

PRO FORMA
CONTRACT FOR THE
PURCHASE OF FIRM CAPACITY AND ENERGY
FROM DAHLBERG CT01, CT03 AND CT05 ELECTRIC GENERATING UNITS

BETWEEN

GEORGIA POWER COMPANY

AND

SOUTHERN POWER COMPANY

[_____, 20____]

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**PRO FORMA
CONTRACT FOR THE PURCHASE
OF FIRM CAPACITY AND ENERGY**

THIS POWER PURCHASE AGREEMENT (“Agreement”), dated as of [____], 20____, is between Georgia Power Company, a corporation organized and existing under the laws of the state of Georgia, having its principal place of business in Atlanta, Georgia (“Buyer”), and Southern Power Company, a corporation organized and existing under the laws of the state of Delaware (“Seller”).

W I T N E S S E T H:

WHEREAS, Seller desires to sell, and Buyer desires to purchase, capacity and associated energy and Ancillary Services from the Facility consistent with the Georgia Public Service Commission’s Order in Docket Nos. 42310 and 42641; and

WHEREAS, the Parties desire to set forth the terms and conditions upon which the sale and purchase of capacity and associated energy and Ancillary Services may be conducted between the Parties.

NOW, THEREFORE, for and in consideration of the premises, the mutual promises and agreements set forth herein and other good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, Buyer and Seller, each intending to be legally bound, agree as follows:

ARTICLE 1

DEFINITIONS

1.1 Certain Definitions. In addition to the initially capitalized terms and phrases defined in the preamble of this Agreement, the following initially capitalized terms and phrases as and when used in this Agreement shall have the respective meanings set forth below:

1.1.1 “Adjustment Period” - has the meaning assigned in Section 9.2.3.

1.1.2 “Affiliate” - means any Person directly or indirectly controlling or controlled by or under direct or indirect common control of a specified Person. For purposes of this definition, “control” means the power to direct the management and policies of such Person, directly or indirectly, whether

through the ownership of voting securities, by contract or otherwise. For purposes of this Agreement, it shall be assumed that the direct or indirect owner of fifty percent (50%) or more of the outstanding stock or other equity interest of a Person has “control” of such Person. The terms “controlling” and “controlled” have meanings correlative to the foregoing.

1.1.3 “After-Tax Basis” - means, with respect to any payment received or deemed to have been received by any Person, the amount of such payment (the “base payment”) supplemented by a further payment (the “additional payment”) to that Person so that the sum of the base payment plus the additional payment shall, after deduction of the amount of all Taxes required to be paid by such Person in respect of the receipt or accrual of the base payment and the additional payment (taking into account any credits or deductions arising from the underlying loss, the base payment and the additional payment and the timing thereof), be equal to the amount required to be received. Such calculations shall be made on the basis of the assumption that the recipient is subject to U.S. federal income taxation at the highest applicable statutory rate applicable to corporations for the relevant period or periods, and is subject to state income taxation at the highest applicable statutory rates applicable to corporations in the relevant jurisdiction for the relevant period or periods.

1.1.4 “AGC” or “Automatic Generator Control” - means, generally, the equipment and capability of an electric generation facility automatically to adjust the generation quantity within the applicable balancing authority with the purpose of interchange balancing and means, specifically, the Facility’s capability of accepting a set point electronically and the automatic adjustment and regulation of the Facility’s energy production.

1.1.5 “AIER” - means Associated Interchange Energy Rate, which, as determined for each Hour, is based on the variable dispatch cost of the incremental resources that serve the collective obligations of the Southern Companies.

1.1.6 “Air Permit” – has the meaning assigned in Section 11.3.

1.1.7 “Alternate Delivery” - means delivery of capacity and energy from an Alternate Resource to an Alternate Delivery Point.

1.1.8 “Alternate Delivery Point” - means any point of interconnection between the Alternate Resource and the Transmission System, or the point(s) of interface between the transmission system to which the Alternate Resource is interconnected and the Transmission System, at which Buyer is (i) capable of receiving energy in the quantity to be delivered at such point pursuant to the Southern OATT, (ii) from which Buyer is able to obtain firm network transmission service in order to deliver all of the energy from the applicable Alternate Resource from such point to serve its native load customers at no additional cost to Buyer or its customers, and (iii) able to transmit such energy to its loads without being required to either materially change the output of generating resources available to Buyer or materially change the schedule of its preexisting power purchases or sales (other than purchases or sales pursuant to this Agreement) that results in material economic harm to Buyer.

1.1.9 “Alternate Resource” - means a generating resource (other than the Facility) for which Seller has an unencumbered first call right, which is connected to the Transmission System, either directly or through other transmission systems, and which in Buyer’s sole judgment is reasonably reliable to meet Buyer’s Schedule.

1.1.10 “Alternate Resource Delivery Unit Hours” or “ARDH” - has the meaning assigned in **Appendix A**, Section C.1.

1.1.11 “Amended GPSC Certificate” - has the meaning assigned in Section 2.3.2.

1.1.12 “Ancillary Services” - means all commercial products other than electrical output that are produced by or related to the Unit, including Electrical Products, Environmental Attributes, any other environmental or regulatory credits or allowances resulting from operation of the Unit, and any other benefit Buyer otherwise would have realized from or related to the Unit if Buyer rather than Seller had constructed, owned or operated the Unit, it being the Parties’ intent that all such benefits and entitlements in addition to electrical output that flow to the owner or operator of the Unit, whether existing as of the Effective Date or at any time during the Term, belong to Buyer at no additional cost to Buyer. However, if a commercial product is not produced by the Unit, Seller shall not be required to acquire such commercial product in the market in order to comply with this Agreement. For the avoidance of doubt, Ancillary Services do not include: (i) any federal, state or local tax attributes arising from the ownership of the Unit, including

depreciation deductions; (ii) grants in lieu of investment tax credits or any similar financial payment or grant with respect to the Unit or the metered electric energy output thereof; or (iii) the metered electric energy produced by the Unit.

1.1.13 “Annual Capacity Price” - has the meaning assigned in Table A-2 in **Appendix A**.

1.1.14 “Annual Period” - means any one of a succession of consecutive twelve (12)-Month periods during the Term of this Agreement beginning on January 1 and ending on the following December 31. The first Annual Period is such period beginning on January 1, 2028.

1.1.15 “ASC” - means Accounting Standards Codification.

1.1.16 “ASME Performance Test Code” - means the rules and regulations established by the American Society of Mechanical Engineers to govern Performance Tests applicable to the Unit under this Agreement.

1.1.17 “Availability Percentage” - has the meaning assigned in Section 17.1.8.

1.1.18 “Available” - means all times following the Delivery Commencement Date when the Unit or an Alternate Resource (designated pursuant to Section 5.1.4), as the case may be, is not Unavailable.

1.1.19 “Base Operating Mode” - means the normal operating mode at which each Unit runs with full normal utilization of the CT.

1.1.20 “Base Operating Mode Energy” - means energy produced by each Unit in the Base Operating Mode.

1.1.21 “Business Day” - means any Day excluding Saturday, Sunday and NERC-defined holidays.

1.1.22 “Buyer” - has the meaning assigned in the preamble.

1.1.23 “Buyer Election Notice” - has the meaning assigned in Section 18.2.5.

1.1.24 “Buyer Security Account” - means an account designated by Buyer for the benefit of Buyer, under the exclusive control of Buyer free and clear of all liens (including the liens of any lenders) of any Person or entity other than Buyer. Any Buyer Security Account shall be established and maintained at the expense of Seller and held by a depositary bank acceptable to Buyer pursuant to a control agreement

in form and substance acceptable to Buyer.

1.1.25 “Buyer System Incremental Cost” - has the meaning assigned in **Appendix A**, Section D.

1.1.26 “Capacity Shortfall” - has the meaning assigned in Section 5.1.7.1.

1.1.27 “Change of Control Transaction” - in respect of a Person means any transaction or series of related transactions which, if consummated, would result in such Person being an Affiliate of another ultimate parent entity immediately after such transaction. For purposes of this definition, a Person’s ultimate parent entity is the Person who directly or indirectly controls fifty percent (50%) or more of such Person’s outstanding capital stock or other equity interests having ordinary voting power and who does not itself have an ultimate parent entity.

1.1.28 “Change of Law” - has the meaning assigned in Section 18.2.1.

1.1.29 “Change of Law Capital Expenditures” - has the meaning assigned in Section 18.2.2.

1.1.30 “Change of Law Notice” - has the meaning assigned in Section 18.2.3.

1.1.31 “Claim” - has the meaning assigned in Section 20.3.1.

1.1.32 “Confidential Information” - means business or technical information rightfully in the possession of either Party, which information derives actual or potential commercial value from not being generally known or readily ascertainable through independent development or reverse engineering by persons who can obtain economic value from its disclosure and use, and includes information furnished or disclosed to the other Party in connection with discussions leading up to execution of this Agreement, including this Agreement. Confidential Information must be designated in writing as confidential by the Party supplying such information (the “Disclosing Party,” the other Party being the “Receiving Party”). Confidential Information does not include information which: (i) is or becomes publicly available other than as a result of a violation of this Agreement; (ii) was, at the time of the disclosure, already in the Receiving Party’s possession; (iii) is disclosed to the Receiving Party by a third party who, to the Receiving Party’s knowledge, is not prohibited from disclosing the information pursuant to any agreement with the Disclosing

Party; (iv) the Receiving Party develops or derives without the aid, application or use of the privileged or proprietary information; or (v) the Receiving Party is required to disclose pursuant to Legal Requirements.

1.1.33 “Consent” - means any approval, consent, authorization or other applicable requirement that is required with respect to the Project or Unit from any jurisdictional Governmental Authority, including, without limitation, all applicable environmental certificates, licenses, permits and approvals.

1.1.34 “Contracted Capacity” - means the full capacity range of the Unit (in MW) being made available to Buyer pursuant to this Agreement, as specified in **Appendix A**, Section A.1.

1.1.35 “Contracted Capacity Cap” - has the meaning assigned in, and is determined pursuant to, **Appendix A**, Section A.1.

1.1.36 “Costs” - has the meaning assigned in Section 17.3.3.

1.1.37 “CPT” - means Central Prevailing Time.

1.1.38 “Creditworthy” - means a Person (i) rated by at least two (2) of the three (3) Rating Agencies, (ii) with an investment grade rating from each of the Rating Agencies that have rated such Person such that its senior unsecured debt (or issuer rating if such Person has no senior unsecured debt rating) is rated at least (A) BBB- by S&P, if rated by S&P, (B) Baa3 by Moody's, if rated by Moody's, and (C) BBB- by Fitch, if rated by Fitch, respectively, and (iii) that has satisfactory and verifiable creditworthiness determined in Buyer's sole discretion.

1.1.39 “CT” - means combustion turbine.

1.1.40 “Cure Period” - has the meaning assigned in Section 17.1.9.

1.1.41 “Current Unit” - has the meaning assigned in Section 5.4.1.

1.1.42 “Daily Fuel Oil Replacement Price” - means a per gallon price issued by the Oil Price Information Service (“OPIS”) for ultra-low sulfur #2 dyed average price for Athens, Georgia, plus any applicable transportation charges to the Facility. The Operating Committee shall establish the procedures and methodology that Seller shall use for determining the Fuel Oil transportation charges.

1.1.43 “Day” - means a calendar day.

1.1.44 “Defaulting Party” - has the meaning assigned in Section 17.3.1.

1.1.45 “Delivered Energy” - has the meaning assigned in **Appendix A**, Section D.

1.1.46 “Delivery Commencement Date” - means January 1, 2028.

1.1.47 “Designated Capacity” - has the meaning assigned in, and is determined pursuant to, **Appendix A**, Section A.3.

1.1.48 “Dispatch Hours” or “DH” - has the meaning assigned in **Appendix A**, Section C.1.

1.1.49 “Dispute Response” - has the meaning assigned in Section 20.1.

1.1.50 “Disputing Party” - has the meaning assigned in Section 20.1.

1.1.51 “Early Termination Date” - has the meaning assigned in Section 17.3.1.

1.1.52 “Electrical Products” - means all electrical products produced by or related to the Unit, including spinning reserves, operating reserves, black start capability, balancing energy, regulation service, ramping capability, reactive power and voltage control, frequency control and other ancillary or essential reliability service products. For the avoidance of doubt, Electrical Products do not include: (i) any federal, state or local tax attributes arising from the ownership of the Unit, including depreciation deductions; (ii) grants in lieu of investment tax credits or any similar financial payment or grant with respect to the Unit or the metered electric energy output thereof; or (iii) the metered electric energy produced by the Unit.

1.1.53 “Eligible Collateral” - means (i) a Letter of Credit, (ii) cash deposited into a Buyer Security Account by Seller, or (iii) a Seller Guaranty; provided, however, that at least fifty percent (50%) of any Eligible Collateral required under any provision of this Agreement must be in the form of either a Letter of Credit or cash deposited into a Buyer Security Account, whenever a Seller Guarantor supplying a Seller Guaranty under this Agreement has an investment grade rating such that its senior unsecured debt (or issuer rating if such Person has no senior unsecured debt rating) is not rated at least (i) BBB by S&P, if rated by S&P, (ii) Baa2 by Moody’s, if rated by Moody’s, and (iii) BBB by Fitch, if rated by Fitch, respectively. For the purposes of the immediately preceding sentence, a Person is not required to have a senior unsecured debt rating (or issuer rating if such Person has no senior unsecured debt rating) from each of S&P, Moody’s and Fitch, but must have the requisite senior unsecured debt rating (or issuer rating if such Person has no senior unsecured debt rating) as set forth above from at least two (2) of the three (3) Rating Agencies.

1.1.54 “Energy Price” - has the meaning assigned in **Appendix A**, Section D.

1.1.55 “Environmental Attributes” - means (i) any and all fuel-related, emissions-related, air quality-related or other environmental-related aspects, claims, characteristics, benefits, credits, reductions, offsets, savings, allowances, efficiencies, certificates, tags, attributes, demand reductions or similar products or rights (including all of those relating to greenhouse gases and all green certificates, green tags, renewable certificates, renewable energy credits, and CO2 credits and all of those that otherwise arise or result from the generation of energy from the Unit, and all of those arising or resulting from the existence of the Unit) (a) howsoever titled and whether known or unknown, (b) whether existing as of the Effective Date or at any time during the Term, and (c) whether such Environmental Attributes have been certified or verified under any renewable standard, and (ii) any environmental benefit Buyer otherwise would have realized from or related to the Unit if Buyer rather than Seller had constructed, owned or operated the Unit; provided, however, that any such environmental benefit could be realized by Seller. Environmental Attributes include any such Environmental Attributes that could qualify or do qualify for application toward compliance with any local, state, federal or international renewable energy portfolio standard, green pricing program, renewable energy program, carbon reduction or greenhouse gas reduction initiative, electricity savings program, licensing requirement, verification or certification procedure, federal contract, or other environmental program, incentive mandate or objective, in each case whether voluntary or mandatory, and whether created by a Legal Requirement, or by any Governmental Authority, partnership, coalition, advisory committee, or independent certification board, group or scientific panel. Environmental Attributes include the exclusive right to report such Environmental Attributes to any Governmental Authority or other Person. Environmental Attributes do not include: (a) any federal, state or local tax attributes arising from the ownership of the Unit, including depreciation deductions; (b) grants in lieu of investment tax credits or any similar financial payment or grant with respect to the Unit or the metered electric energy output thereof; or (c) the metered electric energy produced by the Unit.

1.1.56 “EPA” - means the U.S. Environmental Protection Agency.

1.1.57 “Equivalent Unplanned (Forced) Derated Unit Hours” or “EFDH” - means the sum of the products of each hour in which the Unit experiences a Forced Derate times the size of the derating reduction, divided by the Designated Capacity, and as further defined in **Appendix A**, Section C.1.

1.1.58 “Event of Default” - means an event described in Section 17.1 for Seller and in Section 17.2 for Buyer.

1.1.59 “Excess Capital Expenditures Notice” - has the meaning assigned in Section 18.2.4.

1.1.60 “Excess Change of Law Capital Expenditures” - has the meaning assigned in Section 18.2.4.

1.1.61 “Extended Force Majeure Event” - has the meaning assigned in Section 16.6.1.

1.1.62 “Facility” - means the three (3) CTs at Seller’s Dahlberg electric generating plant interconnected to the Transmission System at the Point of Interconnection. The Facility includes, without limitation, the three (3) GE model EA, dual fuel, simple cycle CTs, specifically identified as CT01, CT03 and CT05, and all auxiliary equipment and facilities necessary or used for the production, control, delivery or monitoring of electricity produced on the Site. All equipment and facilities installed on Seller’s side of the Point of Interconnection and the Primary Gas Delivery Point at the Site shall be considered to be part of the Facility.

1.1.63 “FASB” - means the Financial Accounting Standards Board.

1.1.64 “Federal Power Act” - means the Federal Power Act, 16 U.S.C. § § 791a *et seq.* (1994), as such Act may be amended from time to time, and any successor statute of similar import.

1.1.65 “FERC” - means the Federal Energy Regulatory Commission or any Governmental Authority succeeding to the powers and functions thereof under the Federal Power Act.

1.1.66 “Finance Lease” - has the meaning as set forth in the ASC Topic 842, Leases, as issued and modified from time to time by FASB.

1.1.67 “Fitch” - means Fitch Ratings Ltd., or its successor.

1.1.68 “Force Majeure Event” - has the meaning assigned in Section 16.1.

1.1.69 “Force Majeure Remedy Plan” - has the meaning assigned in Section 16.6.1.

1.1.70 “Forced Derate” - means a time during which the generating capability of a Unit is reduced below the Designated Capacity for the Unit for reasons other than a Force Majeure Event, excluding a Forced Outage.

1.1.71 “Forced Outage” - means a time during which the Unit is not capable of normal operations for reasons other than a Force Majeure Event and which is not a Scheduled Outage or a Maintenance Outage.

1.1.72 “Fuel Oil” - means liquid fuel consistent with equipment manufacturer’s specifications and Air Permit requirements.

1.1.73 “GAAP” - means generally accepted accounting principles, as such may be modified from time to time.

1.1.74 “Gains” - has the meaning assigned in Section 17.3.3.

1.1.75 “Gas Day” - means a period of twenty-four (24) consecutive hours beginning and ending at 9:00 a.m. CPT.

1.1.76 “Gas Supply Plan” - has the meaning assigned in Section 12.1.1.

1.1.77 “GDPIPD” - means the Gross Domestic Product Implicit Price Deflator as reported in the Survey of Current Business published in January of each year for the annual escalation or de-escalation of the previous year, and revised thereafter, by the Bureau of Economic Analysis, United States Department of Commerce, Washington, D.C.

1.1.78 “Georgia Integrated Transmission System” - means the integrated transmission system in Georgia, which consists of electric transmission facilities (≥ 40 kV) that are individually owned and maintained by participating utilities who jointly plan and operate through agreements among Georgia Transmission Corporation, Georgia Power Company, Municipal Electric Authority of Georgia (MEAG Power) and Dalton Utilities.

1.1.79 “GHG Cap” - means the GHG Rate times the quantity of fuel required in order to comply with Buyer’s Scheduling Instructions.

1.1.80 “GHG Charges” - means any Taxes imposed on the Unit or Seller by a Governmental Authority under a New GHG Law for Greenhouse Gas emitted by and attributable to the Unit after the Delivery Commencement Date and prior to the end of the Term.

1.1.81 “GHG Credits” - means any instrument, credit, offset, allowance or similar right to emit Greenhouse Gas issued by a Governmental Authority in accordance with Legal Requirements or any revenues which are allocated to or received by any Person or generating facility associated with any GHG emissions or the avoidance of or reduction in the production of GHG emissions.

1.1.82 “GHG Rate” - means: (i) with respect to CO₂, 118.86 lbs. of CO₂ / MMBtu when operating on Natural Gas and 163.05 lbs. of CO₂ / MMBtu when operating on Fuel Oil; and (ii) with respect to any other Greenhouse Gas, a rate established by Buyer that is equal to the average emissions rate for the applicable Greenhouse Gas from Buyer’s own combustion turbine electric generation units.

1.1.83 “Governmental Approvals” - means any and all licenses, permits, franchises, agreements, approvals, authorizations, consents, waivers, rights, exemptions, releases, variances, exceptions, or orders of or issued by, or filing with, or notice to, any Governmental Authority under Legal Requirements.

1.1.84 “Governmental Authority” - means any local, state, regional or federal administrative, legal, judicial or executive agency, court, commission, department or other such entity, but excluding any such agency, court, commission, department or other such entity acting in a capacity as lender, guarantor or mortgagee.

1.1.85 “GPSC” - means the Georgia Public Service Commission or any Governmental Authority succeeding to the powers and functions thereof.

1.1.86 “GPSC Certificate” - has the meaning assigned in Section 2.3.2.

1.1.87 “GPSC Certificate Target Date” - has the meaning assigned in Section 2.3.2.

1.1.88 “Greenhouse Gas” or “GHG” - means carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), sulfur hexafluoride (SF₆), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and other gases or emissions classified as a greenhouse gas as contributing to the greenhouse effect.

1.1.89 “Grid Emergency” - has the meaning as that term is defined in the Seller’s

Interconnection Agreement.

1.1.90 “Guaranteed Heat Rates” - means the guaranteed heat rates set forth in **Appendix J**.

1.1.91 “Hot Gas Path Inspection” - means the hot gas path inspection as defined by the maintenance documents of the original equipment manufacturer.

1.1.92 “Imbalance Charges” - has the meaning assigned in Section 12.2.4.

1.1.93 “Impasse Notice” - has the meaning assigned in Section 20.1.

1.1.94 “Indebtedness” - of any Person means all of the following without duplication: (a) obligations of such Person for borrowed money evidenced by bonds, debentures, notes, loan agreements or other similar instruments; (b) purchase money indebtedness of such Person constituting an obligation to pay the deferred purchase price of property or services, other than trade payables incurred in the ordinary course of business; (c) lease obligations of such Person which are capitalized on the balance sheet of such Person in accordance with GAAP; (d) liabilities of a second Person secured by any lien on any property of such first Person, whether or not such liabilities have been assumed by such first Person; (e) liabilities of such Person with respect to letters of credit or applications or reimbursement agreements therefor; (f) net obligations of such Person under any swap or hedging agreement; or (g) indebtedness of such Person owing under direct or indirect guarantees of indebtedness of any other Person or constituting obligations to purchase or acquire or to otherwise protect or insure a creditor against loss in respect of indebtedness of any other Person excluding endorsements of negotiable instruments for deposit or collection in the ordinary course of business.

1.1.95 “Indemnified Party” - has the meaning assigned in Section 15.1.

1.1.96 “Interconnection Agreement” - means that certain Interconnection Agreement entered into or to be entered into by and between Seller and Buyer, dated as of July 31, 2001, that provides for the construction and operation of the Interconnection Facilities and governs the interconnection and parallel operation of the Facility with the Transmission System.

1.1.97 “Interconnection Facilities” - means those facilities described in the Interconnection Agreement as facilities that must be installed or modified in order to enable the Facility to deliver the energy

associated with the Contracted Capacity to meet Buyer's Schedules from the Unit to the Transmission System.

1.1.98 "Interest Rate" - means the interest per annum equal to the prime rate as published in *The Wall Street Journal*, or comparable successor publication, under "Money Rates," as applied on a daily basis and compounded quarterly.

1.1.99 "JAMS" - has the meaning assigned in Section 20.3.1.

1.1.100 "kV" - means kilovolt(s).

1.1.101 "kW" - means kilowatt(s).

1.1.102 "Legal Requirement" - means any law, code, statute, regulation, rule, ordinance, permit, judgment, injunction, order, Consent or other requirement of a Governmental Authority having jurisdiction over the matter in question that is valid and applicable to the matter in question at the time of the execution of this Agreement or any time thereafter during the Term.

1.1.103 "Letter of Credit" - means a standby letter of credit, substantially in the form attached hereto as **Appendix G** and which (i) is issued by a U.S. commercial bank or the U.S. branch of a foreign bank with total assets of at least ten billion dollars (\$10,000,000,000) having a general long-term senior unsecured debt rating of A minus or higher as rated by S&P, or A3 or higher as rated by Moody's, or A minus or higher as rated by Fitch; and (ii) is otherwise acceptable to Buyer in Buyer's sole discretion.

1.1.104 "Losses" - has the meaning assigned in Section 17.3.3.

1.1.105 "Maintenance Outage" - means a planned interruption of a portion or all of the Unit's generation capability that: (i) has been coordinated in advance with Buyer with a mutually agreed start date, time and duration or to which Buyer has consented pursuant to Section 11.2.2; and (ii) is for the purpose of performing work on specific components of the Unit or Facility, as applicable, that would limit the power output of the Unit but should not, in the reasonable judgment of Seller, be postponed until the next Scheduled Outage.

1.1.106 "Maintenance Schedules" - has the meaning assigned in Section 11.2.1.

1.1.107 "Major Inspection" - means major inspection as defined by the maintenance documents of the original equipment manufacturer.

1.1.108 “Material Adverse Change” - means that Seller or, if Seller is providing Eligible Collateral in the form of a Seller Guaranty, that Seller Guarantor experiences any of the events described in clauses (a) or (b): (a) such Person is no longer Creditworthy; or (b) the maturity of any Indebtedness of such Person which in the aggregate exceeds one hundred fifty million dollars (\$150,000,000.00) or five percent (5%) of equity, whichever is less is accelerated by the holder or holders thereof as a result of a default thereunder.

1.1.109 “Metering System” - means all meters, metering devices and related instruments used to measure and record electric energy and to determine the amount of such electric energy that is delivered to Buyer at the Point of Interconnection and for the other purposes set forth in Section 9.2.

1.1.110 “Minimum Capacity” - has the meaning assigned in **Appendix C**, Section I.B.

1.1.111 “MMBtu” - means one million British thermal units. One (1) MMBtu is equivalent to one (1) dekatherm.

1.1.112 “Month” - means a calendar month, commencing at the beginning of the first Day of such calendar month. “Monthly” has a meaning correlative to that of Month.

1.1.113 “Monthly Availability Adjustment” or “MAA” - has the meaning assigned in and is determined pursuant to **Appendix A**, Section C.

1.1.114 “Monthly Availability Factor” or “MAF” - has the meaning assigned in and is determined pursuant to Table A-4 in **Appendix A**.

1.1.115 “Monthly Availability Percentage” or “MAP” - has the meaning assigned in and is determined pursuant to **Appendix A**, Section C.

1.1.116 “Monthly Capacity Fee” or “MCF” - has the meaning assigned in and is determined pursuant to **Appendix A**, Section B.

1.1.117 “Monthly Capacity Payment” or “MCP” - means the amount to be paid by Buyer to Seller for Buyer’s purchase of the Designated Capacity for a particular Month, as provided in Section 5.2 and determined pursuant to **Appendix A**, Section B.

1.1.118 “Monthly Energy Payment” or “MEP” - means the amount to be paid by Buyer to Seller for Buyer’s purchase of energy and Ancillary Services for a particular Month, as provided in Section 5.3 and determined pursuant to **Appendix B**, Section A.

1.1.119 “Monthly Fuel Charge” or “MFC” - has the meaning assigned in **Appendix B**, Sections A and E.

1.1.120 “Monthly Invoice” - has the meaning assigned in Section 6.1.1.

1.1.121 “Monthly Startup Charge” or “MSC” - has the meaning assigned in **Appendix B**, Section C.

1.1.122 “Monthly Value Factor” or “MVF” - has the meaning assigned in Table A-3 in **Appendix A**.

1.1.123 “Moody’s” - means Moody’s Investors Service, Inc. or its successor.

1.1.124 “MVOM” - has the meaning assigned in **Appendix B**, Section B.

1.1.125 “MW” - means megawatt(s).

1.1.126 “MWh” - means megawatt-hour(s).

1.1.127 “Natural Gas” - means a mixture of hydrocarbon gasses that occurs with petroleum deposits, principally methane, together with varying quantities of ethane, propane, butane, and other gases, but excluding manufactured or artificial gas.

1.1.128 “NERC” - means the North American Electric Reliability Corporation, including any successor thereto and subdivisions thereof.

1.1.129 “New GHG Law” - means a Legal Requirement enacted after the Effective Date that imposes GHG Charges as a direct result of the generation of electric energy by the Unit.

1.1.130 “Nominal Capability” - means 76 MW per Unit for a total of 228 MW for the Facility.

1.1.131 “Non-Defaulting Party” - has the meaning assigned in Section 17.3.1.

1.1.132 “Notice of Dispute” - has the meaning assigned in Section 20.1

1.1.133 “NOx Emissions” - means emissions of nitrogen oxides.

1.1.134 “Operating Committee” - means the committee established pursuant to Section 11.7.

1.1.135 “Operating Procedures” - means those procedures developed by the Parties pursuant to Section 11.1.2.

1.1.136 “Operating Representatives” - means those individuals appointed by each of the Parties to the Operating Committee pursuant to Section 11.7.

1.1.137 “Operator Requested Schedule” - has the meaning assigned in Section 13.2.4.

1.1.138 “Party” or “Parties” - means either Buyer or Seller, or both, respectively.

1.1.139 “Party Appointed Arbitrators” - has the meaning assigned in Section 20.3.2.1.

1.1.140 “Performance Test” or “Performance Testing” - means a performance test conducted in accordance with the procedures set forth in **Appendix D**.

1.1.141 “Person” - means any natural person, corporation, limited liability company, general partnership, limited partnership, proprietorship, other business organization, trust, union, association or Governmental Authority.

1.1.142 “Point of Interconnection” - means the point of connection between the Transmission System and the Facility’s electrical facilities at the Center Primary 230 kV Substation, as described in more detail in the Interconnection Agreement.

1.1.143 “Primary Beneficiary” - has the meaning set forth in ASC Topic 810, Consolidation, as issued and modified from time to time by FASB.

1.1.144 “Primary Gas Delivery Point” - means the point of interconnection between the Facility and the Transco pipeline serving the Facility.

1.1.145 “Proposed Resolutions” - has the meaning assigned in Section 20.3.3.

1.1.146 “Prudent Industry Practices” - means, any of the practices, methods, standards and acts engaged in or approved by a significant portion of the independent power industry in the United States that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, could have been expected to accomplish the desired result consistent with good business practices, reliability, economy, safety and expedition. Prudent Industry Practices are not intended to be limited to the optimum practices, methods or acts to the exclusion of all others, but rather to be acceptable practices, methods and acts generally

accepted in the United States, having due regard for, among other things, manufacturers' warranties, and applicable Legal Requirements.

1.1.147 "Rating Agency" or "Rating Agencies" - means the rating entities of S&P, Moody's or Fitch. If any Rating Agency ceases to exist or publish ratings, such Rating Agency will be replaced under this Agreement with a nationally recognized rating agency mutually agreed upon by the Parties.

1.1.148 "Reference Conditions" - means ninety-five degrees Fahrenheit (95°F), forty-five percent (45%) relative humidity, average barometric pressure at the site at the reference temperature and relative humidity, and the maximum reactive power obligation as specified in the Interconnection Agreement.

1.1.149 "Replacement Costs" - has the meaning assigned in and is determined pursuant to **Appendix A**, Section D.

1.1.150 "Replacement Price" - has the meaning assigned in and is determined pursuant to **Appendix A**, Section D.

1.1.151 "Representatives" - means, when used with respect to a Party, collectively or individually (as the context might indicate), such Party, its Affiliates and permitted successors and assigns, and the directors, officers, representatives, agents, contractors, subcontractors, and employees of each of them.

1.1.152 "Responding Party" - has the meaning assigned in Section 20.1.

1.1.153 "Rules" - has the meaning assigned in Section 20.3.1.

1.1.154 "S&P" - means Standard & Poor's Financial Services LLC, or its successor.

1.1.155 "Schedule," "Scheduled," "Scheduling" and "Scheduling Instructions" - mean instructions issued by Buyer from the Scheduling Center to Seller with respect to the scheduling of the production of electricity by the Unit, or the delivery of energy from an Alternate Resource if applicable under Section 5.1.4, in accordance with Article 13 and **Appendix C**.

1.1.156 "Scheduled Outage" - has the meaning assigned in Section 11.2.1.

1.1.157 "Scheduling Center" - means the scheduling center designated by Buyer from time to time in writing as being the primary control point for Scheduling Instructions and other notifications

provided pursuant to Article 13 and **Appendix C**, Section II. There may only be one Scheduling Center designated at any one time.

1.1.158 “Seasonal Performance Period” or “Season” - means one (1) of the following periods during each Annual Period: Summer (June through September); Fall (October and November); Winter (December, January and February); or Spring (March through May).

1.1.159 “Seller” - has the meaning assigned in the preamble.

1.1.160 “Seller Guarantor” - means a Person that, at the time of execution and delivery of its Seller Guaranty, is a direct or indirect owner of Seller, or is otherwise an entity acceptable to Buyer, and (a) is Creditworthy; and (b) has satisfactory and verifiable creditworthiness determined in Buyer’s sole discretion.

1.1.161 “Seller Guaranty” - means a guaranty provided by the Seller Guarantor that is substantially in the form of the guaranty attached hereto as **Appendix H**.

1.1.162 “Seller Performance Security” - has the meaning assigned in Section 7.1.

1.1.163 “Seller Response Deadline” - has the meaning assigned in Section 18.2.6.

1.1.164 “Seller Response Notice” - has meaning assigned in Section 18.2.6.

1.1.165 “SERC” - means the Southeastern Electric Reliability Council, including any successor thereto.

1.1.166 “Site” - means the land in Jackson County, in the state of Georgia, on which the Facility is located, as set forth in **Appendix F**.

1.1.167 “SO₂ Emissions” - means emissions of sulfur dioxides.

1.1.168 “Southern Balancing Authority Area” and “SBAA” - means the NERC and SERC recognized balancing authority area that includes the Transmission System.

1.1.169 “Southern Company Transmission System” - means the integrated high voltage electricity transmission systems of the electric utility operating companies of The Southern Company (as of the date of this Agreement, Alabama Power Company, Georgia Power Company, and Mississippi Power Company), as modified or expanded from time-to-time, as well as any successor in function thereto.

1.1.170 “Southern OATT” - means The Southern Companies Open Access Transmission Tariff and any successor in function thereto.

1.1.171 “Startup Energy” - means energy produced during startup when ramping from synchronization to the Minimum Capacity.

1.1.172 “Startup Event” - has the meaning assigned in **Appendix B**.

1.1.173 “Station Service” - means energy that is used to serve the electrical requirements of the Facility and includes the transformer losses and line losses between the Facility and the Transmission System.

1.1.174 “Substitute Unit” - has the meaning assigned in Section 5.4.1.

1.1.175 “Substitution Eligibility Criteria” has the meaning assigned in Section 5.4.2.

1.1.176 “System Emergency” - means that the Scheduling Center has determined pursuant to its prevailing practices that conditions are expected to occur or have occurred that could jeopardize the ability to meet projected loads in the SBAA.

1.1.177 “Taxes” - means all taxes, fees, levies, licenses or charges imposed by any Governmental Authority, other than taxes, levies, licenses or charges based upon net income or net worth, together with any interest and penalties thereon.

1.1.178 “Technical Limits” - means the operational limits and constraints described in **Appendix C**, Section I.

1.1.179 “Term” - means the term of this Agreement specified in Section 2.1.

1.1.180 “Termination Payment” - has the meaning assigned in Section 17.3.2.

1.1.181 “Test Energy Price” - means the product of AIER multiplied by ninety percent (90%) (Test Energy Price = AIER x 0.90).

1.1.182 “Tested Reliable Capacity” - means the capability of the Unit at Reference Conditions to produce Base Operating Mode Energy as demonstrated pursuant to a Performance Test.

1.1.183 “Third Arbitrator” - has the meaning assigned in Section 20.3.2.1.

1.1.184 “Threshold Amount” - has the meaning assigned in Section 18.2.4.

1.1.185 “Transmission Provider” - means the owner or operator of the Transmission System responsible for providing transmission service under the Southern OATT.

1.1.186 “Transmission System” - means the Southern Company Transmission System and the Georgia Integrated Transmission System.

1.1.187 “Unavailability Event” - means any single, continuous period during which the Unit or an Alternate Resource (designated pursuant to Section 5.1.4), is Unavailable to serve Buyer’s Schedules, in whole or in part.

1.1.188 “Unavailable” or “Unavailability” - means the extent to which at all times following the Delivery Commencement Date the Unit or an Alternate Resource (designated pursuant to Section 5.1.4), as the case may be, is unable to deliver energy pursuant to a Schedule due to a Scheduled Outage, Maintenance Outage, Forced Outage, Forced Derate or a Force Majeure Event.

1.1.189 “Undelivered Energy” - has the meaning assigned in **Appendix A**, Section D.

1.1.190 “Unit” - means one or more of the three (3) CTs at the Facility that are designated to meet Seller’s power supply obligations pursuant to this Agreement. However, pursuant to Section 5.4, another generating unit at the Site may be substituted for Dahlberg CT01, CT03, and CT05.

1.1.191 “Unit Hour” - means, for each Unit, an hour in which such Unit is dispatched in order to meet a Schedule by Buyer pursuant to **Appendix A**. For example, in one hour where Buyer Schedules two (2) Units, two (2) Unit Hours shall accumulate.

1.1.192 “Unit NO_x Allowances” - has the meaning assigned in Section 12.4.1.

1.1.193 “Unit SO₂ Allowances” - has the meaning assigned in Section 12.4.1.

1.1.194 “Unplanned (Forced) Outage Hours” or “FOH” - means the hours during which the Unit experiences a Forced Outage and as further defined in **Appendix A**, Section C.1.

1.1.195 “Variable Interest” or “VI” - has the meaning as set forth in ASC Topic 810, Consolidation, as issued and modified from time to time by FASB.

1.1.196 “Variable Interest Entity” or “VIE” - has the meaning as set forth in ASC Topic 810, Consolidation, as issued and modified from time to time by FASB.

ARTICLE 2

TERM OF AGREEMENT

2.1 Term. This Agreement shall become effective when executed by both Buyer and Seller and, subject to any earlier termination pursuant to the terms of this Agreement, shall remain in full force and effect through December 31, 2037.

2.2 Survival. All provisions of this Agreement that expressly or by implication come into or continue in force and effect following the expiration or termination of this Agreement shall remain in effect and be enforceable following such expiration or termination.

2.3 Conditions Subsequent.

2.3.1 If FERC acceptance of this Agreement is required by Legal Requirements, and if (a) FERC issues a valid order rejecting this Agreement, or (b) FERC takes action which has the effect of delaying the date when FERC will issue an order accepting this Agreement to a date beyond two hundred eighty five (285) Days from the granting of a GPSC Certificate, then in the case of (a) or (b) the Parties shall meet within ten (10) Business Days of such order or action to negotiate amendments to this Agreement, an extension of time for FERC to accept the Agreement beyond two hundred eighty five (285) Days from the granting of a GPSC Certificate, or other appropriate measures, so that this Agreement is legal and fully enforceable without materially increasing the risks for either Party or adversely affecting the value of the economic bargain to either Party contemplated by this Agreement in its original form. If the Parties are unable to negotiate any acceptable amendment, or other appropriate measures, then either Party may terminate this Agreement upon written notice to the other Party, provided that such notice is delivered to the non-terminating Party no later than thirty (30) Days after two hundred eighty five (285) Days from the granting of a GPSC Certificate. In no event shall this termination right be available to the Parties, and the Parties shall be deemed to have waived such termination right, absent receipt of such notice by the non-terminating Party prior to the expiration of such thirty (30) Day period. Notwithstanding the foregoing, if, prior to two hundred eighty five (285) Days from the granting of a GPSC Certificate FERC issues a valid order accepting this Agreement subject to material modifications or conditions, including acceptance subject to refund following an administrative proceeding, then the adversely affected Party or

Parties shall have the right to terminate this Agreement if such material modifications or conditions are not acceptable to such Party or Parties. Within fifteen (15) Days of the issuance of a FERC order, Seller shall provide Buyer with a copy of the FERC order along with written notice of whether the FERC order is subject to material modifications or conditions that adversely affect Seller and, if so, whether such material modifications or conditions are acceptable to Seller. If Seller fails to provide such written notice within such fifteen (15) Day period, then any FERC order accepting this Agreement subject to material modifications or conditions shall be deemed to be acceptable to Seller. Within fifteen (15) Days of receipt of a copy of the FERC order from Seller, Buyer shall provide Seller with written notice of whether the FERC order is subject to material modifications or conditions that adversely affect Buyer and, if so, whether such material modifications or conditions are acceptable to Buyer. If Buyer fails to provide such notice within such fifteen (15) Day period, then any FERC order accepting this Agreement subject to material modifications or conditions shall be deemed to be acceptable to Buyer. If either Party provides written notice that such material modifications are not acceptable, then the Parties shall meet within ten (10) Business Days of such notice to negotiate amendments to this Agreement, or other appropriate measures, so that this Agreement is legal and fully enforceable without materially increasing the risks for either Party or adversely affecting the value of the economic bargain to either Party contemplated by this Agreement in its original form. If the Parties are unable to negotiate any acceptable amendments, or other appropriate measures, then the Party who delivers the notice shall have the right to terminate this Agreement upon written notice to the other Party provided that such written notice is delivered no later than thirty (30) Days after the two hundred eighty five (285) Days from the granting of a GPSC Certificate. Upon a termination pursuant to this Section 2.3.1, neither Party shall have any liability to the other Party hereunder.

2.3.2 If after two hundred fifty (250) Days from the filing date by Buyer of the application with the GPSC for a Certificate of Public Convenience and Necessity (“GPSC Certificate Target Date”), (i) GPSC has not approved this Agreement through the granting of a Certificate of Public Convenience and Necessity (“GPSC Certificate”), or (ii) GPSC has issued a GPSC Certificate that is subject to material qualifications or conditions that adversely affect Buyer, then Buyer may terminate this Agreement upon written notice to Seller, provided that such notice is delivered to Seller no later than thirty (30) Days after

the GPSC Certificate Target Date. If within thirty (30) Days from the GPSC Certificate Target Date the issuance or denial of the GPSC Certificate has been appealed to the GPSC or Fulton County Superior Court, then Buyer may terminate this Agreement upon written notice to Seller, provided that such notice is delivered to Seller no later than eighty (80) Days after the GPSC Certificate Target Date. If Buyer fails to exercise the aforementioned termination right within the applicable notice period, then Buyer shall be deemed to have waived such termination right. Notwithstanding the foregoing, if at any time the GPSC amends the GPSC Certificate with respect to this Agreement ("Amended GPSC Certificate") and the Amended GPSC Certificate imposes material qualifications or conditions that adversely affect Buyer, unless Buyer and Seller agree to amend in accordance with Section 2.3.3, Buyer shall have a unilateral right to terminate this Agreement if such material qualifications or conditions are not acceptable to Buyer. Within fifteen (15) Days of the issuance of the Amended GPSC Certificate, Buyer shall provide Seller with written notice of whether the Amended GPSC Certificate is subject to material qualifications or conditions and, if so, whether the material qualifications or conditions are acceptable to Buyer. If Buyer fails to provide such notice within such fifteen (15) Day period, the Amended GPSC Certificate will be deemed to be acceptable to Buyer. Upon a termination pursuant to this Section 2.3.2, neither Party shall have any further liability to the other party hereunder. Notwithstanding anything to the contrary in this Agreement, and provided it is not otherwise required by GPSC Rule 515-3-4.08, neither Party shall seek to have the GPSC revoke the GPSC Certificate of its own initiative for reasons solely related to changed economic circumstances or market conditions affecting this Agreement.

2.3.3 If the GPSC issues an Order approving this Agreement with any modification or condition, or issues an Amended GPSC Certificate, as applicable, this Agreement will not be amended to include the modification or condition unless Seller executes a written amendment agreeing to any such modification or condition. If Buyer requests, within thirty (30) Days of the issuance of such Order, that Seller execute a written amendment agreeing to such modifications or conditions, and Seller does not execute such written amendment within thirty (30) Days of such request, Buyer may terminate this Agreement. Upon termination of this Agreement pursuant to this Section 2.3.3, Buyer will promptly return any unused portion of the Performance Security to Seller and, thereafter, neither Party will have any further obligation to the

other Party hereunder.

ARTICLE 3

REPRESENTATIONS, WARRANTIES AND COVENANTS

3.1 Representations and Warranties of Seller. Seller hereby makes the following representations and warranties to Buyer as of the date of this Agreement:

3.1.1 Seller is a corporation, duly organized, validly existing and in good standing under the laws of the state of Delaware, that is qualified to do business in the state of Georgia, is the sole owner and operator of the Facility, and has the legal power and authority to own its properties, to carry on its business as now being conducted and to enter into this Agreement and to otherwise carry out the transactions contemplated hereby and perform and fulfill all covenants and obligations on Seller's part to be performed under and pursuant to this Agreement.

3.1.2 The execution, delivery and performance by Seller of this Agreement have been duly authorized by all necessary action, and do not and will not require any consents or approvals of any Person other than those which have already been properly obtained.

3.1.3 The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby and the fulfillment of and compliance with the provisions of this Agreement, do not and will not conflict with or constitute a breach of or a default under, any of the terms, conditions or provisions of any Legal Requirement, charter, bylaw, operating agreement or other formation or organizational document of Seller, or any deed of trust, mortgage, loan agreement, other evidence of Indebtedness or any other agreement or instrument to which Seller is a party or by which it or any of its property is bound.

3.1.4 This Agreement constitutes the legal, valid and binding obligations of Seller that are enforceable in accordance with their terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws relating to or affecting the enforcement of creditors' rights generally or by general equitable principles, regardless of whether such enforceability is considered in a proceeding in equity or at law.

3.1.5 There is no pending, or to the knowledge of Seller, threatened action or proceeding affecting Seller before any Governmental Authority that purports to affect the legality, validity or enforceability of this Agreement as in effect on the date hereof or that could reasonably be expected to have a material adverse effect on Seller.

3.1.6 There are no bankruptcy proceedings pending or being contemplated by Seller or, to Seller's knowledge, threatened against Seller.

3.1.7 Seller is not debarred, suspended or proposed for debarment as a contractor or subcontractor to any department, agency or other division of the United States Government.

3.1.8 To the best of Seller's knowledge and belief, Buyer will not be required by any Legal Requirement or any accounting standard, including those implemented or administered by FASB, to consolidate Seller or any of its Affiliates or permitted assigns as a VIE in Buyer's or any of its Affiliates' financial statements.

3.2 Representations and Warranties of Buyer. Buyer hereby makes the following representations and warranties to Seller as of the date of this Agreement:

3.2.1 Buyer is a corporation, duly organized, validly existing and in good standing under the laws of the state of Georgia, that is qualified to do business in the state of Georgia and has the legal power and authority to own its properties, to carry on its business as now being conducted and to enter into this Agreement and carry out the transactions contemplated hereby and perform and fulfill all covenants and obligations on its part to be performed under and pursuant to this Agreement.

3.2.2 The execution, delivery and performance by Buyer of this Agreement have been duly authorized by all necessary corporate action, and do not and will not require any consent or approval of Buyer's board of directors or shareholders other than that which has already been obtained.

3.2.3 Subject to Section 2.3, the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby and the fulfillment of and compliance with the provisions of this Agreement do not and will not conflict with any of the terms, conditions or provisions of any Legal Requirements applicable to Buyer, or of any partnership agreement, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which Buyer is a

party or by which it or any of its property is bound, or result in a breach of or a default under any of the foregoing.

3.2.4 This Agreement constitutes the legal, valid and binding obligation of Buyer that is enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws relating to or affecting the enforcement of creditors' rights generally or by general equitable principles, regardless of whether such enforceability is considered in a proceeding in equity or at law.

3.2.5 There is no pending or, to the knowledge of Buyer, threatened action or proceeding affecting Buyer before any Governmental Authority which purports to materially adversely affect the legality, validity or enforceability of this Agreement or that reasonably could be expected to have a material adverse effect on Buyer's ability to perform its obligations under this Agreement.

3.2.6 Buyer is Creditworthy and there are no bankruptcy proceedings pending or being contemplated by it or, to its knowledge, threatened against it.

3.3 Seller Covenants. Seller hereby covenants and agrees that throughout the Term:

3.3.1 No modifications to, or expansion of, the Facility that would have a material adverse effect on Buyer's rights or obligations under this Agreement will occur without the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed.

3.3.2 Seller will not convey, sell, lease, transfer or otherwise dispose of all or substantially all of its business or assets, whether now owned or hereafter acquired, to the extent that such conveyance, sale, lease, transfer or other disposition would have a material adverse effect on Buyer's rights or obligations under this Agreement without the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed.

3.3.3 Buyer will not be required by any Legal Requirement or any accounting standard, including but not limited to those implemented or administered by the FASB, to consolidate Seller or any of its Affiliates or permitted assigns as a VIE in Buyer's or any of its Affiliates' financial statements. Seller covenants to promptly notify Buyer following any determination made by Seller or its independent auditor that Seller constitutes a VIE for which Buyer is the Primary Beneficiary as a result of this Agreement,

considered individually or together with any other power purchase agreements between Seller and Buyer. Seller will provide to Buyer a VIE certification form in the form of **Appendix L** signed by the chief financial officer of Seller (i) at the time of execution of this Agreement, (ii) prior to each anniversary of the COD during the Term, and (iii) at any time this Agreement is amended by the Parties. Seller will also provide Buyer a Finance Lease certification in the form of **Appendix M** signed by the chief financial officer of Seller at the time of execution of this Agreement and thereafter at any time this Agreement is amended by the Parties. Seller covenants to promptly notify Buyer following any determination made by Seller or its independent auditor that Seller must be partially or fully deconsolidated from the books of Seller or Seller's parent, as the case may be.

3.3.4 Except as may be allowed pursuant to Sections 3.3.2, 19.2, or any other provisions of this Agreement, Seller will maintain the legal right to and will possess and operate the Unit and deliver the capacity, energy and Ancillary Services of the Unit to Buyer in accordance with the provisions of this Agreement.

3.4 Buyer Covenant. Buyer shall, at the request of Seller, but only to the extent permissible under the Southern OATT, designate any Alternate Resource as a secondary network resource (or similar designation) for the period during which such Alternate Resource is used to provide Buyer with energy pursuant to this Agreement.

ARTICLE 4

REGULATORY APPROVALS; COMPLIANCE WITH LAWS, RULES AND REGULATIONS; TAXES

4.1 Preservation of Terms.

4.1.1 Each Party agrees that, subject to Section 4.2, except with the prior written consent of the other Party, it will not institute or voluntarily cooperate in the institution or conduct of any claim, action or proceeding before FERC under Section 205, Section 206 or any other portion of the Federal Power Act, or any other Governmental Authority under any provision of federal law or state or local law or any other Legal Requirement which claim, action or proceeding is intended for the purpose of, or could reasonably be expected to have the effect of, changing the terms of this Agreement then in effect. Without limiting the

foregoing, but subject to the terms of this Agreement, the Parties agree that the rates for service specified herein shall remain in effect for the Term and shall not be subject to change through application to FERC pursuant to the provisions of Section 205 or 206 of the Federal Power Act, or to any other Governmental Authority under any provision of federal law or Georgia state or local law or any other Legal Requirement, absent written agreement of the Parties.

4.1.2 In any proceeding before FERC involving this Agreement, the Parties shall request that FERC review any and all aspects of this Agreement under the “public interest” application of the “just and reasonable” standard of review 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 NRG Power Marketing LLC v. Maine Public Utility Commission, 130 S. Ct. 693 (2010).

4.2 Other Approvals. Each Party shall diligently seek to obtain, maintain, pursue, or cause to be pursued, comply with and, as necessary, renew and modify from time to time any and all other Consents, required to be possessed by such Party, in a manner that is reasonably expected to enable such Party to perform its obligations under this Agreement. Each Party agrees to assist and support the other Party, in a timely manner and to the extent reasonably requested by either Party, in obtaining such Consents. Upon request, each Party shall provide a copy of such Consents to the requesting Party.

4.3 Taxes.

4.3.1 Subject to Section 18.1, Seller shall pay, or cause to be paid, all Taxes on or with respect to: (i) the Facility, including its development, permitting, design, engineering, procurement, construction, testing, startup, ownership, leasing, financing, operation, and maintenance; (ii) the production and delivery of energy and Ancillary Services to be provided to Buyer arising, in the case of energy, prior to the time of Seller’s delivery of such energy to Buyer at the Point of Interconnection, or, in the case of Ancillary Services, prior to the time such Ancillary Services are made available to Buyer; (iii) Seller’s conversion of Natural Gas into electricity after delivery by Buyer and receipt by Seller of such Natural Gas at the Primary Gas Delivery Point, and (iv) Seller’s conversion of Fuel Oil into electricity; provided, however, that nothing contained in this Section 4.3.1 shall be construed to affect the applicability of Section 18.1 to GHG Charges under any New GHG Law.

4.3.2 Buyer shall pay or cause to be paid all Taxes on or with respect to: (i) energy received by Buyer arising at and after the time such energy is delivered by Seller to the Point of Interconnection, (ii) Ancillary Services received by Buyer arising at and after the time such Ancillary Services are made available to Buyer, (iii) Natural Gas received and possessed by Buyer at and prior to the time of delivery of such Natural Gas by Buyer to Seller at the Primary Gas Delivery Point, (iv) property taxes on Fuel Oil stored for Buyer at the Facility, and (v) the procurement of Fuel Oil by Seller on behalf of Buyer. Such Taxes shall include such sales, use, excise or other similar Taxes on the sale to Buyer and purchase from Seller of capacity, energy, and Ancillary Services pursuant to this Agreement. Buyer shall be responsible for all Taxes arising out of the transfer and delivery by Buyer and receipt by Seller of Natural Gas at the Primary Gas Delivery Point and the procurement of Fuel Oil by Seller on behalf of Buyer, and Seller shall be responsible for any new Taxes that may arise after the date of execution of this Agreement concerning the conversion of Natural Gas or Fuel Oil into energy; provided, however, that nothing contained in this Section 4.3.2 shall be construed to affect the applicability of Section 18.1 to GHG Charges under any New GHG Law.

4.3.3 Each Party shall use reasonable efforts to implement and administer the provisions of this Agreement in accordance with the intent of the Parties to minimize Taxes so long as neither Party is materially adversely affected by such efforts.

4.3.4 In the event Seller is required by law or regulation to remit or pay Taxes that are Buyer's responsibility hereunder, Seller may include such Taxes in the next Monthly Invoice and Buyer shall remit payment thereof in accordance with Article 6. Conversely, if Buyer is required by law or regulation to remit or pay Taxes that are Seller's responsibility hereunder, Buyer may deduct the amount of any such Taxes from the sums otherwise due to Seller under this Agreement. Any refunds associated with such Taxes will be handled in the same manner. Nothing herein shall obligate or cause a Party to pay or be liable to pay any Taxes from which it is exempt under applicable Legal Requirements.

ARTICLE 5

SALE AND DELIVERY OF CAPACITY AND ENERGY

5.1 Agreement to Sell and Purchase.

5.1.1 At all times following the Delivery Commencement Date, but subject to the terms of this Agreement, Seller agrees to sell to Buyer the entire electrical capability of the Unit, net of Station Service, as, when and to the extent Buyer Schedules such electrical capability, and all Ancillary Services. Subject to the terms of this Agreement, Buyer agrees to purchase from Seller such electrical output of the Unit, pursuant to Buyer's Scheduling Instructions, and the Designated Capacity associated with the Unit after the Delivery Commencement Date. For the avoidance of doubt, the delivery of energy to the Point of Interconnection includes the transfer to Buyer of all Ancillary Services associated with such energy. The Monthly Capacity Payment and the Monthly Energy Payments are the exclusive compensation owed to Seller for capacity, energy and Ancillary Services under this Agreement.

5.1.2 Seller is responsible for all Station Service at Seller's expense. If the Facility is located within the state of Georgia, Seller must arrange Station Service for the Facility in accordance with the Georgia Territorial Electric Service Act (O.C.G.A. §§ 46-3-1 through 46-3-15). If Seller supplies its station service on Seller's side of the Point of Interconnection, the Unit's output is net of energy consumed and demand requirements (*i.e.*, the energy delivered to the Point of Interconnection).

5.1.3 Except as otherwise provided in Section 5.1.4 with respect to delivery of capacity and energy at an Alternate Delivery Point, Seller shall deliver capacity and energy from the Unit to Buyer at the Point of Interconnection. The risk of loss of energy shall pass from Seller to Buyer at the Point of Interconnection. The Facility shall be interconnected on the Transmission System and shall be situated such that the Buyer can provide balancing services under the Southern OATT. Buyer shall be responsible for providing generator balancing services with respect to the SBAA and Southern OATT necessary for the receipt of energy pursuant to Buyer's Schedules and for any costs thereof.

5.1.4 Unavailability.

5.1.4.1 Following the Delivery Commencement Date, if the Unit is Unavailable as a result of a Forced Outage or Forced Derate, Seller shall have the option to elect to

substitute physical Alternate Delivery from an Alternate Resource at an Alternate Delivery Point pursuant to Sections 5.1.4.2 and 5.1.4.3. in order to meet Buyer's Schedules (subject to the other provisions of this Agreement); provided, however, that Seller shall only be permitted to utilize an Alternate Resource to provide that portion of Scheduled energy that cannot be provided from the Unit due to such Unavailability Event.

5.1.4.2 If Seller elects to provide energy from an Alternate Resource, it shall, to the extent that the designated Alternate Resource(s) is Available, provide Buyer with a uniform quantity of energy in each hour that Buyer Schedules at least that quantity of energy. The hours (or equivalent hours) of delivery of energy from an Alternate Resource shall be incorporated as Alternate Resource Delivery Hours in the Monthly Availability Percentage calculations pursuant to **Appendix A**, Section C, and such failure to deliver from the Unit in the Alternate Resource Delivery Hours shall not be treated as Unavailability. At Buyer's discretion, Buyer shall be entitled to deduct from any Monthly Capacity Payment or Monthly Energy Payment, as the case may be, the amount of the incremental additional costs incurred by Buyer due to system losses as a result of Seller's delivery of Scheduled energy from an Alternate Resource, as compared to the losses that Buyer would have incurred if such Scheduled energy were delivered from the Unit. Buyer shall determine the amount of incremental additional energy losses in a manner consistent with the methodology utilized by Buyer in applying loss penalties in its system dispatch; provided, however, such methodology shall not treat Seller's Alternate Resource in a materially different manner from Buyer's other generating resources. The Operating Representatives shall further develop Operating Procedures to calculate and bill Seller for such losses consistent with this Section 5.1.4.2.

5.1.4.3 In order to exercise its right to deliver energy from an Alternate Resource under Section 5.1.4.1 during a given Day, Seller must provide Buyer with advance notice in a manner agreed upon by the Operating Committee by no later than 7:00 a.m. CPT of the Business Day immediately prior to such Day of delivery, which notice shall specify the Alternate Resource and Alternate Delivery Point. Seller shall provide any other information that Buyer requires in order for Buyer to request firm network transmission service for such energy. Seller may propose to utilize only one (1) Alternate Delivery Point and only one (1) Alternate Resource for a given Day. Once Seller provides a notice of

Alternate Delivery, Seller shall adhere to and shall not withdraw such Alternate Delivery without Buyer's written consent. For the avoidance of doubt, any failure to deliver energy pursuant to Buyer's Schedules from a designated Alternate Resource shall reduce the calculated Availability performance pursuant to **Appendix A**, Section C.

5.1.4.4 Following the Delivery Commencement Date, if the Unit is Unavailable as a result of a Force Majeure Event, in lieu of the suspension of Monthly Capacity Payments to the extent provided in Section 16.3, Seller shall have the option to elect Alternate Delivery in accordance with Section 5.1.4.3.

5.1.5 Notwithstanding the designation by Seller of the Designated Capacity pursuant to **Appendix A**, Buyer shall be entitled to Schedule and receive, and if Scheduled by Buyer, Seller shall be obligated to deliver, up to the entire energy output that the Unit is capable of producing when operated and all Ancillary Services associated with the Unit, subject to the Technical Limits and Scheduling procedures set forth in **Appendix C**.

5.1.6 Seller shall not sell any of the capacity, energy or Ancillary Services associated with the Unit to any other Person, including the sale of any energy not Scheduled by Buyer.

5.1.7 Capacity Shortfall.

5.1.7.1 Buyer may declare a "Capacity Shortfall" if, during a Summer Seasonal Performance Period, the Unit is Scheduled to operate at its Designated Capacity for any period of thirty (30) consecutive Days and the average actual output of the Unit for such period of thirty (30) consecutive Days, adjusted to Reference Conditions, excluding ramping, is less than the Designated Capacity. However, the calculation of a Capacity Shortfall shall not include any reduction in output of the Unit to the extent caused by a Force Majeure Event, a Forced Derate, or a Forced Outage, in each case which has been properly declared by Seller pursuant to the terms of this Agreement, or to the extent due to a Transmission System outage.

For example, the Unit was designated by Seller to have a Designated Capacity of 500 MW. During one period of thirty (30) consecutive Days in a Summer Seasonal Performance Period, the Unit was Scheduled at the Designated Capacity. On average during such period of thirty (30) consecutive Days, the

actual output of the Unit adjusted to Reference Conditions when the Unit was Scheduled to operate at its Designated Capacity, excluding ramping, was 483 MW, and the resulting Capacity Shortfall was 17 MW.

5.1.7.2 When Buyer declares a Capacity Shortfall, Operating Representatives from both Parties shall convene, within ten (10) Business Days of such declaration, in order to review the data used by Buyer to support such Capacity Shortfall declaration. Actual hourly generation data from the Unit and the associated actual hourly ambient conditions (i.e., temperature and humidity) as measured at the Facility will be used by Buyer to determine the hourly output of the Unit, as adjusted to Reference Conditions, for any Capacity Shortfall declaration. Upon the completion of such review, Buyer, in its sole discretion, may elect to reduce the Designated Capacity by the Capacity Shortfall for the period of thirty (30) consecutive Days that triggered the Capacity Shortfall and for the remainder of the Annual Period, and such reduction would apply to successive Annual Periods, subject to any subsequent Capacity Shortfall, unless and until such time that Seller conducts a Performance Test pursuant to **Appendix D** and establishes a different Designated Capacity in accordance with **Appendix A**. The following would be the Designated Capacity reduction for the example set forth in Section 5.1.7.1: the Capacity Shortfall is 17 MW, and Buyer could elect to reduce the Designated Capacity by 17 MW.

5.1.7.3 If Seller disputes Buyer's Capacity Shortfall declaration, then the matter shall be resolved pursuant to the provisions of Article 20. If Buyer elects to reduce the Designated Capacity pursuant to this Section 5.1.7.3, Buyer shall provide to Seller written notice of the reduction in Designated Capacity and its effective date.

5.2 Calculation of Monthly Capacity Payments. Subject to the terms of this Agreement, Buyer shall pay Seller a Monthly Capacity Payment calculated in accordance with **Appendix A**, Section B.

5.3 Calculation of Monthly Energy Payments. Subject to the terms of this Agreement, Buyer shall pay Seller a Monthly Energy Payment calculated in accordance with **Appendix B**, Section A. For the avoidance of doubt, the Monthly Energy Payment includes all compensation owed to Seller for Ancillary Services associated with energy delivered to the Point of Interconnection.

5.4 Substitution of a Unit at the Site.

5.4.1 For the purpose of improving Seller's performance under this Agreement with

respect to capacity availability and reliability of energy supply, Seller may propose by written notice to Buyer to replace the then-current Unit (for the purposes of Section 5.4, the “Current Unit”) with another CT generating unit at the Site (the “Substitute Unit”) (including a unit that had been previously substituted under this Section 5.4) that satisfies the Substitution Eligibility Criteria and otherwise is capable of reliably meeting Buyer’s Schedules. However, notwithstanding anything herein to the contrary, Buyer may reject any such proposed replacement of a Current Unit in its sole discretion, including the rejection of any proposed Substitute Unit that satisfies the Substitution Eligibility Criteria. Unless otherwise agreed by Buyer, in its sole discretion, any such replacement of the Current Unit with a Substitute Unit approved by Buyer shall not occur any earlier than the later of (i) sixty (60) Days after Seller’s written notice to Buyer proposing the replacement, and (ii) the commencement of the next Annual Period after Seller’s written notice to Buyer proposing the replacement.

5.4.2 Unless otherwise agreed by Buyer, in its sole discretion, a CT generating unit at the Site must satisfy all of the following criteria to be eligible for consideration as a proposed Substitute Unit (collectively, the “Substitution Eligibility Criteria”): (i) Buyer must be able to obtain sufficient firm transmission delivery rights on the Transmission System, without any modification to the Transmission System being necessary, to permit the replacement of the Current Unit with the proposed Substitute Unit; and (ii) the proposed Substitute Unit cannot be designated under any other firm power sale obligation by Seller for the proposed replacement period; and (iii) during the three hundred and sixty-five (365) Days period prior to Seller’s written notice to Buyer proposing the replacement, the proposed Substitute Unit had a forced outage rate that was less than the forced outage rate during the same period for the Current Unit, or, if the proposed Substitute Unit cannot satisfy such forced outage rate requirement, Seller demonstrates to Buyer’s satisfaction that the reasonably anticipated availability of the proposed Substitute Unit during the next Annual Period will be equal to or greater than the reasonably anticipated availability of the Current Unit, in each case based on credible information, analysis and projections; and (iv) the Designated Capacity of the proposed Substitute Unit, as determined in accordance with **Appendix A**, will be no less than the lower limit of the Contracted Capacity range and will not exceed the Designated Capacity of the Current Unit.

5.4.3 If Seller provides notice proposing the replacement of the Current Unit with a Substitute Unit pursuant to Section 5.4.1, Seller shall, as part of the proposal and at Seller's expense, complete a Performance Test on the proposed Substitute Unit pursuant to **Appendix D** to determine the Designated Capacity of the Substitute Unit in accordance with **Appendix A**.

5.4.4 Seller's written notice to Buyer proposing the replacement of the Current Unit with the Substitute Unit shall contain necessary supporting information and documentation with respect to items (ii), (iii), (iv) and (v) of the Substitution Eligibility Criteria. If Seller proposes the replacement of the Current Unit with a Substitute Unit for a period less than the remainder of the Term, such proposal must include details with respect to the subsequent replacement of the Substitute Unit under Section 5.4 at the end of such defined period.

5.4.5 For the avoidance of doubt, in the case of a proposal for the replacement of the Current Unit with a Substitute Unit for a period less than the remainder of the Term, Buyer may require, as a condition to Buyer's acceptance of the proposed Substitute Unit, additional terms to address the subsequent replacement of the Substitute Unit under Section 5.4 at the end of such defined period.

5.4.6 If Buyer, in its sole discretion, accepts the proposed Substitute Unit, the Current Unit shall be replaced with the Substitute Unit as the Unit under this Agreement, effective as of the replacement date as determined under Section 5.4.1.

ARTICLE 6

BILLING AND COLLECTIONS

6.1 Capacity and Energy Billing and Payment.

6.1.1 Subject to the provisions of Section 6.2, by the tenth (10th) Day of each Month (commencing with February 2028), Seller shall send Buyer an invoice stating the Monthly Capacity Payment, the Monthly Energy Payment, and, if applicable, any Monthly Availability Adjustment for the immediately preceding Month (or cumulative Months of a Season) ("Monthly Invoice"). Such invoice shall also specify any other payments required to be made by either Party pursuant to this Agreement, and with

respect to payments to be paid by Seller, such payments shall be netted against payments due to Seller by Buyer.

6.1.2 All Monthly Invoices shall be due and payable by Buyer on or before the tenth (10th) Day after Buyer's receipt of such invoice. If such tenth (10th) Day is not a Business Day, then payment shall be due on the next succeeding Business Day. Subject to the provisions of Section 6.2, Buyer shall make payment to Seller in accordance with such invoices on or before the date due in immediately available funds, through wire transfer of funds to an account designated by Seller, or other means acceptable to Seller. Interest on unpaid amounts shall accrue from the date such payments were due at a rate equal to the Interest Rate. Each Monthly Invoice shall contain a statement explaining in reasonable detail how such invoice was calculated pursuant to Sections 5.2 and 5.3.

6.2 Billing Disputes and Final Accounting.

6.2.1 If Buyer questions or contests the amount or propriety of any payment claimed by Seller to be due pursuant to this Agreement, Buyer shall make payment to Seller of amounts not in dispute, but may withhold amounts disputed in good faith until after the settlement of such question or contest in accordance with this Section 6.2.

6.2.2 In the event Buyer questions or contests the correctness of any charge or credit, Buyer shall provide Seller with written notice of such amount and the basis for Buyer's question or contest. Seller shall promptly review the questioned charge or credit and shall notify Buyer of any error in Seller's determination of amounts owed by Buyer and issue an amended invoice in the amount of any payment that Buyer is required to make in respect of such re-determination. If Buyer disputes in good faith Seller's amended invoice amount, then the matter shall be resolved pursuant to the provisions of Article 20 applicable to billing disputes. To the extent Seller disagrees with Buyer's basis for questioning the original invoice, Seller shall provide a written explanation of its position.

6.2.3 Seller shall have until the end of one (1) year after the date of delivery of energy under this Agreement to correct any invoice for payment due for such energy and associated capacity and deliver a corrected invoice to Buyer. Buyer shall have until the end of one (1) year after its receipt of any invoice to question or contest the correctness of any charge or credit made to Buyer on such invoice. If

within such one (1) year period, Buyer has made payment under an invoice and thereafter questions or contests the correctness thereof, Seller shall not be required to refund any payment received from Buyer until such time as it is finally determined that Seller's invoice was in error.

6.3 Interest. If either Party does not make a payment required by this Agreement when due, then interest at the Interest Rate from the date such overdue payment was due until such overdue payment, together with interest, is paid shall be added to the due payment. If either Party makes a payment pursuant to an invoice that is later determined to have been incorrect, then interest at the Interest Rate from the date such overpayment was made shall be added to the overpayment until such overpayment, together with interest, is refunded to such Party. Remittance received by mail, if mail is a means of payment acceptable to a Party owed such payment, will be accepted without interest charges if such payment is postmarked on or before the due date. If the due date of any payment falls on a Day other than a Business Day, the next succeeding Business Day shall be the last Day on which payment can be postmarked without interest charges being assessed. Notwithstanding this Section 6.3, no interest shall be paid with respect to any Monthly Availability Adjustment except to the extent that such Monthly Availability Adjustment was not correctly calculated and/or invoiced in accordance with this Agreement.

6.4 Billing and Payment Records. Each Party will, until the end of one (1) year after its receipt of any invoice, make available to the other Party, and each Party may audit, such books and records of the other Party as are necessary for such Party to verify the calculation of the Monthly Capacity Payments, the Monthly Energy Payments, and any Monthly Availability Adjustment, and any other invoice, charge or payment demand made in connection with this Agreement.

ARTICLE 7

PERFORMANCE SECURITY

7.1 Seller Performance Security. In recognition that, as of the date of the execution of this Agreement, Seller is Creditworthy, Seller is not required to deliver to Buyer the Seller Performance Security under this Article 7 simultaneously with the execution of this Agreement. If, at any time during the Term, Seller experiences a Material Adverse Change, then, within three (3) Business Days after such Material

Adverse Change, Seller will deliver to Buyer Eligible Collateral (the “Seller Performance Security”) in the applicable amount set forth in the following Table 7.1, or in any lesser amount that Buyer, in its sole discretion, may determine is appropriate based on Buyer’s evaluation of the overall circumstances of the Material Adverse Change; provided, however, if Buyer elects hereunder to require Performance Security in an amount less than the applicable amount set forth in Table 7.1, Buyer, in its sole discretion, may subsequently require Seller to provide Performance Security in the applicable amount set forth in Table 7.1. The Seller Performance Security, if applicable under this Section 7.1, shall be adjusted at certain prescribed times in accordance with Table 7.1 and shall be adjusted annually pursuant to Section 7.2.

TABLE 7.1¹

Applicable Dates	Eligible Collateral (\$/kW) for 10 Annual Periods PPA Term
Agreement execution until the Delivery Commencement Date	28
From the Delivery Commencement Date through the Term of the Agreement	Annual Period 1-4: 74
	Annual Period 5-7: 69
	Annual Period 8-10: 33

If any portion of the Eligible Collateral that Buyer is then holding is in the form of a Seller Guaranty and a Material Adverse Change occurs in respect of Seller Guarantor, then within three (3) Business Days, Seller shall deliver to Buyer replacement Eligible Collateral to replace such Seller Guaranty, which replacement Eligible Collateral shall be in a form other than a Seller Guaranty.

¹ All amounts shown herein as \$/kW shall be calculated based on the Nominal Capability of the Facility.

7.2 Annual Adjustment of Seller Performance Security. The Seller Performance Security is expressed in 2020 US dollars. However, beginning on January 1, 2021 and continuing every January 1 of each year during the Term, the values shown in Table 7.1 will be adjusted based on the change in GDPIPD between the base year 2020 (using the 4th quarter 2019 GDPIPD and the 4th quarter 2020 GDPIPD to adjust between 2020 and 2021) and each year during the Term, and such escalation shall be capped at a compound escalation rate of 4.75% per year.

7.3 Replacement Collateral; Substituted Collateral; Release of Collateral.

7.3.1 Replacement Collateral. To the extent that any replacement of Seller Performance Security is required to maintain compliance with Section 7.1 (subject to adjustment in amount under Section 7.2), Seller shall deliver same to Buyer no later than ninety (90) Days prior to the earlier to occur of (a) the date when an increase or decrease in Eligible Collateral is required pursuant to Table 7.1 and (b) the date when the existing Eligible Collateral will expire; provided that the increase or decrease, as the case may be, in Eligible Collateral shall not become effective until the applicable date specified in Table 7.1 has arrived. In the event of a failure to comply with the preceding sentence, Buyer shall be entitled, without limitation to its other remedies under this Agreement or at law, to (i) draw the full amount on the existing Eligible Collateral prior to the expiration date thereof and (ii) take such further action to protect its interests pursuant to this Agreement. Upon receipt of any replacement Eligible Collateral, and provided that Seller remains in compliance with this Article 7, Buyer shall not draw upon the existing Eligible Collateral, for which such replacement is being made, solely because such existing Eligible Collateral is about to expire.

7.3.2 Release of Collateral; Substituted Collateral. Upon replacement of the Seller Performance Security pursuant to Section 7.3.1, Buyer shall promptly release the Eligible Collateral that is being replaced back to Seller. The choice of any Eligible Collateral provided by Seller may be selected from time to time by Seller, and upon receipt and acceptance of substitute Eligible Collateral, Buyer shall promptly release such Eligible Collateral for which substitution is being made in an amount equal to that which is being substituted. Following any expiration or termination of this Agreement, the Parties shall mutually agree to a final settlement of all obligations under this Agreement, which such period shall not exceed six (6) Months from such termination date, and after such settlement, any remaining Eligible

Collateral posted by Seller that has not been drawn upon by Buyer pursuant to its rights under this Agreement shall be returned to Seller. Any dispute between the Parties regarding such final settlement shall be resolved according to the applicable procedures set forth in Article 20, and any remaining Eligible Collateral posted by Seller shall not be returned to Seller until the resolution of such dispute.

7.4 Draws; Replenishment. In addition to the draws permitted by Section 7.3.1, Buyer may draw upon the Eligible Collateral provided by Seller to recover any damages to which Buyer is entitled under this Agreement (including damages following the occurrence of an Event of Default by Seller) or any other unpaid amounts owed by Seller under this Agreement, including to recover delay liquidated damages under Section 8.3, damages arising from an Event of Default by Seller, and termination damages arising from termination of this Agreement by Buyer for an Event of Default by Seller. In the event of such a draw on the Eligible Collateral, then, except in the circumstance when Buyer establishes an Early Termination Date pursuant to Section 17.3.1 or this Agreement otherwise terminates, Seller shall within three (3) Business Days replenish the Eligible Collateral to the full amount required by Section 7.1.

7.5 Reporting. Seller shall promptly notify Buyer of any circumstance that results in Seller's failure to be in compliance with the Seller Performance Security requirements of this Article 7. From time to time, at Buyer's written request, Seller shall provide Buyer with such evidence as Buyer may reasonably request to demonstrate that Seller and any Seller Guarantor, Seller Guaranty, Letter of Credit or Security Account is in full compliance with this Agreement.

7.6 Delivery of Eligible Collateral for Performance Security. Seller will provide to Buyer Eligible Collateral to meet any of Performance Security requirements under this Agreement by delivering, as applicable, cash wired to an account to be designated by Buyer, or Letter of Credit or Seller Guaranty to the following address:

Assistant Treasurer
Georgia Power Company
c/o Southern Company Services
BIN SC1407
30 Ivan Allen Jr. Blvd.
Atlanta, Georgia 30308

ARTICLE 8

RESERVED

ARTICLE 9

INTERCONNECTION AND METERING

9.1 Interconnection. The Interconnection Agreement shall be maintained throughout the Term of this Agreement. Seller shall promptly provide a copy of, and any amendments to, such Interconnection Agreement to Buyer in accordance with the notice provisions of Section 21.4. Buyer shall not be responsible under this Agreement for any costs and expenses (including overheads) incurred in connection with the design, construction, installation and maintenance of the Interconnection Facilities. Seller is responsible for determining all transmission-related rules, practices and policies with which it must comply.

9.2 Meters.

9.2.1 Seller shall ensure the Metering System is designed, located, constructed, installed, owned, operated and maintained in accordance with the Interconnection Agreement and Prudent Industry Practices in order to measure and record the amount of energy delivered from the Unit to the Point of Interconnection, to calculate the Unit capacity, and to measure the availability of the Unit in meeting Buyer's Schedules. The meters shall be of a mutually acceptable accuracy range and type. None of Seller, Seller's Affiliates or the employees, subcontractors or contractors of any of them shall make adjustments to the Metering System without the written consent of Buyer. Buyer may, at its own cost, install additional meters or other such facilities, equipment or devices on Buyer's side of the Point of Interconnection as Buyer deems necessary or appropriate to monitor the measurements of the Metering System; provided, however, that in all cases Seller will be entitled to base its invoiced amounts solely by reference to its own Metering System. Buyer shall reasonably establish the telemetering equipment that is necessary to coordinate the Unit with the Scheduling Center and Seller shall, at its sole cost, install or cause the installation of such telemetering equipment. The telemetered data shall be delivered by Seller to the electrical switchyard of the Facility.

9.2.2 Seller shall inspect and test all meters at such times as will conform to Prudent Industry Practices, but not less often than once biennially. Seller shall be responsible for all costs and expenses incurred in connection with such inspections or tests.

9.2.3 If the Metering System fails to register, or if the measurement made by a metering device is found upon testing to vary by more than one-half percent (0.5%) from the measurement made by the standard meter used in the test, an adjustment shall be made correcting all measurements of energy made by the Metering System during: (i) the actual period when inaccurate measurements were made by the Metering System, if that period can be determined to the mutual satisfaction of the Parties; or (ii) if such actual period cannot be determined to the mutual satisfaction of the Parties, the second half of the period from the date of the last test of the Metering System to the date such failure is discovered or such test is made ("Adjustment Period"). If the Parties are unable to agree on the amount of the adjustment to be applied to the Adjustment Period, the amount of the adjustment shall be determined: (i) by correcting the error if the percentage of error is ascertainable by calibration, tests or mathematical calculation; or (ii) if not so ascertainable, by estimating on the basis of deliveries made under similar conditions during the period since the last test. Within thirty (30) Days after the determination of the amount of any adjustment, Buyer shall pay Seller any additional amounts then due for deliveries of energy or Designated Capacity during the Adjustment Period or Buyer shall be entitled to a credit against any subsequent payments for energy or Designated Capacity, as the case may be.

9.2.4 Buyer and its representatives shall be entitled to be present at any test, inspection, maintenance, adjustments and replacement of any part of the Metering System relating to obligations under this Agreement.

9.3 Reserved.

9.4 Loss Factor Adjustment. If, and to the extent, the Metering System is not measuring deliveries of energy physically at the Point of Interconnection, the metered amount of energy shall be adjusted for losses to or from the Point of Interconnection by a loss factor determined by Buyer, in accordance with Prudent Industry Practices. Seller will be provided with a copy of any study or analysis prepared by Buyer in determining such loss factor.

ARTICLE 10

DESIGNATED CAPACITY; CAPACITY TESTS

10.1 Tested Reliable Capacity and Designated Capacity. The Tested Reliable Capacity and Designated Capacity of the Unit shall be established in accordance with **Appendix A**. Performance Tests shall be conducted pursuant to **Appendix D**. Upon completion by Seller of any Performance Test, Seller shall promptly provide to Buyer a complete written report, in accordance with **Appendix D**, of such Performance Test, certified by a responsible officer of Seller, for Buyer's review and verification. Following the Delivery Commencement Date, Seller shall cooperate with Buyer's request for information concerning the performance of the Unit that Buyer may reasonably request from time to time.

10.2 Disputes Concerning Capacity Tests. In the event the Parties disagree with respect to the Performance Test results, the dispute shall be resolved pursuant to the provisions of Article 20 applicable to Performance Test results. If such dispute is not resolved by the first Day of any Annual Period, the Tested Reliable Capacity and Designated Capacity in effect for such Annual Period may not exceed the Tested Reliable Capacity and Designated Capacity established under Appendix A by the most recent undisputed Performance Test, subject to the outcome of this dispute resolution process. Following the resolution of the dispute, an adjustment shall be made to all Monthly Capacity Payments made with respect to such Annual Period to account for any difference between the new Designated Capacity and the preceding Designated Capacity.

ARTICLE 11

OPERATION AND MAINTENANCE

11.1 Operation and Maintenance.

11.1.1 Seller shall manage, control, operate and maintain all parts of the Unit in a manner consistent with Prudent Industry Practices, taking into account Buyer's right to Schedule the Unit, and in accordance with applicable planning standards and operating policies of the SERC and NERC and in accordance with the Operating Procedures to be developed by the Operating Committee. For the

avoidance of doubt, the requirements of this Section 11.1.1 shall not be interpreted to limit Buyer's Scheduling rights as provided for elsewhere in this Agreement.

11.1.2 Seller and Buyer shall mutually develop and agree upon written Operating Procedures no later than twelve (12) Months prior to the Delivery Commencement Date. Topics covered shall include deliveries of energy during start-up and testing of the Unit; the method of Day-to-Day communications; clearance and switching practices; daily capacity availability and energy reports; Unit operations log; reactive power output; technical limits regarding Unit operation (including minimum run times, maximum ramp rates, minimum down times between starts, quick start capability and other limits specified in **Appendix C**); ramp rates for the delivery of power to the Transmission System; coordination of maintenance scheduling; designation of confidential information and such other matters as the Operating Representatives shall agree are appropriate. The Operating Representatives shall be responsible for modifying, from time to time, these Operating Procedures in writing to reflect agreed upon changes. In the event of inconsistency or conflict between the Operating Procedures and specific terms of this Agreement, the specific terms of this Agreement shall take precedence.

11.1.3 Seller shall employ at the Facility all safety devices and safety practices required by Prudent Industry Practices. Seller shall keep accurate records of any accident or other occurrence at the Site that results in injury to persons or damage to property. Seller shall provide to Buyer reasonable access to these records upon not less than seven (7) Days notice during normal business hours, but shall not be required to provide access to employment records regarding Facility personnel.

11.1.4 During the Term, Seller shall employ qualified and trained personnel for management, operation and maintenance of the Facility.

11.2 Maintenance Scheduling.

11.2.1 Commencing on the year prior to the year of the Delivery Commencement Date and by October 1 of each year thereafter, Seller shall submit to Buyer maintenance schedules, including the scope of the maintenance, and outage plans for the Unit that conform to Prudent Industry Practices for similar equipment, including in terms of frequency and duration ("Maintenance Schedules"), for the next four (4) Annual Periods or the number of such Annual Periods remaining in the Term, whichever is less.

Seller shall not schedule any maintenance of the Unit during any of the Months of January, February, June, July, August, or September of any Annual Period that would decrease the capacity output of the Unit below the Designated Capacity without the prior written consent of Buyer. Buyer shall have thirty (30) Days to review the proposed Maintenance Schedules and may approve or reject the Maintenance Schedules in whole or in part. The Maintenance Schedules are subject to the approval of Buyer, which approval shall not be unreasonably withheld or delayed; provided, however, any determination by Buyer to disapprove a Hot Gas Path Inspection or Major Inspection in May or December, or both, shall not be considered unreasonable. If any portion of the Maintenance Schedules is rejected by Buyer, Seller shall resubmit revised Maintenance Schedules to Buyer within thirty (30) Days of Buyer's rejection and Buyer and Seller agree to use best efforts to promptly develop Maintenance Schedules that are mutually acceptable to the Parties considering the burdens that Buyer's changes impose on Seller compared to the burdens avoided by Buyer as a result of such changes. Any dispute concerning this Section 11.2.1 shall be resolved in accordance with the provisions of Article 20 applicable to Maintenance Schedule disputes. The outages scheduled in the final, approved Maintenance Schedule shall be the "Scheduled Outages" for purposes of this Agreement.

11.2.2 In addition to Scheduled Outages, Seller may request an unlimited number of Maintenance Outages during any Annual Period. Seller shall request each Maintenance Outage no less than twenty-four (24) hours in advance and at least one (1) Business Day in advance. Such request shall identify the equipment and Designated Capacity that will not be available for Scheduling and the proposed start time and duration of the Maintenance Outage. Buyer shall respond to Seller's request as soon as reasonably practicable. Seller shall not take a Maintenance Outage without Buyer's prior written or telephonic consent, and such consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that the Parties acknowledge that it shall be reasonable for Buyer to deny any request for a Maintenance Outage if Buyer reasonably believes that it may Schedule the Unit to a level that would require the availability of the equipment that is proposed to be Unavailable during the Maintenance Outage. Buyer shall have the right to revoke its consent to a Maintenance Outage if changed conditions require Scheduling of the Designated Capacity scheduled to be Unavailable during such Maintenance Outage. If Buyer

reasonably requests Seller to return all or part of that portion of the Facility that is affected by the Maintenance Outage to full availability status, Seller shall comply as soon as reasonably practical.

11.2.3 If Seller has a Scheduled Outage, and such Scheduled Outage occurs or would occur coincident with a System Emergency, Buyer shall notify Seller of the System Emergency. Due to the System Emergency, Buyer may request Seller to reschedule the Scheduled Outage or, if the Scheduled Outage has begun, to expedite the completion thereof, and Seller shall comply with such request as soon as reasonably practical.

11.3 Permits. Seller shall maintain, for the period required by Legal Requirements during the Term, all Consents pertaining to air emissions necessary for the performance of Seller's obligations under this Agreement ("Air Permit"), including the operation of the Unit for at least four thousand (4,000) hours per Annual Period throughout the Term (of which one thousand (1,000) hours are permitted for operation using Fuel Oil); provided, however, the inability of Seller to cause compliance with such 4,000 hours per Unit operating requirement shall not be deemed a Seller Event of Default so long as Seller completely covers for the remainder of the Term any such shortfall in the ability to meet Buyer's Schedules due to limitations in the Air Permit by electing to provide physical Alternate Delivery from an Alternate Resource in accordance with the provisions of Section 5.1.4.3. Seller shall provide a copy of the Air Permit to Buyer, and shall promptly provide a copy of any renewal or amendment to the Air Permit to Buyer, in accordance with the notice provisions of Section 21.4.

11.3.1 In the event of a Seller Event of Default resulting from the inability of Seller to cause compliance with the 4,000 hours per Unit operating requirement in Section 11.3, the capacity and energy that would be considered available to Buyer under the Agreement in calculating the Termination Payment pursuant to the provisions of Section 17.3.2 shall be determined by utilizing the Unit's Air Permit limitations in effect on the Early Termination Date.

11.4 Access to the Site and the Facility. Seller grants to Buyer and its designated employees and agents the right to enter the Site with reasonable prior notice to Seller to: (i) inspect, maintain, and test meters and other Buyer equipment; (ii) monitor or measure energy generated by the Unit in accordance with the terms of this Agreement; (iii) monitor Performance Tests; (iv) inspect the Facility; and (v) inspect

and test facilities related to the supply of Natural Gas and Fuel Oil. All activities of Buyer and its designated employees and agents at the Site shall be subject to the reasonable rules and procedures of Seller.

11.5 Availability of Records. Seller shall keep complete and accurate records and all other data necessary for the purposes of proper administration of this Agreement in accordance with the following guidelines:

11.5.1 All records related to the Unit and Seller's performance under this Agreement shall be maintained for a minimum of five (5) years after the creation of such record or data and for any additional period of time required by Legal Requirements or a Governmental Authority; provided, however, that such records will be kept for as long as is necessary to complete any audit that began or was announced during such five-year period. Notwithstanding anything herein to the contrary, if Seller intends to dispose of or destroy any such records or data after such five-year period, Seller will provide Buyer with thirty (30) Days' prior written notice.

11.5.2 An accurate and up-to-date operating log shall be maintained at the Facility with records of: (i) real and reactive power production for each clock hour; (ii) changes in operating status and scheduled maintenance; (iii) Scheduled Outages, Maintenance Outages, Forced Outages and Force Majeure Events; (iv) any unusual conditions found during inspections; and (v) any significant events related to the operation of the Unit.

11.5.3 Upon reasonable advance notice and during normal business hours, Buyer shall have the right from time to time to examine the records and data relating to the Unit and this Agreement, including all historical test records relating to the Unit, at the Facility or at a location mutually agreed to by the Parties.

11.5.4 At the request of Buyer throughout the Term of the Agreement, Seller shall provide to Buyer public and non-public financial and business information reasonably necessary for Buyer to make accounting determinations. Without limiting the foregoing, upon reasonable notice to Seller, Buyer and Buyer's independent auditor will have the right to inspect, from time to time, such books and records of Seller as are reasonably necessary for Buyer to determine whether Seller constitutes a VIE and this Agreement represents a VI, or if this Agreement must be treated as a Finance Lease. To the extent such

inspection requires access to confidential information of Seller, such information will constitute Confidential Information subject to the provisions of Section 21.13 of this Agreement.

11.6 Disclaimer. Seller understands and agrees that Buyer's receipt and/or review of any material related to the Project or any physical inspection of the Facility conducted by Buyer under any provision of this Agreement is solely for its own information. By conducting such reviews or inspections, Buyer makes no endorsement of the design or representation or warranty of the safety, durability or reliability of the Facility, all of which are the sole responsibility of Seller in accordance with the terms of this Agreement, and Buyer shall not be deemed to have accepted any condition of the Facility that is not in full compliance with the terms hereof. Seller shall in no way represent to any third party that, as a result of Buyer's receipt and review of any material or any inspections, Buyer is in any way responsible for the engineering or construction soundness of the Facility.

11.7 Operating Committee.

11.7.1 The Parties shall establish an Operating Committee comprised of two (2) Operating Representatives, one (1) appointed by each of Seller and Buyer. Seller and Buyer, as the case may be, shall provide written notice of such appointments to the other Party. Such appointments may be changed at any time by similar written notice. The Operating Representatives shall meet as necessary, but not less often than once each calendar year, at a mutually agreeable time and place upon prior written notice. The Operating Representatives shall represent the Parties in all matters arising hereunder that may be delegated to them by mutual agreement of the Parties, but shall not have any authority to modify or amend the terms of this Agreement.

11.7.2 Each Party shall cooperate in providing to the Operating Representatives all information required in the performance of their duties. If the Operating Representatives are unable to agree on any matter falling under their jurisdiction, such matter shall be submitted to senior officers for discussion and resolution. All decisions and agreements made by the Operating Representatives or their principals shall be evidenced in writing.

ARTICLE 12

FUEL SUPPLY; ALLOWANCES

12.1 Overview.

12.1.1 Prior to the Delivery Commencement Date, Seller shall acquire and pay for any Natural Gas and Fuel Oil used at the Unit. At all times following the Delivery Commencement Date during the Term, (i) the Unit shall be capable of utilizing Natural Gas as Scheduled by Buyer in order to produce the energy committed to Buyer under this Agreement, and (ii) Seller shall use commercially reasonable efforts to maintain in the Unit's Air Permit the ability to utilize Fuel Oil, and to the extent allowed by such Air Permit, the Unit shall be capable of utilizing Fuel Oil as Scheduled by Buyer in order to produce the energy committed to Buyer under this Agreement. Buyer shall have the responsibility for developing a gas supply plan for procuring and making available at the Primary Gas Delivery Point the quantities of Natural Gas at the rates of delivery and at an allowable pressure as specified in **Appendix C** required to accommodate Buyer's Scheduling Instructions (the "Gas Supply Plan").

12.1.2 In accordance with **Appendix B**, Section E, Buyer shall receive or pay, as the case may be, a Monthly Fuel Adjustment based on the Guaranteed Heat Rate set forth in **Appendix J** for all Natural Gas and Fuel Oil used to generate energy that is delivered to Buyer pursuant to Buyer's Scheduling Instructions, including ramping (i) from synchronization to Minimum Capacity (Startup Energy), (ii) from Minimum Capacity to Base Operating Mode Schedule, (iii) from Base Operating Mode Schedule to Minimum Capacity, and (iv) from Minimum Capacity to offline. Such ramping energy shall be multiplied by the appropriate Guaranteed Heat Rates pursuant to **Appendix J** to determine the Daily Guaranteed Fuel quantity during ramping. (The Guaranteed Heat Rate for ramping from synchronization to Minimum Capacity shall be the Guaranteed Heat Rate for Minimum Capacity.) Seller shall be responsible for the cost of Natural Gas and Fuel Oil for start-up of the Unit prior to synchronization. The Parties shall be responsible in accordance with the provisions of **Appendix A**, Section A.2 for the cost of Natural Gas and Fuel Oil, including transportation charges, required for Performance Testing.

12.2 Natural Gas Transportation Capacity.

12.2.1 Except as otherwise provided in this Article 12, Buyer shall bear all of the costs incurred under the Gas Supply Plan. To the extent Buyer desires to have or use storage capacity in order to better manage the Natural Gas requirements of the Unit, Buyer shall be obligated to obtain such capacity at its expense.

12.2.2 At Seller's expense, Seller shall cause to be acquired, constructed, owned, operated and maintained, all facilities, infrastructures and property interests that are necessary for Seller to receive, measure and use Natural Gas delivered by Buyer at the Primary Gas Delivery Point so as to enable the Unit to produce energy as committed to Buyer under this Agreement, including without limitation all costs associated with the construction and operation of the gas pipeline lateral(s) necessary to connect the Facility to the gas pipeline(s) of the fuel supplier(s).

12.2.3 Seller agrees to accept at the Primary Gas Delivery Point any Natural Gas that (i) meets the gas quality standards for delivered Natural Gas under the applicable gas transportation provider's FERC gas tariff and the applicable transportation agreement(s), or (ii) does not meet the gas quality standards described in (i) so long as such Natural Gas would not, in Seller's reasonable discretion, have a material adverse effect on the Unit, or (iii) Seller allows to flow beyond the Primary Gas Delivery Point.

12.2.4 The Parties shall exercise reasonable commercial efforts to minimize any imbalances or other penalties or charges from transporters of Natural Gas delivered to the Unit ("Imbalance Charges"). Buyer shall be responsible for all Imbalance Charges relating to delivery of Natural Gas to the Unit to meet Buyer's Scheduling Instructions. If Buyer or Seller receives an invoice from a transporter for Imbalance Charges, the Parties shall determine the cause for such charges. To the extent that the Imbalance Charges were incurred as a result of Buyer's actions or inaction, then Buyer shall pay such Imbalance Charges. To the extent that the Imbalance Charges were incurred as a result of Seller's actions or inaction, or a CT trip or a Forced Derate associated with attempting to respond to Buyer's Schedule, then Seller shall pay such Imbalance Charges. Imbalance Charges that are not due to the action or inaction of Buyer or Seller or whose cause cannot be determined shall be shared equally by Buyer and Seller. Any

disputes under this Section 12.2.4 shall be resolved in accordance with the provisions of Article 20 applicable to Imbalance Charges disputes.

12.2.5 All Natural Gas supplied by Buyer pursuant to this Agreement shall be measured at the Primary Gas Delivery Point. Buyer shall retain title to Natural Gas provided by Buyer to meet Buyer's Schedules. The title to all energy generated by the Unit as a result of the conversion of such Natural Gas to energy in the Unit shall vest in Buyer immediately upon generation thereof and pursuant to this tolling arrangement, Seller shall make the Unit available to Buyer to convert Buyer's Natural Gas to Buyer's energy. Notwithstanding the foregoing, risk of loss of Natural Gas supplied by Buyer pursuant to this Agreement shall transfer from Buyer to Seller at the Primary Gas Delivery Point and Seller shall bear the risk of loss of energy generated at the Unit until it is transferred from Seller to Buyer at the Point of Interconnection.

12.3 Fuel Oil.

12.3.1 At Seller's sole cost and expense, Seller shall own, operate and maintain all facilities, infrastructure and property interests necessary for (i) the simultaneous delivery of at least two seven thousand five hundred (7,500) gallon tractor-trailers containing Fuel Oil, and (ii) working storage for the sole use by Buyer of a minimum of **[REDACTED]** gallons of Fuel Oil storage capacity (at 40°F and 75% relative humidity) per MW of full load CT capacity.

12.3.2 Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, **[REDACTED]** gallons of the Fuel Oil inventory residing in the Facility's **[REDACTED]** gallon Fuel Oil storage tank as of the Delivery Commencement Date. Buyer shall pay Seller for such Fuel Oil inventory within ten (10) Days of receiving Seller's invoice therefor, the amount equal to the quantity of such inventory times the average Daily Fuel Oil Replacement Price during the one hundred twenty day (120) period immediately preceding the Delivery Commencement Date. At the end of the Term, Buyer agrees to sell to Seller, and Seller agrees to purchase from Buyer, Buyer's Fuel Oil inventory residing in the Facility's **[REDACTED]** gallon Fuel Oil storage tank as of the last day of the Term. Seller shall pay Buyer for such inventory within ten (10) Days of receiving Buyer's invoice therefore the amount equal to the quantity of such inventory times the average Daily Fuel Oil Replacement Price during the one hundred twenty (120)

Day period immediately preceding the last day of the Term.

12.3.3 Seller shall make best efforts to procure Fuel Oil at Buyer's direction. Fuel Oil consumed by the Unit shall be determined by its fuel oil metering system.

12.3.4 Seller shall at all times bear the risk of loss of Fuel Oil unless and until Buyer elects to assume Fuel Oil procurement responsibilities pursuant to Section 12.3.10, in which event the risk of loss of Fuel Oil shall be borne by Buyer until the risk of loss passes from Buyer to Seller, which shall occur upon Seller's receipt of the Fuel Oil deliveries at the Facility.

12.3.5 Seller and Buyer have the right to order tank inspections for problematic conditions, including but not limited to low stability, water and bacterial, which can occur from having Fuel Oil sit in the tanks for a prolonged period of time, the costs of which shall be shared by the Parties, and to the extent reasonably necessary to chemically treat Fuel Oil at Buyer's expense. Buyer shall be responsible for the costs of any treatment needed to bring the Fuel Oil in the Fuel Oil storage tank back within specification unless the action or inaction of Seller can be determined to be the cause of the out of spec condition, in which case Seller will bear the full cost of treatment.

12.3.6 Buyer can direct Seller at any time to provide a quote for additional Fuel Oil procurement to Facility. If Buyer requests a quote, Seller will provide a quote to deliver Fuel Oil to the Facility including all taxes, fees and transportation costs. Buyer, if it elects, will then provide confirmation for Fuel Oil to be purchased on Buyer's behalf at the quote provided by Seller. The Operating Committee shall develop procedures for Buyer to request Fuel Oil inventory purchases and for Seller to comply with such requests. Such procedures shall address the timeliness, reasonableness and methodology of the requests from both Parties' perspectives.

12.3.7 Seller shall at all times be responsible for the cost of Fuel Oil that it utilizes for any purpose other than meeting Buyer's Schedules. Seller shall not be excused from failing to satisfy Buyer's Schedule requests to operate on Fuel Oil to the extent such failure is due to Seller's use of Fuel Oil for any purpose other than (1) to generate energy specified in Buyer's Schedules, or (2) for testing to be conducted in accordance with Prudent Industry Practices.

12.3.8 Buyer shall have the ongoing right to direct Seller to maintain during specified time

periods a specific level of Fuel Oil inventory at the Facility, not to exceed **[REDACTED]** gallons.

12.3.9 The Parties recognize that the ability to Schedule the Unit using Fuel Oil is limited by a number of factors including: (i) the amount of Fuel Oil inventory at the Facility; (ii) the rate at which such inventory is being depleted pursuant to Buyer's Scheduling Instructions; (iii) Seller's maximum hourly replenishment capability of **[REDACTED]** gallons per hour; (iv) the Air Permit; and (v) the availability of Fuel Oil and transportation for Fuel Oil to the Facility. Through each of their representatives on the Operating Committee, Buyer and Seller agree to cooperate in the development of Operating Procedures establishing parameters applicable to utilization of Fuel Oil by the Unit so as to optimize Buyer's right to Schedule the Unit on Fuel Oil.

12.3.10 Buyer shall have the right to assume the responsibilities of procuring and supplying the Fuel Oil to the Facility necessary to meet the Buyer's Scheduling at any time during the Term of this Agreement upon reasonable notice to Seller. In the event Buyer elects to assume such responsibilities, the Parties shall mutually agree on revisions to the Operating Procedures to reflect the change in responsibilities.

12.3.11 Seller will track and report monthly to Buyer the level of Buyer's Fuel Oil inventory, the amount of Fuel Oil delivered that month, and the amount of Fuel Oil consumed that month. The Operating Committee shall develop procedures for the real time reporting of Fuel Oil inventory and other operating protocols, including nomination, scheduling and delivery, inventory accounting, operations reporting and quality control.

12.4 Allowances.

12.4.1 All NO_x Allowances and SO₂ Allowances that are allocated to or for the Unit, or that are otherwise granted to Seller for the Unit, by any Governmental Authority or pursuant to any Legal Requirement or Consent, including through any type of state or federal set-aside program, for the calendar years covered, in whole or in part, by the Annual Periods (such NO_x Allowances, the "Unit NO_x Allowances", and such SO₂ Allowances, the "Unit SO₂ Allowances") shall be reserved by Seller for the sole benefit of Buyer, and Seller shall use, at no cost to Buyer, all Unit NO_x Allowances and Unit SO₂ Allowances for NO_x Emissions and SO₂ Emissions, respectively, from the Unit resulting from energy generated to meet Buyer's

Scheduling Instructions. If NOx Emissions or SO₂ Emissions from the Unit resulting from energy generated to meet Buyer's Scheduling Instructions exceed the Unit NOx Allowances or Unit SO₂ Allowances, respectively, then Buyer shall be required to obtain and supply, at Buyer's expense, any additional NOx Allowances or SO₂ Allowances, as applicable, required for such NOx Emissions or SO₂ Emissions in excess of the Unit NOx Allowances or Unit SO₂ Allowances; provided, however, that Buyer shall not be required to provide any NOx Allowances or SO₂ Allowances that are needed due to Seller exceeding the emission rates allowed by the Air Permit, any Consent, and any other applicable Legal Requirements. In no event shall Seller transfer any Unit NOx Allowances or Unit SO₂ Allowances to any other Person at any time or otherwise use Unit NOx Allowances or Unit SO₂ Allowances for any purpose other than the NOx Emissions and SO₂ Emissions from the Unit resulting from energy generated to meet Buyer's Scheduling Instructions.

12.4.1.1 In the event that Seller is allocated, issued or has the right to obtain NOx Allowances or SO₂ Allowances for a portion of, or its entire fleet of, generating units, then a proportional amount of such NOx Allowances or SO₂ Allowances shall be reserved as Unit NOx Allowances or Unit SO₂ Allowances, as applicable, for Buyer's benefit in accordance with this Section 12.4. The proportional amount of NOx Allowances and SO₂ Allowances shall be calculated based on the method, formula or other similar calculation used by the Governmental Authority to determine the amount of such NOx Allowances and SO₂ Allowances attributable to each generating unit compared to the sum of all NOx Allowances and SO₂ Allowances for all generating units of Seller. For purposes of this Section 12.4.1.1, all references to "Seller" shall be deemed to include Seller's Affiliates or other entity to which NOx Allowances or SO₂ Allowances may be or have been allocated to or given rights to obtain for the Unit.

12.4.2 If for any period the Unit NOx Allowances or Unit SO₂ Allowances exceed the number of NOx Allowances or SO₂ Allowances, respectively, required for emissions from the Unit resulting from energy generated to meet Buyer's Scheduling Instructions for such period, then Seller shall carry forward such excess Unit NOx Allowances or Unit SO₂ Allowances, as the case may be, to use for the benefit of Buyer in accordance with Section 12.4.1 in future periods to the extent such Unit NOx Allowances and Unit SO₂ Allowances are allowed to be carried forward. At the end of the Term, Seller shall, to the

extent permitted by Legal Requirements, transfer any and all such excess Unit NOx Allowances and Unit SO₂ Allowances to Buyer, and Buyer may utilize such Unit NOx Allowances and Unit SO₂ Allowances for any purpose in its sole and absolute discretion.

12.4.3 This Section 12.4 shall apply to a Substitute Unit that is authorized pursuant to Section 5.4. However, Buyer shall not be required to provide any NOx Allowances and SO₂ Allowances that are required with respect to any Alternate Resource, and Seller shall be responsible, at Seller's expense, for obtaining all NOx Allowances and SO₂ Allowances required for any Alternate Resource.

12.4.4 Seller shall be solely responsible, at its sole cost and expense, for any and all other emission allowances other than NOx Allowances and SO₂ Allowances that are required in connection with the Unit and any Substitute Unit, including for any emissions or energy produced therefrom.

ARTICLE 13

ENERGY SCHEDULING AND TRANSMISSION

13.1 Energy Scheduling. Buyer shall issue Scheduling Instructions for the electrical output committed under this Agreement. If the Unit is capable of operating on AGC, Buyer has the right to Schedule the Unit on AGC or non-AGC.

13.2 Coordination and Scheduling.

13.2.1 Notwithstanding any other provision of this Agreement, Buyer agrees to submit and Seller agrees to receive Schedules of the Unit in accordance with the procedures set forth in this Section 13.2 and **Appendix C**. Seller is not obligated to deliver energy in response to those portions of Scheduling Instructions that materially deviate from such procedures. Buyer is not entitled to Schedule energy, and Seller is not obligated to deliver such energy, to the extent that such energy cannot be delivered due to (a) Buyer's failure to deliver to the Facility a sufficient quantity of fuel to generate such energy at the applicable Guaranteed Heat Rate, (b) Buyer's inability to receive such energy at the Point of Interconnection, or (c) the inability of Seller to operate the Unit in excess of 4,000 hours per Unit per Annual Period; provided, however, that Seller shall not be excused from failing to meet Buyer's Schedule pursuant to this subsection (c) if such failure is the result of Seller's operation of the Unit for purposes other than

complying with Buyer's Schedules and the associated requirements of this Agreement.

13.2.2 The electrical output committed under this Agreement shall be subject to Scheduling Instructions issued by the Scheduling Center. Seller shall comply with such Scheduling Instructions at the time designated for compliance therewith, subject to the Technical Limits and the Scheduling procedures set forth in **Appendix C**. In addition, at the request of Buyer, Seller shall make reasonable efforts to cause the Unit to control voltage by producing or absorbing reactive power subject to the Technical Limits; provided, however, that such actions do not cause Seller to violate any provisions of its Interconnection Agreement and provided that Buyer shall reimburse Seller for any incremental costs incurred by Seller (including waiving any negative Unit Availability impacts directly attributable to Seller's compliance with such reactive power instructions), in excess of those costs Seller would have incurred under the Interconnection Agreement, as a result of Seller's compliance with any such requests.

13.2.3 Buyer and Seller shall maintain written records of the quantities of energy to be delivered each hour during the Term. Following the Delivery Commencement Date, subject to Section 5.1.5, Buyer may Schedule energy at any time during the Term and Seller shall cause the entire output capability of the Unit to be available to Buyer when Scheduled.

13.2.3.1 If Buyer elects to Schedule energy for delivery on the next Business Day, Buyer shall provide its Schedule for such delivery to Seller no later than 12:00 p.m. CPT on the Business Day prior to the Day of delivery for deliveries from the Unit, and no later than 9:00 a.m. CPT on the Business Day prior to the Day of delivery for deliveries from an Alternate Resource. This Day-ahead Scheduling Instruction will also include any electric deliveries from midnight to midnight for any calendar Days that precede the next Business Day (*i.e.*, weekends and holidays). Buyer shall also provide a non-binding, good faith estimate of its Scheduling Instructions for the twenty-four (24) hour period following the next Business Day. Buyer may submit Scheduling Instructions for each hour requesting the number of Units to be operated and, for each Unit, the Unit energy output level to meet Buyer's Schedule, subject to a minimum of the Minimum Capacity up to the full Base Operating Mode Energy output capability. Seller may dispatch any combination of Units at any Unit energy output levels to meet Buyer's Schedule; provided, however, if for any reason, Seller chooses to operate more or less than the number of Units requested by

Buyer, the energy payment calculations made pursuant to **Appendix B** will be based on the lesser of (a) the Guaranteed Heat Rate and number of starts for Buyer's Scheduling Instructions or (b) the Guaranteed Heat Rate and number of starts for actual operation of the Units. Buyer will be required to accept and pay for energy during ramp up and ramp down periods at a price as described in **Appendix B**.

13.2.3.2 For Scheduling Instructions submitted after the Day-ahead deadline, Buyer must provide Seller with a proposed revised Schedule at least one (1) hour prior to the start-up or ramp up of energy delivery. If energy is not already Scheduled, Buyer will be assessed one or more turbine start events, as applicable, in accordance with **Appendix B**, Section C. Buyer will be responsible for the actual costs (commensurate with the Guaranteed Heat Rate) of implementing the intra-Day Scheduling Instruction (including any associated imbalance penalties, if any, assessed by the Transmission Provider); provided, however, such costs shall not include any lost opportunity costs for power sales from the Facility.

13.2.3.3 Notwithstanding anything contained in Section 13.2.4.2 to the contrary, in the event Seller has provided notice that an Unavailability Event has occurred prior to Buyer giving intra-Day Scheduling Instructions, the most recent Schedule submitted by Buyer shall be deemed the Schedule for the balance of such Day in which the Seller has provided notice that the Unavailability Event has occurred. If no Day-ahead or intra-Day Schedule has been given to Seller for a given Day and Seller subsequently provides notice that an Unavailability Event has occurred, Buyer shall have the right to submit one (1) intra-Day Schedule for the balance of such Day and shall not change such intra-Day Schedule for the balance of such Day. For each Day following the Unavailability Event until the return to service of the Unit, Buyer shall have the right to submit a Day-ahead Schedule and one (1) intra-Day Schedule for the balance of such Day and shall not change such Schedule for the balance of such Day. During an Unavailability Event, Seller shall inform Buyer regularly as to the projected schedule of the return to service of the Unit. If the Unit is able to return to service, Seller must notify Buyer by 3:00 p.m. CPT the previous Day to be able to deliver the entire Schedule requested by Buyer from the Unit. If the Unit is able to return to service intra-Day, Seller must give a three-hour notification of ability to operate. Buyer then has the right to submit a new Schedule for the balance of that Day. The previous Day's Schedule remains the

obligation of Seller until the end of the three-hour notification. If Buyer chooses to Schedule zero (0) MWh for the balance of the Day, there is no obligation for Seller for the remainder of that Day. If Buyer chooses to Schedule the Unit for greater than the Minimum Capacity, the new forward Schedule becomes Seller's delivery obligation for the remainder of that Day.

13.2.4 Seller may from time to time request that the Unit be allowed to deliver electric energy output to Buyer in order to test and/or evaluate Facility equipment ("Operator Requested Schedule"). Seller shall request such Operator Requested Schedule from Buyer at least one (1) Business Day in advance and Buyer shall have the right to approve such Operator Requested Schedule (such approval not to be unreasonably withheld, conditioned or delayed). If Buyer approves and subsequently determines that it is necessary to Schedule the Unit during an Operator Requested Schedule, then Buyer may cancel or interrupt, as the case may be, the Operator Requested Schedule and subsequently Schedule the Unit as it deems appropriate; provided, however, Buyer shall reimburse Seller for any reasonable, incremental expenses incurred by Seller due to Seller's reliance on Buyer's previous approval of the Operator Requested Schedule.

13.2.5 The Parties recognize that Buyer is a FERC jurisdictional entity subject to the reliability authority of NERC and that, to ensure continuous and reliable electric service, Buyer operates its system in accordance with the operating criteria and guidelines of NERC. If a System Emergency is declared and the Scheduling Center, at its sole discretion, identifies the need to modify the schedule or dispatch of the Unit, the Scheduling Center will notify Seller's personnel and, if requested, Seller's personnel shall immediately place the energy of the Unit within the exclusive control of the Scheduling Center for the duration of such System Emergency; provided, however, in such event, Buyer shall ensure that the Scheduling Center does not cause the Unit to be operated in a manner that exceeds the Technical Limits or any operations-related limits in the Air Permit without the prior consent of Seller, and, notwithstanding Seller's consent, Buyer shall be responsible for all costs associated with operation of the Unit pursuant to such Scheduling Center control, including any penalties imposed on Seller by any Governmental Authority or costs incurred by Seller associated with additional maintenance or accelerated maintenance, in accordance with Prudent Industry Practices, due to such event. Without limiting the generality of the

foregoing, the Scheduling Center may require Seller's personnel to raise or lower production of energy generated by the Unit, including potential start-up and/or shutdown situations, to maintain safe and reliable load levels and voltages on the Transmission System. To the extent Seller is required, pursuant to this Section 13.2.5, to take any action, or the Scheduling Center takes any action, which will adversely affect Seller's ability to meet Buyer's Schedules, including those Schedules modified pursuant to Section 13.2.5, Seller shall be excused from meeting Buyer's Schedules and, for purposes of the Monthly Availability Percentage calculation, such hours (or equivalent hours) of Unavailability shall be subtracted from Unplanned (Forced) Outage Hours and Equivalent Unplanned (Forced) Derated Unit Hours and such hours (or equivalent hours) of Unavailability shall be subtracted from Dispatch Hours, as shown in the MAP formulas in Section C.1 of **Appendix A**.

13.2.6 Seller shall cooperate with Buyer in establishing System Emergency plans, including (without limitation) recovery from a local or widespread electrical blackout, voltage reduction in order to effect load curtailment, and other such plans that may be necessary or appropriate under the circumstances.

13.3 AGC. If, on the Effective Date, the Unit is capable of operating on AGC, Seller shall be responsible for all costs incurred at the Facility that are necessary to make the Unit respond to Buyer's AGC signals. If the Unit is capable of operating on AGC, Buyer shall have the right, but not the obligation, to dispatch the Unit in the AGC mode, and Buyer shall have the right to operate the Unit on AGC or provide a Schedule to Seller at any time. The integrated net effect of AGC during an hour will be treated as a Schedule and subject to all limitations that otherwise apply to Schedules. For AGC, Buyer may submit instructions for each hour requesting the number of Units to be operating. If, for any reason, Seller chooses to operate more or less than the number of Units requested by Buyer, the energy payment calculations made pursuant to **Appendix B** will be based on the lesser of (a) the Guaranteed Heat Rate and number of starts for the Buyer's Scheduling Instructions or (b) the Guaranteed Heat Rate and number of starts, respectively, for the actual operation of the Unit. For example, if due to a Forced Outage, Seller chooses to operate less than the number of Units requested by Buyer, then the energy payment calculations made pursuant to **Appendix B** will be based on the Guaranteed Heat Rate and number of starts for the actual

operation of the Units at the Guaranteed Heat rate and additional starts for actual operation would result in a lower energy payment as compared to the energy payment calculated based on Buyer's Scheduling Instructions. Conversely, if due to a Forced Derate, Seller chooses to operate more than the number of Units requested by Buyer, then the energy payment calculations made pursuant to **Appendix B** will be based on the Guaranteed Heat Rate and number of starts for Buyer's Scheduling Instructions, as the Guaranteed Heat Rate and additional starts for actual operation of the Units would result in a higher energy payment as compared to the energy payment calculated based on Buyer's Scheduling Instructions, and the actual number of starts would be less than the number of starts for such instructions. In the event the AGC capability of the Unit is unavailable, Buyer shall utilize non-AGC Scheduling and Seller, at Seller's expense, shall use commercially reasonable efforts to re-establish AGC capability.

13.4 Effect of Grid Emergencies. The Parties recognize that pursuant to the Interconnection Agreement, Seller may be required to reduce generation or take certain actions during a Grid Emergency and may be required to disconnect the Unit from the Transmission System to allow mitigation of system problems and repair or maintenance on the Interconnection Facilities or the Transmission System. To the extent that Seller is required pursuant to the Interconnection Agreement to take any action, other than instances where Seller's acts or omissions are the cause for the required actions, which will adversely affect its ability to meet Buyer's Schedules, Seller shall be excused from meeting Buyer's Schedules, for purposes of the Monthly Availability Percentage calculation, and such hours (or equivalent hours) of Unavailability shall be subtracted from Unplanned (Forced) Outage Hours and Equivalent Unplanned (Forced) Derated Unit Hours and such hours (or equivalent hours) of Unavailability shall be subtracted from Dispatch Hours, as shown in the MAP formulas in Section C.1 of **Appendix A**.

13.5 Effect of Insufficient Capability in the Transmission System. In the event that the Transmission System is unable to receive the Scheduled energy from the Unit, Seller shall be excused from meeting Buyer's Schedules and, for purposes of the Monthly Availability Percentage calculation, such hours (or equivalent hours) of Unavailability shall be subtracted from Unplanned (Forced) Outage Hours and Equivalent Unplanned (Forced) Derated Unit Hours and such hours (or equivalent hours) of Unavailability shall be subtracted from Dispatch Hours, as shown in the MAP formulas in Section C.1 of **Appendix A**. In

the event Seller is utilizing an Alternate Resource to meet Buyer's Schedules and the Transmission System is unable to receive the Scheduled energy from the Alternate Resource, this shall be treated as Unavailability to be included in the Monthly Availability Percentage calculation pursuant to **Appendix A**, Section C.

ARTICLE 14

INSURANCE

14.1 Insurance Required of Seller. Throughout the Term, Seller must acquire and maintain, at its sole cost and expense, the types and amounts of insurance coverage as are consistent with Prudent Industry Practices, but in no event less than the types and amounts described in this Article 14.

14.2 Proof of Insurance. Buyer, in its sole discretion, may require Seller to deliver to Buyer, at any time during the Term, but at least thirty (30) Days after the Effective Date and thereafter annually on the Commercial Operation Date anniversary, a certificate of insurance certifying Seller's coverage under insurance policy(ies) issued by a reputable insurance company authorized to do business in the state where the Facility is located.

14.3 General Terms. The required insurance coverage must contain a broad form contractual endorsement specifically covering liabilities arising out of or caused by the operation of the Facility or by Seller's failure to maintain the Facility in satisfactory and safe operating condition. Seller's insurance must be primary for any activity arising out of this Agreement. Insurance or self-insurance maintained by Buyer or other additional insureds is in excess of Seller's insurance, contingent and non-contributory. To the extent allowed by applicable law, Buyer and its Representatives must be additional insureds under the commercial general liability policy, auto liability policy and, if applicable, excess/umbrella policy. To the extent allowed by applicable law, Seller waives, and must require its insurers to waive, a right of subrogation against Buyer and its Representatives for the commercial general liability policy, auto liability policy, umbrella policy, if applicable, and the workers' compensation policy.

14.4 General Liability Insurance. This insurance policy must provide the following coverage, which can be exceeded by Seller and may be met through any combination of primary insurance and

following form excess or umbrella insurance, so long as the combined limits meet requirements of this Agreement:

14.4.1 Commercial general liability insurance in an “occurrence” form with bodily injury and property damage combined liability limits of not less than twenty million dollars (\$20,000,000.00) per occurrence; provided, however: (i) Seller may use any combination of primary or excess policies to satisfy the overall limit requirements; and (ii) if Seller uses a “claims-made” policy, it must maintain continuous coverage in effect for at least five (5) years beyond termination of this Agreement, through continuous renewal of the original policy or by purchasing extended discovery period or retroactive insurance dated back to the Effective Date of this Agreement.

14.4.2 Specific coverage for broad form contractual liability and a separation of insureds provision.

14.5 Additional Insurance. In addition to the requirements above, Seller must acquire and maintain throughout the Term, the following additional types of insurance:

14.5.1 Workers’ Compensation. Workers’ compensation insurance in accordance with statutory requirements, including employer’s liability insurance, with limits not less than one million dollars (\$1,000,000.00) per occurrence and endorsement providing insurance for obligations under the U.S. Longshoremen’s and Harbor Worker’s Compensation Act and the Jones Act, where applicable.

14.5.2 Auto Liability. Automobile liability insurance including owned, non-owned and hired automobiles with combined bodily injury and property damage limits of at least two million dollars (\$2,000,000.00).

14.5.3 Pollution Liability. Coverage for bodily injury, property damage, including clean-up costs and defense costs resulting from sudden, accidental and gradual pollution conditions, including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, hydrocarbons, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water shall be maintained, with limits not less than one million dollars (\$1,000,000.00) per occurrence or claim; provided, however, that, if Seller uses a “claims-made” policy, the policy must maintain continuous coverage in effect for at least five (5) years

beyond termination of this Agreement through continuous renewal of the original policy or by purchasing extended discovery period retroactive insurance dated back to the Effective Date of this Agreement.

14.5.4 All Risk Property. Replacement cost of the Facility. A deductible may be carried, which will be the absolute responsibility of Seller.

14.6 Notice of Change or Cancellation. The required insurance policies will be endorsed with a provision requiring the insurance company to notify Buyer at least thirty (30) Days prior to the effective date of any cancellation, with the exception of a ten (10) Days' notice for nonpayment of premium. If notice of cancellation is only commercially available to Seller's attention, then Seller will forward such thirty (30) Day (or, for non-payment of premium, ten (10) Day) advance notice to Buyer immediately upon receipt. Furthermore, Seller agrees to notify Buyer at least thirty (30) Days prior to the effective date of any known material change in a required policy.

14.7 Payment of Premiums. Seller will pay all premiums and other charges due on each insurance policy and will keep all coverage in force throughout the Term of this Agreement.

14.8 No Waiver of Liability. The provisions requiring Seller to acquire and maintain insurance under this Agreement will not be construed as a waiver, restriction or limitation of any liability imposed on Seller under this Agreement, whether or not the same is covered by insurance. It is the intent of the Parties, however, that to the extent there is insurance coverage available to cover the legal or contractually assumed liability of Seller, any payments due as a result of such liability will be made first from the proceeds of such policies.

ARTICLE 15

INDEMNIFICATION

15.1 Scope of Indemnity. Seller expressly agrees to indemnify, hold harmless and defend the Buyer and its Representatives (each an "Indemnified Party") against all claims, liability, fines, costs or expenses (on an After-Tax Basis) imposed by Governmental Authorities or arising from loss, damage or injury to the person or property of third parties in any manner directly or indirectly related to: (a) the development, construction, use, ownership or operation of the Facility; (b) acts or omissions of Seller or its

Representatives in connection with the performance of, or failure to perform, Seller's obligations or representations, warranties, or covenants under this Agreement (including any failure to comply with any Consent or Legal Requirement); (c) a representation or warranty of Seller (or its Affiliate) being false or misleading in any material respect when made or when deemed made; (d) activities (including prior uses of third parties) on Seller's side of the Point of Interconnection and Primary Gas Delivery Point; or (e) any negligence or willful misconduct of Seller or its Representatives, except to the extent such loss, damage or injury is the result of the negligence or willful misconduct of the Buyer.

15.2 Notice of Proceedings. An Indemnified Party which becomes entitled to indemnification under this Agreement shall promptly notify Seller of any claim or proceeding in respect of which it is to be indemnified. Such notice shall be given as soon as reasonably practicable after the Indemnified Party obligated to give such notice becomes aware of such claim or proceeding. Failure to give such notice shall not excuse an indemnification obligation except to the extent failure to provide notice prejudices Seller. Seller shall assume the defense thereof with counsel designated by Seller; provided, however, that if the defendants in any such action include both the Indemnified Party and Seller and the Indemnified Party reasonably concludes that there may be legal defenses available to it that are different from or additional to, or inconsistent with, those available to Seller, the Indemnified Party shall have the right to select and be represented by separate counsel, at the expense of Seller. If Seller fails to assume the defense of a claim, the indemnification of which is required under this Agreement, the Indemnified Party may, at the expense of Seller, contest, settle, or pay such claim; provided, however, that settlement or full payment of any such claim may be made only with Seller's consent or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement.

ARTICLE 16

FORCE MAJEURE

16.1 Definition of Force Majeure Event. For the purposes of this Agreement, a "Force Majeure Event" as to a Party means any occurrence, nonoccurrence or set of circumstances that prevents a Party, in whole or in part, from performing any of its obligations or satisfying any conditions under this Agreement

and that is beyond the reasonable control of such Party (including such Party's contractors) and is not caused by such Party's (including such Party's contractors') negligence, lack of due diligence or failure to follow Prudent Industry Practices, or by such Party's breach of this Agreement. The term Force Majeure Event shall not include: (i) the inability to meet a Legal Requirement or the change in a Legal Requirement; (ii) a site-specific strike, walkout, lockout or other labor dispute at the Facility; (iii) equipment failure or equipment damage, unless, in the case of the Facility only, such equipment failure or equipment damage results directly from an event that would otherwise constitute a Force Majeure Event hereunder; (iv) changes in market conditions that affect the cost or availability of equipment, materials, supplies or services, including the Unit's fuel supply or the cost of power from resources other than the Unit; (v) any (a) inability by Buyer to obtain Natural Gas supply, (b) or failure by a Natural Gas transporter to deliver sufficient quantities of Natural Gas for Buyer to perform its obligations under this Agreement, or (c) inability by Buyer to receive energy at the Point of Interconnection, provided such inability is not caused by Seller's actions or inactions; (vi) failures of a Party's contractors, suppliers or vendors, unless such failure is caused by an event which would otherwise constitute a Force Majeure Event hereunder if directly experienced by the Party; (vii) ambient temperature and humidity at the Site being different than Referenced Conditions; and (viii) any event, including a change in any Legal Requirement or accounting standard, that requires Buyer to consolidate Seller or any of its Affiliates or permitted assigns as a VIE in Buyer's financial statements.

16.2 No Breach or Liability. If a Force Majeure Event occurs, subject to compliance with Section 16.4 and Section 16.5, the affected Party will be excused from performance of its obligations hereunder, other than payment obligations that accrued prior to the declaration of the Force Majeure Event, and will not be construed to be in default in respect of such obligations to the extent that, and for so long as, failure to perform is due to a Force Majeure Event. However, the suspension of performance due to a Force Majeure Event shall be of no greater scope and of no longer duration than is required by such Force Majeure Event. Notwithstanding anything herein to the contrary, no Force Majeure Event shall extend this Agreement beyond its stated Term.

16.3 Monthly Capacity Payments. In the case of an Unavailability Event caused by a Force Majeure Event declared by Seller pursuant to Article 16, if there are any Days of such Unavailability Event

that are not covered by a Seller election of Alternate Delivery in accordance with Section 5.1.4.3, Buyer's obligation to make a Monthly Capacity Payment for any Month including such Days shall be excused pro rata, based on the number of such Days in the Month and to the extent that Seller is prevented on such Days from satisfying Scheduling Instructions from Buyer by the Force Majeure Event.

16.4 Notice of Force Majeure Event. Following the occurrence of a Force Majeure Event, and as a condition to relief under Section 16.2, the affected Party shall give the other Party notice thereof, followed by written notice if the first notice is not written, as promptly as possible after such Party becomes aware of such Force Majeure Event, describing the particulars of such Force Majeure Event, including an estimate of the anticipated duration and effect of the Force Majeure Event (if reasonably estimable) upon the performance of its obligations or satisfaction of any conditions under this Agreement (including, if Seller is the affected Party, Seller shall provide Buyer with information reasonably required to determine the amount of the reduction of the generating capability of the Unit), and discussing any actions being taken to avoid or minimize the effect of the Force Majeure Event. The affected Party shall have a continuing obligation to deliver to the other Party regular updated reports and any additional documentation and analysis supporting its claim regarding a Force Majeure Event. The burden of proof as to whether a Force Majeure Event has occurred and as to the impact of a Force Majeure Event shall be upon the affected Party.

16.5 Mitigation. The affected Party shall comply with the following requirements as a condition to the affected Party's right to relief under Section 16.2 due to a Force Majeure Event: (i) the affected Party shall continue to perform its obligations hereunder to the extent not affected by such Force Majeure Event; (ii) the affected Party shall remedy its inability to perform as soon as reasonably practicable; provided, however, that this Section 16.5 shall not require the settlement of any non-site specific strike, walkout, lockout or other general labor dispute on terms which, in the sole judgment of the affected Party, are contrary to its interest; (iii) when the affected Party is able to resume performance of its obligations under this Agreement, the affected Party shall promptly provide written notice to the other Party, promptly resume such performance, and provide the other Party with a written certification from an independent, registered engineer reasonably acceptable to such other Party that the Force Majeure Event has been cured.

16.6 Extended Force Majeure Events.

16.6.1 If the affected Party has reason to believe that a suspension of performance due to a Force Majeure Event will continue for a period of six (6) Months or longer following the initial suspension of performance resulting from the Force Majeure Event (an “Extended Force Majeure Event”), the affected Party shall notify the other Party promptly and shall submit a “Force Majeure Remedy Plan” to the other Party within thirty (30) Days thereafter. In addition, if the other Party has reason to believe that a Force Majeure Event will be an Extended Force Majeure Event, the other Party may request that the affected Party submit a “Force Majeure Remedy Plan,” which the affected Party shall submit to the requesting Party within thirty (30) Days of the request. A Force Majeure Remedy Plan shall set forth a plan and schedule for remedial measures (including necessary repairs, improvements, and changes to operations, as applicable) to cure the effects of the Force Majeure Event so as to enable the affected Party to resume full performance of the suspended obligations under this Agreement as soon as reasonably practicable.

16.6.2 While a Force Majeure Remedy Plan is in effect, the affected Party shall provide Monthly status reports to the other Party regarding the implementation of the Force Majeure Remedy Plan, any other measures to remedy the Force Majeure Event, any changes to the Force Majeure Remedy Plan, and the expected remaining duration of the suspended performance and shall provide any additional relevant information as may be reasonably requested by the other Party. The affected Party shall modify the Force Majeure Remedy Plan if and as needed to achieve the objective of resuming full performance of the suspended obligations under this Agreement as soon as reasonably practicable.

16.6.3 The Party not prevented from performing its obligations due to the Force Majeure Event may at any time terminate this Agreement effective upon ten (10) Days prior written notice to the affected Party if: (i) the affected Party fails to provide a Force Majeure Remedy Plan as required by this Section 16.6; or (ii) the affected Party fails to carry out the Force Majeure Remedy Plan in a method reasonably designed to achieve the objective of resuming full performance of the suspended obligations under this Agreement as soon as reasonably practicable; or (iii) the affected Party remains unable to perform the suspended obligations under this Agreement twelve (12) Months following the initial suspension of performance resulting from the Force Majeure Event. For the purposes of subsection (iii) of this Section

16.6.3, the twelve (12) Month period need not be continuous if each period of suspension of performance comprising the twelve (12) Month period is the result of a common cause such that, if the cause had been cured following the first suspension of performance, the additional suspensions of performance would not have occurred.

16.6.4 Upon any termination of this Agreement as provided in Section 16.6.3, the Parties shall have no further liability or obligation to each other except for any obligation arising prior to the date of such termination.

ARTICLE 17

DEFAULT AND REMEDIES

17.1 Default by Seller. The occurrence of any of the following events shall constitute an Event of Default by Seller:

17.1.1 Any representation or warranty made by Seller herein or in any certificate or other document delivered to Buyer pursuant hereto shall prove to be incorrect in any material respect when made, unless Seller shall promptly commence and diligently pursue action to cause such representation or warranty to become true in all material respects and does so within thirty (30) Days after notice thereof has been given to Seller by Buyer (unless such cure is not capable of being effected within such thirty (30) Day period in which case Seller shall have an additional thirty (30) Day period in which to perform such cure) and such cure removes any material adverse effect on Buyer of such representation or warranty having been incorrect.

17.1.2 A court having jurisdiction shall enter: (i) a decree or order for relief in respect of Seller in an involuntary case or proceeding under any applicable Federal or state bankruptcy, insolvency, reorganization or other similar law; or (ii) a decree or order, the entry of which was sought by an entity other than Seller, adjudicating Seller bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of Seller under any applicable Federal or state law, or appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of Seller or of any substantial part of its affairs.

17.1.3 Seller shall: (i) commence a voluntary case or proceeding under any applicable Federal or state bankruptcy, insolvency, reorganization or other similar law or any other case or proceeding to be adjudicated a bankrupt or insolvent; (ii) consent to the entry of a decree or order for relief in respect of Seller in any involuntary case or proceeding under any applicable Federal or state bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against it; (iii) file any petition, answer or consent seeking reorganization or similar relief under any applicable Federal or state law, which, if granted would have the effect of relieving Seller of any of its obligations; (iv) consent to the filing of any petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or similar official of Seller or of any substantial part of its property; (v) make an assignment for the benefit of creditors; (vi) admit in writing its inability to generally pay its debts as they become due; or (vii) take any action in furtherance of any of the foregoing.

17.1.4 Seller fails to comply or cause compliance with the Seller Performance Security requirements of Section 7.1, or Seller Guarantor breaches any of its obligations under the Seller Guaranty or if any representation or warranty made by Seller Guarantor in the Seller Guaranty shall prove to be incorrect in any material respect when made, unless any of the foregoing is cured by the end of the second Business Day following receipt of a written notice from Buyer of a failure under this Section 17.1.4.

17.1.5 Seller fails to perform or observe any material obligation of Seller under this Agreement, other than those obligations specifically addressed in Section 17.1, which failure continues for a period of thirty (30) Days after written notice thereof from Buyer unless such cure is not capable of being effected within such thirty (30) Day period, in which case Seller shall have an additional thirty (30) Day period in which to perform such cure.

17.1.6 Seller violates the requirements of Article 19 through an assignment or transfer of this Agreement or an ownership interest in the Unit or Facility or through a Change of Control Transaction.

17.1.7 Seller fails to pay Buyer any undisputed amount payable by Seller to Buyer pursuant to this Agreement for fifteen (15) Days after the same shall have become due and payable and

Seller fails to cure such failure to pay within fifteen (15) Days after receipt of written demand therefor from Buyer.

17.1.8 The Availability Percentage (as defined below) is below sixty percent (60%) for any (i) one (1) Summer Season, or (ii) one (1) Winter Season during which five hundred (500) or more hours are Scheduled for each Month, or (iii) six (6) consecutive Months during which five hundred (500) or more hours are Scheduled for each Month; provided, however, that Seller may, within fifteen (15) Days after the end of such Season or six (6) Month period, as applicable, submit a cure plan that is reasonably acceptable to Buyer and expected to resolve the cause of the unsatisfactory Availability Percentage as soon as practicable, but in no event later than one hundred eighty (180) Days from the end of such Season or six (6) Month period, as applicable. If Seller fails to submit such a cure plan in a timely manner or fails to diligently pursue implementation of the cure plan, or if the unsatisfactory Availability Percentage is not, in fact, cured by the end of the one hundred eighty (180) Day period, then Buyer shall have the right to declare an Event of Default. The cause of the unsatisfactory Availability Percentage shall be cured only if (i) Seller is able to resume performance of its obligations under this Agreement and provides Buyer with a written certification reasonably acceptable to Buyer that the cause of the unsatisfactory Availability Percentage has been cured, and (ii) the Monthly Availability Percentage determined for the first full Month following Buyer's receipt of such certification of successful completion of the cure plan is at least sixty percent (60%). For the purposes of this Section 17.1.8, the "Availability Percentage" shall mean the percentage calculated for the relevant period using the MAP formulas shown in Section C.1 of **Appendix A** with the calculation applied to the total relevant period and with ARDH equal to zero.

17.1.9 Notwithstanding any other provision of this Agreement other than Section 17.1.9.3, if the Tested Reliable Capacity of the Unit, determined pursuant to a Performance Test, at any time after the Delivery Commencement Date, is below seventy percent (70%) of the Nominal Capability, and Seller fails to (i) submit to Buyer a cure plan reasonably acceptable to Buyer for such inadequate Tested Reliable Capacity within ten (10) Days after determination by the Performance Test of such inadequate Tested Reliable Capacity, and (ii) cure such inadequate Tested Reliable Capacity within a reasonable period of time, not to exceed one hundred twenty (120) Days from the completion of the Performance Test ("Cure

Period"); provided, however, that the Cure Period may be extended in accordance with Section 17.1.9.1 if Seller elects for the period of such extended Cure Period to cover (to the extent of the degraded capacity) Buyer's Schedules through an Alternate Resource in accordance with Section 5.1.4.3. Buyer shall have the right to declare an Event of Default if Seller fails to (i) establish the cure plan within the required ten (10) Day period or, if applicable, establish the revised cure plan within the required fifteen (15) Day period under Section 17.1.9.1, or (ii) diligently implement such cure plan (including implementation of such actions as Buyer may reasonably request), or (iii) cure the inadequate Tested Reliable Capacity within the Cure Period (as the Cure Period may be extended under Section 17.1.9.1) as set forth in Section 17.1.9.2.

17.1.9.1 In the event Seller establishes a cure plan in accordance with Section 17.1.9 but requires a Cure Period of more than one hundred twenty (120) Days to cure the inadequate Tested Reliable Capacity, then the Cure Period will be extended for a reasonable additional period of time, which extension will not in any case exceed four hundred twenty (420) Days, provided that Seller satisfies all of the following conditions to any such extension: no later than fifteen (15) Days prior to the expiration of the one hundred twenty (120) Days Cure Period, Seller shall provide to Buyer (i) a revised cure plan setting forth a reasonable extension of the Cure Period, not to exceed four hundred and twenty (420) Days, which revised cure plan and extension shall be reasonably acceptable to Buyer, and (ii) a written certification reasonably acceptable to Buyer confirming that in order for Seller to cure the inadequate Tested Reliable Capacity Seller must be afforded such reasonable additional period of time; and (iii) Seller's election for the period of such extended Cure Period or cover (to the extent of the degraded capacity) Buyer's Schedules through an Alternate Resource in accordance with Section 5.1.4.3. For the avoidance of doubt, the total duration of the Cure Period, as extended, shall not exceed five hundred and forty (540) Days.

17.1.9.2 The cause of the inadequate Tested Reliable Capacity shall be cured under Sections 17.1.9 only if (i) Seller provides Buyer with a written certification reasonably acceptable to Buyer confirming that the inadequate Tested Reliable Capacity has been cured, and (ii) the inadequate Tested Reliable Capacity is increased to a value equal to or greater than seventy percent (70%) of the Nominal Capability as demonstrated by the most recent Performance Test. Throughout the duration

of any Cure Period, the Designated Capacity will be deemed to be the Tested Reliable Capacity determined pursuant to the most recent Performance Test.

17.1.9.3 Notwithstanding the foregoing provisions of Sections 17.1.9, 17.1.9.1 and 17.1.9.2, whenever the Tested Reliable Capacity of the Unit determined pursuant to a Performance Test at any time after the Delivery Commencement Date is below seventy percent (70%) of the Nominal Capability, Buyer shall have the unilateral right to elect the remedy specified in **Appendix A**, Section A.4, in which case, such remedy shall be available for inadequate Tested Reliable Capacity above, at and below seventy percent (70%) of Nominal Capability. In order to elect such remedy Buyer must notify Seller in writing of this election and must waive its right in such notice to declare a Seller Event of Default under Sections 17.1.9 and 17.1.9.1 with respect to such specific event (but not any other additional events) of inadequate Tested Reliable Capacity.

17.1.10 Seller breaches its obligation to deliver energy pursuant to Buyer's Schedule(s) to the extent that the Unit or a designated Alternate Resource, if applicable, is Available, and such breach continues for more than two (2) hours after Buyer provides Seller with written notice of such breach.

17.1.11 Seller, or any of its Affiliates, or any of their employees, contractors, subcontractors, agents or representatives willfully adjusts the Metering System or the Interconnection Facilities without Buyer's written consent and which adjustment has the effect of falsely increasing the amounts owed by Buyer under this Agreement.

17.1.12 Any failure of any covenant made by Seller in Section 3.3 herein, unless Seller shall promptly commence and diligently pursue action to cure such failure within thirty (30) Days after notice thereof has been given to Seller by Buyer, (unless such cure is not capable of being effected within such thirty (30) Day period in which case Seller must submit a cure plan prior to the end of such thirty (30) Day period outlining steps to assure Buyer that the failure will be cured, which cure plan shall be subject to Buyer's approval, such approval not to be unreasonably withheld by Buyer, but in no event shall the total cure period exceed one hundred and eighty (180) Days) and such cure removes any adverse effect on Buyer of such failure of such covenant; provided, however, that no Event of Default by Seller shall occur pursuant to this Section 17.1.12 unless Buyer cooperates with Seller during the cure period and takes

commercially reasonable actions (without causing a material adverse effect on Buyer) necessary to bring about a determination by Buyer and its independent auditor that Seller does not constitute a VIE as a result of this Agreement.

17.1.13 Buyer is required by any Legal Requirement or any accounting standard, including but not limited to those implemented or administered by FASB, to consolidate Seller or any of its Affiliates or permitted assigns as a VIE in Buyer's or any of its Affiliates' financial statements and such condition continues for a period of thirty (30) Days after written notice thereof from Buyer unless such cure is not capable of being effected within such thirty (30) Day period, in which case Seller shall have an additional thirty (30) Day period in which to commence such cure and thereafter diligently pursues such cure and completes such cure within sixty (60) Days. Buyer may seek remedies pursuant to Section 17.3 for a Seller Event of Default caused under this Section 17.1.13; provided, however, upon termination of this Agreement, if the Seller is able to clearly demonstrate that the Seller Event of Default was not caused by any direct or indirect action by Seller, the Seller shall have no further liability or obligation to Buyer except for any obligation arising prior to the date of such termination.

17.1.14 Seller violates any Legal Requirement and such violation would have a material adverse effect on Seller's ability to perform under this Agreement and such violation is not cured within thirty (30) days after written notice from Buyer unless such cure is not capable of being effected within such thirty (30) Day period, in which case Seller shall have an additional thirty (30) Day period in which to commence such cure and thereafter diligently pursues such cure and completes such cure within sixty (60) Days and such cure removes any material adverse effect on Seller's ability to perform under this Agreement; provided, however, Seller shall be deemed not to have committed an Event of Default hereunder if Seller has validly contested the alleged violation, such matter remains pending before the applicable Governmental Authorities, and any cease and desist order or other enforcement action due to an alleged violation of the Legal Requirements has been stayed.

17.2 Default by Buyer. The occurrence of any of the following events shall constitute an Event of Default by Buyer:

17.2.1 Buyer fails to pay any undisputed amount payable by Buyer to Seller pursuant to this Agreement for fifteen (15) Days after the same shall have become due and payable and Buyer fails to cure such failure to pay within fifteen (15) Days after receipt of written demand therefor from Seller.

17.2.2 Buyer fails to perform or observe any material obligation of Buyer under this Agreement, other than those obligations included in this Section 17.2, which failure materially and adversely affects the ability of Seller or Buyer to perform their respective obligations under this Agreement and continues for a period of thirty (30) Days after written notice thereof from Seller (unless such cure is not capable of being effected within such thirty (30) Day period, in which case Buyer shall have an additional thirty (30) Day period in which to perform such cure.)

17.2.3 Any representation or warranty made by Buyer herein or in any certificate or other document delivered to Seller pursuant hereto shall prove to be incorrect in any material respect when made, unless Buyer shall promptly commence and diligently pursue action to cause such representation or warranty to become true in all material respects and does so within thirty (30) Days after notice thereof has been given to Buyer by Seller (unless such cure is not capable of being effected within such thirty (30) Day period in which case Buyer shall have an additional thirty (30) Day period in which to perform such cure) and such cure removes any material adverse effect on Seller of such representation or warranty having been incorrect.

17.2.4 A court having jurisdiction shall enter: (i) a decree or order for relief in respect of Buyer in an involuntary case or proceeding under any applicable Federal or state bankruptcy, insolvency, reorganization or other similar law; or (ii) a decree or order adjudicating Buyer bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of Buyer under any applicable Federal or state law, or appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of Buyer or of any substantial part of its affairs.

17.2.5 Buyer shall: (i) commence a voluntary case or proceeding under any applicable Federal or state bankruptcy, insolvency, reorganization or other similar law or any other case or proceeding to be adjudicated a bankrupt or insolvent; (ii) consent to the entry of a decree or order for relief in respect of Buyer in any involuntary case or proceeding under any applicable Federal or state bankruptcy,

insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against it; (iii) file any petition, answer or consent seeking reorganization or similar relief under any applicable Federal or state law, which, if granted would have the effect of relieving Buyer of any of its obligations; (iv) consent to the filing of any petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or similar official of Buyer or of any substantial part of its property; (v) make an assignment for the benefit of creditors; (vi) admit in writing its inability to generally pay its debts as they become due; or (vii) take any action in furtherance of any of the foregoing.

17.2.6 Buyer violates the requirements of Article 19 through an assignment or transfer of this Agreement.

17.2.7 Buyer violates any Legal Requirement and such violation would have a material adverse effect on Buyer's ability to perform under this Agreement and such violation is not cured within thirty (30) days after written notice from Seller unless such cure is not capable of being effected within such thirty (30) Day period, in which case Buyer shall have an additional thirty (30) Day period in which to commence such cure and thereafter diligently pursues such cure and completes such cure within sixty (60) Days and such cure removes any material adverse effect on Buyer's ability to perform under this Agreement. Provided, however, Buyer shall be deemed not to have committed an Event of Default hereunder if Buyer has validly contested the alleged violation, such matter remains pending before the applicable Governmental Authorities, and any cease and desist order or other enforcement action due to an alleged violation of the Legal Requirement has been stayed.

17.2.8 Any failure of any covenant made by Buyer in Section 3.4 herein, unless Buyer shall promptly commence and diligently pursue action to cure such failure within thirty (30) Days after notice thereof has been given to Buyer by Seller, (unless such cure is not capable of being effected within such thirty (30) Day period in which case Buyer must submit a cure plan prior to the end of such thirty (30) Day period outlining steps to assure Seller that the failure will be cured, which cure plan shall be subject to Seller's approval, such approval not to be unreasonably withheld by Seller, but in no event shall the total cure period exceed one hundred and eighty (180) Days) and such cure removes any adverse effect on

Seller of such failure of such covenant.

17.3 Remedies.

17.3.1 If an Event of Default occurs at any time during the Term, the non-defaulting Party (the “Non-Defaulting Party”) may, for so long as the Event of Default is continuing, subject to the provisions of Article 20, take one or more of the following actions: (i) establish a date (which date shall be no more than ten (10) Business Days after the Non-Defaulting Party delivers written notice of such date to the defaulting Party (the “Defaulting Party”)) on which this Agreement shall terminate (the “Early Termination Date”), (ii) proceed by appropriate proceedings in accordance with this Agreement at law, in equity or otherwise, to protect and enforce its right to damages (actual or liquidated) or, where the Event of Default is one other than the failure to pay money, equitable relief, including specific performance, and (iii) immediately cease performance or withhold any payments, or both, due in respect of this Agreement.

17.3.2 If an Early Termination Date has been established, and the Non-Defaulting Party has not successfully pursued an action for specific performance, or is not excused from the payment of damages pursuant to Section 17.1.13, the Non-Defaulting Party shall in good faith calculate its Gains, Losses and Costs resulting from the termination of this Agreement, aggregate such Gains, Losses and Costs into a single net amount, and then notify the Defaulting Party. If the Non-Defaulting Party's aggregate Losses and Costs exceed its aggregate Gains, the Defaulting Party shall, unless it disagrees with such calculation, within fifteen (15) Business Days of receipt of such notice, pay the net amount (the “Termination Payment”) to the Non-Defaulting Party, which amount shall bear interest at the Interest Rate from the Early Termination Date until paid. If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the Non-Defaulting Party may retain such Gains. If the Defaulting Party disagrees with the calculation of the Termination Payment, the issue shall be resolved pursuant to the provisions of Article 20 applicable to Termination Payment disputes, and the resulting Termination Payment shall be due and payable within three (3) Business Days after the award.

17.3.3 Subject to the provisions of Section 11.3.1, the Gains, Losses and Costs shall be determined by comparing the cost under this Agreement of the capacity and energy that would be available under this Agreement for the remainder of the Term had this Agreement not been terminated to the market

price of capacity and energy of equivalent reliability and Scheduling flexibility for the remaining Term (had this Agreement not been terminated). For the avoidance of doubt, nothing in Article 7 is intended to limit liability under this Section 17.3. To ascertain such market price, the Non-Defaulting Party may consider, among other evidence, the settlement prices of NYMEX energy futures contracts, quotations from leading dealers in energy and gas swap contracts, offers for replacement capacity and energy or bids to purchase the remaining capacity and energy that was to be sold pursuant to this Agreement, in either case made by bona fide third-parties (including offers received by the Non-Defaulting Party in response to any request for proposals for capacity and energy contracts), all adjusted for the length of the remaining Term (had this Agreement not been terminated) and differences in locational basis (including without limitation costs of transmission investments and transmission service), reliability, Scheduling flexibility and any other considerations affecting value. Neither Party shall be required to enter into replacement transactions in order to determine the Termination Payment. As used in this Section 17.3.3: (i) “Costs” shall mean, brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred by such Party either in terminating any agreement which it has entered into to fulfill its obligations hereunder or entering into new agreements which replace this Agreement, and attorneys’ fees, if any, incurred in connection with enforcing its rights under this Agreement; (ii) “Gains” shall mean, an amount equal to the economic benefit determined on a mark to market basis (exclusive of Costs), if any, to the Non-Defaulting Party resulting from the termination of this Agreement; and (iii) “Losses” shall mean an amount equal to the economic loss determined on a mark to market basis (exclusive of Costs), if any, to the Non-Defaulting Party resulting from the termination of this Agreement.

17.4 Rights of Specific Performance. In the case of an Event of Default, the Parties recognize that any remedy at law may be inadequate because this Agreement is unique and/or because the actual damages of the Non-Defaulting Party may exceed the amount of any guaranty or other collateral available to the Non-Defaulting Party. The Parties agree that in such an event, the Non-Defaulting Party shall be entitled to pursue an action for specific performance and the Defaulting Party waives all of its rights to assert as a defense to such action that the Non-Defaulting Party’s remedy at law is adequate. For the avoidance

of doubt, the Non-Defaulting Party shall not be entitled to receive both specific performance and a Termination Payment from the Defaulting Party.

17.5 Limitation of Remedies, Liability and Damages. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY HEREIN PROVIDED, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, AND EXCEPT FOR THE PAYMENT OF LIQUIDATED DAMAGES SPECIFIED HEREIN, NEITHER PARTY NOR THEIR AFFILIATES SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE; PROVIDED, HOWEVER, THAT THIS SENTENCE SHALL NOT APPLY TO LIMIT THE LIABILITY OF A PARTY WHOSE ACTIONS GIVING RISE TO SUCH LIABILITY CONSTITUTE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT; PROVIDED, FURTHER, THAT IT IS EXPRESSLY AGREED THAT THE LOST VALUE OF ANY INVESTMENT TAX CREDIT, PRODUCTION TAX CREDIT OR ANY OTHER SIMILAR TAX CREDIT OR BENEFIT WILL BE CONSIDERED CONSEQUENTIAL DAMAGES. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE ACTUAL DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE LIQUIDATED DAMAGES DO NOT CONSTITUTE A PENALTY AND ARE A REASONABLE APPROXIMATION OF THE HARM OR LOSS. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, IN NO EVENT SHALL BUYER'S LIABILITY TO SELLER FOR A

TERMINATION PAYMENT UNDER THIS AGREEMENT EXCEED AN AMOUNT EQUAL TO THE SUM OF ANY AMOUNTS THEN OWED BY BUYER HEREUNDER PLUS THE TOTAL OF ALL REMAINING MONTHLY CAPACITY PAYMENTS FOLLOWING TERMINATION THAT WOULD HAVE BEEN PAYABLE TO SELLER UNDER THIS AGREEMENT HAD THE AGREEMENT REMAINED IN EFFECT THROUGH THE END OF THE TERM.

17.6 Disclaimer of Warranties. THERE ARE NO WARRANTIES UNDER THIS AGREEMENT EXCEPT TO THE EXTENT SPECIFICALLY SET FORTH IN THE TEXT HEREOF. THE PARTIES HEREBY SPECIFICALLY DISCLAIM AND EXCLUDE ALL IMPLIED WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE.

17.7 No Interruption. Except as otherwise provided in this Agreement, unless and until this Agreement has been terminated, neither Party shall, as a result of any breach or alleged breach by the other Party, refuse to deliver, or suspend or delay any delivery of, capacity or associated energy to be provided under this Agreement; refuse to take energy to the extent required under this Agreement; suspend, delay or refuse to make, any of the payments required under this Agreement.

17.8 Duty to Mitigate. Notwithstanding any other provision of this Agreement, each Party has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance.

ARTICLE 18

CHANGE OF LAW

18.1 New GHG Law.

18.1.1 In the event of the enactment of a New GHG Law by any Governmental Authority, Buyer shall reimburse Seller for the GHG Charges paid by Seller under such New GHG Law for Greenhouse Gas emitted due to the Unit producing and delivering energy pursuant to Schedule Instructions issued by Buyer; provided, however, that Seller shall be required to use GHG Credits, if any, to avoid or mitigate such GHG Charges in accordance with Section 18.1.3. In no event shall Buyer be responsible for GHG Charges associated with (i) Greenhouse Gas emissions that exceed the GHG Cap, or (ii) the operation of the Unit

other than pursuant to Schedule Instructions issued by Buyer.

18.1.2 As a condition to Buyer's obligation to reimburse Seller for GHG Charges under Section 18.1.1, Seller shall submit to Buyer documentation of such GHG Charges that establishes each of the following to Buyer's reasonable satisfaction: (i) the amount of the GHG Charges; (ii) Seller is responsible for the payment of the GHG Charges to a Governmental Authority in whose jurisdiction the Facility is located or that otherwise has jurisdiction over Seller or the Facility, and Seller has paid the GHG Charges to the Governmental Authority; (iii) the GHG Charges were incurred for Greenhouse Gas emitted due to the Unit producing and delivering energy pursuant to Scheduling Instructions issued by Buyer; and (iv) Seller took all reasonable steps to mitigate the cost or amount of such GHG Charges, including utilizing any GHG Credits pursuant to Section 18.1.3.

18.1.3 Seller shall be required to use GHG Credits allocated to or for the Unit, or otherwise granted to or received by Seller for the Unit, to avoid or mitigate GHG Charges otherwise reimbursable by Buyer under Section 18.1.1. In the event that Seller is allocated, issued or has the right to obtain GHG Credits for a portion of or its entire fleet of generating units, then Seller shall, at no cost to Buyer, utilize a proportional amount of such GHG Credits to mitigate the GHG Charges otherwise reimbursable by Buyer under Section 18.1.1. For purposes of this Section 18.1.3, all references to "Seller" shall be deemed to include Seller's Affiliates or other entity to which GHG Credits may be or have been allocated to or given rights to obtain for the Unit. The proportional amount of GHG Credits shall be calculated based on the method, formula or other similar calculation by which the Governmental Authority used to determine the amount of such GHG Credits attributable to each generating unit compared to the sum of all GHG Credits for all generating units of Seller. As a condition to Buyer's obligation to reimburse Seller for GHG Charges under Section 18.1.1, Seller shall provide Buyer with all information reasonably requested by Buyer to document GHG Credits and Seller's compliance with this Section 18.1.3.

18.1.4 Buyer shall not be required to reimburse Seller for any GHG Charges that may be associated with any Alternate Resource or any other generating facility other than the Unit (including any energy produced by or fuel utilized by such Alternate Resource or other generating facility).

18.1.5 Seller shall not transfer, or provide any other Person rights with respect to, GHG

Credits that Seller is required to use to mitigate GHG Charges under Section 18.1.3. If and to the extent that any GHG Credits for an Annual Period addressed by Section 18.1.3 are in excess of those required for the production of energy by the Unit to satisfy Buyer's Schedules for an Annual Period, then, upon request by Buyer and as permitted by Legal Requirements, Seller shall transfer such GHG Credits to Buyer at no additional cost to Buyer.

18.2 Change of Law.

18.2.1 "Change of Law" means a Legal Requirement enacted after the Effective Date, which requires Seller to install additional or different equipment at the Unit or otherwise modify the Unit in order to comply with such Legal Requirement.

18.2.2 "Change of Law Capital Expenditures" means additional capital expenditures (determined in accordance with GAAP) reasonably incurred by Seller in accordance with Prudent Industry Practices for additional or different equipment installed at the Unit during the Term, or for other modifications to the Unit during the Term, as a direct result of a Change of Law and as necessary for the Unit as operated under this Agreement to comply with such Change of Law during the Term; provided, however, that capital expenditures will not constitute Change of Law Capital Expenditures unless Buyer, using Prudent Industry Practices, would incur the same capital expenditures with respect to its own generation facilities of the same type as the Unit as a result of the requirements of such Change of Law (taking into account differences in facility generating capacity and the frequency and duration of facility dispatch). Change of Law Capital Expenditures shall be appropriately pro-rated based on the remaining Term divided by the useful life of the applicable capital addition or modification. Change of Law Capital Expenditures will be net of any cost savings to Seller resulting from the capital addition or modification.

18.2.3 If Seller determines that any Change of Law Capital Expenditures will be incurred as a result of a Change of Law (including costs less than the Threshold Amount), Seller shall notify Buyer of a Change of Law by no later than six (6) Months after the enactment of the applicable Change of Law ("Change of Law Notice"). The Change of Law Notice must include a discussion of the relevant Change of Law, Seller's plan to comply with the Change of Law (including the additional or different equipment at the Unit or other modification of the Unit required to comply with the Change of Law), and reasonable

documentation of Seller's determination of Change of Law Capital Expenditures (or estimate of Change of Law Capital Expenditures if actual costs are not known), and Seller will provide periodic updates to Buyer regarding Seller's compliance plan and Change of Law Capital Expenditures. Seller will provide any such additional relevant information as may reasonably requested by Buyer.

18.2.4 If one or more Change of Laws would cause Seller to incur Change of Law Capital Expenditures (in the aggregate) in excess of four dollars per kilowatt (\$4.00/kW) multiplied by the Nominal Capability of the Unit in kW in any given Annual Period (the "Threshold Amount"), and if Seller submitted a Change of Law Notice(s) for such Change of Law(s) pursuant to Section 18.2.3, then Seller may, through written notice to Buyer ("Excess Capital Expenditures Notice"), request Buyer's approval, in Buyer's sole discretion, of Seller's recovery of such incremental amount of capital expenditures in excess of the Threshold Amount (such excess amount, the "Excess Change of Law Capital Expenditures") through an adjustment to the Annual Capacity Price, provided that no adjustment will be allowed to an Annual Capacity Price for any Annual Period prior to Seller incurring Excess Change of Law Capital Expenditures. For purposes of calculating the adjustment to the Annual Capacity Price associated with capitalized additions or modifications to the Unit (determined in accordance with GAAP), the Parties will, each acting in good faith and in a commercially reasonable manner, establish an appropriate annual fixed charge rate for application to the original capital cost of such additions, modifications, or other capital expenditures. This calculation will represent the total cost associated with the identified addition or modification, including depreciation, carrying costs, and any other cost or expense item related to capital investments. Seller may not seek recovery of any Change of Law Capital Expenditures for which Seller did not submit a Change of Law Notice under Section 18.2.3. The Excess Capital Expenditures Notice shall supplement the Change of Law Notice, including addressing in detail the Excess Change of Law Capital Expenditures and setting forth Seller's calculations for the proposed increase in the Annual Capacity Price, as determined pursuant to this Section 18.2.4. Seller shall be responsible for demonstrating that Seller's proposed plan for complying with the Change of Law is reasonable and conforms with Prudent Industry Practices and that the Excess Change of Law Capital Expenditures are reasonable, consistent with Prudent Industry Practices, required for compliance with the Change of Law, and otherwise in compliance with Section 18.2.

Seller shall promptly provide any and all other information reasonably requested by Buyer in connection with Buyer's analysis of and response to Seller's Excess Capital Expenditures Notice.

18.2.5 By no later than three hundred sixty-five (365) Days after receipt of Seller's Excess Capital Expenditures Notice, Buyer will inform Seller by written notice of whether Buyer, in Buyer's sole discretion, accepts or rejects Seller's proposed adjustment to the Annual Capacity Prices to recover Excess Change of Law Capital Expenditures ("Buyer Election Notice"); provided, however, if Buyer does not notify Seller of Buyer's decision within such three hundred sixty-five (365) Days period, then Buyer will be deemed to have rejected Seller's proposed adjustment to the Annual Capacity Prices. For the avoidance of doubt, under no circumstances will Buyer's rejection of a proposed adjustment to Annual Capacity Prices and Seller's recovery of Excess Change of Law Capital Expenditures constitute an Event of Default under Article 17 of this Agreement.

18.2.6 If Buyer, in its sole discretion, rejects Seller's request, or if Buyer is deemed under Section 18.2.5 to have rejected Seller's request, to recover Excess Change of Law Capital Expenditures addressed in Seller's Excess Capital Expenditures Notice, Seller shall provide written notice to Buyer (the "Seller Response Notice") by the Seller Response Deadline of whether Seller elects to (i) pay for such Change of Law Capital Expenditures (including Excess Change of Law Capital Expenditures), or (ii) terminate this Agreement effective as of the date set forth in the Seller Response Notice (which date shall be no earlier than three hundred sixty-five (365) Days after the date the Seller Response Notice is provided to Buyer). The "Seller Response Deadline" is the date that is thirty (30) Days after the earlier of (i) the date of the Buyer Election Notice, or (ii) three hundred sixty-five (365) Days after Buyer's receipt of Seller's Excess Capital Expenditures Notice if Buyer did not provide a Buyer Election Notice. If Seller does not provide a Seller Response Notice to Buyer by the Seller Response Deadline, then Seller will be deemed to have waived such option to terminate this Agreement as a result of the relevant Change of Law(s) and Change of Law Capital Expenditures and shall be deemed to have elected to pay for such Change of Law Capital Expenditures (including Excess Change of Law Capital Expenditures). Notwithstanding anything herein to the contrary, if Seller elects to so terminate this Agreement in a Seller Response Notice provided to Buyer by the Seller Response Deadline, Buyer shall have the right to elect by written notice, delivered to

Seller within sixty (60) Days after such Seller Response Notice, to accept Seller's proposed adjustment to Annual Capacity Prices as set forth in Seller's Excess Capital Expenditures Notice to recover Excess Change of Law Capital Expenditures, and in such case this Agreement shall not terminate and shall continue in full force and effect with such adjustment to Annual Capacity Prices. If Buyer does not provide such written notice within such sixty (60) Days period, then Buyer shall be deemed to have waived such election and this Agreement shall terminate in accordance with the Seller Response Notice on the date set forth in the Seller Response Notice (provided the termination date shall be no earlier than three hundred sixty-five (365) Days after the date the Seller Response Notice is provided). Seller shall be responsible for all Change of Law Capital Expenditures incurred prior to the effective date of any such termination. Following the effective date of any such termination, neither Party shall have any further liability to the other Party except for any obligations incurred prior to the effective date of the termination.

18.2.7 The Parties acknowledge that, except as provided in Sections 18.2.4, 18.2.5 and 18.2.6, the Annual Capacity Prices shall not be adjusted as a result of a Change of Law or Change of Law Capital Expenditures. If Buyer has elected under Section 18.2.5 or Section 18.2.6 to accept Seller's proposed adjustment to Annual Capacity Prices to recover Excess Change of Law Capital Expenditures, Seller may not seek any additional adjustment to Annual Capacity Prices for the same Change of Law(s) addressed in such Buyer election (including for any additional or different Change of Law Capital Expenditures arising from such Change of Law(s)). For the avoidance of doubt, any election by Buyer under Section 18.2.5 or Section 18.2.6 to allow Seller to recover Excess Change of Law Capital Expenditures shall apply only to the Change of Law and Excess Change of Law Capital Expenditures addressed in such Buyer election.

18.2.8 Seller acknowledges and agrees that except as provided in Article 18: (i) Buyer shall not be responsible for any costs or expenses incurred by Seller in connection with the Facility or the performance of Seller's obligations under this Agreement that result from new or different or other changes in Legal Requirements (including any change in an interpretation of any Legal Requirement); and (ii) in no event shall the payments required to be made by Buyer under this Agreement be increased as a result of any costs or expenses that Seller incurs as a result of new or different or other changes in Legal

Requirements (including any change in an interpretation of any Legal Requirement).

18.3 No Dedication. No undertaking by Seller under this Agreement is intended to constitute the dedication of the Facility or any part thereof to the public or affect the status of Seller as an independent entity and not a public utility or public service company.

ARTICLE 19

ASSIGNMENT AND TRANSFERS OF INTERESTS

19.1 Assignment and Assumption of Obligations.

19.1.1 Seller.

19.1.1.1 Seller may not assign this Agreement or any portion thereof to any Person without the prior written consent of Buyer. Any proposed assignee of this Agreement shall (i) agree to assume assignor's obligations hereunder, and (ii) deliver to Buyer such assurances regarding its creditworthiness and its ability to perform all obligations of Seller hereunder, as Buyer may reasonably request. Any assignment of this Agreement made in compliance with the preceding sentences shall constitute an acceptance and assumption of such obligations by the assignee, a novation of the assignee in place of Seller with respect to such obligations (and any related interests so transferred), and a release and discharge by Buyer of Seller from, and an agreement by Buyer not to make any claim for payment, liability, or otherwise against Seller with respect to, such obligations from and after the effective date of the assignment.

19.1.1.2 Notwithstanding Section 19.1.1.1, Seller may, without the consent of Buyer, assign this Agreement to a lender for collateral security purposes in connection with any financing or the refinancing of the Unit or Facility, and in connection therewith, Buyer agrees to execute a reasonable written consent to such collateral assignment in a form acceptable to Buyer should the financing party reasonably request such consent; provided, however, that such collateral assignment shall not place any limitation on Buyer's rights under this Agreement or expand the liability, risks or obligations imposed on Buyer under this Agreement.

19.1.1.3 Estoppels Related to Financing or Purchasing of Interest. Upon

reasonable request to Buyer, Buyer agrees to execute a written confirmation that, if true, then to the best of Buyer's knowledge at the time of the Request, Seller is not in default of this Agreement.

19.1.2 Buyer. Buyer may not assign this Agreement or any portion thereof to any Person other than a Creditworthy Affiliate without the prior written consent of Seller.

19.2 Other Restrictions. Seller agrees that, without the prior written consent of Buyer, there will be no (a) assignment or transfer of any interest in the Unit, (b) Change of Control Transaction with respect to Seller, or (c) delegation by Seller of the operational responsibility for the Facility.

19.3 Reimbursement for Buyer's Costs from Transfers or Assignments. Seller agrees that, in the event Seller assigns or transfers an interest in the Facility or the Agreement, as such transactions are described in Section 19.1 and Section 19.2, Seller shall pay Buyer the amount of twenty-five thousand dollars (\$25,000.00) per occurrence for each and any proposed transaction and will pay to Buyer the amount of ten thousand dollars (\$10,000) per occurrence for each and any request for an estoppel pursuant to Section 19.1.1.3. For the avoidance of doubt, if Seller requests Buyer's consent under Section 19.1.1 or Section 19.2, and Buyer undertakes drafting of consent documents or amendments to provide such consent, and Seller thereafter fails to consummate the proposed transaction, Buyer reserves the right, in its sole discretion, to require Seller to provide reimbursement to Buyer pursuant to this Section 19.3.

19.4 General Requirements. Any consent required by Sections 19.1 or 19.2 shall not be unreasonably withheld, conditioned or delayed; provided, however, that neither Party shall be required to accept any limitation of its rights under this Agreement or expansion of the liability, risks or obligations imposed on it under this Agreement (including changes in accounting treatment). It shall be reasonable for either Party to condition its consent required by Article 19 on the execution of amendments to this Agreement that are reasonably determined by such Party to be necessary to preserve the value and protection afforded to such Party under this Agreement. It shall be a condition of any assignment, transfer, Change of Control Transaction or other disposition with respect to this Agreement and/or the Unit under Section 19.1.1 or 19.2 that Seller Performance Security required under Section 7.1, if applicable, shall remain in place notwithstanding such disposition, or that replacement security in form, substance and amount in full compliance with this Agreement or otherwise reasonably acceptable to Buyer shall have been

provided prior to such disposition. Any purported assignment, transfer, Change of Control Transaction or other disposition with respect to this Agreement and/or the Unit that is not in compliance with the applicable provisions of Section 19.1 or Section 19.2, as the case may be, will be null and void, and of no force and effect.

ARTICLE 20

DISPUTE RESOLUTION

20.1 Notice of Dispute; Dispute Resolution Process. Either Party (“Disputing Party”) has the right to give notice to the other Party (“Responding Party”) that the Responding Party is not performing in accordance with the terms and conditions of this Agreement. Such notice (the “Notice of Dispute”) will describe with specificity the basis for the Disputing Party’s belief and may propose a resolution of such dispute. Within fifteen (15) Business Days after receiving the Notice of Dispute, the Responding Party will provide the Disputing Party with a written response to the Notice of Dispute, which will describe with specificity the basis for the Responding Party’s position and which may include additional issues (if any) with respect to the dispute raised by the Notice of Dispute and may propose a resolution of such dispute (the “Dispute Response”). Within five (5) Business Days after the submission of the Dispute Response, the dispute will be submitted to a designated senior Representative of Seller and a designated senior Representative of Buyer for resolution. If the designated senior Representatives are unable to resolve the dispute to the mutual satisfaction of the Parties within twenty (20) Business Days from the submission to such designated senior Representatives, or such other period as the Parties may agree upon, then (a) in the case of disputes described in Section 20.2, either Party may provide written notice to the other Party declaring an impasse (the “Impasse Notice”) and thereafter the Parties agree to arbitrate such disputes pursuant to Section 20.2, (b) in the case of disputes described in Section 20.3, either Party may provide an Impasse Notice and thereafter the Parties agree to arbitrate such disputes pursuant to Section 20.3, and (c) in the case of any dispute that is not described in Section 20.2 or Section 20.3, either Party may pursue such rights and remedies as may be available under applicable law or in equity subject to the terms and conditions of this Agreement.

20.2 Expert Arbitration. Upon the submission of an Impasse Notice, a dispute with respect to (a) the results of a Performance Test (under any provision of this Agreement), (b) a Capacity Shortfall (Section 5.1.7), (c) Imbalance Charges (Section 12.2.4), (d) Seller Event of Default under Sections 17.1.8 or 17.1.9, or (e) the development of Maintenance Schedules (Section 11.2.1) shall be resolved by arbitration as set forth in this Section 20.2.

20.2.1 Selection of Expert. The Parties shall attempt to agree upon the selection of an independent third party expert to make a determination concerning such dispute. If the Parties are unable to mutually agree on the selection of an expert within fifteen (15) Days following the submission of the Impasse Notice, the Disputing Party shall provide a list of five (5) qualified experts to the Responding Party and the Responding Party shall select one expert from such list. As a condition to appointment as a qualified expert, the expert must satisfy the following criteria: (i) be competent and experienced in matters involving the electric energy business in the United States, with at least ten (10) years of experience in the electric industry; (ii) have no interest, financial or otherwise, in either Party or this Agreement beyond payment of the fees and expenses for serving as the expert hereunder; and (iii) have not performed, or been employed by a firm that has provided, services for either Party, and otherwise have not been previously or currently employed or engaged in any capacity by, and not have a personal or professional relationship with, either Party other than as the expert hereunder, unless such employment, engagement or relationship has been disclosed in writing to the Parties prior to the appointment as an expert hereunder. The expert must not advise or otherwise communicate ex parte in any way with either Party following appointment as an expert hereunder and must treat the details of this Agreement and all expert activity hereunder as private and confidential, and not publish or disclose any information related to the arbitration without the prior written consent of both Parties.

20.2.2 Expert Decision. Within fifteen (15) Days after the selection of the expert, the Parties shall file with the expert written positions (with supporting documentation) concerning the dispute. The expert may request additional filings and shall render a decision within fifteen (15) Days of receipt of all filings. In the case of any dispute resolved under this Section 20.2, the decision rendered by the independent expert shall be final and binding upon Seller and Buyer. Following the resolution of a dispute

hereunder involving the Designated Capacity, Monthly Capacity Payment billing shall (if necessary and as soon as practicable) be adjusted retroactively (with interest at the Interest Rate) to reflect Designated Capacity equal to such expert's determination.

20.2.3 Costs. In the event the independent expert adopts the position of one of the Parties, then the other Party shall pay the fees and expenses of such expert. Otherwise, such fees and expenses will be shared equally by the Parties.

20.3 JAMS Arbitration. Upon the submission of an Impasse Notice, (a) a dispute with respect to the calculation of a Termination Payment pursuant to Section 17.3.3, or (b) a billing dispute under Section 6.2.2, including a dispute concerning the calculation of (i) a Monthly Capacity Payment pursuant to **Appendix A**, Sections B, C and D, or (ii) a Monthly Energy Payment pursuant to **Appendix B**, shall be resolved by arbitration as set forth in this Section 20.3.

20.3.1 JAMS. Such billing dispute (the "Claim") will be resolved under the Federal Arbitration Act by binding arbitration following the JAMS Comprehensive Arbitration Rules and Procedures (the "Rules") of Judicial Arbitration and Mediation Services ("JAMS") then in effect, including its evidentiary and procedural rules, except as modified herein. It is the Parties' intent that such arbitration, including the selection and qualification of arbitrators, will be conducted in accordance with the Rules, as amended and supplemented, except where specifically modified by this Agreement, and not by the terms of any state arbitration act or other Legal Requirement.

20.3.2 Initiation of Arbitration; Selection of Arbitrators.

20.3.2.1 Within ten (10) Business Days after delivering an Impasse Notice, the delivering Party must contact JAMS to commence arbitration and must provide written notice to the other Party in accordance with Section 21.4. Arbitration will be deemed to be commenced when JAMS issues a Commencement Letter (as defined in the Rules) in accordance with the Rules. The Party initiating arbitration will nominate one (1) arbitrator at the same time it initiates arbitration. The other Party will nominate one (1) arbitrator within ten (10) Business Days of receiving the Commencement Letter. The two Party-nominated arbitrators will be deemed neutrals and not the representative of the appointing Party. The two (2) arbitrators (the "Party-Appointed Arbitrators") will appoint a third arbitrator (the "Third Arbitrator").

All arbitrators will (i) be competent and experienced in matters involving the electric energy business in the United States, with at least ten (10) years of legal, engineering, or business experience in the electric industry; (ii) have no interest, financial or otherwise, in the Parties or this Agreement beyond payment of their fees and expenses for serving on the Arbitration Panel; and (iii) have not performed, or been employed by a firm that has provided, services for either Party, and otherwise have not been previously or currently employed or engaged in any capacity by, and not have a personal or professional relationship with, either Party other than as a member of the Arbitration Panel, unless such employment, engagement or relationship has been disclosed in writing to all Parties prior to the selection of the Arbitration Panel. Arbitrators must not advise or otherwise communicate ex parte in any way with either Party following appointment to the Arbitration Panel and must treat the details of this Agreement and all Arbitration Panel activity as private and confidential, and not publish or disclose any information related to the arbitration without the prior written consent of both Parties. Further, the Third Arbitrator will be independent of the Parties and the Party-Appointed Arbitrators. Each Party will pay the fees and expenses incurred by its Party-Appointed Arbitrator and the fees and expenses of the Third Arbitrator will be divided equally between the Parties.

20.3.2.2 If the Party-Appointed Arbitrators are unable to agree on the Third Arbitrator within ten (10) Business Days from initiation of arbitration, then the Third Arbitrator will be selected by JAMS with due regard given to the selection criteria in Section 20.3.2.1 and input from the Parties and the Party-Appointed Arbitrators. Parties will undertake to request JAMS to complete selection of the Third Arbitrator no later than sixty (60) Days from initiation of arbitration. Costs charged by JAMS for this service will be borne by the Parties equally. If JAMS should fail to select the Third Arbitrator within sixty (60) Days from initiation of arbitration, then either Party may petition a court of competent jurisdiction in Atlanta, Fulton County, Georgia to select the Third Arbitrator. Due regard will be given to the selection criteria in Section 20.3.2.1 and input from the Parties and the Party-Appointed Arbitrators.

20.3.2.3 If prior to the conclusion of the arbitration any member of the Arbitration Panel becomes incapacitated or otherwise unable to serve, then a replacement arbitrator will be appointed in the manner set forth in this Section 20.3.2.

20.3.3 Discovery; Hearing. Discovery and other pre-hearing procedures will be conducted as agreed by the Parties, including at least one corporate representative deposition, or if they cannot agree, as determined by a majority of the Arbitration Panel; provided, however, all pre-hearing discovery will be completed within ninety (90) Days following selection of the Third Arbitrator. Within fifteen (15) Business Days after completion of such pre-hearing discovery, each Party will submit, either individually or jointly, by overnight delivery to the other Party and the Arbitration Panel a separate, precise statement for each issue in dispute, that Party's proposed means of resolving each issue, and the factual or legal support for such proposal (the "Proposed Resolutions"). No later than thirty (30) Business Days after all pre-hearing discovery has been completed, a hearing will be conducted at which Seller and Buyer will each present such evidence and witnesses as it may choose. Arbitration will be conducted in accordance with the Rules, as amended and supplemented, except where specifically modified by this Agreement.

20.3.4 Confidential Proceeding. Each Party will maintain the confidentiality of the arbitration proceedings, except as reasonably necessary to effectively represent itself in the proceeding to enforce the arbitration award or determination, or as otherwise required by law. All discovery materials will remain confidential pursuant to Section 21.13.

20.3.5 Arbitration Cost. Each Party will be responsible for its own legal and arbitration expenses incurred in connection with the arbitration proceeding, including attorneys' fees, investigation or discovery (including e-discovery) costs, and expert, consultant or arbitrator fees and expenses.

20.3.6 Arbitrator Decisions.

20.3.6.1 The Arbitration Panel will consider the terms and conditions of this Agreement, including all relevant evidence and testimony, and will render its decision within thirty (30) Days following conclusion of the hearing by means of a written reasoned decision; provided, however, the Arbitration Panel is expressly and specifically limited to selecting one (1) of the Proposed Resolutions provided by Seller and Buyer for each issue in dispute. The Arbitration Panel will have no authority to award consequential, special, indirect, treble, exemplary, incidental, or punitive damages of any type under any circumstance, regardless of whether such damages may be available under applicable state law, federal law, the Federal Arbitration Act, or any other applicable law.

20.3.6.2 The written decision rendered by a majority of the Arbitration Panel will be provided to the Parties. Each Party will indicate its acceptance or rejection of the decision by notifying the opposing Party within ten (10) Days after issuance of the decision. If both Parties accept such decision, such decision may be filed in a court of competent jurisdiction and may be enforced by Seller or Buyer as a final judgment in such court. If either Party rejects the written decision, the rejecting Party may pursue any avenue of appeal pursuant to the Federal Arbitration Act; provided, however, that no Party will recover consequential, special, indirect, treble, exemplary, incidental, or punitive damages.

20.4 Location of Arbitration. Any arbitration under Section 20.2 or Section 20.3 will take place in Atlanta, Fulton County, Georgia.

20.5 Mandatory Arbitration. SUBJECT TO SECTION 20.3.6.2, EACH PARTY UNDERSTANDS AND AGREES THAT WHEN ARBITRATION IS REQUIRED UNDER THIS ARTICLE 20, ARBITRATION IS MANDATORY AND EACH PARTY WAIVES ANY RIGHT TO SEEK JUDICIAL RELIEF OR FILE COURT PROCEEDINGS TO DETERMINE THE SPECIFIED MATTERS UNDER SECTION 20.2 OR SECTION 20.3, OTHER THAN THE RIGHT TO SEEK JUDICIAL RELIEF TO COMPEL ARBITRATION, TO CONFIRM AN ARBITRATION AWARD, OR TO SEEK INJUNCTIVE RELIEF PURSUANT TO SECTION 20.6 IN ACCORDANCE WITH THIS AGREEMENT.

20.6 Injunctive Relief. Notwithstanding any other provision of this Article 20, the Parties acknowledge that an award of damages may not afford complete relief or furnish an adequate legal remedy as between them (such as when Seller's Event of Default arises from Seller's actions designed to achieve an economic gain by selling energy, capacity or Ancillary Services to a third party in violation of this Agreement). Accordingly, the Parties agree that a Party will be permitted to seek at any time, in accordance with applicable laws, procedures, and the terms of this Agreement, injunctive relief relating to the performance of this Agreement from an arbitrator, a Governmental Authority of appropriate jurisdiction, or a court of competent jurisdiction located in Atlanta, Fulton County, Georgia. The Parties expressly agree that this Section 20.6 does not present a question of substantive arbitrability and waive any right to have an arbitrator decide whether preliminary injunctive relief is available in court. In the event of entry of any interlocutory injunctive relief, the Party against whom such relief is entered waives the right to have a bond

or security posted pending resolution of the dispute giving rise to the issuance of the injunction.

20.7 Continued Performance. The Parties agree to continue performing their respective obligations under this Agreement while the dispute is being resolved, unless and until such obligations are terminated or expire in accordance with the provisions of this Agreement.

ARTICLE 21

MISCELLANEOUS PROVISIONS

21.1 Amendments. This Agreement may be amended only by a written instrument duly executed by authorized representatives of Buyer and Seller.

21.2 Binding Effect. This Agreement and any extension shall inure to the benefit of and shall be binding upon the Parties and their respective permitted successors and assigns.

21.3 Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute a single instrument.

21.4 Notices. Unless otherwise specified, where notice is required by this Agreement, such notice shall be in writing and shall be deemed given: (i) upon receipt, when mailed by United States registered or certified mail, postage prepaid, return receipt requested; (ii) upon the next Business Day, when sent by overnight delivery, postage prepaid using a recognized courier service; or (iii) upon receipt, when sent by facsimile transmission, provided receipt of such facsimile transmission is confirmed before 4:00 P.M. CPT by facsimile transmission or otherwise in writing. In all instances, notice to the respective Parties should be directed as follows:

To Seller:

Southern Power Company
3535 Colonnade Parkway
Birmingham, Alabama 35243
Attn: Contract Administration
Telephone: (205) 992-0270
Email: spcasman@southernco.com

with a copy to:

Southern Power Company
30 Ivan Allen Jr. Blvd, NW
Atlanta, GA. 30308
Attn: Senior VP and General Counsel, Southern Power Company
Telephone: (404) 506-0269
Email: scedmond@southernco.com

To Buyer:

Georgia Power Company
241 Ralph McGill Blvd NE
BIN 10194
Atlanta, GA 30308
Attn: Director of Resource Policy & Planning
Telephone: (404) 506-2568
Email: jgrubb@southernco.com

with copies to:

Georgia Power Company Legal Dept.
241 Ralph McGill Blvd., N.E.
Bin 10180
Atlanta, GA 30308
Attn: Commercial & Transactional Counsel
Telephone: (404) 506-5358
Email: ctwingfi@southernco.com

Troutman Pepper Hamilton Sanders LLP
600 Peachtree St NE
Suite 3000
Attn: Judith H. Fuller
Telephone: (404) 885-3243
Email: judith.fuller@troutman.com

or to such other addressees as may later be designated by the Parties.

21.5 Entire Agreement. This Agreement (including the attached **Appendices A** through **N**, inclusive) constitutes the entire understanding between the Parties and supersedes any previous agreements related to the subject matter hereof between the Parties. The Parties have entered into this Agreement in reliance upon the representations and mutual undertakings contained herein and not in reliance upon any oral or written representations or information provided by one Party to the other Party not contained or incorporated herein.

21.6 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the state of Georgia, without giving effect to any conflict of law rules thereof, which may direct the application of the laws of another jurisdiction. With respect to those matters that may be referred to the state or federal courts under this Agreement, the Parties agree to submit to the exclusive jurisdiction of either the Fulton County Superior Court in Atlanta, Georgia or the U.S. District Court for the Northern District of Georgia, Atlanta Division, as appropriate.

21.7 Time of Essence; Waiver.

21.7.1 Time is of the essence in the performance of obligations pursuant to this Agreement.

21.7.2 The failure of either Party to enforce at any time any of the provisions of this Agreement, or to require at any time performance by the other Party of any of the provisions hereof, shall in no way be construed to be a waiver of such provisions, or in any way to affect the validity of this Agreement or any part hereof or the right of such Party hereafter to enforce every such provision. No modification or waiver of all or any part of this Agreement shall be valid unless it is reduced to a writing, signed by both Parties, that expressly states that the Parties agree to a waiver or modification, as applicable.

21.8 Headings. The headings contained in this Agreement are used solely for convenience and do not constitute a part of the Agreement between the Parties, nor should they be used to aid in any manner in the construction of this Agreement.

21.9 Third Parties. This Agreement is intended solely for the benefit of the Parties hereto. Nothing in this Agreement shall be construed to create any duty, standard of care or liability to any Person not a Party to this Agreement.

21.10 Agency. This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

21.11 Severability. If any term or provision of this Agreement or the application thereof to any Person, entity, or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to Persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

21.12 Negotiated Agreement. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution or other event of negotiation, drafting or execution hereof.

21.13 Confidentiality.

21.13.1 The Parties acknowledge that portions of this Agreement contain Confidential Information and may require the Parties to disclose additional Confidential Information to one another. Each Party agrees that: (i) for a period of three (3) years from the date hereof for Confidential Information contained in this Agreement; and (ii) for a period of three (3) years from the date of disclosure for additional Confidential Information disclosed during the Term, it will not, and will ensure that none of its Affiliates, consultants or advisors do not, without the written consent of the other Party or as otherwise provided herein, disclose to any third party (other than to Affiliates of the disclosing Party or consultants and advisors to such Affiliates and the disclosing Party who need to know such information in connection with the performance of their duties or services for such Affiliates or the disclosing Party), such portions of this Agreement, or the terms or provisions hereof, or any additional Confidential Information disclosed pursuant to such Party's performance of this Agreement and identified as Confidential Information at the time of such disclosure, except to the extent that disclosure to a third party is required by law, or by a court or by an administrative agency having jurisdiction over the disclosing Party.

21.13.2 The Parties agree to seek confidential treatment of the Confidential Information in this Agreement from the GPSC, but acknowledge that certain terms, conditions and provisions of this Agreement will need to be disclosed in connection with the application for a the GPSC Certificate. No assurance or commitment is made regarding the ability of Buyer to obtain the requested confidential treatment in that proceeding or otherwise.

21.13.3 The Parties agree to seek confidential treatment of the Confidential Information in this Agreement from FERC, but acknowledge that certain Confidential Information may be made publicly available by FERC.

21.13.4 Any public statement or other announcement by a Party hereto concerning the transaction described herein shall be reviewed and agreed upon by the Parties before release, which agreement shall not be unreasonably withheld, conditioned or delayed.

21.14 Interpretation. In this Agreement, unless the context otherwise requires, the singular shall include the plural and any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “hereof,” “herein,” “hereto” and “hereunder” and words of similar import when used in this Agreement shall, unless otherwise expressly specified, refer to this Agreement as a whole and not to any particular provision of this Agreement. Whenever the term “including” is used herein in connection with a listing of items included within a prior reference, such listing shall be interpreted to be illustrative only, and shall not be interpreted as a limitation on or exclusive listing of the items included within the prior reference. Any reference in this Agreement to “Section,” “Article,” or “Appendix” shall be references to this Agreement unless otherwise stated, and all such Appendices shall be incorporated into this Agreement by reference. Unless specified otherwise, a reference to a given agreement or instrument, and all schedules, exhibits, appendices and attachments thereto, shall be a reference to that agreement or instrument as modified, amended, supplemented and restated, and in effect from time to time. Unless otherwise stated, any reference in this Agreement to any entity shall include its permitted successors and assigns, and in the case of any Governmental Authority, any Person succeeding to its functions and capacities.

21.15 Replacement Index. Should any index or tariff referenced in this Agreement be discontinued, no longer published or deemed unrepresentative, the Parties will cooperate in establishing substitute benchmarks through reference to equivalent indices or tariffs.

21.16 Recording. Each Party acknowledges and consents to the tape or electronic recording of all telephone conversations between the Parties, and that any such recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any proceeding or action relating to this Agreement. Each Party waives any further notice of such monitoring or recording, and agrees to notify its officers and employees of such monitoring or recording and to obtain any necessary consent of such officers and employees.

21.17 Further Assurances. The Parties agree to provide such reasonable cooperation to each other as necessary to give effect to the terms of this Agreement.

21.18 Transfer of Information Acknowledgement. Seller agrees to execute contemporaneous with the execution of this Agreement, the Transfer of Information Acknowledgement attached as **Appendix N**, and Buyer agrees to the limited use and confidential treatment of such information as set forth in **Appendix N**.

[The next page is the signature page.]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized officers, as of the date first above written.

GEORGIA POWER COMPANY (“BUYER”)

SOUTHERN POWER COMPANY (“SELLER”)

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

APPENDIX A

CAPACITY; CAPACITY PAYMENT

A. **Contracted Capacity; Tested Reliable Capacity; Designated Capacity; Capacity Buy Down; Capacity Pricing:**

1. **Contracted Capacity Cap; Contracted Capacity Range:** The Contracted Capacity Cap shall equal 102.5% of the Nominal Capacity, provided that Buyer, in its sole discretion, may elect to accept an offer from Seller to increase the Contracted Capacity Cap to an amount equal to a Tested Reliable Capacity that is greater than 102.5% of the Nominal Capacity pursuant to Section A.2 of this **Appendix A**.

Subject to Section A.4 of this **Appendix A**, the upper limit of the Contracted Capacity range for the Term shall be the Contracted Capacity Cap. Subject to Section A.4 of this **Appendix A**, the lower limit of the Contracted Capacity range for the Term shall be ninety-two percent (92%) of the Nominal Capacity.

2. **Tested Reliable Capacity; Performance Tests:** Seller will conduct Performance Testing of the Unit in accordance with **Appendix D** in order to determine the capacity that will reliably and consistently be available to meet Buyer's Schedules.

Prior to the Delivery Commencement Date, but no earlier than ninety (90) Days prior to the Delivery Commencement Date, Seller shall establish the initial Tested Reliable Capacity pursuant to a Performance Test. However, if Seller cannot perform the Performance Test during such period of 90 days due to ambient conditions, Seller shall perform the Performance Test as soon as practicable with appropriate ambient conditions after the Delivery Commencement Date, and in the interim period after the Delivery Commencement Date, the Nominal Capacity shall be applicable until the initial Tested Reliable Capacity is determined through a Performance Test.

Following the establishment of the initial Tested Reliable Capacity hereunder, each Party shall have the right to request a Performance Test to re-determine the Tested Reliable Capacity to be performed during the period from March 15 to April 15 of each Annual Period upon ten (10) Business Days written notice to the other Party; provided, however, that upon consent by both Parties, such Performance Test may be performed outside the period of March 15 to April 15 of each Annual Period; provided, further that no such Performance Test may be scheduled during any period of Scheduled Outage, Maintenance Outage, Force Majeure Event or during a Forced Outage. The Tested Reliable Capacity determined as a result of an additional Performance Test shall become the new Tested Reliable Capacity.

In the event a Performance Test results in a Tested Reliable Capacity that is greater than the then-effective Contracted Capacity Cap, Seller may offer to increase the Contracted Capacity Cap to such Tested Reliable Capacity and Buyer shall accept or reject such offer, in its sole discretion. If Buyer accepts such offer, then the Contracted Capacity Cap shall be reset to the Tested Reliable Capacity resulting from such Performance Test. If Buyer does not accept such offer, the Contracted Capacity Cap shall not change.

Seller shall be responsible and bear all costs and expenses to obtain and deliver fuel required for the Performance Test(s) required to determine the initial Tested Reliable Capacity and Buyer shall receive and purchase such test energy at the Test Energy Price.

For all subsequent Performance Tests, the requesting Party shall bear the costs and expenses of such of any subsequent Performance Test; provided, however, that Seller shall bear such costs and expenses of (i) any Performance Test requested by Buyer if the Tested Reliable Capacity (as a result of such Performance Test) is determined to be less than the Tested Reliable Capacity immediately prior to such Performance Test, or (ii) any Performance Test performed under Section 4 of this **Appendix A**, or (iii) any Performance Test performed due to a reliability issue pursuant to Section 3 of **Appendix D**. If Buyer is responsible for the fuel costs for a Performance Test, Buyer will purchase test energy at the applicable price under **Appendix B** for energy delivered from the Unit pursuant to Buyer's Schedule. If Seller is responsible for the fuel costs for a Performance Test, Buyer will purchase test energy at the lesser of (i) the Test Energy Price, and (ii) the applicable price under **Appendix B** for energy delivered from the Unit pursuant to Buyer's Schedule.

3. **Designated Capacity:** Unless Seller designates a Designated Capacity that is less than the Tested Reliable Capacity as set forth below in this Section A.3 of **Appendix A**, the Designated Capacity shall be deemed to be the Tested Reliable Capacity; provided, however, notwithstanding anything herein to the contrary, the Designated Capacity shall not exceed the Contracted Capacity Cap. If the Tested Reliable Capacity under a Performance Test is greater than the then-effective Contracted Capacity Cap and Seller does not offer, or Buyer rejects an offer, to increase the Contracted Capacity Cap to such Tested Reliable Capacity under Section A.2 of this **Appendix A**, then the Designated Capacity shall be deemed to be the Contracted Capacity Cap, unless Seller designates a Designated Capacity that does not exceed the Contracted Capacity Cap, as set forth below in this Section A.3 of **Appendix A**.

Within ten (10) Business Days of establishment of the Tested Reliable Capacity through a Performance Test, Seller may elect by written notice to Buyer to designate a Designated Capacity that is less than the Tested Reliable Capacity resulting from such Performance Test; provided, however, that, (i) such Designated Capacity shall not exceed the Contracted Capacity Cap, and (ii) if Seller does not so designate a Designated Capacity in such ten (10) Business Days period, the Designated Capacity shall be determined as set forth above in this Section A.3 of **Appendix A**.

However, notwithstanding anything herein to the contrary, in the event the Interconnection Agreement requires Seller to produce reactive power for the Transmission System, the Designated Capacity shall not exceed the capability of the Unit assuming that the maximum production of reactive power is being supplied to satisfy the Interconnection Agreement requirements.

Any change to the Designated Capacity shall take effect on the first day of the next Month after such new Designated Capacity is determined and designated in accordance with this Section A.3.

Notwithstanding anything herein to the contrary, this Section A.3 of **Appendix A** is subject to the determination of a Capacity Shortfall pursuant to Section 5.1.7.

For use pursuant to Section D of **Appendix B**, a Designated Seasonal Capacity shall be determined for each Season for the purpose of allocating energy produced by the Unit. For the Winter Season, the Designated Seasonal Capacity shall be calculated as the Tested Reliable Capacity adjusted to forty degrees Fahrenheit (40°F) and seventy five percent (75%) relative humidity and the reactive power output obligation imposed by Seller's Interconnection Agreement. For all other Seasons, the Designated Seasonal Capacity shall be set to the Designated Capacity.

4. **Tested Reliable Capacity Below Contracted Capacity Range; Capacity Buy Down:** In addition to and without limiting the remedies available to Buyer pursuant to Section 17.1.9, if a Performance Test indicates that the Unit's Tested Reliable Capacity is less than the lower end of the then-effective Contracted Capacity range but greater than or equal to seventy percent (70%) of the Nominal Capability or any other percentage if Buyer makes the election provided under Section 17.1.9.3: Seller shall have ten (10) Days to submit to Buyer a cure plan for increasing the Unit's

capacity which shall be reasonably acceptable to Buyer and shall include a reasonable cure period during which Seller may conduct additional Performance Tests. Such cure period shall not exceed one hundred twenty (120) Days; provided, however, if Seller establishes a cure plan hereunder but requires a cure period of more than one hundred twenty (120) Days to cure the inadequate Tested Reliable Capacity, then such cure period will be extended for a reasonable additional period of time, which extension will not in any case exceed four hundred twenty (420) Days, provided that Seller satisfies all of the following conditions to any such extension: no later than fifteen (15) Days prior to the expiration of the one hundred twenty (120) Days cure period, Seller shall provide to Buyer (i) a revised cure plan setting forth a reasonable extension of the cure period, not to exceed four hundred and twenty (420) Days, which revised cure plan and extension shall be reasonably acceptable to Buyer, and (ii) a written certification reasonably acceptable to Buyer confirming that in order for Seller to cure the inadequate Tested Reliable Capacity Seller must be afforded such reasonable additional period of time, and (iii) Seller's election for the period of such extended cure period to or cover (to the extent of the degraded capacity) Buyer's Schedules through an Alternate Resource in accordance with Section 5.1.4.3. For the avoidance of doubt, the total duration of any such cure period, as extended, shall not exceed five hundred and forty (540) Days. The inadequate Tested Reliable Capacity shall be deemed cured under this Section 4 of **Appendix A** only if (i) Seller provides Buyer with a written certification reasonably acceptable to Buyer confirming that the inadequate Tested Reliable Capacity has been cured, and (ii) the Tested Reliable Capacity, as demonstrated by the most recent Performance Test, is increased to a value equal to or greater than the lower limit of the original Contracted Capacity range as set forth in Section 1 of this **Appendix A**. Throughout the duration of any cure period, the Designated Capacity will be deemed to be the Tested Reliable Capacity determined pursuant to the most recent Performance Test.

If Seller fails to (i) establish the cure plan within the required ten (10) Day period set forth above in this Section 4 of **Appendix A** or, if applicable, establish the revised cure plan within the required fifteen (15) Day period set forth above in this Section 4 of **Appendix A** for a Cure Period extension, or (ii) diligently implement such cure plan (including implementation of such actions as Buyer may reasonably request), or (iii) cure the inadequate Tested Reliable Capacity within the applicable cure period, Seller shall pay Buyer, as liquidated damages, the buy down payment shown in Table A-1 corresponding to the Annual Period following the Annual Period in which the most recent Performance Test was conducted, based on the difference (in kW) between the then-effective lower limit of the Contracted Capacity range and the then-effective Tested Reliable Capacity. In addition, upon Seller making the required buy down payment hereunder, the lower limit of the then-effective Contracted Capacity range shall be reset at the Tested Reliable Capacity demonstrated in the most recent Performance Test and the upper limit of the then effective Contracted Capacity range will be lowered by the same amount that the lower limit has been reduced. However, for the avoidance of doubt, any such resetting of the lower and upper limits of the Contracted Capacity range shall not limit or modify Buyer's rights and remedies under Section 17.1.9 of this Agreement. Subject to Section 17.1.9 of this Agreement, the payment of buy down liquidated damages pursuant to this Section A.4 of **Appendix A** shall be Buyer's sole and exclusive remedy for a reduction of the Tested Reliable Capacity below the lower end of the Contracted Capacity range.

Table A-1²
Buy Down Payment for Capacity Reduction
Below Minimum Guarantee

Buy Down Payment (\$/kW)
10 Annual Periods PPA Term
Annual Period 1-4: 74
Annual Period 5-7: 69
Annual Period 8-10: 33

In the event the cure plan fails to restore the capacity to a value equal to or greater than the lower limit of the original Contracted Capacity range as set forth in Section A.1 of this **Appendix A** and the Contracted Capacity range is reset (lowered) as set forth above in this Section A.4 of **Appendix A**, and thereafter Seller is able to restore the capacity to a value equal to or greater than the lower limit of the original Contracted Capacity range as set forth in Section A.1 of this **Appendix A**, (i) Buyer will not be required to refund to Seller any buy down liquidated damages paid by Seller hereunder, and (ii) Seller must offer the restored capacity increment to Buyer at the Annual Capacity Price and pursuant to the capacity payment terms set forth herein. If Buyer accepts such offer, the Contracted Capacity range will be reset (raised) by an amount equal to the portion of the restored capacity increment accepted by Buyer. If Buyer does not accept the offer, the Contracted Capacity range will not be reset, but Seller will be free to sell the restored capacity increment to third parties, notwithstanding the provisions of Sections 5.1.5 and 13.2.3 that require Seller to deliver the entire output to Buyer; provided, however, in such event, Buyer shall, at all times during the remainder of the Term, be entitled to Schedule the entire energy output of the Unit times a fraction the numerator of which is the upper limit of the reset (lowered) Contracted Capacity range and the denominator of which is the most recent Tested Reliable Capacity.

5. **Capacity Pricing:**

The “Annual Capacity Price” for the first calendar year will be \$**[REDACTED]**/kW and will escalate each calendar year thereafter as follows:

² The buy down payment amounts in Table A-1 are expressed in 2020 US dollars. However, beginning on January 1, 2021 and continuing every January 1 of each year during the Term, the values shown in Table A-1 will be adjusted based on the change in GDPIPD between the base year 2020 (using the 4th quarter 2019 GDPIPD and the 4th quarter 2020 GDPIPD to adjust between 2020 and 2021) and each year during the Term, and such escalation shall be capped at a compound escalation rate of 4.75% per year.

Table A-2
Annual Capacity Price

Calendar Year	(\$/kW)
2028	[REDACTED]
2029	[REDACTED]
2030	[REDACTED]
2031	[REDACTED]
2032	[REDACTED]
2033	[REDACTED]
2034	[REDACTED]
2035	[REDACTED]
2036	[REDACTED]
2037	[REDACTED]

The Annual Capacity Price shall include all fixed costs, including without limitation, fixed operation and maintenance charges.

B. Monthly Capacity Payment:

For each Month of each Annual Period, subject to the provisions of this Agreement, the “Monthly Capacity Payment” (“MCP”) shall be determined as follows:

$$\text{MCP} = \text{MCF} - \text{MAA}$$

$$\text{MCF} = \text{DC} * \text{ACP} * \text{MVF}$$

Where:

MCP = the Monthly Capacity Payment for such Month.

MCF = the Monthly Capacity Fee for such Month determined in accordance with this Section B of **Appendix A**.

MAA = the Monthly Availability Adjustment for such Month determined pursuant to Section C of **Appendix A**.

DC = Designated Capacity for such Month, as determined in accordance with Section A.3 of **Appendix A**.

ACP = the applicable Annual Capacity Price from Table A-2 of **Appendix A**.

MVF = the applicable Monthly Value Factor from Table A-3 of **Appendix A**.

In the event that the Delivery Commencement Date occurs on a Day other than the first Day of a Month, or if the last Day of the Term occurs on a Day other than the last Day of a Month, the calculation of the Monthly Capacity Payment and Monthly Availability Adjustment will be determined on a pro rata basis.

If the amount of the MCP for a Month is negative (i.e., the amount of the Monthly Availability Adjustment exceeds the amount of the Monthly Capacity Fee for such Month), then the Monthly

Capacity Payment for the Month will be deemed to be zero dollars (\$0.00) and Buyer will not be required to pay Seller a Monthly Capacity Payment for the Month.

Table A-3
Monthly Value Factor

Month	Monthly Value Factor
January	0.20
February	0.16
March	0.02
April	0.02
May	0.02
June	0.07
July	0.16
August	0.16
September	0.06
October	0.02
November	0.02
December	0.09

Notwithstanding the foregoing Monthly Value Factors in Table A-3, for any given Annual Period, Buyer shall be entitled, in its sole and absolute discretion, to modify the Monthly Value Factors for any or all Months by providing notice to Seller, provided that: (i) Buyer provides Seller such notice at least 180 Days prior to the commencement of such Annual Period; (ii) each Value Payment Factor must be at least equal to 0.02; and (iii) the sum of all Monthly Value Factors for each Annual Period must equal 1.0.

C. **Monthly Availability Adjustment:**

For each Month of each Annual Period, Buyer shall determine the Monthly Availability Adjustment (“MAA”) as follows:

MAA = the greater of (i) (MCF * MAF), or (ii) (Replacement Costs for MAP less than 96%)

Where:

MCF = the Monthly Capacity Fee for such Month determined in accordance with this Section B of **Appendix A**.

MAF = the Monthly Availability Factor for such Month from Table A-4 of **Appendix A** based on the MAP for such Month, as determined pursuant to this Section C of **Appendix A**.

MAP = the Monthly Availability Percentage for such Month as determined pursuant to this Section C of **Appendix A**.

Replacement Costs = the total Replacement Costs determined in accordance with Section D of **Appendix A** for a Month with a MAP of less than 96%. In the case of a MAP of less than 96%, Replacement Costs do not apply to, and are not calculated for, any Hour of Undelivered Energy (as defined in Section D below) for the portion of the MAP that is greater than or equal to 96%.

For the avoidance of doubt, there will be no Monthly Availability Adjustment (MAA=0) for a Month with a Monthly Availability Percentage greater than or equal to 96%.

1. Calculation of Monthly Availability Percentage:

The following formula is applicable to the calculation of the MAP for a Month:

$$\text{MAP} = 100\% - \frac{(\text{FOH} + \text{EFDH} - \text{ARDH})}{\text{DH}}$$

Where:

FOH = The sum of Unplanned (Forced) Outage Hours for the Month in which the Unit would have been dispatched pursuant to Buyer's Schedules during the Month.

EFDH = The sum of Equivalent Unplanned (Forced) Derated Unit Hours for the Month in which the Unit was or would have been dispatched pursuant to Buyer's Schedules during the Month. (For example, if a unit with a Designated Capacity of 500 MW was derated by 200 MW for 20 hours, $\text{EFDH} = 20 * 200 / 500 = 8$.)

ARDH = The sum of Alternate Resource Delivery Unit Hours for the Month, which are the Unplanned (Forced) Outage Hours or Equivalent Unplanned (Forced) Derated Hours for the Month in which delivery is made from an Alternate Resource pursuant to Section 5.1.4.

DH = The sum of Dispatch Hours for the Month in which the Unit was or would have been dispatched pursuant to Buyer's Schedules during the Month; provided however, if such sum of the Dispatch Hours for the Month is less than forty (40), then DH shall be deemed to be equal to forty (40).

The calculation of the MAP shall not include energy Scheduled during any period of: (i) Scheduled Outages or Maintenance Outages; (ii) Unit ramping; (iii) Force Majeure Event declared by Seller in accordance with Article 16 for which Seller has not elected Alternate Delivery pursuant to Section 5.1.4.3; and (iv) Unavailability Events to the extent they are directly caused by the acts or omissions of Buyer.

The Parties will develop an example calculation for MAP in the Operating Procedures.

2. Monthly Availability Factor:

Seller guarantees a minimum Monthly Availability Percentage of ninety-six percent (96%) for each Month of each Annual Period.

The "Monthly Availability Factor" ("MAF") for each Month of each Annual Period shall be determined pursuant to Table A-4, based on the MAP for such Month:

Table A-4
Monthly Availability Factor

<u>MAP</u>	<u>Monthly Availability Factor ("MAF")</u>
Greater than or equal to 96%	0
Less than 96% but at least 60%	$(96\% - \text{MAP}) * 1.5$
Less than 60%	1.0

For a MAP greater than or equal to ninety-six percent (96%), the MAF will equal zero. There will be no increase in the Monthly Capacity Payment for a MAP of more than ninety-six percent (96%). For a MAP of at least sixty percent (60%) but less than ninety-six percent (96%), the MAF is equal to one and one-half (1.5) multiplied by each percent or fraction thereof of MAP shortfall below ninety-six percent (96%). For example, in the event the MAP is ninety-five and two tenths percent (95.2%), there will be an eight tenths percent (0.8%) shortfall below ninety-six percent (96%), and the MAF will be one and two tenths percent (1.2%).³ If the MAP is less than sixty percent (60%), the Monthly Capacity Fee is reduced to zero and the Monthly Capacity Payment will equal zero dollars (\$0.00) for such Month.

D. Calculation of Replacement Costs for MAP less than 96%:

The following calculation of Replacement Costs applies only to a Month with a MAP of less than 96%. In addition, in the case of a MAP of less than 96%, Replacement Costs do not apply to, and are not calculated for, any Hour of Undelivered Energy for the portion of the MAP that is greater than or equal to 96%.

"Replacement Costs" means, for any given Hour for which there is Undelivered Energy, the sum of: (a) the product of: (1) the Undelivered Energy for such Hour as determined by Buyer, multiplied by (2) the difference of the Replacement Price for such Hour minus the Energy Price for such Hour; plus (b) all documented energy imbalance charges, transmission costs, penalties, charges and other costs and expenses that Buyer incurs as a result of the non-delivery of such Undelivered Energy or as a result of purchasing energy to replace Undelivered Energy, including pursuant to applicable transmission or other tariffs; provided, however, that if the foregoing sum of (a) and (b) is a negative amount for a given Hour, then the Replacement Costs for such Hour shall be deemed to be equal to zero dollars (\$0.00).

"Buyer System Incremental Cost" means, for a given Hour, the incremental cost, measured in dollars per MWh, for Buyer and its Affiliates to supply the next MWh of energy, after serving the requirements of all of Buyer's and its Affiliates' native load customers, all other power sales of Buyer and its Affiliates (including both firm and non-firm sales), and all contractual obligations of Buyer and its Affiliates during such Hour. Buyer System Incremental Cost shall include marginal replacement fuel cost, variable operation and maintenance costs, fuel handling costs, emission allowance replacement costs, compensation for transmission losses, delivered cost of energy purchases from others, start-up and unit commitment costs, and any other energy-related costs, all as determined by Buyer after the applicable Hour.

³ $1.5 * 0.8\% = 1.2\%$

“Energy Price” means, for a given Hour, the applicable price of the Undelivered Energy for such Hour as determined pursuant to **Appendix B**, if such Undelivered Energy had been delivered from the Unit pursuant to this Agreement.

“Replacement Price” means, for any given Hour for which there is Undelivered Energy, the greater of: (i) Buyer System Incremental Cost for such Hour, or (ii) (a) if Buyer determines in its sole discretion to purchase energy to replace all or any portion of Undelivered Energy for such Hour, the price for which Buyer purchases energy to replace such Undelivered Energy (or such applicable portion), plus documented costs and fees reasonably incurred by Buyer in purchasing such replacement energy (e.g., broker fees), plus documented transmission charges and transmission losses, if any, reasonably incurred by Buyer to deliver such replacement energy to the Point of Interconnection or Alternate Delivery Point, as applicable, and administrative costs, if any, reasonably incurred by Buyer for such replacement energy (in each case stated in terms of \$/MWh of replacement energy), or (b) if Buyer determines in its sole discretion not to purchase energy to replace all or any portion of Undelivered Energy for such Hour, the market price for which Buyer would have been able to purchase at the Point of Interconnection energy to replace such Undelivered Energy (or such applicable portion), as reasonably determined by Buyer; provided, however, that Buyer shall not be required to enter into any transaction or agreement to purchase energy with any Person in order to determine the Replacement Price.

“Undelivered Energy” means, for a given Hour, the amount of energy Scheduled by Buyer for delivery during such Hour that is not delivered by Seller pursuant to this Agreement, excluding energy that is not provided as a direct result of a Force Majeure Event declared by Seller in accordance with Article 16 for which Seller has not elected Alternate Delivery pursuant to Section 5.1.4.3, but including energy that is not delivered as a result of a Forced Outage or a Forced Derate; provided, however, that solely for purposes of this definition, Undelivered Energy for any Hour shall not exceed the difference (if positive) of: (i) the Designated Capacity for such Hour, minus (ii) Delivered Energy for such Hour, provided that if such difference is negative, the Undelivered Energy for such Hour shall be equal to zero (0) MWh.

“Delivered Energy” means, for any Hour, the quantity of energy (expressed in MWh) delivered by Seller to the Point of Interconnection or Alternate Delivery Point, as applicable, pursuant to Buyer’s Schedule, excluding test energy and including ramp energy delivered to Buyer at the Point of Interconnection.

Seller acknowledges and agrees that neither Buyer nor its Affiliates shall be required to utilize or change their utilization of their individually or collectively owned or controlled assets (including electric generation facilities), purchased power or market positions in order to minimize the Replacement Price or Replacement Costs for any given Hour. Further, Seller acknowledges and agrees that Buyer shall be entitled (but shall not be required) to purchase energy to replace any Undelivered Energy from any Person(s) in its reasonable discretion and that any such purchase may be utilized in the determination of the Replacement Price and Replacement Costs hereunder.

To determine the Monthly Availability Adjustment for billing purposes, Buyer shall provide to Seller, as soon as practicable after the end of each Month during each Annual Period, a written statement which sets forth the amount of Replacement Costs, including the Replacement Price for each applicable Hour; provided, however, that such calculations may be based on an estimate of the Buyer System Incremental Cost for the applicable Hours during such Month. If such calculations are based on an estimate of the Buyer System Incremental Cost, Buyer subsequently shall recalculate the actual Replacement Costs based on the actual Buyer System Incremental Cost for each applicable Hour, recalculate the Monthly Availability Adjustment for the applicable Month based on the actual Replacement Costs, and recalculate the Monthly Capacity Payment for the applicable Month based on the actual Monthly Availability Adjustment. Buyer will then true-up the Monthly Capacity Payment as follows: (i) If the previously paid or billed Monthly Capacity Payment

(based on estimated values of Buyer System Incremental Cost) is greater than the recalculated Monthly Capacity Payment (based on actual values of Buyer System Incremental Cost), such true-up shall be implemented through a credit provided to Buyer in the corresponding amount of the difference, which shall be applied in future invoices for Monthly Capacity Payments under Article 6 of the Agreement, or if at end of Term, shall be paid by Seller to Buyer pursuant to Article 6; (ii) If the previously paid or billed Monthly Capacity Payment (based on estimated values of Buyer System Incremental Cost) is less than the recalculated Monthly Capacity Payment (based on actual values of Buyer System Incremental Cost), such true-up shall be implemented through an additional amount billed to Buyer in the corresponding amount of the difference, which shall be paid by Buyer pursuant to Article 6 of the Agreement.

APPENDIX B

ENERGY PAYMENT CALCULATION

A. Monthly Energy Payment Calculation

The Monthly Energy Payment (“MEP”) shall be determined as follows:

$$\text{MEP} = \text{MEP}_{\text{FAC}} + \text{MEP}_{\text{AR}}$$

To the extent that energy is being provided from the Unit:

$$\text{MEP}_{\text{FAC}} = \text{MVOM}_{\text{GAS-FAC}} + \text{MVOM}_{\text{OIL-FAC}} + \text{MSC}_{\text{GAS-FAC}} + \text{MSC}_{\text{OIL-FAC}} + \text{MFA}_{\text{GAS}} + \text{MFA}_{\text{OIL}}$$

To the extent energy is being provided from an Alternate Resource:

$$\text{MEP}_{\text{AR}} = \text{MVOM}_{\text{GAS-AR}} + \text{MVOM}_{\text{OIL-AR}} + \text{MSC}_{\text{GAS-AR}} + \text{MSC}_{\text{OIL-AR}} + \text{MFC}_{\text{GAS-AR}} + \text{MFC}_{\text{OIL-AR}}$$

Where:

MEP =	Monthly Energy Payment.
MVOM _{GAS-FAC} =	Monthly Variable O&M Charge for energy provided from the Unit when dispatched on Natural Gas determined pursuant to Section B.
MVOM _{OIL-FAC} =	Monthly Variable O&M Charge for energy provided from the Unit when dispatched on Fuel Oil determined pursuant to Section B.
MVOM _{GAS-AR} =	Monthly Variable O&M Charge for energy provided from Alternate Resources when the Unit would have been dispatched on Natural Gas determined pursuant to Section B.
MVOM _{OIL-AR} =	Monthly Variable O&M Charge for energy provided from Alternate Resources when the Unit would have been dispatched on Fuel Oil determined pursuant to Section B.
MSC _{GAS-FAC} =	Monthly Startup Charge for energy provided from the Unit when dispatched on Natural Gas determined pursuant to Section C.
MSC _{OIL-FAC} =	Monthly Startup Charge for energy provided from the Unit when dispatched on Fuel Oil determined pursuant to Section C.
MSC _{GAS-AR} =	Monthly Startup Charge for energy provided from Alternate Resources when the Unit would have been dispatched on Natural Gas determined pursuant to Section C.
MSC _{OIL-AR} =	Monthly Startup Charge for energy provided from Alternate Resources when the Unit would have been dispatched on Fuel Oil determined pursuant to Section C.
MFA _{GAS} =	Monthly Fuel Adjustment for operation on Natural Gas determined pursuant to Section D.1. The Monthly Fuel Adjustment for operation on Natural Gas does not apply when Seller is delivering energy from Alternate Resources.
MFA _{OIL} =	Monthly Fuel Adjustment for operation on Fuel Oil determined pursuant to Section D.2. The Monthly Fuel Adjustment for operation on Fuel Oil does not apply when Seller is delivering energy from Alternate Resources.
MFC _{GAS-AR} =	Monthly Fuel Charge for Natural Gas for energy provided from

MFC _{OIL-AR} =	Alternate Resources determined pursuant to Section D. Monthly Fuel Charge for Fuel Oil determined pursuant to Section D with respect to deliveries from Alternate Resources.
GHR _{GAS} =	The applicable Guaranteed Heat Rate in MMBtu/MWh when the Unit would have been dispatched on Natural Gas pursuant to Appendix J . The GHR for an hour will be based upon the MW Scheduled across the hour.
GHR _{OIL} =	The applicable Guaranteed Heat Rate in MMBtu/MWh when the Unit would have been dispatched on Fuel Oil pursuant to Appendix J . The GHR for an hour will be based upon the MW Scheduled across the hour.
DFP _{GAS} =	Daily Fuel Price for Natural Gas in \$/MMBtu.
FRP _{OIL} =	Daily Fuel Oil Replacement Price in \$/MMBtu. Defined as the Daily Fuel Oil Replacement Price in \$/Gal multiplied by a factor of 7.21 Gal/MMBtu.

In the event that Buyer disputes any Monthly Energy Payment as calculated by Seller, Buyer shall make a minimum Monthly Energy Payment for the applicable Month equal to the amount not disputed by Buyer. Such payment will remain subject to further adjustment in accordance with Section 6.2.

B. Monthly Variable O&M Charges (“MVOM”)

The Monthly Variable O&M Charges shall be the sum of the hourly Variable O&M Charges for each delivered output level (from the Unit or Alternate Delivery) that is Scheduled during a given Month. The Variable O&M Charges for each delivered or Scheduled output level is the product of the delivered or Scheduled output level and the corresponding Variable O&M Rate. Variable O&M charges also apply to energy delivered from the Unit during ramping.

The Monthly Variable O&M Charges shall be determined as follows:

$$MVOM_{GAS-FAC} = \sum [(SE_{GAS-FAC} * VOM_{GAS})_{Hour_1} \dots (SE_{GAS-FAC} * VOM_{GAS})_{Hour_N}]$$

$$MVOM_{OIL-FAC} = \sum [(SE_{OIL-FAC} * VOM_{OIL})_{Hour_1} \dots (SE_{OIL-FAC} * VOM_{OIL})_{Hour_N}]$$

$$MVOM_{GAS-AR} = \sum [(SE_{GAS-AR} * VOM_{GAS})_{Hour_1} \dots (SE_{GAS-AR} * VOM_{GAS})_{Hour_N}]$$

$$MVOM_{OIL-AR} = \sum [(SE_{OIL-AR} * VOM_{OIL})_{Hour_1} \dots (SE_{OIL-AR} * VOM_{OIL})_{Hour_N}]$$

Where:

SE _{GAS-FAC} =	Amount of energy delivered from the Unit each hour by Seller in MWh for operation on Natural Gas (pursuant to Buyer's Schedules) including energy produced during ramping of the Unit.
SE _{OIL-FAC} =	Amount of energy delivered from the Unit each hour by Seller in MWh for operation on Fuel Oil (pursuant to Buyer's Schedules) including energy produced during ramping of the Unit.
SE _{GAS-AR} =	Scheduled energy in MWh delivered in each hour from Alternate Resources when the Unit would have been dispatched on Natural Gas in a given Month.
SE _{OIL-AR} =	Scheduled energy in MWh delivered in each hour from Alternate Resources when the Unit would have been dispatched on Fuel Oil in a given Month.

VOM_{GAS}= Variable O&M Energy Rate for operation on Natural Gas is \$[REDACTED]/MWh escalated at actual GDPIPD. Other than escalation, VOM_{GAS} is a constant value and shall not vary based upon the Unit's hours of operation or MWh output.

VOM_{OIL}= Variable O&M Energy Rate for operation on Fuel Oil is \$[REDACTED]/MWh escalated at actual GDPIPD. Other than escalation, VOM_{OIL} is a constant value and shall not vary based upon the Unit's hours of operation or MWh output.

C. Monthly Startup Charges ("MSC")

If Seller delivers energy from the Unit when dispatched on Natural Gas, the Monthly Startup Charge will be determined as follows:

$$MSC_{GAS-FAC} = \sum [FSR_{GAS} + O\&MSR_{GAS}]$$

If Seller delivers energy from the Unit when dispatched on Fuel Oil, the Monthly Startup Charge will be determined as follows:

$$MSC_{OIL-FAC} = \sum [FSR_{OIL} + O\&MSR_{OIL}]$$

If Seller delivers energy from Alternate Resources, the Monthly Startup Charge will be determined as follows:

$$MSC_{GAS-AR} = \sum [FSR_{GAS} + O\&MSR_{GAS}]$$

If Seller delivers energy from Alternate Resources when the Unit would have been dispatched on Fuel Oil, the Monthly Startup Charge will be determined as follows:

$$MSC_{OIL-AR} = \sum [FSR_{OIL} + O\&MSR_{OIL}]$$

The Monthly Startup Charge shall be the sum of two components of Startup Charges during a given Month: (1) a fuel cost component associated with each Startup Event, and (2) an O&M cost component associated with each Startup Event.

Where:

\sum = Summation from startup 1 to startup N.

FSR_{GAS} = Fuel Startup Rate (in \$/Startup Event) when dispatched on Natural Gas, as shown in Table B-2 below.

FSR_{OIL} = Fuel Startup Rate (in \$/Startup Event) when dispatched on Fuel Oil, as shown in Table B-3 below.

O&MSR_{GAS} = O&M Startup Rate (in \$/Startup Event) when dispatched on Natural Gas, as shown in Table B-2 .

O&MSR_{OIL} = O&M Startup Rate (in \$/Startup Event) when dispatched on Fuel Oil, as shown in Table B-3.

For purposes of determining Monthly Startup Charge, a Startup Event is defined as a charge created by a change in Unit output from 0 MWh to output greater than 0 MWh according to the Tables B-2 and B-3 below pursuant to Buyer's Scheduling Instructions. Additionally, Sections 13.2.4.1 and 13.3 shall govern the number of starts assessed to Buyer when Seller's operation of the Unit deviates from Buyer's Schedule.

Energy produced by Seller and delivered to Buyer from startup to Minimum Capacity and from Minimum Capacity to offline will be paid for at the Guaranteed Heat Rate at Minimum Capacity.

Table B-2
Startup Rates (\$/Startup Event) for Operation on Natural Gas

Fuel Startup Rate (\$/event)	Hot	[REDACTED]
	Warm	[REDACTED]
	Cold	[REDACTED]
O&M Startup Rate (\$/event)		\$(REDACTED)

Table B-3
Startup Rates (\$/Startup Event) for Operation on Fuel Oil

Fuel Startup Rate (\$/event)	Hot	[REDACTED]
	Warm	[REDACTED]
	Cold	[REDACTED]
O&M Startup Rate (\$/event)		\$(REDACTED)

D. Monthly Fuel Adjustment.

If Seller delivers energy from the Unit in accordance with Buyer's Schedule or in response to an AGC signal provided by Buyer (if the Unit is capable of operating on AGC), Buyer shall determine the Daily Guaranteed Fuel quantity by multiplying the Guaranteed Heat Rate of the Scheduled amount or the AGC instructed output (if the Unit is capable of operating on AGC), as the case may be, pursuant to **Appendix J** and Section 13 by the amount of energy that was delivered to Buyer. The Operating Representatives will develop procedures for determining energy produced and delivered pursuant to Buyer's Schedule during ramping of the Unit, including (i) from synchronization to Minimum Capacity (Startup Energy), and (ii) from Minimum Capacity to Base Operating Mode Schedule. Such ramping energy shall be multiplied by the appropriate Guaranteed Heat Rates pursuant to **Appendix J** to determine the Daily Guaranteed Fuel quantity during ramping. The Guaranteed Heat Rate for ramping from synchronization to Minimum Capacity shall be the Guaranteed Heat Rate for Minimum Capacity.

If the actual heat rate is different than the applicable Guaranteed Heat Rates, then a Monthly Fuel Adjustment shall be made to Buyer's next invoice.

D.1. Monthly Fuel Adjustment ("MFA_{GAS}") for operation on Natural Gas

The Monthly Fuel Adjustment ("MFA_{GAS}") for operation on Natural Gas shall be determined as follows:

$$MFA_{GAS} = \sum \{ [(DGF_{GAS} - DAF_{GAS}) \cdot DFC_{GAS}]_{DAY 1} \dots [(DGF_{GAS} - DAF_{GAS}) \cdot DFC_{GAS}]_{DAY} \}$$

$N\}$

The Monthly Fuel Adjustment (“MFA_{GAS}”) shall be the sum of the daily fuel adjustments for each Gas Day or partial Gas Day in the Month. The daily fuel adjustment is the product of the difference of Daily Guaranteed Fuel and Daily Actual Fuel in MMBtu and the corresponding Daily Fuel Cost in \$/MMBtu.

Where:

DGF_{GAS} = The Daily Guaranteed Fuel quantity in MMBtu for operation on Natural Gas.
DAF_{GAS} = The Daily Actual Fuel quantity allocated to Buyer’s consumption (to generate energy pursuant to Buyer’s Schedules) in MMBtu for operation on Natural Gas as measured at the Primary Gas Delivery Point.
DFC_{GAS} = The Daily Fuel Cost in \$/MMBtu for operation on Natural Gas.

The Daily Guaranteed Fuel quantity for operation on Natural Gas shall be the sum of the hourly MMBtus that would have been burned using the appropriate Guaranteed Heat Rate multiplied by the corresponding hourly delivered energy, including energy produced during ramping, by Seller pursuant to Buyer’s Schedule.

$$DGF_{GAS} = \sum [(GHR_{GAS \text{ hr } 1} * SE_{GAS-FAC}) \dots (GHR_{GAS \text{ hr } N} * SE_{GAS-FAC \text{ hr } N})]$$

The Daily Actual Gas Fuel quantity for operation on Natural Gas shall be the sum of the hourly MMBtus allocated to Seller each Day corresponding to the actual amount of Natural Gas consumed in the Unit to meet Buyer’s Schedules on each Day and any greater or lesser adjustment to account for differences between the total gas measured at the Primary Gas Delivery Point and the actual total consumption at the Unit.

The Daily Fuel Cost (DFC_{GAS}) for operation on Natural Gas shall be determined as follows:

$$DFC_{GAS} = (TGD + VTA + IT)$$

Where:

TGD = The Gas Day’s “Gas Daily” midpoint price for its Daily Price Survey for Transco’s Zone 4.
VTA = The Variable Transportation Adders will be Transco’s Zone 4 to Zone 4 maximum firm transportation variable charges including all fuel retention and surcharges.
IT = The Interruptible Transportation rate, if applicable, will be Transco’s Zone 4 to Zone 4 maximum Interruptible Transportation Charges for any amount needed above the firm transportation capacity procured by Buyer.

If the Monthly Fuel Adjustment for operation on Natural Gas is positive, the Buyer shall pay Seller the amount of the Monthly Fuel Adjustment for operation on Natural Gas. If the Monthly Fuel Adjustment for operation on Natural Gas is negative, the Seller shall pay Buyer the absolute value amount of the Monthly Fuel Adjustment for operation on Natural Gas.

D.2. Monthly Fuel Adjustment (“MFA_{OIL}”) for operation on Fuel Oil

The Monthly Fuel Adjustment (“MFA_{OIL}”) for operation on Fuel Oil shall be determined as follows:

$$MFA_{OIL} = \sum \{ [(DGF_{OIL} - DAF_{OIL}) \times FRP_{OIL}]_{DAY\ 1} \dots [(DGF_{OIL} - DAF_{OIL}) \times FRP_{OIL}]_{DAY\ N} \}$$

The Monthly Fuel Adjustment (“MFA_{OIL}”) shall be the sum of the daily fuel adjustments for each Day or partial Day in the Month. The daily fuel adjustment is the product of the difference of Daily Guaranteed Fuel and Daily Actual Fuel in MMBtu and the corresponding Daily Fuel Oil Replacement Price in \$/MMBtu.

Where:

DGF_{OIL} = The Daily Guaranteed Fuel Oil quantity in MMBtu.
DAF_{OIL} = The Daily Actual Fuel Oil quantity consumed by the Unit (to generate energy pursuant to Buyer’s Schedules) in MMBtu as measured by the Fuel Oil flow meters located at each unit.

The Daily Guaranteed Fuel Oil quantity (“DGF_{OIL}”) shall be the sum of the hourly MMBtus that would have been burned at the appropriate Guaranteed Heat Rate for operation on Fuel Oil pursuant to **Appendix J** multiplied by the corresponding hourly delivered energy, including energy produced during ramping, pursuant to Buyer’s Schedule.

$$DGF_{OIL} = \sum [(GHR_{OIL\ hr\ 1} \times SE_{OIL-FAC\ hr\ 1}) \dots (GHR_{OIL\ hr\ N} \times SE_{OIL-FAC\ hr\ N})]$$

The Daily Fuel Oil Replacement Price (\$/MMBtu) shall be determined for a given Day per the definition of Daily Fuel Oil Replacement Price.

If the Monthly Fuel Adjustment for operation on Fuel Oil is positive, the Buyer shall pay Seller the amount of the Monthly Fuel Adjustment for operation on Fuel Oil. If the Monthly Fuel Adjustment for operation on Fuel Oil is negative, the Seller shall pay Buyer the absolute value amount of the Monthly Fuel Adjustment for operation on Fuel Oil.

E. Monthly Fuel Charge.

E.1 Monthly Fuel Charge for operation on Natural Gas.

If Seller delivers energy from Alternate Resources, the Monthly Fuel Charge will be

determined as follows:

$$MFC_{GAS-AR} = \sum [(DGF_{GAS-AR} * DFP_{GAS})_{DAY 1} \dots (DGF_{GAS-AR} * DFP_{GAS})_{DAY N}]$$

The Monthly Fuel Charge shall be the sum of the daily fuel charges for each Day or partial Gas Day in the Month when delivering from an Alternate Resource. The daily fuel charge is the product of the Daily Guaranteed Fuel in MMBtus and the corresponding Daily Fuel Price in \$/MMBtu.

Where:

DGF_{GAS-AR} = Daily Guaranteed Fuel quantity in MMBtus for energy delivered from Alternate Resources.

The Daily Guaranteed Fuel (“DGF”) shall be the sum of the hourly MMBtus that would have been burned at the appropriate Guaranteed Heat Rate pursuant to **Appendix J** multiplied by the corresponding hourly delivered energy pursuant to Buyer’s Schedule, excluding ramping.

If Seller is delivering from an Alternate Resource, the following equation would apply:

$$DGF_{GAS-AR} = \sum [(GHR_{GAS \text{ hr } 1} * SE_{GAS-AR \text{ hr } 1}) \dots (GHR_{GAS \text{ hr } N} * SE_{GAS-AR \text{ hr } N})]$$

The Daily Fuel Price (\$/MMBtu) shall be determined for a given Day in a Month as follows:

DFP_{GAS-AR} = The Gas Day’s “Gas Daily” midpoint price for its Daily Price Survey for Transco’s Zone 4.

E.2 Monthly Fuel Charge for operation on Fuel Oil.

If Seller delivers energy from an Alternate Resource in an hour for which Buyer Schedules the Unit on Fuel Oil, the MFC_{OIL-AR} will be determined as follows:

$$MFC_{OIL-AR} = \sum [(DGF_{OIL-AR} * FRP_{OIL})_{DAY 1} \dots (DGF_{OIL-AR} * FRP_{OIL})_{DAY N}]$$

The MFC_{OIL} shall be the sum of the daily fuel charges for each Day or partial Day in the Month when delivering from an Alternate Resource. The daily fuel charge is the product of the Daily Guaranteed Fuel in MMBtus and the corresponding Daily Fuel Oil Replacement Price in \$/MMBtu.

Where:

DGF_{OIL-AR} = The Daily Guaranteed Fuel quantity in MMBtu for energy delivered from Alternate Resources.

FRP_{OIL} = Daily Fuel Oil Replacement Price in \$/MMBtu. Defined as the Daily Fuel Oil Replacement Price in \$/Gal multiplied by a factor of 7.21 Gal/MMBtu.

The Daily Guaranteed Fuel (“DGF”) shall be the sum of the hourly MMBtus that would have been burned at the appropriate Guaranteed Heat Rate pursuant to **Appendix J** multiplied by the corresponding hourly delivered energy, Seller pursuant to Buyer’s Schedule, excluding ramping.

If Seller is delivering from an Alternate Resource, the following equation would apply:

$$DGF_{OIL-AR} = \sum_{SE_{OIL-AR \text{ hr } N}} [(GHR_{OIL \text{ hr } 1} * SE_{OIL-AR \text{ hr } 1}) \dots (GHR_{OIL \text{ hr } N} * SE_{OIL-AR \text{ hr } N})]$$

APPENDIX C

TECHNICAL LIMITS AND SCHEDULE PROCEDURES

The following Technical Limits and Schedule apply to the operation on both Natural Gas and Fuel Oil.

I. TECHNICAL LIMITS

A. General Requirements

Subject to the Technical Limits set forth in subsections B, C, D, E and F of this Section I of **Appendix C**, the Unit shall be capable of meeting Buyer's Schedules at all times during the Term following the Delivery Commencement Date, twenty-four (24) hours per Day, seven (7) Days per week. Seller may propose modifications or changes to the Technical Limits based on specifications and recommendations, as modified from time to time, of the equipment manufacturers of the CT and CT generator provided that (1) any such modifications or changes that in Buyer's sole judgment may adversely affect Buyer's Scheduling flexibility (including without limitation, magnitude, duration and response time) under this Agreement shall be subject to the prior written approval of Buyer's Operating Representative, and (2) in the event such changes limit Buyer's Scheduling flexibility more than the limits as set forth below, Seller shall make commercially reasonable efforts to minimize the effect of any such equipment manufacturer's specifications or recommendations on Seller's ability to deliver energy in response to Buyer's Schedules. The Parties shall develop procedures for the testing contemplated in **Appendix D**; provided, however, that reasonable demonstration of such capabilities from prior testing or operation may be used instead.

B. Minimum Capacity Limits / Net Output

Minimum output level shall be established at the level that the Unit is able to remain operationally stable and remain in compliance with permitted emissions limits ("Minimum Capacity"). Each Unit is estimated to have a Minimum Capacity of approximately **[REDACTED]** MW, subject to emissions limitations and ambient conditions.

C. Maximum Ramp Rates

Maximum ramp rates shall be twelve (12) MW per minute per Unit from minimum load. to maximum load.

D. Minimum Schedule and Minimum Down Times

The minimum Schedule time for the Base Operating Mode is two (2) consecutive hours. Start-up and ramping will be accomplished prior to the Scheduled hours. The minimum down time is four (4) hours.

E. Starts

The maximum number of turbine starts is one (1) start per turbine per calendar Day; provided, however, Buyer shall have the right to start one (1) turbine twice a Day not to exceed a total of thirty (30) Days per Annual Period.

F. Required Startup Notification

Plant start times are as specified in the following table:

Start Classification (Off-line Hours)	Start Time to Minimum (1) (hours)	Start Time to Full Load (1) (hours)
Hot (< 8 hours)	1	2
Warm (8 < hours < 48)	1	2
Cold (> 48 hours)	1	2
Winter Cold (2) (> 48 hours)	1	2
Notes: 1. Start Time equals time of notice. (Seller shall provide Buyer with copies of results of any tests that demonstrate the ability of the Unit to meet the above start times.) 2. Winter cold applies when freeze mitigation actions have been taken by operator, provided that Seller shall promptly notify Buyer prior to implementing any planned freeze mitigation actions and afford Buyer a reasonable opportunity to Schedule the Unit in lieu of implementing such freeze mitigation actions.		

G. Natural Gas Pipeline Pressure

Natural Gas deliveries under this Agreement shall be at a pressure that is greater than or equal to the lower of (i) 450 psig, or (ii) the minimum pressure recommended by the manufacturer to operate a Unit on Natural Gas, as such modification may be modified from time to time.

II. SCHEDULE PROCEDURES

This Section II of **Appendix C** sets forth the procedures to be followed by Buyer and Seller for notification and Scheduling the Unit when it is called for by Buyer. The procedures specified are subject to change upon mutual agreement of the Parties.

A. Notification Communication

1. Three Months prior to the Delivery Commencement Date, Seller shall supply the Scheduling Center with the names of the personnel who can be called to Schedule energy. Seller will provide Buyer a single phone number that will be answered twenty-four (24) hours a Day and corresponding fax number and email address. Seller shall keep this information current.
2. Three Months prior to the Delivery Commencement Date, the Scheduling Center shall supply Seller with the names of individuals to be contacted concerning availability of the Unit and energy Schedules. The Scheduling Center will provide Seller with a single phone number that will be answered twenty-four (24) hours per Day and corresponding fax number and email address. The Scheduling Center shall keep this information current.

B. Scheduling and Notification Procedures

1. By 12:00 p.m. (noon) CPT of each Business Day, or by 8:30 a.m. CPT if Seller has elected to deliver from an Alternate Resource, the Scheduling Center will contact Seller if it anticipates submitting a Schedule for the next Business Day and any subsequent Days which are not Business Days (the period covered by such Schedule being referred to as a "Scheduling Period"). The Scheduling Center will provide a Schedule for each hour of the Scheduling Period in accordance with Article 13. The Scheduling Center shall also provide a good faith, non-binding estimate for the next Scheduling Period. The Scheduling Center is not obligated to contact Seller if it does not plan to submit a Schedule for a Scheduling Period.
2. On or before 1:30 p.m. CPT, Seller shall inform the Scheduling Center if the Unit or in the case of Alternate Delivery, the Alternate Resource, will be de-rated during the next Scheduling Period. Seller shall provide an estimate of the time and degree to which the generation levels will be reduced. Unless due to the declaration of a Force Majeure Event, such Seller notification does not preclude Buyer from requesting any amount of energy from the Unit or relieve Seller of its obligation to deliver energy in accordance with any Scheduling Instructions.
3. Seller shall promptly inform the Scheduling Center of any equipment problems or unplanned outages and the expected time and degree to which generation levels will be reduced. During Unit Outages, Seller shall continue to keep Buyer informed as to the expected date when the Unit, or in the case of Alternate Delivery, the Alternate Resource, will be returned to service for dispatch.
4. Intra-Day Scheduling shall be permitted in accordance with the provisions of Article 13.
5. Procedures will be established as needed for the Scheduling of energy delivered from an Alternate Resource; provided, however, that Seller bears the ultimate responsibility for all tagging and other transmission arrangements with respect to such deliveries.

APPENDIX D

PERFORMANCE TESTING PROCEDURES

1. Objective

The purpose of this **Appendix D** is to provide an agreed upon method for the determination of Tested Reliable Capacity. Consistent, past performance of the Unit in reliably meeting the Designated Capacity and in reliably meeting the Scheduling Instructions shall be deemed as acceptable demonstration of the capability of the Unit.

During the Performance Test for purposes of determining the Tested Reliable Capacity, the Unit's actual net plant output will be corrected to Reference Conditions at the Site.

2. Operating Conditions

During the Performance Test, the Unit will be operated within the normal design limits, consistent with continuous operation, and in accordance with Prudent Industry Practices, as confirmed by available Unit operating data. The gas turbines will be operated at Base Operating Mode for the duration of the test. All auxiliary systems will be operated as appropriate for the actual ambient conditions existing during the test period.

3. Testing

On the date of the Performance Test, the Unit shall be brought to maximum load using Natural Gas. The test shall be scheduled between the weekday hours of 11:00 a.m. and 7:00 p.m. local time and as close as practical with Buyer's Scheduling requirements. During the test period data shall be collected for a minimum of two (2) hours once the CT has achieved stable operations at Base Operating Mode. To the extent that the Unit experiences equipment malfunction, unsteady operation or unreliability during any test or its historical operating records show difficulty or unreliability during testing of the Unit or deficiencies in meeting Buyer's Schedules, Buyer may request that Seller perform additional testing of the Unit at Seller's expense in order to demonstrate to Buyer's reasonable satisfaction the reliability of the Unit.

Testing will be performed in accordance with ASME Performance Test Code and other applicable industry standards and all Legal Requirements. All Performance Test activities will be conducted by, or under the supervision of, Seller and its contractors. Buyer shall have the right to have a representative present to witness Performance Tests conducted pursuant to this Agreement. Each Party will notify the other of its intent to conduct any test with a six (6) Business Day advanced written notice as specified in **Appendix A**.

Actual net output of the Unit will be metered with the Metering System. No commercial test tolerances or measurement uncertainties will be applied to test results.

4. Reduction of Data

Actual tested capacity will be adjusted to the Reference Conditions, using correction curves provided by Seller or its engineer in accordance with the following equation:

Tested Reliable Capacity = Measured Base Load Net Output x Fwetblb x Fbaro x Fpf

Where:

Measured Base Load Net Output = actual net Unit output measured during the test conducted at Base Operating Mode.

Fwetblb = correction factor for dry bulb temperature and relative humidity from actual conditions to Reference Conditions. Fwetblb for the Unit = Figure D1.

Fbaro = correction for barometric pressure from actual test conditions to Reference Conditions. Fbaro for the Unit = Figure D2

Fpf = correction for reactive power output from actual test conditions to Reference Conditions. Fpf for the Unit = Figure D3.

Figure D1: *[REDACTED]*

Figure D2: *[REDACTED]*

Figure D3: *[REDACTED]*

APPENDIX E

RESERVED

APPENDIX F

THE SITE

The Site shall be defined as:

The land, rights-of-way and related equipment and facilities of the combustion turbine electric generating plant known as Plant Dahlberg located in Jackson County, Georgia at 585 Jarrett Rd, Nicholson, Georgia 30565.

APPENDIX G

FORM OF STANDBY LETTER OF CREDIT

[Bank Letterhead]

Date of issuance: _____, 20__

Irrevocable Standby Letter of Credit No.: _____

"Issuer": _____

Address: _____

"Beneficiary": _____

Address: _____

"Account Party": _____

Address: _____

"Expiry Date": _____, 20__, and any automatically extended date, as herein provided
[(but in no event later than _____, 20__)]

"Total Amount": _____ United States Dollars (U.S. \$_____)

We, the Issuer, hereby establish in your favor, for the account of the Account Party, our irrevocable standby letter of credit (this "**Standby Letter of Credit**"), in the aggregate amount not exceeding the Total Amount.

Funds under this Standby Letter of Credit are available to you on or before the Expiry Date against your sight draft drawn on us in the form attached as Annex 1 hereto, with appropriate insertions, and referring thereon to the number of this Standby Letter of Credit, accompanied by a completed certificate signed by a person purporting to be one of your officers or authorized representatives, in the form attached as Annex 2 hereto, with appropriate insertions.

This Standby Letter of Credit is effective immediately and expires at 5:00 p.m. (Eastern Prevailing time) on the Expiry Date, as the same may be extended. It is a condition of this Standby Letter of Credit that the Expiry Date will be deemed automatically extended without amendment for a period of one year from the present or any future Expiry Date, unless we notify you not less than ninety (90) days prior to any such date, in accordance with the notice provisions set forth herein, that we have elected not to extend the Expiry Date for such additional period.

Presentation of such drafts and such certificates will be made on any day that is a business day for us at or prior to 5:00 p.m. (Eastern Prevailing Time) at our office located at _____, Atlanta, Georgia, or at any other office in Atlanta, Georgia or New York, New York, that is designated by us in a written notice delivered to you. If such sight draft and such certificate are received at any such office on or prior to the Expiry Date, we hereby agree with you that we will duly honor the same within two (2) business days of such presentation.

Drawings may also be presented to us by facsimile transmission to facsimile number [_____]. Beneficiary may contact the Issuer at [_____] to confirm receipt of the transmission. Beneficiary's failure to seek such a telephone confirmation does not affect the Issuer's obligation to honor such a presentation. If you present a facsimile drawing under this Letter of Credit, you do not need to present the original of any drawing documents and the facsimile transmission will constitute the operative drawing documents.

Partial drawings and multiple presentations may be made under this Standby Letter of Credit, provided, however, that each such demand that is paid by us will reduce the amount available under this Standby Letter of Credit.

Except as is expressly set forth herein, payment of drafts drawn under this Standby Letter of Credit is not subject to any condition or qualification. The obligation of the Issuer under this Standby Letter of Credit is the independent obligation of the Issuer and is in no manner contingent upon reimbursement with respect thereto.

This Standby Letter of Credit is transferable and can be successively transferred to any transferee that Beneficiary states in writing to us has succeeded such Beneficiary under this Letter of Credit; provided that such transfer to such transferee is in compliance with applicable U.S. laws and regulations. Transfer of this Standby Letter of Credit to any transferee will be effected by the presentation to us of this Standby Letter of Credit accompanied by a certificate in the form attached as Annex 3 hereto, with appropriate insertions, signed by a person purporting to be an officer or authorized representative of the Beneficiary. Upon such presentation we will forthwith issue an irrevocable letter of credit to such transferee with provisions therein consistent with this Standby Letter of Credit.

This Standby Letter of Credit sets forth in full the terms of our undertaking, and such undertaking may not be modified, annulled or amplified by reference to any other document, instrument or agreement referred to herein or in which this Standby Letter of Credit is referred or to which this Standby Letter of Credit relates, and any such reference may not be deemed to incorporate herein by reference any such document, instrument or agreement.

To the extent not contrary to the express terms hereof, this Standby Letter of Credit will be governed by the International Standby Practices (herein referred to as the "ISP98"). As to matters not governed by the ISP98, this Standby Letter of Credit will be governed by and construed in accordance with the laws of the state of Georgia.

Notices concerning this Standby Letter of Credit may be sent to a party by hand delivery or by certified mail or registered mail, or by electronic transmission to its respective address set forth herein. Any notice, demand, request or other communication will be deemed to have been received by the party to whom it is sent at the time of its delivery. Each party may notify the other of any change of address in the manner provided above.

[ISSUING BANK]

By: _____
Authorized Signature

ANNEX 1

FORM OF SIGHT DRAFT

[Insert Place], [Insert Date]

Amount: [Insert Currency][Insert Amount in Numbers]
 [Insert Amount in Letters]

Drawn under Irrevocable Standby Letter of Credit No. _____ of [Insert Name of Issuing Bank]

At Sight

Pay to the Order of [Name of Beneficiary]

In reference to: Irrevocable Standby Letter of Credit No. _____, dated _____.

To: [Insert Name of Issuing Bank]
 [Insert Address]

[BENEFICIARY]

By:_____

Title:_____

ANNEX 2

FORM OF CERTIFICATE

Re: [Insert Name of Agreement] dated _____, 20__ (the “**Agreement**”) between [Name of Account Party] (“**Account Party**”) and [Name of Beneficiary] (“**Beneficiary**”).

The undersigned, an officer or authorized representative of [Beneficiary], hereby certifies to [ISSUING BANK] (the “**Bank**”) with reference to irrevocable standby letter of credit no. (the “**Standby Letter of Credit**”), issued by the Bank for the account of [Account Party] in favor of [Beneficiary] that:

(1) (Insert one of the following, as applicable)

Pursuant to the Agreement, Beneficiary is entitled to demand payment under the Standby Letter of Credit in the amount of the sight draft accompanying this certificate.

or

[Beneficiary] has received written notice from the Bank in accordance with the terms of the Standby Letter of Credit that the Bank has elected not to extend the Expiry Date of the Standby Letter of Credit for an additional period past its then Expiry Date and the Account Party has failed to deliver a substitute letter of credit in accordance with the terms of the Agreement.

(2) The undersigned is an officer or authorized representative of [Beneficiary] and is authorized to execute and deliver this certificate and to draw upon the Standby Letter of Credit.

IN WITNESS WHEREOF, the undersigned has executed and delivered this Certificate as of this ____ day of _____, 20__.

[BENEFICIARY]

By: _____
Title: _____

ANNEX 3

INSTRUCTION TO ASSIGN IN ENTIRETY

_____, 20__

Re: Irrevocable Standby Letter of Credit No.

Gentlemen:

For value received, the undersigned beneficiary hereby irrevocably assigns to:

(Name of Assignee)
(Address)

all rights of the undersigned beneficiary to demand payment under the above Standby Letter of Credit in its entirety.

By this assignment, all rights of the undersigned beneficiary in such Standby Letter of Credit are transferred to the assignee and the assignee will hereafter have the sole rights as beneficiary thereof.

The Standby Letter of Credit is returned herewith and in accordance therewith we ask you to issue a new irrevocable Standby Letter of Credit in favor of the assignee with provisions consistent with the Standby Letter of Credit.

Very truly yours

[Beneficiary]

By: _____
Title: _____

APPENDIX H

FORM OF GUARANTY

THIS GUARANTY AGREEMENT (the “**Guaranty**”), dated and effective as of _____, 20____, is made and entered into by _____ (the “**Guarantor**”) in favor of the _____ (the “**Beneficiary**”).

WHEREAS Beneficiary and _____ (the “**Company**”), [a subsidiary of the Guarantor], have entered into that certain [Insert Name of Agreement] dated as of _____, 20____ (as amended, restated, supplemented or otherwise modified from time to time, the “**Agreement**”);

WHEREAS, the Beneficiary has required, as an inducement to its entry into the Agreement, that Guarantor deliver to the Beneficiary this Guaranty or other Eligible Collateral as and when required under the Agreement;

WHEREAS, the Guarantor qualifies as a Seller Guarantor under the Agreement and this Guaranty qualifies as Eligible Collateral under the Agreement; and

WHEREAS, the Guarantor will derive substantial direct and indirect benefit from the transactions contemplated by the Agreement.

NOW, THEREFORE, to induce the Beneficiary to enter into the Agreement and perform its obligations thereunder, and for and in consideration of the foregoing premises, the mutual agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Guarantor agrees as follows:

ARTICLE 1 - DEFINITIONS

1.1 *Definitions.* Unless otherwise defined in this Guaranty, capitalized terms have the meanings specified or referred to in the Agreement.

ARTICLE 2 - GUARANTY

2.1 *Guaranty.* Guarantor hereby unconditionally and irrevocably guarantees to the Beneficiary and its successors and assigns, the prompt and full payment of any and all obligations of the Company to the Beneficiary when due, whether by acceleration or otherwise, with such interest as may accrue thereon, under the Agreement or under any other documents or instruments now or hereafter evidencing, securing or otherwise relating to the Agreement (the “**Guaranteed Obligations**”); provided, however, that Guarantor’s liability under this Guaranty will in no event exceed the aggregate amount of Eligible Collateral required to be provided by Seller from time to time pursuant to Article 5 of the Agreement (plus costs of enforcement of this Guaranty as provided in Section 4.4 below), as the case may be. Guarantor will immediately pay any obligation of Company upon demand by the Beneficiary.

2.2 *Guaranty Absolute.* (a) The Guarantor absolutely guarantees that the Guaranteed Obligations will be paid strictly in accordance with the terms of the Agreement, regardless of any law or regulation now or hereafter in effect in any jurisdiction affecting any of such terms or the rights of the Beneficiary with respect thereto. This Guaranty constitutes a guarantee of payment and not of collection. The obligations of the Guarantor hereunder are several from the Company or any other person, and are primary obligations concerning which the Guarantor is the principal obligor. The liability of Guarantor under this Guaranty will be direct and immediate and not conditional or contingent upon the pursuit of any remedies against the Company or any other person, nor against securities or liens available to the Beneficiary, its successors or assigns. The liability of the Guarantor under this Guaranty will be irrevocable,

absolute and unconditional irrespective of, and the Guarantor hereby irrevocably waives any defenses it may now have or hereafter acquire in any way relating to, any or all of:

- (i) any change in the time, manner or place of payment of, or in any other term of, all or any of the Guaranteed Obligations, or any other amendment, modification or waiver of, or any consent to departure from, the terms of such Guaranteed Obligations, or any compromise, settlement, release or termination of any of the Guaranteed Obligations;
- (ii) any change, restructuring or termination of the corporate structure or existence of the Company or any of its subsidiaries, including, without limitation, any disposal by the Guarantor of all or any part of its interest in the Company, or otherwise alter its investment in the Company in any manner;
- (iii) any lack of validity or enforceability, in whole or in part, of the Guaranteed Obligations, the Agreement or any agreement or instrument relating thereto;
- (iv) any failure of the Beneficiary to disclose to either the Company or the Guarantor any information relating to the business, condition (financial or otherwise), operations, performance, properties or prospects of either the Company or any of its subsidiaries now or hereafter known to the Beneficiary (the Guarantor waiving any duty on the part of the Beneficiary to disclose such information);
- (v) any failure, omission, delay or lack on the part of Beneficiary to enforce, ascertain or exercise any right, power or remedy under or pursuant to the terms of the Agreement, the Guaranteed Obligations or this Guaranty;
- (vi) any failure of the Beneficiary to commence an action against Company, including without limitation as contemplated by the provisions of O.C.G.A. Section 10-7-24, as amended;
- (vii) any lack of due diligence by the Beneficiary in the collection or protection of or realization upon any collateral securing the Guaranteed Obligations;
- (viii) the bankruptcy, insolvency, winding up, dissolution, liquidation, administration, reorganization or other similar or dissimilar failure or financial disability of the Guarantor or the Company or any legal limitation, disability, incapacity, or other circumstance relating to the Guarantor or the Company;
- (ix) the addition, substitution or partial or entire release of any guarantor, maker or other party (including the Company) primarily or secondarily liable or responsible for the payment and observance of the Guaranteed Obligations or by any extension, waiver, amendment or thing that may release or discharge (in whole or in part) a guarantor, maker or third party (other than as a result of the indefeasible payment of the Guaranteed Obligations in full);
- (x) the taking, variation, renewal, addition, substitution, subordination, or partial or entire release of any security or other credit support for the Guaranteed Obligations, or the enforcement or neglect to perfect or enforce any such security or support; or
- (xi) except as provided in Section 2.3(c), any other circumstance whatsoever (including, without limitation, any statute of limitations) or any act of the Beneficiary or any existence of or reliance on any representation by the Beneficiary that might

otherwise constitute a legal or equitable defense available to, or a discharge of, the Guarantor.

This Guaranty will continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Guaranteed Obligations should for any reason subsequently be asserted, or declared, to be void or voidable or is unwound in any way under any state or federal law, including without limitation any provision of the Bankruptcy Code related to fraudulent conveyance or preference (each a “**Voidable Transfer**”), and Beneficiary or any other person is not required to repay or restore, in whole or in part, any such Voidable Transfer, or Beneficiary or any other person elects to do so, all as though such payment had not been made.

(b) No action that the Beneficiary takes or fails to take in connection with the Guaranteed Obligations, or any security for the payment of any of the Guaranteed Obligations, nor any course of dealing with Company or any other person, will release Guarantor’s obligations hereunder, affect this Guaranty in any way, or afford Guarantor any recourse against the Beneficiary.

(c) In the case of an Event of Default under the Agreement or with regard to any of the Guaranteed Obligations, Guarantor hereby consents and agrees that the Beneficiary will have the right to enforce its rights, powers, and remedies thereunder or hereunder or under any other instrument now or hereafter evidencing, securing, or otherwise relating to the Guaranteed Obligations, and apply any payments or credits received by the Company or Guarantor or realized from any security, in any manner and in any order as the Beneficiary, in its sole discretion, sees fit, and all rights, powers, and remedies available to the Beneficiary in such event will be nonexclusive and cumulative of all other rights, powers, and remedies provided thereunder or hereunder or by law or in equity. If the Guaranteed Obligations are partially paid by reason of the election of the Beneficiary, its successors or assigns, to pursue any of the remedies available to the Beneficiary, or if such indebtedness is otherwise partially paid, this Guaranty will nevertheless remain in full force and effect, and Guarantor will remain liable for the entire balance of the Guaranteed Obligations even though any rights that Guarantor may have against the Company may be destroyed or diminished by the exercise of any such remedy.

2.3 *Waivers and Acknowledgments.*

(a) Guarantor hereby waives promptness, diligence, presentment, demand of payment, acceptance, notice of acceptance, protest, notice of dishonor and any other notices with respect to any of the Guaranteed Obligations and this Guaranty.

(b) The Guarantor hereby unconditionally and irrevocably waives any right to revoke this Guaranty and acknowledges that this Guaranty is continuing in nature and applies to all Guaranteed Obligations, whether existing now or in the future. The provisions of this Guaranty will extend and be applicable to all renewals, amendments, extensions, consolidations, and modifications of the Agreement.

(c) The Guarantor hereby waives and relinquishes all rights and remedies accorded by application of law to sureties or guarantors and agrees not to assert or take advantage of any such rights or remedies, including without limitation:

- (i) Any right to require the Beneficiary to proceed against the Company or any other person or to proceed against or exhaust any security held by the Beneficiary at any time or to pursue any other remedy in the Beneficiary’s power before proceeding against the Guarantor;
- (ii) Any defense that may arise by reason of the incapacity, lack of authority, death or disability of any other person or the failure of the Beneficiary to file or enforce a

claim against the estate (in administration, bankruptcy or any other proceeding) of any other person; or

- (iii) Any defense arising because of the exercise of any right or remedy available to, or election made by, the Beneficiary pursuant to the Federal Bankruptcy Code, whether as an unsecured or undersecured creditor, seeking adequate protection or otherwise.

(d) The Guarantor hereby unconditionally and irrevocably waives any defense based on any right of set-off or counterclaim against or in respect of the obligations of the Guarantor hereunder.

(e) The Guarantor waives any and all defenses, claims and discharges of Company, or any other obligor pertaining to the Guaranteed Obligations. Without limiting the generality of the foregoing, the Guarantor will not assert, plead or enforce against the Beneficiary or any other person any defense of waiver, release, statute of limitations, res judicata, statute of frauds, fraud, incapacity, minority, usury, illegality or unenforceability which may be available to the Company or any other person liable in respect of any indebtedness, or any setoff available against the Beneficiary to the Company or any such other person, whether or not on account of a related transaction. The Guarantor expressly agrees to waive reliance on any anti-deficiency statute(s). If a foreclosure proceeding is commenced, the Guarantor expressly agrees that he will be and remain unconditionally liable, to the fullest extent permitted by applicable law, for any deficiency remaining after foreclosure of any mortgage or security interest securing indebtedness, whether or not the liability of the Company or any other person for such deficiency is discharged pursuant to statute or judicial decision.

2.4 *Subrogation.* Notwithstanding any payment or payments made by the Guarantor hereunder, the Guarantor hereby irrevocably waives any and all rights of subrogation to the rights of the Beneficiary against the Company and any and all rights of reimbursement, assignment, indemnification or implied contract or any similar rights (including without limitation any statutory rights of subrogation under Section 509 of the Bankruptcy Code, 11 U.S.C. § 509) against the Company or against any other guarantor of all or any part of the Guaranteed Obligations until such time as the Guaranteed Obligations have been indefeasibly paid or performed in full. If, notwithstanding the foregoing, any amount will be paid to the Guarantor on account of such subrogation or similar rights at any time when all of the Guaranteed Obligations will not have been indefeasibly paid in full, such amount will be held by the Guarantor in trust for the Beneficiary and will be turned over to the Beneficiary in the exact form received by the Guarantor, to be applied against the Guaranteed Obligations in such order as the Beneficiary may determine in its sole discretion.

2.5 *Contribution, Indemnification, Reimbursement.* The Guarantor hereby irrevocably and absolutely waives all right of contribution, indemnification, reimbursement or similar rights against the Company with respect to the Guaranty, whether such rights arise under an express or implied contract or by operation of law, it being the intention of the Guarantor and the Company that the Guarantor will not be deemed to be a “creditor” (as defined in Section 101 of the U.S. Bankruptcy Code or any other applicable law) of the Company by reason of the existence of this Guaranty if the Company becomes a debtor in any proceeding under the U.S. Bankruptcy Code or any other applicable law.

2.6 *Agreement regarding Bankruptcy of Company.* So long as any Guaranteed Obligations are owed to the Beneficiary, the Guarantor may not, without the prior written consent of the Beneficiary, commence, or join with any other person in commencing, any bankruptcy, reorganization or insolvency proceeding against the Company.

ARTICLE 3 - REPRESENTATIONS AND WARRANTIES

The Guarantor hereby represents and warrants as follows:

3.1 *Organization.* The Guarantor is a [] duly organized, validly existing and in good standing under the laws of the state of [].

3.2 *Authorization; No Conflict.* The execution and delivery by the Guarantor of this Guaranty, and the performance by the Guarantor of its obligations hereunder (i) are within the Guarantor's [] powers, (ii) have been duly authorized by all necessary [] action, (iii) do not contravene its [] or any law or regulation applicable to or binding on the Guarantor or any of its properties and (iv) do not require the consent or approval of any person that has not already been obtained or the satisfaction or waiver of any conditions precedent to the effectiveness of this Guaranty that have not been satisfied or waived.

3.3 *Enforceability.* This Guaranty constitutes the legal, valid and binding obligation of the Guarantor enforceable against the Guarantor in accordance with its terms, except to the extent that such enforceability may be limited by applicable bankruptcy, insolvency, dissolution, reorganization, moratorium, liquidation or other similar laws affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

3.4 *No Bankruptcy Proceedings.* There are no bankruptcy proceedings pending or being contemplated by Guarantor or, to its knowledge, threatened against it.

3.5 *No Legal Proceedings.* There are no legal proceedings that would be reasonably likely to materially adversely affect Guarantor's ability to perform this Guaranty.

ARTICLE 4 - MISCELLANEOUS

4.1 *Continuing Guaranty; Assignment.* This Guaranty is a continuing guaranty and will (i) remain in full force and effect until all of the Guaranty Obligations have been satisfied, (ii) consistent with the terms hereof, apply to all Guaranteed Obligations whenever arising, (iii) be binding upon the Guarantor, its successors and assigns, and (iv) inure to the benefit of, and be enforceable by, the Beneficiary and its permitted assignees hereunder. The Guarantor may not assign or delegate its rights or obligations under this Guaranty without (x) the prior written consent of the Beneficiary, which consent may be withheld in the Beneficiary's sole discretion, and (y) a written assignment and assumption agreement in form and substance reasonably acceptable to the Beneficiary. Without prejudice to the survival of any of the other agreements of the Guarantor under this Guaranty, the agreements and obligations of the Guarantor contained in Section 4.4 (with respect to enforcement expenses) and the last sentence of Section 2.2(a) will survive the payment in full of the Guaranteed Obligations and all of the other amounts payable under this Guaranty.

4.2 *Notices.* All notices, requests, demands and other communications that are required or may be given under this Guaranty will be in writing and will be deemed to have been duly given when actually received if (a) personally delivered; (b) transmitted by facsimile, electronic or digital transmission method; or (c) if sent by certified or registered mail, return receipt requested. In each case notice will be sent:

- (i) if to the Beneficiary:

[Company, address, c/o person]
- (ii) if to the Guarantor:

[Company, address, c/o person]

or to such other place and with such other copies as the Beneficiary or the Guarantor may designate as to itself by written notice to the other pursuant to this Section 4.2. Delivery by facsimile or other electronic or digital method of an executed counterpart of a signature page to any amendment or waiver of any provision of this Guaranty will be effective as delivery of an original executed counterpart thereof.

4.3 *Delay and Waiver.* No failure on the part of the Beneficiary to exercise, and no delay in exercising, any right hereunder will operate as a waiver thereof; nor will any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

4.4 *Expenses.* The Guarantor agrees to pay or reimburse the Beneficiary and any permitted assignees of the Beneficiary on demand for its reasonable costs, charges and expenses (including reasonable fees and expenses of counsel) incurred in connection with the enforcement of this Guaranty or occasioned by any breach by the Guarantor of any of its obligations under this Guaranty, including without limitation any actions taken in any bankruptcy or insolvency proceedings, should Guarantor be required to pay under this Guaranty.

4.5 *Entire Agreement; Amendments; Other Guarantees.* This Guaranty and any agreement, document or instrument attached hereto or referred to herein integrate all the terms and conditions mentioned herein or incidental hereto and supersede all oral negotiations and prior writings in respect to the subject matter hereof. In the event of any conflict between the terms, conditions and provisions of this Guaranty and any such agreement, document or instrument, the terms, conditions and provisions of this Guaranty will prevail. This Guaranty may only be amended or modified by an instrument in writing signed by each of the Guarantor and the Beneficiary and any permitted assignees of the Beneficiary. Without limiting the foregoing: (i) this Guaranty will not release, modify, revoke or terminate any other guaranty heretofore, now or hereafter executed by the Guarantor; nor will any other guaranty heretofore, now or hereafter executed by the Guarantor release, modify, revoke or terminate this Guaranty, and (ii) all of the Guarantor's liabilities and obligations and the Beneficiary's rights and remedies under this Guaranty are in addition to and cumulative with those under any other guaranty executed by the Guarantor in favor of the Beneficiary or any affiliate of the Beneficiary on or about the date hereof or at any other time.

4.6 *Headings.* The headings of the various Sections of this Guaranty are for convenience of reference only and will not modify, define or limit any of the terms or provisions hereof.

4.7 *Governing Law; Consent to Jurisdiction.* (a) This Guaranty will be construed and interpreted, and the rights of the parties determined, in accordance with the law of the state of Georgia, without giving effect to principles of conflicts of law that would require the application of the laws of another jurisdiction.

(b) Each party hereto irrevocably and unconditionally (i) agrees that the exclusive jurisdiction for any suit, action or other legal proceeding arising out of this Guaranty will be brought in the United States District Court for the Northern District of Georgia or in any Georgia State court of general jurisdiction in Fulton County, Atlanta, Georgia; (ii) consents to the jurisdiction of any such court in any such suit, action or proceeding; and (iii) waives any objection that such party may have to the laying of venue of any such suit, action or proceeding in any such court.

(c) THE GUARANTOR HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO, THIS GUARANTY, OR THE ACTIONS OF THE BENEFICIARY IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE OR ENFORCEMENT THEREOF.

4.8 *Severability.* Any provision of this Guaranty that is prohibited or unenforceable will be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof.

IN WITNESS WHEREOF, the Guarantor has caused this Guaranty to be duly executed and delivered by its duly authorized representative as of the day and year first above written.

[Company]

Attest: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

APPENDIX I

RESERVED

APPENDIX J

GUARANTEED HEAT RATES

Energy produced by Seller and delivered to Buyer from synchronization to Minimum Capacity and from Minimum Capacity to offline will be paid for at the Guaranteed Heat Rate at Minimum Capacity.

A. **[REDACTED]**

B. **[REDACTED]**

APPENDIX K

RESERVED

APPENDIX L

**CERTIFICATION OF WHETHER THE AGREEMENT
WILL REQUIRE DECONSOLIDATION BY SELLER
WITH RESPECT TO VARIABLE INTEREST ENTITY**

AGREEMENT – Power Purchase Agreement dated _____, 20__ between Georgia Power Company (“Buyer”), and _____ (“Seller”) (the “Agreement”). Capitalized terms used herein shall have the meaning assigned in the Agreement.

The undersigned individual, being the Chief Financial Officer of Seller¹ and having responsibilities for financial accounting matters associated with the Agreement, hereby certifies that the Agreement WILL (____)/WILL NOT (____) require Seller, at any time over the Agreement Term and based on U.S. Generally Accepting Accounting Principles in effect as of the date of this certificate, to deconsolidate on its books and records any assets, liabilities, cash flow, profits or losses of Seller as a result of the Georgia Power being determined to be the Primary Beneficiary. My determination of the most likely accounting treatment of this transaction results from my personal consideration after necessary discussions with relevant officers of Accounting Standards Codification (“ASC”) Topic 810, Consolidation, and the following factual matters:

- 1) Seller’s accounting policies, procedures, and internal controls are sufficient to provide Georgia Power with an appropriate basis for confirming the information contained herein.

_____ Yes
_____ No (please explain)

Explain: _____

- 2) Seller qualifies for one of the scope exceptions listed in paragraphs 810-10-15-12 and 810-10-15-17 of ASC Topic 810.

_____ Yes (please explain)
_____ No

Explain: _____

- 3) Seller is financed with equity equal to or greater than ten percent (10%) of Seller’s total assets per paragraphs 810-10-25-45 to 47 of ASC Topic 810.

_____ Yes

¹ If Seller’s business structure does not designate an officer with this or a similar title, Seller must provide written documentation affirming the authority of the individual who attests to this certification.

_____ No

- 4) The Agreement revenues correlate with fluctuations in Seller's operating cash flows (operating expenses).

_____ Yes (please explain)

_____ No

Explain: _____

- 5) The Agreement reduces variability in the fair value of Seller's assets, for example by absorbing fuel or electricity price risk.

_____ Yes (please explain)

_____ No

Explain: _____

- 6) The Agreement Term is for greater than 50% of the remaining economic life of the unit.

_____ Yes

_____ No

- 7) The Agreement is for substantially all of the proposed Unit's productive output.

_____ Yes

_____ No

- 8) Georgia Power and/or its affiliates participated significantly in the design or redesign of the Facility.

_____ Yes

_____ No

- 9) The percentage that the Facility's fair value represents, of the fair value of the proposed Seller's total assets, is approximately;

_____ %

- 10) The Facility is essentially the only source of payment for specified liabilities or specified other interest (there is specific debt associated with the Facility).

_____ Yes

_____ No

Confirmation

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

By: _____

Title: _____

Company: _____

Date: _____

APPENDIX M

CERTIFICATION AS TO CERTAIN FACTUAL STATEMENTS RELATED TO THE PROPOSED TRANSACTION WITH RESPECT TO FINANCE LEASE TREATMENT

(While completion of this certification is a requirement, the assertions herein are relevant only if a lease is identified in accordance with Accounting Standard Codification (“ASC”) Topic 842, Leases.)

AGREEMENT – Agreement for the Purchase of Energy, Environmental Attributes and Electrical Products from a Renewable Resource dated _____, 20__ between Georgia Power Company (“**Georgia Power**”) and _____ (“**Seller**”) (the “**Agreement**”). Capitalized terms used herein will have the meaning assigned in the Agreement.

The undersigned individual, being the Chief Financial Officer¹ of _____ and **[having responsibilities/based on information I have received from individuals responsible]** for financial accounting matters arising from this Agreement, based on my personal consideration after necessary discussions with relevant officers of factual matters hereby certifies the following based on my understanding of ASC Topic 842, Leases.

1. The Agreement DOES (____)/DOES NOT (____) transfer ownership of the Unit at or by the end of the Agreement Term as described in paragraph 842-10-25-2(a) of ASC Topic 842.
2. The Agreement DOES (____)/DOES NOT (____) contain a purchase option for the Unit that is reasonably certain to be exercised as described in paragraph 842-10-25-2(b) of ASC Topic 842.
3. The Agreement Term IS (____)/IS NOT (____) equal to the major part or seventy-five percent (75%) or more of the estimated remaining economic life of the Facility offered as described in paragraph 842-10-25-2(c) of ASC Topic 842.
4. The present value of the minimum lease payments allocated to the Facility at the beginning of the Agreement Term IS (____)/IS NOT (____) greater than or equal to substantially all or ninety percent (90%) of the fair value of the Facility offered as described in paragraph 842-10-25-2(d) of ASC Topic 842.
5. The present value of the minimum Agreement payments allocated to the Facility at the beginning of the Agreement Term IS (____)/IS NOT (____) greater than or equal to substantially all or ninety percent (90%) of the fair value of the Facility offered as described in paragraph 842-10-25-2(d) of ASC Topic 842.
6. The Facility IS (____)/IS NOT (____) of such a specialized nature that it is expected to have no alternative use to the lessor at the end of the Agreement Term as described in paragraph 842-10-25-2(e) of ASC Topic 842.

If I have responded in the affirmative to one or more of the above factual statements, I have attached a good faith statement of the dollar amounts that the Company would be required to capitalize and the residual value of the Facility at the end of the Term.

¹ If Seller’s business structure does not designate an officer with this or a similar title, Seller must provide written documentation affirming the authority of the individual who attests to this certification.

The Seller understands that the Buyer will rely upon this certification, and that the Buyer may require further documentation supporting this certification.

Confirmation

The above information (and any attachment) agrees with Seller's records as of the date hereof.

By: _____

Title: _____

Company: _____

Date: _____

APPENDIX N

TRANSFER OF INFORMATION ACKNOWLEDGEMENT

_____ (“**Seller**”) and Georgia Power Company (“**Georgia Power**”) have entered into that certain Power Purchase Agreement (“**Agreement**”) dated as of _____, 202___. The Agreement contemplates that certain information that could be considered to be non-public information that potentially has implications under the Federal Energy Regulatory Commission’s Standards of Conduct will be provided by Seller to Georgia Power and/or Southern Company Services, Inc. as agent for the transmission owning subsidiaries of Southern Company (Alabama Power Company, Georgia Power Company, and Mississippi Power Company). Seller acknowledges that such information is being provided for the purposes of operational implementation and administration of the Agreement (which includes conducting Georgia Power Company’s system operations and dispatch functions) and will be utilized by individuals in both Transmission/Distribution and energy affiliate/wholesale marketing unit functions under the Standards of Conduct.

The individuals within the Southern Company organizations indicated above may only use the information for the purpose of implementing and administering the Agreement (including conducting Georgia Power’s system operations and dispatch functions). Seller understands that such information will not be used or disseminated in any manner contrary to the confidentiality provision(s) in the Agreement or in violation of the Federal Energy Regulatory Commission’s Standards of Conduct. Seller’s provision of this information has not been and is not being provided in exchange for any preferential treatment, either operational or rate-related, by Southern Company Services, Inc. or by any of the transmission-owning subsidiaries of Southern Company. Seller also acknowledges that Seller is not providing the information under duress or coercion. In accordance with requirements of the Federal Energy Regulatory Commission, Southern Company Services, Inc. may post on OASIS the fact of Seller’s consent to the provision of the information specified above to certain employees that may be employed within organizational units deemed to be energy affiliates/wholesale marketing units under the Standards of Conduct.

Acknowledged on behalf of Seller:

By: _____

Name: _____

Title: _____

Date: _____