Fittings	Rosemount Analytical (Emerson)	
Instrumentation - Misc Valves & Fittings	Swagelok	
Instruments, Flow Element, Orifice Plates	Daniel Industries	
Instruments, Flow Element, Orifice Plates	Emerson Process Management	
Instruments, Flow Element, Orifice Plates	Emerson Process Management	
Instruments, Flow Element, Orifice Plates	Fluidic Techniques	

Equipment	Approved Supplier	Clarifications or Restrictions
Instruments, Flow Element, Orifice Plates	Frenzelilt	
Instruments, Flow Element, Orifice Plates	PPG	
Instruments, Flow Element, Orifice Plates	Schneider	
Instruments, Flow Element, Orifice Plates	Triad Measurement	
Instruments, Flow Element, Orifice Plates	Yokogawa	
Instruments, Flow Switch and Indicator type	John Deere	
Instruments, Flow Switch and Indicator type	Maarky Thermal Systems	
Instruments, Flow Switch and Indicator type	Tyco/Raychem HTS	
Inverters	ABB	
Inverters	Chint	
Inverters	GE	
Inverters	Ingersoll-Rand	
Inverters	Powell	
Inverters	Schletter	
Inverters	SMA	
Inverters	TLT- Babcock	
Lighting Fixtures	Appleton	
Lighting Fixtures	Cooper-Crouse Hinds	
Lighting Fixtures	GE	
Lighting Fixtures	HM Cragg	
Lighting Fixtures	Lisega	
Lightning Protection	A/C Lightning Protection	
Lightning Protection	Hanwha Q CELLS	
Lightning Protection	LG Chem	
Lightning Protection	Veolia	
Limit Switches	Global Chem Feed	
Limit Switches	John H. Carter	
Limit Switches	Magnetrol	
Limit Switches	Mueller	
Limit Switches	Pentair	
Limit Switches	Phono Solar (SUMEC)	
Limit Switches	SMIT	
Limit Switches	Soltec	
Linings, alloy	Hayden Industries	
Linings, alloy	Rocky Mountain Fabricators	
Linings, alloy	Southern-States	
Linings, alloy	ValvTechnologies	
Linings, clad	Doyle & Roth	
Linings, clad	IMI CCI	

Equipment	Approved Supplier	Clarifications or Restrictions
Linings, clad	LONGi	
Linings, clad	Robinson	
Linings, rubber	ARDCO	
Linings, rubber	Godrej	
Linings, rubber	Goodrich	
Linings, tile	Square D	
MCCs (MV) and Switchgear	ABB	
MCCs (MV) and Switchgear	Cutler-Hammer (Eaton)	
MCCs (MV) and Switchgear	GE	
MCCs (MV) and Switchgear	Lukens Steel	
MCCs (MV) and Switchgear	Power Electronics	
MCCs (MV) and Switchgear	Siemens	
MCCs (MV) and Switchgear	Southern Instruments	
MCCs 480VAC (Low Voltage) and Switchgear	ABB	
MCCs 480VAC (Low Voltage) and Switchgear	Allen-Bradley	
MCCs 480VAC (Low Voltage) and Switchgear	Cutler-Hammer (Eaton)	
MCCs 480VAC (Low Voltage) and Switchgear	GE	
MCCs 480VAC (Low Voltage) and Switchgear	M&I Electric	
MCCs 480VAC (Low Voltage) and Switchgear	Southern Power	
Monitors, Vibration	Alta Solutions	
Monitors, Vibration	Bentley-Nevada (GE)	
Motors, Medium Voltage	ABB	
Motors, Medium Voltage	EKO	
Motors, Medium Voltage	GE	
Motors, Medium Voltage	HT Solar	
Motors, Medium Voltage	Siemens	
Motors, Medium Voltage	Techibus (formerly ABB)	
Motors, Medium Voltage	Torishima	
Motors, Medium Voltage	Universal Valve	
Motors, Medium Voltage	Wayman Fire Protection	
Oil Water Separators	Graver Water Systems	
Oil Water Separators	HICO	
Oil Water Separators	Matcor	

Equipment	Approved Supplier	Clarifications or Restrictions
Oil Water Separators	Protectowire	
PDCs, Power Distribution Centers Bldgs	ABB	
PDCs, Power Distribution Centers Bldgs	Cape Electric/Graybar	
PDCs, Power Distribution Centers Bldgs	Crown Electric	
PDCs, Power Distribution Centers Bldgs	ESC (Environmental Systems Corp)	
PDCs, Power Distribution Centers Bldgs	Kidde	
PDCs, Power Distribution Centers Bldgs	M&I Electric	
PDCs, Power Distribution Centers Bldgs	Pittsburgh Tank	
PDCs, Power Distribution Centers Bldgs	Voith	
Pipe Supports	Anvil International	
Pipe Supports	Bergen Power	
Pipe Supports	Limitorque	
Pipe Supports	Pinnacle Controls	
Power Conversion System	ABB	
Power Conversion System	Chint	
Power Conversion System	Ingeteam	
Power Conversion System	Power Electronics	
Power Conversion System	Schneider	
Power Conversion System	SMA	
Power Conversion System	TMEIC	
Power Distribution Center	P&H	
Power Distribution Center	Point Eight	
Power Distribution Center	Yuba	
Power Distribution Center	Alstom	
Protective Relays	ABB	
Protective Relays	Alstom	
Protective Relays	Basler	
Protective Relays	Beckwith	
Protective Relays	GE	
Protective Relays	See Valves, Severe Service Control	
Protective Relays	Siemens	
Protective Relays	Toshiba	
Pumps, Boiler Feed	Flexonics - Pathway Div	
Pumps, Boiler Feed	Kranco	
Pumps, Boiler Feed	Sullair	
Pumps, Boiler Feed	TMEIC	
Pumps, Circulating Water	Flowserve	
Pumps, Circulating Water	Fluidic Techniques	

Equipment	Approved Supplier	Clarifications or Restrictions
Pumps, Circulating Water	Goodyear	
Pumps, Circulating Water	Hyundai	
Pumps, Circulating Water	KSB	
Pumps, Circulating Water	Sulzer Pumps	
Pumps, Circulating Water	Torishima	
Pumps, Condensate	Flowserve	
Pumps, Condensate	Goulds	
Pumps, Condensate	Hyundai	
Pumps, Condensate	KSB	
Pumps, Condensate	Sulzer Pumps	
Pumps, Condensate	Torishima	
Pumps, Fire Protection	Aurora	
Pumps, Fire Protection	Caterpillar	
Pumps, Fire Protection	Cumberland Valve and Fitting	
Pumps, Fire Protection	Energys	
Pumps, Fire Protection	Exotherm Corporation	
Pumps, Fire Protection	John Cockrell (CMI)	
Pumps, Fire Protection	Pathway	
Pumps, Fire Protection	PECO (The Blythe Company)	
Pumps, Fire Protection	Philadelphia Gear	
Pumps, Fire Protection	Rotork	
Pumps, Fire Protection	Spirax Sarco USA	
Pumps, Fire Protection	Wolverine Fire Protection	
PV Modules	Astronergy	
PV Modules	Canadian Solar	
PV Modules	Fike	
PV Modules	Hamon / Research Cottrell	
PV Modules	Howden Power	
PV Modules	ITT Standard	
PV Modules	JDH Corrosion Consultants	
PV Modules	LB Construction Enterprises	
PV Modules	Local read-mix company(ies)	
PV Modules	Phoenix Pump	

Equipment	Approved Supplier	Clarifications or Restrictions
PV Modules	RBI	
PV Modules	RFIP, Inc.	
PV Modules	SunLink	
PV Modules	SunPower	
PV Modules	Swagelok	
PV Modules	Triad Measurement	
PV Modules	Yarway Corp.	
Pyranometer	Eimco Water Technologies	
Pyranometer	Envirosep	
Pyranometer	Kipp and Zonen	
Racking System	Array Technologies Inc.	
Racking System	Gai-tronics	
Racking System	Hyundai	
Racking System	National Steel Erectors	
Racking System	Newtron Heat Trace	
Racking System	R.P. Adams	
Racking System	Samsung	
Racking System	Shoals	
Racking System	SolarBOS	
Racking System	Summit Fire Protection	
Racking System	SunPower	
Racking System	Terex Services	
Racking System	Umicore	
Reinforcing Steel (Rebar) - Fabricated	Ambassador Steel	
Reinforcing Steel (Rebar) - Fabricated	Barker Steel	
Reinforcing Steel (Rebar) - Fabricated	CMC Rebar	
Reinforcing Steel (Rebar) - Fabricated	GE-Hitachi	
Reinforcing Steel (Rebar) - Fabricated	Gerdau	
Reinforcing Steel (Rebar) - Fabricated	Harlo	
Reinforcing Steel (Rebar) - Fabricated	Jinko	
Reinforcing Steel (Rebar) - Fabricated	KSB	
Reinforcing Steel (Rebar) - Fabricated	Reetex	
Reinforcing Steel (Rebar) - Fabricated	SMA	
Reinforcing Steel (Rebar) - Fabricated	Thomas	
Reinforcing Steel (Rebar) - Fabricated	Western Engine	
Relay Panel OEMs	Control Center LLC	
Relay Panel OEMs	Crown Technical Systems	
Relay Panel OEMs	Electric Machinery	

Equipment	Approved Supplier	Clarifications or Restrictions
Relay Panel OEMs	KE Burgmann (IAFD)	
Relay Panel OEMs	SEL (Schweitzer Engineering Labo	
Relay Panel OEMs	Weksler	
RTDs, Instruments	Great Lake International	
RTDs, Instruments	Johnson March Systems, Inc.	
RTDs, Instruments	Milton Roy/LMI	
RTDs, Instruments	Rosemount Analytical (Emerson)	
RTDs, Instruments	Teledyne - Monitor Labs	
Sampling Systems	Johnson March Systems, Inc.	
Sampling Systems	SEL (Schweitzer Engineering Labo	
Sampling Systems	Wahlco	
Selective Catalyst Reduction (SCR) System, Air Cooled	Mitsubishi Hitachi Power Systems	For Simple Cycle CTs
SCR System, Air Cooled	Nolan Power Group	For Simple Cycle CTs
SCR, Catalyst	Cormatech	
SCR, Catalyst	Mitsubishi Power	For MPW supplied Air Cooled SCR
SCR, Catalyst	UFM (Universal Flow Monitors)	
Standby Diesel Generator	Caterpillar	
Standby Diesel Generator	Cooper Power Systems	
Standby Diesel Generator	Cummins	
Standby Diesel Generator	Demag	
Standby Diesel Generator	Kobelco Compressors America, In	
Standby Diesel Generator	Western Control Systems	
Steam Bypass and Desuperheater Valves	See UPS System	
Steam Traps	Armstrong	
Steam Traps	Bestobell Steam Traps	
Steam Traps	SPG	
Steam Traps	Xlyem-Flowtronix	
Steam Turbine Generator	Mitsubishi Power	Project-Specific
Steam Turbine Generator	Toshiba	Project-Specific
Strainers	Armstrong	

Equipment	Approved Supplier	Clarifications or Restrictions
Strainers	Eaton	
Strainers	Flowserve	
Strainers	Heat Exchanger Design	
Strainers	International Cooling System	
Strainers	Mid-Atlantic Crane & Equip.	
Strainers	Mueller	
Strainers	Spirax Sarco USA	
Strainers	Suntech	
Strainers	Whiting	
Strainers	Yarway Corp.	
Strainers, Automatic Backwash	Fluid Engineering	
Strainers, Automatic Backwash	Hellan	
Strainers, Automatic Backwash	Qualico	
Strainers, Automatic Backwash	Sure Flow Equipment Inc.	
Structural Steel	AFCO	
Structural Steel	Blum Enterprises	
Structural Steel	Cives	
Structural Steel	Highland Tank	
Structural Steel	Mercury Co.	
Structural Steel	Patterson	
Structural Steel	Pax Fab	
Structural Steel	Paxton Vierling	
Structural Steel	PYCO	
Structural Steel	Schneider Electric (Foxboro)	
Structural Steel	Steele	
Structural Steel	Stellar	
Switchgear	ABB	
Switchgear	Cutler-Hammer (Eaton)	
Switchgear	GE	
Switchgear	Powell	
Tanks, Field Erected	Caldwell Tanks	
Tanks, Field Erected	Chattanooga Boiler and Tank	
Tanks, Field Erected	Fisher Controls (Emerson)	
Tanks, Field Erected	Namco Controls	

Equipment	Approved Supplier	Clarifications or Restrictions
Tanks, Field Erected	Piping Technologies and Products	
Tanks, Field Erected	Tampa Tank	
Tanks, Shop Fabricated Steel	Accelerated	
Tanks, Shop Fabricated Steel	Arrow Tank	
Tanks, Shop Fabricated Steel	Cembell Industries	
Tanks, Shop Fabricated Steel	CH Murphy	
Tanks, Shop Fabricated Steel	Chattanooga Boiler and Tank	
Tanks, Shop Fabricated Steel	Detroit Diesel	
Tanks, Shop Fabricated Steel	Highland Tank	
Tanks, Shop Fabricated Steel	Mitten Manufacturing	
Tanks, Shop Fabricated Steel	Paxton Vierling	
Tanks, Shop Fabricated Steel	REC Solar	
Tanks, Shop Fabricated Steel	Talesun	
Tanks, Shop Fabricated Steel	Tie Steel	
Temperature sensor cells	Aros Solar Technology	
Thermocouples/Thermowells	Alloy Engineering	
Thermocouples/Thermowells	ARI Industries	
Thermocouples/Thermowells	Claude S. Gordon	
Thermocouples/Thermowells	Elliott	
Thermocouples/Thermowells	Gulf Sensors	
Thermocouples/Thermowells	JMN Rebar Installation	
Thermocouples/Thermowells	John H. Carter	
Thermocouples/Thermowells	Minco	
Thermocouples/Thermowells	Pinnacle Controls	
Thermocouples/Thermowells	Pulsafeeder	
Thermocouples/Thermowells	Thermo Environmental (CEMS An	
Thermocouples/Thermowells	Weiss Instruments GNB (battery)	
Transformer	ABB	
Transformer	Alstom	
Transformer	Cooper	
Transformer	Hyundai	
Transformer	PACS	
Transformer	Peerless Manufacturing Co.	
Transformer	Siemens	
Transformer	Virginia Crane	

Equipment	Approved Supplier	Clarifications or Restrictions
Transformer	Watlow	
Transformers, Main & Generator Step-Up (GSU)	ABB	No India Manufacturer
Transformers, Main & Generator Step-Up (GSU)	Ederer	
Transformers, Main & Generator Step-Up (GSU)	Forney	
Transformers, Main & Generator Step-Up (GSU)	GE	Waukesha only. No Mexico
Transformers, Main & Generator Step-Up (GSU)	Hellan	
Transformers, Main & Generator Step-Up (GSU)	Hitachi	
Transformers, Main & Generator Step-Up (GSU)	Hyundai	
Transformers, Main & Generator Step-Up (GSU)	Mitsubishi	
Transformers, Main & Generator Step-Up	Siemens	No Mexico Manufacturer
Transformers, Main & Generator Step-Up (GSU)	SMI	
Transformers, Main & Generator Step-Up (GSU)	Tank Connections	
Transformers, Unit Auxiliary	ABB	
Transformers, Unit Auxiliary	GE	
Transformers, Unit Auxiliary	HICO	
Transformers, Unit Auxiliary	Hyundai	
Transformers, Unit Auxiliary	PS International	
Transformers, Unit Auxiliary	Siemens	
Transformers, Unit Auxiliary	Waukesha	
Transmitters	Endress & Hauser	
Transmitters	Rosemount Analytical (Emerson)	
Transmitters	Schneider Electric (Foxboro)	
Transmitters	Yokogawa	
Traveling Screens	Atlas	
Traveling Screens	Eimco Water Technologies	
Traveling Screens	Schutte & Koerting	

Equipment	Approved Supplier	Clarifications or Restrictions
Traveling Screens	Siemens Energy	
UPS System & Batteries	Alcad	
UPS System & Batteries	Ametek Solidstate Controls/SCI	
UPS System & Batteries	Ash Battery	
UPS System & Batteries	Benning	
UPS System & Batteries	C & D Technologies	
UPS System & Batteries	Custom Instrumentation Services	
UPS System & Batteries	Cybercat	UPS & Chargers
UPS System & Batteries	Endress & Hauser	
UPS System & Batteries	Evoqua	
UPS System & Batteries	Gulf Sensors	
UPS System & Batteries	Haynes Int'l	Inverters
UPS System & Batteries	Hitachi HVB, Inc.	
UPS System & Batteries	NexTracker	
UPS System & Batteries	Nolan Power Group	
UPS System & Batteries	POWERCON	UPS & Chargers
UPS System & Batteries	Weir Valves & Controls	Batteries
Valves - Control Valves	Control Components Inc. (CCI)	
Valves - Control Valves	Fisher & Ludlow	
Valves - Control Valves	Flowserve	Flowserve is restricted from providing severe-duty control valves but may provide general-duty control valves.
Valves - Control Valves	SPP Pumps	
Valves, General Service Control	Celeros (Copes/Vulcan)	
Valves, General Service Control	Emerson	
Valves, General Service Control	Flowserve	Flowserve is restricted from providing severe-duty control valves but may provide general-duty control valves.
Valves, General Service Control	IKG Industries	

Equipment	Approved Supplier	Clarifications or Restrictions
Valves, General Service Control	KOSO	
Valves, Severe Service Ball	Bray	
Valves, Severe Service Ball	Cameron	
Valves, Severe Service Ball	Emerson (Fisher)	
Valves, Severe Service Ball	Modern Welding	
Valves, Severe Service Ball	US Water	
Valves, Severe Service Control	Celeros (Copes/Vulcan)	
Valves, Severe Service Control	Emerson (Fisher)	
Valves, Severe Service Control	IMI CCI	
Valves, Severe Service Control	KOSO	
Valves, Steam Bypass and Desuperheater	Control Components Inc. (CCI)	
Valves, Steam Bypass and Desuperheater	Fisher Controls (Emerson)	
Valves, Steam Bypass and Desuperheater	Pennsylvania Transformer	
Valves, Steam Bypass and Desuperheater	SPX (Copes/Vulcan)	
Valves, Steam Bypass and Desuperheater	WEG Industries	
Valves, Steam Bypass and Desuperheater	Yarway Corp.	
Water Treatment System	Aquatech International	
Water Treatment System	Evaptech	
Water Treatment System	Graham	
Water Treatment System	Graver Technologies	
Water Treatment System	Proco	
Water Treatment System	Ruhrpumpen	
Water Treatment System	Struthers - TEI	
Water Treatment System	Suez / GE Water & Process Techn	
Water Treatment System	US Water	
Water Treatment System	Vector Systems, Inc.	
	Zurn	

Schedule C

Seller's Required Consents (Outstanding)

[to be provided by Seller]

Schedule D

Seller's Required Governmental Approvals (Outstanding)

[to be provided by Seller]

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:

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

where:

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:

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

where:

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

Operating Restrictions³⁷

1. Minimum Output Level: [●] MW
2. Maximum Starts: [●] Completed Starts per [●]
3. Required Start-up Period: As specified in Section 6.4
4. Minimum Run Time: The Facility may be shut down for a Scheduled Shutdown following a Completed Start of such Unit only upon and after the expiration of a minimum run time of [●] hours, excluding any Start-up Hours and any Shutdown Period.
5. Minimum Downtime: The Facility's combustion turbine Unit may be Started for a Completed Start following a Scheduled Shutdown of such Unit only upon and after the expiration of a minimum downtime of [●] hours after each Scheduled Shutdown, it being understood and agreed that any Shutdown Period and any Start-up Period shall count toward such [●] hours of minimum downtime.
6. Maximum Ramp Rate: [●] MW/minute. For the avoidance of doubt, the restrictions in this item 6 shall not apply during any hours of Start-Up Period (in which case, item 3 above may apply) or during any Shutdown Period.

³⁷ **NTD:** Insert Operating Restrictions specified by Bidder in its proposal.

Schedule G

ACP or LMP Market Disruption Event Dispute Resolution Procedures

(a) If, by thirty (30) Days after an ACP Market Disruption Event or LMP Market Disruption Event, the Parties have not agreed upon another reference or index price to serve as the Auction Clearing Price for the applicable Season or the LMP at the applicable Commercial Pricing Node in the applicable MISO Market for the applicable MISO Settlement Interval (s), respectively, that reflects as closely as possible the intention of the Parties as expressed herein, then, upon the request of either Party, Seller and Buyer shall consult with each other in an attempt to agree as promptly as practicable upon an independent market consultant that is available, willing and recognized as having expertise in MISO (an “Independent Market Consultant”) to determine such other reference or index price (the “Replacement Price”).

(b) In the event that Seller and Buyer do not mutually agree on an Independent Market Consultant by ten (10) Business Days after the request for an Independent Market Consultant by either Party, Seller and Buyer shall each select an Independent Market Consultant before the end of such time period and request those two Independent Market Consultants to mutually agree upon (as promptly as practicable) a third Independent Market Consultant to act as the sole Independent Market Consultant to resolve the dispute. In the event that (i) either Party does not select an Independent Market Consultant before the end of such time period according to the preceding sentence or (ii) the two Independent Market Consultants selected by Seller and Buyer before the end of such time period according to the preceding sentence do not, by twenty (20) Business Days after the request for an Independent Market Consultant by either Party, mutually agree upon a third Independent Market Consultant to act as the sole Independent Market Consultant to resolve the dispute, then Seller and Buyer shall, as promptly as practicable, engage AAA solely for the purpose of selecting, in accordance with the requirements of this Schedule G and the Commercial Arbitration Rules and Mediation Procedures, a third Independent Market Consultant to act as the sole Independent Market Consultant to resolve the dispute.

(c) The Party that requested dispute resolution in accordance with this Schedule G shall, as promptly as practicable after an Independent Market Consultant is selected to resolve the dispute (whether pursuant to clause (a) or clause (b) of this Schedule G), engage such Independent Market Consultant to resolve the dispute as promptly as practicable (with instructions to make its determination within thirty (30) days following the submission of the matter to the Independent Market Consultant). At the time of such engagement, each Party may provide a statement specifying in reasonable detail such Party’s position to the Independent Market Consultant and the other Party, together with reasonable supporting calculations or information.

(d) The cost and expenses of the Independent Market Consultant selected to resolve the dispute (and of any other Independent Market Consultants and AAA in selecting the Independent Consultant to resolve the dispute, if and as applicable) shall be paid fifty percent (50%) by Seller and fifty percent (50%) by Buyer.

(e) In making its determination, the Independent Market Consultant shall be bound by the terms of this Agreement. The Parties shall not make any submittals to the Independent Market Consultant other than the initial submittals according to clause (c) above; however, the

Independent Market Consultant may consider available industry matters as in its opinion are necessary or appropriate to make a proper determination. The determination of the Independent Market Consultant shall be made in writing.

(f) The dispute resolution procedure set forth in this Schedule G shall be the exclusive procedure for resolving any dispute as to determination of another reference or index price to serve as the Auction Clearing Price for the applicable Season or the LMP at the applicable Commercial Pricing Node in the applicable MISO Market for the applicable MISO Settlement Interval(s) in the context of an ACP Market Disruption Event or LMP Market Disruption Event, respectively. Any Independent Market Consultant decision shall be final, binding and enforceable on the Parties. Judgment may be entered upon the same in any court of competent jurisdiction.

Schedule H

Emission Demonstration Test Procedures

[to come]

Schedule I

Heat Rate Demonstration Test Procedures

[to come]

Schedule 2.3(b)(vi)

Form of Accounting Certification

ACCOUNTING CERTIFICATION

Date: [●]

The undersigned individual, being the Principal Accounting Officer of Seller and having responsibilities for financial accounting matters associated with the Agreement, hereby certifies the following with respect to that certain Fuel Conversion Services Agreement, dated as of [●], between Entergy Texas, Inc. (“Buyer”) and [●] (“Seller”) (as amended, supplemented or otherwise modified, the “Agreement”), as of the date of this certification:

To the best of knowledge of the undersigned individual, under Accounting Standards as in effect on the date of this certification or that have been published or adopted on or prior to the date of this certification with an effective date during the term of the Agreement, neither the Agreement nor the transactions contemplated thereby 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.

Seller understands that Buyer will rely upon this certification, and Seller agrees that Buyer may request (and, if so requested, Seller shall promptly provide to Buyer) further documentation supporting this certification.

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

Confirmation

The above information (and any documentation supporting this certification provided as set forth above) 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

[to be provided by Seller]³⁸

³⁸ **NTD:** Project Schedule to include the following Milestones: (i) Enter into Electric Interconnection Agreement and other Deliverability Arrangements; (ii) Enter into Gas Interconnection Arrangements and Gas Transportation Arrangements; (iii) Enter into EPC contract; (iv) Enter into financing arrangements; (v) Full mobilization to Facility Site to commence civil and electrical work; (vi) Construction permits obtained from all relevant Governmental Authorities; (vii) Completion of Electric Interconnection Facilities; (viii) Completion of Gas Interconnection Facilities; (ix) attainment of Full Deliverability (including that the interconnection and transmission upgrades, including any Network Upgrades, required by the Deliverability Arrangements are complete, tested and in commercial operation); (x) attainment of Gas interconnection according to the Gas Interconnection Arrangements and firm Gas transportation according to the Gas Transportation Arrangements (including upgrades (including by applicable Transporter(s)) required therefor are complete, tested and in commercial operation); (xi) the Energization Date; (xii) Mechanical completion of the Facility; (xiii) commencement of performance testing of the Facility; (xiv) the Units have achieved commissioning; (xv) Capacity Demonstration Test, Heat Rate Demonstration Test and Emission Demonstration Test successfully completed; and (xvi) the Commercial Operation Date.

Schedule 5.1

Capacity Payments

The monthly Capacity Payment payable by Buyer hereunder shall be equal to the product of (i) the Dependable Capacity, times (ii) the Option Premium, where:

“Option Premium” means \$[●]/MW.³⁹

The Capacity Payments constitute Seller’s full compensation hereunder (including for all fixed cost charges, costs associated with Starts, costs associated with Gas (except as otherwise expressly set forth in Section 7.10) or other fuel and other costs and expenses arising out of or in connection with Seller’s Cost Scope, which shall be borne exclusive by Seller at no cost to Buyer), other than the Variable Payments and Start-up Payments.

³⁹ **NTD:** Insert Option Premium specified by Bidder in its proposal.

Schedule 5.2

Variable Payments

$$VP_m = \left[\sum_{i=1}^n \{DE_i * VOM_i\} \right] - VPD_m$$

where:

- VP_m = Variable Payment for the applicable month
- n = Total number of Reference MISO Settlement Intervals in the applicable month
- i = Each Reference MISO Settlement Intervals in the applicable month
- DE_i = Subject to Section 4.2(b) (i.e., excluding Ramp Energy), Delivered Energy during Reference MISO Settlement Interval i
- VOM_i = \$[●]/MWh⁴⁰
- VPD_m = { $[MAR_m - MAFM_m] * 2.0 * CP_m$ } + { $[MAFM_m - MA_m] * CP_m$ }

where:

- MAR_m = Monthly Availability Requirement for the applicable month (or portion thereof);
- $MAFM_m$ = Lesser of (i) Monthly Availability for the applicable month (or portion thereof), except that, when calculating Monthly Availability for purposes of this clause (i), Affected Capacity (as used in the denominator, DC_i , of the calculation of Monthly Availability) shall be deemed to include the portion of the Dependable Capacity, if any, that is unavailable during any Reference MISO Settlement Intervals of the applicable month (or portion thereof) due solely and directly to Force Majeure; or (ii) Monthly Availability Requirement for the applicable month (or portion thereof);
- CP_m = Capacity Payment for the applicable month (or portion thereof), expressed in Dollars; and
- MA_m = Monthly Availability for the applicable month (or portion thereof)

provided, however, that, notwithstanding the foregoing calculation, in no event shall the aggregate VPD_m for any Contract Year exceed the total Capacity Payments for such Contract Year (and the VPD_m calculated as set forth above for any months (or portions thereof) in such Contract Year after such cap has been reached for such Contract Year shall be reduced to the extent of any such excess)

⁴⁰ NTD: Insert VOM specified by Bidder in its proposal.

Schedule 5.3

Start-up Payments

$$SUP_m = CS_m * FSC$$

where:

SUP_m = Start-up Payment for the applicable month

CS_m = Total number of Completed Start-ups in the applicable month

FSC = \$[●]/Completed Start⁴¹

For the avoidance of doubt, no Start-up Payment shall be due in respect of any Start-up that is not a Completed Start-up.

⁴¹ **NTD:** Insert charge per Completed Start specified by Bidder in its proposal.

Schedule 6.1

Monthly Availability

For purposes of this Agreement, “Monthly Availability” means, with respect to any month (or portion thereof) in the Delivery Term, an amount, expressed as a percentage, determined in accordance with the following formula:

$$MA_m = \frac{\sum_{i=1}^n AC_i}{\sum_{i=1}^n DC_i}$$

where:

- MA_m = Monthly Availability for the applicable month (or portion thereof).
- n = Total number of Reference MISO Settlement Intervals in the applicable month that occur during the Delivery Term.
- i = Each Reference MISO Settlement Interval in the applicable month that occurs during the Delivery Term.
- AC_i = The lowest of:

(i) the amount of the Dependable Capacity actually available during Reference MISO Settlement Interval i (which, for the avoidance of doubt, means taken over the course of the entire Reference MISO Settlement Interval i as a whole) at the Electric Interconnection Point (whether or not Buyer makes a Product Request for Products associated therewith);

(ii) the amount of the Dependable Capacity set forth, or deemed to be set forth, as available in the Availability Notice for Reference MISO Settlement Interval i provided by Seller to Buyer (but excluding any increase in availability notified to Buyer after the Day-Ahead Availability Notice Deadline); and

(iii) DC_i for Reference MISO Settlement Interval i ;

provided, however, that:

(A) if the amount in clause (i) or clause (ii) above would otherwise be less than the Minimum Output Level, it shall be deemed to be zero (0) MW;

(B) if, during Reference MISO Settlement Interval i , the Facility is not capable of achieving at least ninety percent (90%) of the full operating range from the Minimum Output Level to the full available Contract Capacity or the Availability Notice for Reference MISO Settlement Interval i provided by Seller to Buyer so states or is deemed to so state, then DC_i will be deemed to be zero (0) MW for Reference MISO Settlement Interval i ; and

(C) following an Outage, the Dependable Capacity will be considered unavailable until the expiration of the Maximum Start-up Period after the time the Facility becomes again available for mechanical commencement of a Start-up.

(For the avoidance of doubt, Dependable Capacity will be considered unavailable to the extent it is unavailable due to Force Majeure or any Reliability Curtailment or any other Unit Contingency (without limiting the treatment of such unavailable capacity as Affected Capacity in the calculation of DC_i below, to the extent provided in the definition of Affected Capacity), including in the event that generation from such Dependable Capacity is limited by MISO as a result of Seller's failure to meet the ramp rates, set points, or other operational or dispatch requirements of MISO.)

DC_i = Dependable Capacity minus Affected Capacity during Reference MISO Settlement Interval i ; provided, however, that the Affected Capacity resulting from Planned Maintenance shall be disregarded to the extent such Planned Maintenance occurs during Excess Equivalent Planned Maintenance Hours.

Schedule 6.3

Heat Rate Curves

Summer Months

Physically Requested Quantity (MW)	Guaranteed Heat Rate Without Duct Firing (MMBtu/MWh)	Guaranteed Heat Rate With Duct Firing* (MMBtu/MWh)	Marginal Heat Rate^ (MMBtu/MWh)
[●] ⁴²	[●]		-
[...] ⁴³	[●]		[●]
[●] ⁴⁴	[●]		[●]
[...] ⁴⁵	[●]	[●]	[●]
[●] ⁴⁶	[●]	[●]	[●]

⁴² **NTD:** Insert Minimum Output Level specified by Bidder in its proposal.

⁴³ **NTD:** Insert values in between.

⁴⁴ **NTD:** Insert maximum potential output level without duct firing specified by Bidder in its proposal.

⁴⁵ **NTD:** Insert values in between.

⁴⁶ **NTD:** Insert maximum potential output level with duct firing specified by Bidder in its proposal.

Winter Months

Physically Requested Quantity (MW)	Guaranteed Heat Rate Without Duct Firing (MMBtu/MWh)	Guaranteed Heat Rate With Duct Firing* (MMBtu/MWh)	Marginal Heat Rate^ (MMBtu/MWh)
[●] ⁴⁷	[●]		-
[...] ⁴⁸	[●]		[●]
[●] ⁴⁹	[●]		[●]
[...] ⁵⁰	[●]	[●]	[●]
[●] ⁵¹	[●]	[●]	[●]

⁴⁷ NTD: Insert Minimum Output Level specified by Bidder in its proposal.

⁴⁸ NTD: Insert values in between.

⁴⁹ NTD: Insert maximum potential output level without duct firing specified by Bidder in its proposal.

⁵⁰ NTD: Insert values in between.

⁵¹ NTD: Insert maximum potential output level with duct firing specified by Bidder in its proposal.

Months Not Summer Months or Winter Months

Physically Requested Quantity (MW)	Guaranteed Heat Rate Without Duct Firing (MMBtu/MWh)	Guaranteed Heat Rate With Duct Firing* (MMBtu/MWh)	Marginal Heat Rate^ (MMBtu/MWh)
[●] ⁵²	[●]		-
[...] ⁵³	[●]		[●]
[●] ⁵⁴	[●]		[●]
[...] ⁵⁵	[●]	[●]	[●]
[●] ⁵⁶	[●]	[●]	[●]

* The figures set forth in the second column of these tables (and not this third column) shall be used until the Contract Energy actually generated by the Facility and injected at the Electric Interconnection Point during the applicable hour (but not to exceed the Maximum Delivered Contract Energy) exceeds the higher of (a) the amount of Contract Capacity without duct firing set forth or deemed to be set forth as available in the Availability Notice applicable to such hour in effect at the time Buyer made a Product Request for such Contract Energy or (b) the output level at which duct firing was actually required to begin in order to deliver the Contract Energy to Buyer at the Delivery Point during such hour.

^ The figures in this fourth column are included for reference for the purposes of assisting Buyer with its planning only. These figures are not intended for use, nor shall they be used for, any calculations with regard to Heat Rates or payments made under this Agreement.

⁵² NTD: Insert Minimum Output Level specified by Bidder in its proposal.

⁵³ NTD: Insert values in between.

⁵⁴ NTD: Insert maximum potential output level without duct firing specified by Bidder in its proposal.

⁵⁵ NTD: Insert values in between.

⁵⁶ NTD: Insert maximum potential output level with duct firing specified by Bidder in its proposal.

Schedule 7.1(a)

Form of Availability Notice

[to come]

Schedule 7.2(b)(i)

Form of Product Request Notice

[to come]

Schedule 7.10(a)(i)

Gas Interconnection Options

[to come]

Schedule 8.5(b)

Real-Time Data

The data points to be measured, recorded, stored and provided by Seller to Buyer shall be at least the following:⁵⁷

Instantaneous Values

- Main Breaker status at Electric Interconnection Point
- Revenue meter MW at Electric Interconnection Point
- Revenue meter MVAR at Electric Interconnection Point
- Real-time voltage at Electric Interconnection Point
- Real-time frequency at Electric Interconnection Point
- Auxiliary load MW for Facility
- Losses prior to Electric Interconnection Point (including auxiliary load) MW for the Facility
- For each Unit: (i) whether it is available to generate power (non-faulted and connected to grid) (yes/no), (ii) real-time generator breaker status at the Unit; (iii) instantaneous energy output MW at the Unit; (v) real-time voltage; and (iv) real-time frequency
- Active Power Limit set point feedback
- Status at each Gas Delivery Point
- Revenue meter pressure PSI at each Gas Delivery Point
- Revenue meter temperature °F at each Gas Delivery Point
- Revenue meter flow rate ACFM at each Gas Delivery Point

Counter values

- Revenue Meter MWh to Electric Interconnection Point
- Revenue Meter MVARh to Electric Interconnection Point
- Auxiliary load MWh for Facility
- Losses prior to Electric Interconnection Point (including auxiliary load) MWh for the Facility
- For each Unit, energy output MWh
- Revenue meter volume CCF at each Gas Delivery Point

⁵⁷ **NTD:** This Schedule is subject to supplementation by Buyer, depending on the details of the Facility.

Schedule 9.4

Capacity Demonstration Test Procedures

[to come]

Schedule 9.8

Insurance Requirements

On or before the commencement of construction of the Facility at the Facility Site, 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 Texas:

(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 Twenty Million Dollars (\$20,000,000) per occurrence and Twenty Million Dollars (\$20,000,000) 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 Seller'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 Texas 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 provide evidence of the insurance coverage required under this Agreement in the form of an ACORD certificate or other certificate of insurance at the following times: (a) on or before the Effective Date, (b) for each required policy, on an annual basis upon renewal but in no event later than ten (10) Business Days after the anniversary or expiration of the policy, and (c) otherwise within ten (10) Business Days after reasonable request by Buyer from time to time. If any of the required insurance is cancelled or non-renewed, Seller or its insurers shall provide written notice to Buyer according to the underlying policies’ terms and conditions and 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 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 for such fiscal quarter or fiscal year; 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:
ENERGY TEXAS, INC.
2107 RESEARCH FOREST DRIVE (T-LFN-6)
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 ENERGY TEXAS, INC. (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 FUEL CONVERSION SERVICES 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").

DRAFT

DRAFT

DRAFT

DRAFT

DRAFT

DRAFT

LETTER OF CREDIT NO. SXXXXXX

PAGE 2

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.

DRAFT

DRAFT

DRAFT

DRAFT

DRAFT

DRAFT

LETTER OF CREDIT NO. SXXXXXX

PAGE 3

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]
[TITLE]

[SIGNATORY]
[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 TEXAS, INC. 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 TEXAS, INC.

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 TEXAS, INC. (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 FUEL CONVERSION SERVICES AGREEMENT, DATED [] (AS AMENDED, MODIFIED OR OTHERWISE SUPPLEMENTED FROM TIME TO TIME, THE "FUEL CONVERSION SERVICES AGREEMENT").

[PICK ONE OF THE FOLLOWING ALTERNATIVES FOR PARAGRAPH 2]

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

OR

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

OR

[2. THE APPLICANT IS REQUIRED TO REPLACE THE LETTER OF CREDIT PURSUANT TO THE SIXTH SENTENCE OF SECTION 12.2 OF THE FUEL CONVERSION SERVICES 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 FUEL CONVERSION SERVICES AGREEMENT) IN ACCORDANCE WITH THE FUEL CONVERSION SERVICES AGREEMENT AND PERFORMANCE ASSURANCE IS STILL REQUIRED FROM THE APPLICANT UNDER THE FUEL CONVERSION SERVICES 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 TEXAS, INC.

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 TEXAS, INC. (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

[to come]

Schedule 19.1

Notice Addresses and Contact Information

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

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

Invoices:
Attn:
Phone:
Facsimile:

Invoices:
Attn:
Phone:
Facsimile:

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

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

Scheduling (Day-ahead Scheduling):
Attn:
Phone:
Facsimile:
Email:

Scheduling (Day-ahead Scheduling):
Attn:
Phone:
Facsimile:
Email:

Payments:
Attn:
Phone:
Facsimile:

Payments:
Attn:
Phone:
Facsimile:

Wire Transfer:
BNK:
ABA:
ACCT:

Wire Transfer:
BNK:
ABA:
ACCT:

Credit and Collections:

Attn:
Phone:
Facsimile:

Credit and Collections:

Attn:
Phone:
Facsimile:

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

Attn:
Phone:
Facsimile:

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

Attn:
Phone:
Facsimile:

Schedule 19.4(e)

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 Texas, Inc., a Texas corporation (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 nominal [●] MW, natural gas-fired, combined-cycle power generation facility located in [●] (the “Facility”).

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 ownership, operation and maintenance of the Facility.

C. Collateral Assignor and Contracting Party have entered into that certain Fuel Conversion Services 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 collateral 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 Facility as collateral security to Collateral Agent, for the benefit of the Secured Parties, (iii) the collateral assignment of the (direct or indirect) [membership/equity] interests in Collateral Assignor as collateral security to Collateral Agent, for the benefit of the Secured Parties, (iv) 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)-(iii) above, (v) the acquisition of the rights of Collateral Assignor under the Assigned Agreement and the Facility as a consequence of any Enforcement Action (or acceptance of an absolute transfer of the Assigned Agreement and the

Facility in lieu of an Enforcement Action) by Collateral Agent or a Subsequent Transferee (as defined below), (vi) the transfer of the Assigned Agreement and the Facility to a Subsequent Transferee following an Enforcement Action or following an absolute transfer thereof in lieu of an Enforcement Action or (vii) any direct or indirect change of control of Collateral Assignor as a consequence of any Enforcement Action (or acceptance of an absolute transfer of the [membership/equity] interests in Collateral Assignor 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 (v)-(vii) above, such acquisition, transfer 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, transfer 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 (but not the requirements of this Consent, including, without limitation, Section 3 (as applicable)), if (A) Collateral Agent or the Subsequent Transferee, as applicable, is a Qualified Operator or, in the case of Collateral Agent only (and not any Subsequent Transferee), has retained (and agrees in writing with Contracting Party to thereafter maintain) a Qualified Operator to operate the Facility, (B) Collateral Agent or the Subsequent Transferee, as applicable, has a creditworthiness equal to or greater than that of each Person making a transfer to Collateral Agent or the Subsequent Transferee, as applicable, as part of such acquisition, transfer or change of control immediately prior thereto, (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 (together with its Affiliates) 1,000 MW or more of electric generation capacity, (D) Collateral Agent or the Subsequent Transferee, as applicable, or one of its Affiliates is not, and during the period commencing four (4) years prior to such acquisition, transfer or change of control until the date of such acquisition, transfer or change of control has not been, involved in material adverse litigation against Contracting Party or any of its Affiliates, (E) without limiting Section 3, Collateral Agent or the Subsequent Transferee, as applicable, provides (or maintains in place) Performance Assurance according to Article 12 of the Assigned Agreement that, even after such acquisition, transfer or change of control, is drawable against all obligations of “Seller” under the Assigned Agreement and other relevant events or circumstances (in each case, whether relating to the period before, on or after the date of the acquisition, assignment or change of control), and (F) in connection with any transfer of the Assigned Agreement or all or a portion of, or an undivided interest in, the Facility, as applicable, to Collateral Agent or the Subsequent Transferee, as applicable, (1) the transfer is of the entire (and not a portion of or undivided interest in) the Assigned Agreement or Facility, as applicable, and (2) Collateral Agent or the Subsequent Transferee, as applicable, concurrently receives transfer of both the entire Facility and the entire Assigned Agreement (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 reasonably satisfactory to Contracting Party and consistent with the provisions of the Assigned Agreement as modified by this Consent (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); provided, however, that, notwithstanding such succession (and regardless of the scope of the obligations of Collateral Assignor assumed by Collateral Agent or the Subsequent Transferee (as applicable)), Events of Default (and Potential Events of Default) of Seller under the Assigned Agreement, whether before or after such succession, shall be determined taking into account all obligations of "Seller" under the Assigned Agreement and other relevant events or circumstances (in each case, whether relating, in whole or in part, to the period before, on or after the date of such succession), including for purposes of Article 12 and Article 15 of the Assigned Agreement and the Performance Assurance (which, even after such succession, shall be drawable against all obligations of "Seller" under the Assigned Agreement and other relevant events or circumstances, in each case, whether relating, in whole or in part, to the period before, on or after the date of such succession);

(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 “Toll Default”):

(a) Contracting Party shall not cancel or terminate the Assigned Agreement until it first gives written notice of such Toll Default to Collateral Agent and affords Collateral Agent a period to cure such Toll Default of:

(i) in the case of a Toll 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 Toll 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 Toll Default pursuant to Section 15.1(c), (A) with respect to a Potential Event of Default or a Toll 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 Toll Default;

(iv) in the case of a Toll 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 Toll 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 Toll Default under Section 15.1(f) of the Assigned Agreement, ten (10) Business Days after the date of such Toll 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 Toll Default, with the Bankruptcy Order to be approved on a final basis within twenty (20) Business Days of such Toll Default);

(vii) in the case of a Toll Default pursuant to Section 15.1(k), thirty (30) Days following the expiration of the cure period afforded Collateral Assignor thereunder;

(viii) in the case of a Toll Default pursuant to Section 15.1(l)(ii), five (5) Business Days following the expiration of the cure period afforded Collateral Assignor thereunder;

(ix) in the case of a Toll Default pursuant to Section 15.1(m), thirty-five (35) Days following the expiration of the cure period afforded Collateral Assignor thereunder;

(x) in the case of a Toll Default pursuant to Section 15.1(p), thirty-five (35) Days following the expiration of the cure period afforded Collateral Assignor thereunder;

(xi) in the case of a Toll Default pursuant to Section 15.1(r), five (5) Business Days following the expiration of the cure period afforded Collateral Assignor thereunder; and

(xii) in the case of all other Toll Defaults, the expiration of the cure period (if any) afforded Collateral Assignor for such Toll Default under the Assigned Agreement.

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 Toll 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) 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 Toll Default under Section 15.1(f) of the Assigned Agreement, and the Contracting Party to exercise its rights and remedies against the same under the terms thereof or of the Assigned Agreement or otherwise available at law or in equity; (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 Toll 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 and the Collateral Assignor’s successors and assigns (including any chapter 7 or chapter 11 trustee appointed in the Bankruptcy Case) and not subject to being modified, stayed, avoided or otherwise limited by any further order of the Bankruptcy Court or any court proceeding under the Bankruptcy Code. 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.

(c) 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.

(d) If (i) possession of the Facility through an Enforcement Action is the sole means to cure a Toll Default described in clauses (i)-(xi) of Section 4(a), (ii) all other Toll Defaults capable of being cured have been cured by the cure period applicable thereto according to Section 4(a) and (iii) by no later than ten (10) Business Days after notice of such Toll 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 Facility 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 such time shall be added to the cure period set forth in Section 4(a) above, provided that the aggregate cure period (i.e., the sum of any cure period afforded Collateral Assignor under the Assigned Agreement, any extended cure period set forth in Section 4(a), and any additional time added pursuant to this Section 4(d)) shall not exceed one hundred twenty (120) Days after notice of such Toll Default to Collateral Agent. For the avoidance of doubt and notwithstanding the foregoing, if multiple Toll Defaults have occurred and are continuing and this Section 4(d) 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 Toll Defaults to which this Section 4(d) 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(d)) has not yet expired with respect to the other Toll 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 (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 (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, and compliance with the assignment and transfer restrictions in the Assigned Agreement (including, without limitation, Section 19.4 thereof) and this Consent (including, without limitation, Section 1(d)) 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) or as contemplated by Section 4 or Section 5), 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) or counterparty to a Replacement Agreement pursuant to Section 5 or as contemplated by Section 4.

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 #:	[_____]

(b) Without limiting Section 4.6 of the Assigned Agreement and for the avoidance of doubt, during any period in which Contracting Party has suspended performance under the Assigned Agreement with respect to its obligation to take delivery of any or all Products, Collateral Assignor shall not be permitted to sell any such Products to any other Person. During any period during which Contracting Party has the right to suspend its performance under the Assigned Agreement, (i) if Contracting Party does not exercise such suspension rights with respect to its obligation to take delivery of certain Products and takes delivery of such Products, then Contracting Party shall pay Collateral Assignor for such Products (to the extent the Assigned Agreement requires separate payment therefor) in accordance with the Assigned Agreement, and (ii) if Contracting Party receives a Monthly Invoice for Products that were 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 Products (to the extent the Assigned Agreement requires separate payment therefor) 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 5.4 and 11.4 of the Assigned Agreement, and to Section 7(a).

8. Representations and Warranties.

(a) *By Contracting Party.*⁵⁸ 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 corporate action, and, assuming Contracting Party obtains, (A) Buyer's Required Consents (B) 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

⁵⁸ **NTD:** 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.

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:⁵⁹

9. Notices. Any communications between the parties hereto or notices provided herein to be given, may be given to the following addresses (subject to the last sentence of this Section 9):

If to Contracting Party:

[]
[]
[]
[]

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) if sent by registered or certified with return receipt requested, or

⁵⁹ **NTD:** Collateral Assignor representations and warranties to be included as required by Collateral Agent.

(d) if sent by facsimile. Notice so given shall be effective upon receipt by the addressee, except that communication or notice so transmitted by facsimile shall be deemed to have been validly and effectively given on the Day on which it is transmitted, if transmitted on a Business Day before 5:00 p.m. (recipient's time), or, if transmitted on a non-Business Day or after that time on a Business Day, 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.

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 County of [●], State of [●], and 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 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]