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CAPACITY SALE AND TOLLING AGREEMENT

between

ENTERGY SERVICES, INC.,

as Agent for the

ENTERGY OPERATING COMPANIES,

and

[SELLER]

dated as of \_\_\_\_\_, 200\_

Notice to Bidders: This Model Capacity Sale and Tolling Agreement has been prepared assuming that the Purchased Capacity is the entire Capacity of a generating Unit or Units. To the extent that a Bidder shall propose an amount of Purchased Capacity not constituting the entire output of a generating Unit or Units, appropriate adjustments shall be made.

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## CAPACITY SALE AND TOLLING AGREEMENT

THIS CAPACITY SALE AND TOLLING AGREEMENT (together with the Schedules hereto, this “Agreement”), made and entered into this \_\_\_ day of \_\_\_\_\_ 200\_, by and between [Seller], a \_\_\_\_\_ organized and existing under the laws of the State of \_\_\_\_\_, (the “Seller”), and Entergy Services, Inc., a corporation organized and existing under the laws of the State of Delaware, as agent for the Entergy Operating Companies (as hereinafter defined) (“ESI”) (each of Seller and ESI are hereinafter sometimes referred to as a “Party” and sometimes collectively referred to as the “Parties”).

### ARTICLE I DEFINITIONS

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

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

1.2 [*Actual Available Purchased Capacity* means, in respect of each Contract Year, an amount calculated in accordance with the following formula:

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

Where:

$PC_{AA}$  = Aggregate Purchased Capacity that is actually available in a Contract Year

$N$  = Number of hours in a Contract Year

$MW_N$  = Purchased Capacity that is actually available in each hour of a Contract Year, not to exceed Summer Dependable Capacity] *if*

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*applicable, and in such case only to Limited Dispatch MUCPA Product B]*

1.3 *Affected Capacity* means any portion of the Purchased Capacity that is unavailable or limited due to a Force Majeure event [(which shall not exceed \_\_\_ hours in a Contract Year)] or Planned Maintenance [(which shall not exceed \_\_\_ hours in a Contract Year)].

1.4 *Affiliate* means, with respect to any specified Person, any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, “control” (including, with correlative meanings, the terms “controlling,” “controlled by” and “under common control with”), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise.

1.5 [*Annual Capacity Factor* means, for any Contract Year and expressed as a percentage or decimal, as applicable, the total Energy that is Scheduled and Dispatched by ESI divided by the Actual Available Purchased Capacity; provided, however, that if, in any hour, the Energy that is actually Scheduled and Dispatched is less than the Purchased Capacity specified in the Scheduling and Dispatch Notice and Seller is the Approval Entity, the Purchased Capacity specified in the Scheduling and Dispatch Notice shall be deemed to be the total Energy that is Scheduled and Dispatched by ESI.] *[if applicable, and in such case only to Limited Dispatch MUCPA Product B]*

1.6 *Approval Entity* has the meaning specified in Section [7.1(c)].

1.7 *Approvals* means all approvals, permits, licenses, consents or other authorizations from, or filings with, Governmental Authorities or other third parties.

1.8 *Availability* means, in any hour and expressed as a percentage or decimal, as applicable, the Purchased Capacity that is actually available (not to exceed the Summer Dependable Capacity), divided by the Summer Dependable Capacity minus the Affected Capacity.

1.9 *Availability Notice* means a Notice delivered in accordance with and meeting the requirements of Section [4.2].

1.10 *Availability Requirement* means, in respect of each Month, the Monthly Availability specified in Section [4.1], expressed as a percentage or decimal, as applicable.

1.11 *Bankrupt* means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for

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the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

1.12 *Beginning Requested Dispatch Hour* means the first clock hour, or portion of a clock hour, during which the Facilities are Scheduled to deliver Energy to ESI during a Dispatch Period.

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

1.14 *Business Day* means any day on which Federal Reserve member banks in New York, New York are open for business; and a Business Day shall commence at 8:00 a.m. and close at 5:00 p.m., local time, at the location of each Party's principal place of business, or at such other location as the context may require.

1.15 *Capacity* means the megawatt output level that the Facilities, or the components of equipment thereof, are capable, as of a given moment, of continuously producing and making available at the Delivery Point, taking into account the operating condition of the equipment at that time, the auxiliary loads, and other relevant factors.

1.16 *Capacity Payment* means the payment to be made by ESI to Seller in respect of the Purchased Capacity pursuant to Section [5.1].

1.17 *Capacity Payment Discount* means, in respect of each Month, if the Monthly Availability shall be less than the Availability Requirement, the amount computed in accordance with the formula therefor set forth in Schedule [5.5].

1.18 [*Capacity Shortfall Payment* means the payment to be made by ESI to Seller in the event that ESI shall fail to Schedule and Dispatch Energy sufficient to achieve an Annual Capacity Factor of [\_\_\_%]] [*if applicable, and in such case only to Limited Dispatch MUCPA Product B*]

1.19 [*Cash Flow Available for Debt Service* means for any period, calculated on a cash basis, all Project Revenues received or projected to be received, as the case may be, by Seller during the relevant period, minus all Operation and Maintenance Costs paid or projected to be paid during such period.]

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

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

1.22 *Contract Year* means, as applicable, each period of twelve months beginning on May 1, 2003, May 1, 2004, and May 1, 2005, and ending on April 30, 2004, April 30, 2005, and April 30, 2006, respectively.

1.23 *Control Area* means an electric power system or combination of electric power systems to which a common automatic generation control scheme is applied in order to: (1) match, at all times, the power output of the generators within the electric power system(s) and Capacity and Energy purchased from entities outside the electric power system(s), with the load within the electric power system(s); (2) maintain scheduled interchange with other Control Areas, within the limits of Acceptable Electrical Practices; (3) maintain the frequency of the electric power system(s) within reasonable limits in accordance with Acceptable Electrical Practices; and (4) provide sufficient generating capacity to maintain operating reserves in accordance with Acceptable Electrical Practices.

1.24 *Control Area Operator* means the Person(s) in control of the physical operation and responsible for fulfilling the duties necessary to operate a Control Area.

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

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

1.27 [*Credit Agreement* means any credit agreement and all related collateral security documentation, if any, relating to (a) any indebtedness of Seller or (b) any indebtedness of any Affiliate of Seller secured by the assets of Seller or by which the assets of Seller may be encumbered, in either case the proceeds of which, directly or indirectly, are used to finance the acquisition or construction of the Facilities.]

1.28 *Day or day* means a period of twenty four (24) consecutive hours, beginning at 12:01 a.m., local time, at the Delivery Point; provided, however, that on the Day on which Central Daylight Time becomes effective, the period shall be twenty-three (23) consecutive hours, and on the Day on which Central Standard Time becomes effective, the period shall be twenty-five (25) consecutive hours; provided, however, if FERC or any other Governmental Authority having jurisdiction should modify the beginning time for a day, the beginning and ending time for a Day under this Agreement shall be revised to correspond to the time established by FERC or such Governmental Authority, as the case may be.

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1.29 *Debt Service* means for any period, the sum that must be paid for such period pursuant to the applicable financing documents for (a) principal payments on the loans made pursuant to such financing documents, (b) interest payments on such loans (net of payments under any interest rate protection agreements), (c) withholding taxes and breakage costs and (d) fees required to be paid to the Lenders pursuant to such financing documents.

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

1.31 *Delivery Anniversary Date* means May 1, 2004, and each anniversary thereafter.

1.32 *Delivery Point* means each of the physical point(s) set forth on Schedule [B], as the same may be amended or supplemented from time to time, at which Energy, Gas, fuel oil or other fuel is, or is deemed to be, delivered or provided and measured, as required by the context.

1.33 *Delivery Term* means the term set forth in Section [3.1].

1.34 *Dispatch* means the dispatch of Energy or Other Associated Electric Products associated with the Purchased Capacity.

1.35 *Dispatch Period* means a period of time during which ESI has requested delivery of Energy or Other Associated Electric Products starting with a Beginning Requested Dispatch Hour and concluding with an Ending Requested Dispatch Hour. A Dispatch Period may continue for more than one calendar day.

1.36 *Dollars* or \$ means United States dollars.

1.37 *Early Termination Date* has the meaning set forth in Section [19.2(a)].

1.38 *Effective Date* means the date of this Agreement.

1.39 *Electric Metering Equipment* means electric meters and associated equipment including, without limitation, metering transformers, telemetric devices and meters for measuring kilowatt-hours and reactive volt-ampere hours, including check meters, if any, utilized in determining the amount of Energy delivered or provided by Seller at the Delivery Point, but shall not include any check meters that ESI may install own and maintain.

1.40 *Ending Requested Dispatch Hour* means the last clock hour, or portion of a clock hour, during which the Facilities are Scheduled to deliver Energy to ESI during a Dispatch Period.

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

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

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

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

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

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

1.47 *FERC* means the Federal Energy Regulatory Commission or any successor agency thereto.

1.48 *Force Majeure* means an event or circumstance which prevents a Party from performing its obligations under this Agreement, which event or circumstance was not reasonably anticipated as of the Effective Date, which is not within the reasonable control of or the result of the negligence of the Affected Party, and which, by the exercise of due diligence, the Affected Party is unable to overcome or avoid or cause to be avoided (including using reasonable efforts to procure fuel supply and transportation services from alternative sources). Notwithstanding the foregoing, a claim of Force Majeure may not be based, in whole or in part, on (a) Seller's increased costs of operating the Facilities, (b) Seller's ability to sell the Purchased Capacity or associated Energy or Fuel Conversion Services at a price greater than the price provided for in the Agreement, (c) curtailment by a Transmission Provider or Transmission Operator unless (i) the Affected Party has contracted for firm transmission with a Transmission Provider for the Purchased Capacity to be delivered to or received at the Delivery Point and (ii) such curtailment is due to "force majeure" or "uncontrollable force" or a similar term as defined under the Transmission Provider's tariff, or (d) failure or breakage of, or damage to, Seller's facilities or equipment not the direct result of acts of God, including but not limited to flood, drought, earthquake, storm, hurricane, tornado or lightning; epidemic; war; riot; civil disturbance; or sabotage; provided, however, that existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that a Force Majeure as defined in the first sentence hereof has occurred.

1.49 *Fuel Conversion Services* means operation of the Facilities by Seller to combust Gas and/or other fuel in order to generate and deliver Energy at the Delivery Point.

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

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

1.52 *Gas Metering Equipment* means Gas meters and associated equipment, including check meters, if any, utilized in determining the amount of Gas consumed by the Facilities, but shall not include any check meters that ESI may install, own and maintain.

1.53 *Governmental Authority* means any federal, foreign, state, local or municipal governmental body; any governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power; or any court or governmental tribunal.

1.54 [*Guarantor* means \_\_\_\_\_.]

1.55 [*Guaranty* means a Guaranty in the form attached hereto as Schedule [20.1].]

1.56 *Guaranteed Heat Rate Curve* means the amount of energy, expressed in Btu's per net kWh (HHV), specified in Schedule [6.1] hereto and adjusted for actual ambient operating conditions.

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

1.58 *Hourly Price of Gas* means, in respect of each hour of a Day, the price, expressed in \$ per MMBtu of Gas, published by Platts *Gas Daily* in its "Daily Price Survey" under the column heading "Midpoint" for Gas to flow at [*"Henry Hub" or "Houston Ship Channel" (select one)*] for the applicable Day.

1.59 *Imbalance Charges* shall mean any penalties, fees or charges assessed by (i) a Transmission Provider or a Control Area Operator for failure to satisfy requirements for balancing of electric energy receipts and deliveries or loads and generation, including, without limitation, any amounts payable by Seller pursuant to the Generator Imbalance Agreement relating to the Facilities or (ii) a Transporter for failure to satisfy the Transporter's balance and/or nomination requirements.

1.60 *Interconnection Facilities* means all structures, facilities, equipment, auxiliary equipment, devices and apparatus directly or indirectly required and installed to interconnect and deliver Energy from the Facilities to the Delivery Point as the same may be defined in the relevant Interconnection Agreement, and including, but not limited to, electric transmission and/or distribution lines, transformation, switching, Electric Metering Equipment, any other metering equipment, communications, and safety equipment, including, but not limited to, equipment required to protect (i) the electrical system to which the Facilities are connected and its customers from faults occurring at the Facilities, and (ii) the Facilities from faults occurring

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on the electrical system to which the Facilities are connected or on other electrical systems to which such electrical system is directly or indirectly connected.

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

1.62 *kW* means kilowatt.

1.63 *kWh* means kilowatt-hour.

1.64 *Lender* means any Person which provides debt or equity capital, loans, credit or credit support, acts as counterparty on any interest rate or currency hedging arrangements, or provides other financing, to Seller in respect of the acquisition or construction, of the Facilities; such term also includes any such Person which acts in the capacity of Lender in connection with any refinancing by Seller of such financing.

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

1.66 *MMBtu* means one million Btus.

1.67 *Month* or *month* means the period beginning at 12:01 a.m., local time, on the first Day of each calendar month and ending at the same hour on the first Day of the next succeeding calendar month.

1.68 *Monthly Availability* means, with respect to any Month and expressed as a percentage or decimal, as applicable, the average of the hourly Availabilities for such Month.

1.69 *MW* means megawatt.

1.70 *MWh* means megawatt-hour.

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

1.72 *Notice* means a communication from one Party to the other Party conforming to the requirements of Article [XXII].

1.73 *Oil Metering Equipment* means all meters and associated equipment, including check meters, if any, utilized in determining the amount of fuel oil utilized by the Facilities.

1.74 *Operation and Maintenance Costs* means, for any period, all costs and expenses incurred to own, operate or maintain the Facilities and provide and deliver the Purchased

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Capacity and associated Energy, Other Associated Electric Products and Fuel Conversion Services, including, but not limited to (i) payments due under any of the Project Documents, (ii) salaries, employee compensation and other labor costs, (iii) costs for procurement, storage or other costs of materials, fuel, parts, equipment, supplies, inventories, consumables, utility services and emission credits, (iv) premiums for insurance, (v) Taxes, (vi) costs of settlement of pending or threatened claims or any related fines, judgments or other costs (including legal fees) associated with such claims, (vii) maintenance, operation and repair costs, (viii) capital expenditures, including all costs of major inspections, unscheduled or scheduled major maintenance of the Facilities and all work on account of extraordinary equipment failures and contingencies (including overhaul costs (other than overhaul costs paid from deposits to any major maintenance reserve account)), in each case to the extent such costs are not paid for by proceeds from insurance, (ix) payments under operating leases, (x) legal, accounting and other professional fees, (xi) costs and fees incurred to obtain and maintain all Approvals, (xii) insurance costs, (xiii) payments with respect to Debt Service and (xiv) amounts deposited in any reserve account in respect of the foregoing. Operation and Maintenance Costs do not include non-cash charges, including depreciation or non-cash obsolescence charges or reserves therefor, amortization of intangibles or other similar bookkeeping entries.

1.75 *Other Associated Electric Products* means all of the services and products associated with capabilities or operational attributes or regulatory treatment of a generating unit, including but not limited to the capability to provide ancillary services, reserves, operational functions (e.g., black start capability), receipt or allocation of emissions allowances and other services and products.

1.76 *Outages* means interruption or reduction in the operation of the Facilities, whether due to maintenance, the curtailment of transmission service, any order or directive of the Transmission Operator or otherwise.

1.77 [*Performance Assurance* means collateral in the form of either cash, letter(s) of credit, or other security reasonably acceptable to the requesting Party.]

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

1.79 *Planned Maintenance* means the removal of the Facilities from service to perform work on specific components that is scheduled in advance and has a predetermined start date and duration (e.g., annual overhaul, inspections, testing).

1.80 *Potential Event of Default* means an event which, with notice or passage of time or both, would constitute an Event of Default.

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

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1.82 [Project Revenues means, for any period, the sum of all amounts received by Seller pursuant to or in connection with (a) the Project Documents or (b) the ownership, use or operation of the Facilities, including any interest income, but not including amounts received from insurance proceeds (other than proceeds from business interruption insurance which shall constitute Project Revenues), condemnation proceeds or indemnities.]

1.83 Protective Apparatus means such equipment and apparatus, including, but not limited to, protective relays, circuit breakers and the like, necessary or appropriate to isolate the Facilities from the electrical system to which they are connected consistent with Accepted Electrical Practices.

1.84 Purchased Capacity means all Capacity of the Facilities (less station power) as provided or delivered pursuant to Section [2.1].

1.85 Purchasing-Selling Entity means an entity that is eligible to purchase or sell Capacity or Energy and reserve transmission services under the Transaction Information System.

1.86 Rolling 12 Month Availability means, as of the end of any Month, the average of the hourly Availabilities from and including the first hour in the twelve (12) consecutive Months during the Delivery Term ending with such Month to and including the last hour of such Month; provided, however, that the Availability during any Month not within the Delivery Term shall be disregarded for this purpose, and for the first Contract Year there shall be no measurement of the Rolling 12 Month Availability until the end of the sixth (6th) Month of such Contract Year, at which time and thereafter for the remainder of the first Contract Year, the average shall be determined based on the actual number of Months then elapsed during the Delivery Term.

1.87 Schedule or Scheduling means the actions of Seller, ESI and/or their designated representatives, including each Party's Transmission Providers, if applicable, of notifying, requesting and confirming to each other the quantity of the Capacity and associated Energy or Other Associated Electric Products to be delivered on any given day or days (or in any given hour or hours) during the Delivery Term at a specified Delivery Point.

1.88 Scheduling and Dispatch Notice means a Notice delivered to Seller by or on behalf of ESI in accordance with and meeting the requirements of Section [7.1(c)].

1.89 Settlement Amount means, with respect to the Non-Defaulting Party, the Losses or Gains, and Costs, expressed in U.S. Dollars, which such party incurs as a result of the termination of this Agreement pursuant to Article [XIX].

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

1.91 Specified Tag Agent means Open Access Technology International, Inc. or any other Tag Agent, as designated by ESI in its sole and absolute discretion.

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1.92 *Start-up* means the action of bringing a Unit from Shutdown to synchronization at its minimum load and the unconditional release of such Unit for ramping to the Scheduled Capacity level.

1.93 *Start-up Gas* has the meaning specified in Section [6.2(b)].

1.94 *Start-up Notification Lead Time* means the time period required by Seller to permit startup of the Facilities as Scheduled for a Dispatch Period under normal equipment conditions as set forth on Schedule [5.3].

1.95 *Start-up Payment* means a payment to Seller pursuant to Section [5.3] in respect of each Cold Start or Hot Start of each Unit.

1.96 *Summer Dependable Capacity* means \_\_\_\_\_ MW.

1.97 *Summer Season* means, for any given year, the Months of June, July and August.

1.98 *Tag* means the collection of information in the electronic request for an Energy Schedule and subsequent responses utilized in the Transaction Information System implemented by NERC.

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

1.100 *Tag Agent Service* means the software component of Tag processing that is used by a Purchasing-Selling Entity to generate and submit Tags to a Tag Authority Service.

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

1.102 *Tag Author* has the meaning specified in Section [7.1(c)].

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

1.104 *Taxes* means any and all foreign, federal, state, local, and/or municipal taxes, including, but not limited to, ad valorem, property, occupation, severance, emissions, generation, first use, conversion, processing, Btu or energy, transmission, utility, gross receipts, privilege, sales, use, excise, transaction, import duties and charges, customs broker fees and other costs of importation, non-U.S. value-added taxes, other non-U.S. taxes or charges, and other taxes, governmental charges, licenses, fees, permits and assessments, or increases in any of the foregoing, now existing or otherwise applicable, including any interest, penalty, or addition thereto, whether disputed or not, on any item that is the subject of this Agreement, other than taxes based on net income or net worth.

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1.105 *Transaction Information System* means a process implemented by NERC to allow the electronic communication of a request for, and securing the approval and recording of, an Energy transaction via the Internet.

1.106 *Transmission Operator* means any transmission owner, independent system operator, regional transmission operator, or other transmission operator or any successor entity from time to time having authority to control the transmission Control Area to which the Facilities are interconnected or any other relevant Control Area.

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

1.108 *Transporter* means any pipeline on which any Gas is transported under this Agreement to the applicable Delivery Point.

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

1.110 *Unit Contingent* or reference to *Unit Contingency* means that the Capacity and associate Energy is intended to be supplied from the Facilities and Seller's failure to deliver is excused to the extent specified components of the Facilities (including all facilities on Seller's side of the Delivery Point) shall not, for any reason, be available to produce and deliver the Purchased Capacity at the Delivery Point (in any case not attributable to the fault or negligence or failure to perform maintenance in accordance with Accepted Electrical Practices by Seller or not otherwise avoidable by Seller's exercise of due diligence).

1.111 *Variable Payment* means the payment to be made by ESI to Seller in respect of Energy Scheduled and Dispatched by ESI and delivered during the relevant Month pursuant to Section [5.2].

1.112 *Winter Season* means, for any given year, the Months of December, January, and February.

## ARTICLE II PURCHASE AND SALE OF CAPACITY AND ENERGY

2.1 Capacity. Subject to the terms and conditions herein, including, without limitation, Section [2.4], during the Delivery Term Seller shall sell and make available to ESI on an exclusive basis, and ESI shall purchase and pay for, the Purchased Capacity.

2.2 Fuel Conversion Services. Subject to the terms and conditions herein including, without limitation, Section [2.4], during the Delivery Term Seller shall perform for ESI, on an exclusive basis, and ESI shall purchase and pay for, Fuel Conversion Services.

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2.3 Other Associated Electric Products. If at any time during the Delivery Term, ESI or any Affiliate of ESI shall elect or be required to purchase Other Associated Electric Products, then ESI shall have the right upon notice to Seller to purchase all Other Associated Electric Products related to the Purchased Capacity. The compensation to Seller for such sale of Other Associated Electric Products, if elected or required by ESI, is included in the Capacity Payment and no further amount shall be payable.

2.4 Priority of Transaction; Firm Obligation to Operate. (a) The relationship between ESI and Seller with respect to the Purchased Capacity and associated Energy and Other Associated Electric Products and the performance of Fuel Conversion Services is exclusive. Seller shall not offer, sell or make available any Purchased Capacity, associated Energy or Other Associated Electric Products, perform Fuel Conversion Services, or Schedule and Dispatch any of the Purchased Capacity, associated Energy or Other Associated Electric Products to or for any Person other than ESI or its successors or permitted assigns. Seller agrees that, notwithstanding the Unit contingent nature of the sale of the Purchased Capacity, associated Energy, Other Associated Electric Products or the performance of Fuel Conversion Services under this Agreement, it will not curtail or otherwise reduce deliveries of the Purchased Capacity, associated Energy, Other Associated Electric Products or the performance of the Fuel Conversion Services in order to make other sales of Capacity, Energy, Other Associated Electric Products or performance of the Fuel Conversion Services from the Facilities.

(b) Seller shall, regardless of whether the Availability shall be, for any period, at, above or below such the Availability Requirement, continue to operate the Facilities to provide the Purchased Capacity and associated Energy and Other Associated Electric Products and perform the Fuel Conversion Services in all hours in which Scheduled and Dispatched by ESI.

(c) Seller's obligation to sell and make available to ESI the Purchased Capacity and associated Energy and Other Associated Electric Products and to perform the Fuel Conversion Services shall be on a Unit Contingent basis. The burden of establishing the existence and extent of any Unit Contingency shall be on Seller.

### ARTICLE III DELIVERY TERM

3.1 Delivery Term. This Agreement shall be effective as of the Effective Date. The Delivery Term of this Agreement shall commence on May 1, 2003 and continue until April 30, 200\_. This Agreement shall terminate automatically at the end of the Delivery Term, unless otherwise agreed by the Parties, and neither ESI nor Seller shall have any further liability or obligation to the other hereunder, except for obligations or duties that accrued prior to such termination or those obligations that survive in accordance with Section [24.1].

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ARTICLE IV  
AVAILABILITY

4.1 Availability Requirement. The Availability Requirement during the Summer Season, Winter Season and other Months shall be 98.00%, 98.00% and 95.00%, respectively. The Monthly Availability shall not be less than the Availability Requirement for any Month.

4.2 Availability Notice. Seller shall furnish to ESI by electronic mail or other electronic transmission acceptable to ESI in its reasonable discretion an Availability Notice substantially in the form set forth in Schedule [4.2], which shall set forth (i) the actual Availability per hour, expressed in MW, of the Purchased Capacity not to exceed the Purchased Capacity, and not to be less than the minimum load [on automatic generating control], and/or (ii) any Outages, Force Majeure events, deratings or other events that would reduce or interrupt any Schedule and Dispatch of Energy to ESI or cause the controlling Availability Notice to be inaccurate in any material respect and a description of the circumstances thereof, in the case of clause (i) at or before [8:00] a.m. CPT on the Business Day immediately prior to the first Day to which such Availability Notice shall relate, and in the case of clause (ii) promptly after the occurrence of the events described therein. Such Availability Notice shall be effective until delivery of a subsequent Availability Notice.

ARTICLE V  
PRICING

5.1 Capacity Payment. For each Month during the Contract Year, ESI shall pay Seller the Capacity Payments set forth in Schedule [5.1] hereto. ESI shall pay the Capacity Payments monthly in arrears.

5.2 Variable Payment. For each Month during the Contract Year, in respect of each Unit, ESI shall pay Seller the Variable Payment set forth on Schedule [5.2] hereto. ESI shall pay the Variable Payment monthly in arrears.

5.3 Start-up Payment. In respect of each Cold Start and Hot Start of each Unit following a Shutdown of such Unit required by a Scheduling and Dispatch Notice in excess of an aggregate of [104]/[52] for each Contract year, ESI shall pay the applicable Start-up Payment set forth in Schedule [5.3] hereto. All costs in respect of any Cold Start or Hot Start not following a Shutdown shall be for the account of Seller. ESI shall make the payments pursuant to this Section [5.3] monthly in arrears.

5.4 All Payments Subject to Set-off. All Capacity Payments, Variable Payments and Start-up Payments shall be, notwithstanding any provision of this Agreement to the contrary, subject to ESI's rights of set-off provided for in Section [19.2].

5.5 Capacity Payment Discount. If the Monthly Availability shall have been, in any Month, less than the Availability Requirement for such Month, the Capacity Payment payable by

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ESI in respect of such Month shall be adjusted downward by the Capacity Payment Discount, as calculated in respect of such Month. If the adjustment of the Capacity Payment in respect of any Month exceeds the Capacity Payment for such Month, there shall be no Capacity Payment in respect of such Month, and ESI shall be entitled to no other adjustment as a result of such Availability shortfall.

5.6 Capacity Shortfall Payment. [In the event the Annual Capacity Factor for any Contract Year is less than [\_\_\_\_%], ESI shall pay Seller the applicable Capacity Shortfall Payment set forth in Schedule [5.6]]. *[if applicable, and in such case only to Limited Dispatch MUCPA Product B]*

## ARTICLE VI GUARANTEED HEAT RATE CURVE

6.1 Guaranteed Heat Rate Curve. Schedule [6.1] sets forth the Guaranteed Heat Rate Curve applicable, on a temperature adjusted basis, during all hours of Dispatch Periods. In the event that in any hour any Unit's actual operating performance, expressed in actual MMBtus of Gas consumed per MMkWh of delivered Energy, shall be at a heat rate greater than the heat rate derived from the Guaranteed Heat Rate Curve set forth in respect of such Unit in Schedule [6.1] hereto (adjusted for actual ambient temperature), Seller shall pay ESI an amount equivalent to the product of the quantity of Gas (expressed in MMBtus) consumed in such hour as a result of operation at a level in excess of the heat rate derived from the Guaranteed Heat Rate Curve (adjusted for actual ambient temperature) and the Hourly Price of Gas at the beginning of such hour. In the event that in any hour any Unit's actual operating performance, expressed in actual MMBtus of Gas consumed per MMkWh of Energy, shall be at a heat rate lower than the heat rate derived from the Guaranteed Heat Rate Curve (adjusted for actual ambient temperature), ESI shall pay Seller an amount equal to the product of the quantity of Gas (expressed in MMBtus) not consumed in such hour as a result of operation at a level below the heat rate derived from the Guaranteed Heat Rate Curve (adjusted for actual ambient temperature) and the Hourly Price of Gas at the beginning of such hour. To the extent that Seller shall declare any Unit in any Availability Notice to be available at less than its Summer Dependable Capacity, if ESI shall request Schedule and Dispatch of such Unit at the maximum Capacity level set forth in such Availability Notice, then the applicable heat rate for the Dispatch Period shall be such Unit's heat rate at its Summer Dependable Capacity. To the extent ESI shall Schedule and Dispatch such Unit at a Capacity level lower than the maximum set forth in an Availability Notice, the heat rate for such Dispatch Periods shall be the heat rate applicable to the actual Capacity level at which such Unit is Scheduled and Dispatched by ESI. All payments pursuant to this Article [VI] shall be paid monthly in arrears, subject to the rights of set off provided for in Section [19.2].

6.2 Start-up Gas and Start-up Energy. (a) ESI shall provide to Seller, pursuant to Section [7.2], the quantity of Gas actually consumed during the hours necessary to complete a Cold Start or Hot Start, as the case may be, of any Unit, not to exceed the maximum number of hours specified for a Cold Start or Hot Start of such Unit in Schedule [5.3].

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(b) In the event that the quantity of Gas consumed to complete a Cold Start or Hot Start, as the case may be, of any Unit (“Start-up Gas”) exceeds the amount of Gas specified in respect of such Unit for a Cold Start or Hot Start in Schedule [5.3] hereto, Seller shall pay ESI an amount equal to the product of (i) such excess quantity (expressed in MMBtus) and (ii) the Hourly Price of Gas at the beginning of such Cold Start or Hot Start.

## ARTICLE VII SCHEDULING AND DISPATCH

7.1 Scheduling and Dispatch Rights. (a) Consistent with the operational limits of the Facilities and the Availability of the Purchased Capacity, ESI shall at all times during the Delivery Term have the exclusive right (i) to Schedule and Dispatch all or a portion of the Purchased Capacity and associated Energy or Other Associated Electric Products and the performance of the Fuel Conversion Services, (ii) to utilize the Energy or Other Associated Electric Products associated with the Purchased Capacity and (iii) to use or resell the Purchased Capacity and the associated Energy, in each case subject to the terms and conditions specified herein.

(b) During the Delivery Term, Seller and ESI shall each (i) be registered as a Purchasing-Selling Entity and (ii) subscribe for Tag Agent Service with the Specified Tag Agent.

(c) ESI may from time to time Schedule and Dispatch all or a portion of the Purchased Capacity by providing to Seller a Scheduling and Dispatch Notice, substantially in the form set forth in Schedule [7.1(c)], and creating and submitting a Tag with the Tag Agent Service, substantially in the form set forth in Schedule [7.1(c)] or any other form designated by the Specified Tag Agent, or providing at least \_\_\_ [days’/hours’] advance written instructions to Seller to create and submit, and Seller shall create and submit in accordance with such instructions, a Tag with the Tag Agent Service (such Party submitting the Tag, the “Tag Author”, and such other Party, the “Approval Entity”) (i) in respect of the Scheduling and Dispatch of all or a portion of the Purchased Capacity for the immediately subsequent Month, at or before 9:30 a.m. CPT on the third Business Day immediately prior to the first Day of such Month (the “Month-ahead Schedule and Dispatch”), subject to adjustment pursuant to clauses (ii) and (iii) below, (ii) in respect of the Scheduling and Dispatch of all or a portion of the Purchased Capacity for the immediately subsequent Day, at or before 9:30 a.m. CPT on the immediately preceding Business Day prior to such Day, subject to adjustment pursuant to clause (iii) below, or (iii) in respect of the Scheduling and Dispatch of all or a portion of the Purchased Capacity for the immediately subsequent hour, 10 minutes before the applicable deadline specified by the Control Area Operator or established by the Transaction Information System prior to such hour subject, in the case of clause (iii), to the operational capabilities of the Facilities, including the ramping capabilities and other limitations thereof.

(d) After the creation or submission of the Tag (including any adjustment thereof) with the Tag Agent Service, the Tag Author shall notify the Approval Entity telephonically that the Tag has been created or adjusted. The Approval Entity shall then promptly verify the

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information set forth in the Tag and promptly notify the Tag Author telephonically of any discrepancies between the Tag and ESI's Scheduling and Dispatch Notice so that the Tag Author can adjust the Tag in accordance with ESI's Scheduling and Dispatch Notice. To the extent that the Approval Entity fails to timely notify the Tag Author of any discrepancies, the Approval Entity shall bear the risk of any errors associated with the Schedule and Dispatch of the Capacity and associated Energy specified in the Tag and appropriate adjustments shall be made with respect to the determination of the Annual Capacity Factor, Imbalance Charges and any other applicable provisions of this Agreement.

(e) A Tag shall be effective, and Seller shall operate the Facilities in accordance with the instructions therein, until its expiration thereof, the creation and submission of an adjustment to the Tag or the creation and submission of a subsequent Tag. If prior to the creation and submission of an adjustment to a Tag or the creation and submission of a subsequent Tag, Seller shall have delivered a new Availability Notice adjusting the Availability of the Purchased Capacity, the Schedule and Dispatch set forth in the previously created and submitted Tag shall be promptly adjusted by the Tag Author (i) to the Capacity level indicated in such subsequent Availability Notice if ESI's immediately preceding Scheduling and Dispatch Notice specified the Schedule and Dispatch of the full Purchased Capacity declared available in such immediately preceding Availability Notice, or (ii) at the lesser of the Capacity level indicated in such subsequent Availability Notice or the Purchased Capacity indicated in ESI's immediately preceding Scheduling and Dispatch Notice if ESI's immediately preceding Scheduling and Dispatch Notice specified the Schedule and Dispatch of the Purchased Capacity at less than the full Capacity declared available in the immediately preceding Availability Notice. Notwithstanding anything to the contrary contained herein, ESI may in its Scheduling and Dispatch Notice specify the Schedule and Dispatch of any and all Purchased Capacity that is actually available for a specified Dispatch Period (without reference or regard to any Capacity level indicated in an Availability Notice).

(f) ESI shall at all times during Delivery Term, in connection with the exercise of its rights and performance of its obligations under this Agreement, Schedule and Dispatch the Facilities and the performance of the Fuel Conversion Services and otherwise comply with its obligations under, and the directives of the Control Area Operator. Seller shall at all times during the Delivery Term, in connection with the exercise of its rights and performance of its obligations under this Agreement, operate and maintain the Facilities and otherwise perform its obligations under, and the valid directives of the Control Area Operator.

(g) The maximum number of Start-ups following a Shutdown that may be requested pursuant to a Scheduling and Dispatch Notice (provided that such Start-ups are attained) is set forth in Schedule [5.3]. When a Dispatch Period will involve a Cold Start or Hot Start, required to be paid for by ESI or counted against ESI's free Start-ups, ESI shall provide Seller with advance notice of at least the Start-up Notification Lead Time set forth in Schedule [5.3]. When a Dispatch Period, including revisions to a previously Scheduled Dispatch Period, does not involve a Cold Start or Hot Start required to be paid for by ESI or counted against ESI's free Start-ups [or when a Unit shall be operating with automatic generating control], ESI shall

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provide Seller with a Scheduling and Dispatch Notice in accordance with the procedures and timing requirements therefor set forth in this Section [5.3].

(h) Set forth in Schedule [5.3] are (i) the minimum run time (in hours), if any, if the Schedule and Dispatch of a Unit shall require a Start-up the cost of which is to be for Seller's account pursuant to Section [5.3], (ii) the minimum generation level (in MW), and (iii) the minimum downtime (in hours), if any, after a Shutdown of a Unit before the Unit may be restarted. ESI's Scheduling and Dispatch of the Facilities shall comply with the foregoing requirements.

7.2 Gas and Fuel Oil. (a) If ESI shall Schedule and Dispatch a Unit or Units, ESI shall deliver or cause to be delivered to Seller at the relevant Delivery Point all quantities of Gas and fuel oil required by Seller (i) to generate Energy during a Dispatch Period pursuant to the relevant Scheduling and Dispatch Notice and (ii) subject to Section [6.2], to perform Cold Start-ups and Hot Start-ups in response to the relevant Scheduling and Dispatch Notice following a Shutdown; provided, however, that any quantities of Gas or fuel oil delivered by ESI to Seller at the relevant Delivery Point that is not consumed in accordance with, or is otherwise consumed in contravention of, the relevant Scheduling and Dispatch Notice shall be for the account of, and any necessary reimbursements shall be made by Seller to, ESI. ESI shall deliver, or cause to be delivered, Gas at the Delivery Point at the pressures in effect from time to time in the pipeline(s) of the respective Transporter(s) immediately upstream of the Delivery Point. ESI shall at all times retain title to all quantities of Gas delivered to the Facilities pursuant to this Section [7.2]. The unit of Gas quantity measurement for purposes of this Agreement shall be one MMBtu.

7.3 Transmission and Scheduling. (a) Seller shall deliver all Energy associated with the Purchased Capacity to ESI at the Delivery Point, and shall Schedule and Dispatch the delivery of the Energy associated with the Purchased Capacity to the Delivery Point. Seller shall (i) cause the Purchased Capacity from the Facilities to qualify at all times during the Delivery Term as a "Firm Network Resource" as determined by the Entergy Transmission Organization, (ii) procure firm transmission service on any other interconnected, coordinated, electric utility system required for delivery of Energy to the Delivery Point, and (iii) cooperate and provide all necessary information required to facilitate ESI's request to the Entergy Transmission Organization for network transmission service.

(b) ESI shall arrange and be responsible for transmission service at and from the Delivery Point. ESI shall procure from the Transmission Provider at all times during the Delivery Term network transmission service from the Delivery Point to other points; provided, however, that ESI may determine and, from time to time during the Delivery Term, change the type and form of network transmission service that it procures in its sole and absolute discretion. The Transmission Provider selected by ESI may be an Affiliate of ESI or a FERC-approved successor independent entity. ESI may request that Seller provide, and Seller shall promptly and timely provide, information to satisfy the Transmission Provider's scheduling requirements for the network transmission service hereunder.

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7.4 Transmission/Transportation Costs. ESI shall be responsible for and bear all costs and expenses related to (i) all transmission and other services required to move Energy that is delivered by Seller at the Delivery Point from the relevant Delivery Point to other points, including but not limited to such costs and expenses related to ESI's obligation to obtain network transmission service as set forth in Section [7.3(b)], and (ii) all transportation to the relevant Delivery Points of all Gas and fuel oil required to be supplied by ESI on one or more Transporter(s) as determined in ESI's sole and absolute discretion or by other means. Seller shall be responsible for all costs and expenses related to (a) the supply and transportation of Gas and fuel oil not required to be supplied by ESI to the relevant Delivery Points, (b) the transportation of Gas and fuel oil required to be supplied by ESI from the relevant Delivery Points to other points, and the transmission of Energy to the relevant Delivery Point, including but not limited to such costs and expenses related to Seller's obligations to obtain "Firm Network Resource" and firm transmission service as set forth in Section [7.3(a)] and (c) any and all Imbalance Charges; provided, however, that any such Imbalance Charges assessed by third parties resulting directly from ESI's failure to receive Energy associated with the Purchased Capacity that is Scheduled and Dispatched by ESI shall be the responsibility of ESI.

7.5 Planned Maintenance. The schedule for Planned Maintenance, including the total number of hours each Contract Year that the Facilities will be unavailable due to Planned Maintenance, is set forth in Schedule [7.5]. Planned Maintenance may be scheduled only during the Months of March, April, October and November, which shall be subject to the prior approval of ESI in its reasonable discretion. Any request by Seller to schedule Planned Maintenance during any other Month shall be subject to the prior approval of ESI in its sole and absolute discretion. The total number of hours that the Facilities will be unavailable due to Planned Maintenance shall not exceed \_\_\_ hours in any Contract Year.

7.6 Risk of Loss and Indemnity. As between the Parties, ESI shall be deemed to be in exclusive possession and control (and responsible for any damages or injury resulting therefrom or caused thereby) of the Gas and fuel oil required to be supplied by ESI prior to the Delivery Point therefor and the Energy after the Delivery Point therefor, and Seller shall be deemed to be in exclusive possession and control (and responsible for any damages or injury resulting therefrom or caused thereby) of such Gas and fuel oil at and from the Delivery Point therefor and the Energy prior to and at the Delivery Point therefor. Risk of loss related to such Gas and fuel oil shall transfer from ESI to Seller at the Delivery Point therefor and risk of loss related to the Energy shall transfer from Seller to ESI at the Delivery Point therefor. ESI shall indemnify, defend and hold harmless Seller from and against any liabilities arising out of or in any way relating to ESI's possession or control of the Gas and fuel oil up to the Delivery Point or its possession and control of the Energy after the Delivery Point therefor, and Seller shall indemnify, defend and hold harmless ESI from and against any liabilities arising out of or in any way relating to Seller's possession or control of the Gas and fuel oil at and from the Delivery Point therefor or its possession and control of the Energy prior to and at the Delivery Point therefor.

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ARTICLE VIII  
QF PUT

8.1 QF Put Rights. Notwithstanding the Capacity Payments and Variable Payments to be made by ESI or any other provision of this Agreement, in those hours during which ESI does not Schedule and Dispatch all Energy associated with the Purchased Capacity, Seller shall be entitled to deliver to ESI, and ESI shall accept, Energy associated with the undispached portion of the Purchased Capacity, on a “when, as, and if available” basis, so long as ESI is obligated to accept such Energy pursuant to applicable law, and Seller shall be reimbursed by ESI for such “when, as, and if available” Energy solely at the Entergy System avoided cost for the particular hour during which such Energy is Scheduled and Dispatched to ESI. *[This provision applicable only to Entergy Control Area QFs which have a power purchase agreement in place with ESI or one of the Entergy Operating Companies.]*

ARTICLE IX  
METERING

9.1 Electricity. (a) Energy delivered by Seller shall be metered at the Delivery Point on a continuous real-time basis. If the Control Area Operator shall require, the Control Area Operator’s electric revenue meter shall be used to determine conclusively the amount of Energy delivered by Seller at the Delivery Point.

(b) Seller shall be responsible for the maintenance, testing and calibration of the Electric Metering Equipment and the maintenance and testing of the electrical facilities and Protective Apparatus, including any transmission equipment and related facilities, necessary to interconnect the Facilities to or at the relevant Delivery Point to the ESI System. ESI shall have the right to receive data in electronic form in real time on a continuous basis by telemetry, and, if necessary, Seller shall install one electric meter which is capable of providing such data to ESI’s reasonable satisfaction. Seller shall bear all costs and expenses of installing, maintaining and testing all Electric Metering Equipment.

9.2 Gas. (a) Gas delivered by ESI to Seller shall be metered at the relevant Delivery Point, as consumed on a continuous real time basis. If the Gas Transporter immediately upstream of the Delivery Point shall require, the revenue meters of such Gas Transporter shall be used to determine conclusively the quantity of Gas delivered at the Delivery Point. If the Gas Transporter immediately upstream of the Delivery Point shall require, the Gas chromatograph of such Gas Transporter shall be used to determine conclusively, the Btu content of all Gas delivered at the Delivery Point.

(b) Seller shall be responsible for the installation, maintenance, testing and calibration of the Gas Metering Equipment (to the extent not otherwise installed, maintained, tested and calibrated by the transporter or supplier of Gas to the Facilities). ESI shall have the right to receive data in electronic form in real time on a continuous basis by telemetry from the Delivery Point and, if necessary, Seller undertake to install one Gas meter which is capable of providing

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such data, to ESI's reasonable satisfaction. Seller shall bear all costs and expenses of installing, maintaining and testing all Gas Metering Equipment.

9.3 Fuel Oil. To the extent that the Facilities or any portion thereof operate or are capable of operating on fuel oil, ESI shall procure and deliver or cause to be delivered to the relevant Delivery Point all required quantities of fuel oil. Seller shall be responsible for the procurement, installation, maintenance, testing and calibration of all facilities necessary in connection with the receipt, storage and use of fuel oil and the Oil Metering Equipment. Seller shall not have any right, title or interest in the fuel oil delivered to the Facilities pursuant to this Agreement.

9.4 Check Meters. ESI may at its option and expense install and operate one or more check meters to check Seller's meters. Such check meters shall be for check purposes and shall not be used for the measurement of Gas, Energy or fuel oil except as provided in Section [9.9] hereof. The check meters shall be subject at all reasonable times to inspection and examination by Seller or its designee. The installation and operation thereof shall, however, be done entirely by ESI in accordance with industry practices for check metering equipment. Seller shall grant to ESI at no cost or expense the right to install such check meters at each Delivery Point and the right to access such check meters at reasonable times as requested by ESI if such check meters are located on Seller's premises.

9.5 Change in Measurement Method. If, at any time during the Delivery Term a new method or technique is developed with respect to electricity, Gas or fuel oil measurement, or the determination of the factors used in electricity, Gas or fuel oil measurement, such new method or technique may be substituted for the method set forth in this Article [IX] when in the reasonable opinion of the Parties, employing such new method or technique is advisable, and they so agree in writing.

9.6 Industry Standards. All Electric Metering Equipment, Gas Metering Equipment and Oil Metering Equipment, whether owned by Seller or by a third party, shall be operated, maintained and tested by and/or on behalf of Seller in accordance with Accepted Electrical Practices in the case of the Electric Metering Equipment, in accordance with AGA and ANSI standards in the case of the Gas Metering Equipment and in accordance with applicable industry standards in the case of the Oil Metering Equipment.

9.7 Access. Each Party shall have the right to receive reasonable advance Notice with respect to, and to be present at the time of, any installing, cleaning, changing, repairing, inspecting, testing, calibrating or adjusting of Electric Metering Equipment, Gas Metering Equipment or Oil Metering Equipment irrespective of whether such Electric Metering Equipment, Gas Metering Equipment or Oil Metering Equipment is owned or operated by Seller or by a third party. The records from such Electric Metering Equipment, Gas Metering Equipment and Oil Metering Equipment shall be the property of Seller, but upon reasonable advance Notice, Seller shall make available to ESI all data, records and charts relating to the Electric Metering Equipment, Gas Metering Equipment and Oil Metering Equipment, together with calculations therefrom, for inspection and verification.

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9.8 Installations. Any installations of Electric Metering Equipment, Gas Metering Equipment or Oil Metering Equipment required pursuant to this Agreement shall be scheduled by Seller; provided, however, that no installation which shall or could affect deliveries of Gas or Energy shall be made without the prior written consent of ESI, which shall not be unreasonably withheld. Any installations of check meters by ESI shall be scheduled by ESI; provided, however, that the installation shall not unreasonably interfere with the operation and maintenance of the Facilities by Seller.

9.9 Estimates. Seller at its sole cost and expense shall inspect and calibrate, or cause to be inspected and calibrated, all Electric Metering Equipment, Gas Metering Equipment and Oil Metering Equipment periodically, but not less frequently than annually. When any test shall show a measurement error of more than (i) in the case of Gas Metering Equipment, two percent (2.00%) or such lower percentage as may be established by applicable tariff, (ii) in the case of Electric Metering Equipment, one-quarter percent (0.25%), or (iii) in the case of Oil Metering Equipment, two percent (2.00%), correction shall be made for the period during which the measurement instruments were in error, first, by using the registration of ESI's check meter, if installed; if the check meter is not installed, or if the period cannot be ascertained, correction shall be made for one-half (½) of the period elapsed since the last date of test; and the measuring instrument shall be adjusted immediately to measure accurately.

9.10 Records. The Parties shall, for five (5) years or such longer period as may be required by any Transmission Operator, each keep and maintain accurate and detailed records relating to each Unit's hourly deliveries of Energy and Gas consumption. Such records shall be made available for inspection by either Party or any Governmental Authority having jurisdiction with respect thereto during normal business hours upon reasonable Notice. If either Party (the "Notifying Party") shall propose to discard any records theretofore required to be retained by this Section **[9.10]**, it shall give Notice to the other Party thereof and the other Party may within thirty (30) days elect to take possession of such records by Notice to the Notifying Party, and in such case the Notifying Party shall promptly deliver such records to the other Party at its expense. If the Party receiving a Notice pursuant to this Section **[9.10]** shall not respond within thirty (30) days, the Notifying Party may discard such records without any further obligation hereunder.

## ARTICLE X OPERATION AND MAINTENANCE

10.1 Operation and Maintenance Obligations. At all times during the Term, Seller shall install, construct, test, operate and maintain the Facilities and shall, except as provided in Section **[9.4]**, bear all costs and expenses of such installation, construction, testing, operation and maintenance, including without limitation labor, parts, supplies, insurance and applicable Taxes. Such installation, construction, testing, operation and maintenance shall comply with Seller's obligations herein and in the Project Documents, including without limitation, Section **[2.4(b)]**, and shall be performed in accordance with Accepted Electrical Practices and any requirements for capacity resource providers that may be promulgated by the Transmission Operator or FERC,

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and any applicable statutes, codes, regulations, standards and guidelines adopted by Governmental Authorities, NERC, the Southeastern Electric Reliability Council, or the Control Area Operator from time to time. Subject to ESI's rights set forth in this Agreement, Seller shall have full and complete responsibility for and control over testing, operation and maintenance of the Facilities.

10.2 Operation. Seller shall operate the Facilities in parallel with the Entergy System with governor control and shall deliver Energy at the Delivery Point in a form appropriate to such electrical system.

10.3 [Response Rates. Seller shall provide to ESI response rates greater than those set forth in Schedule [A] for automatic generation control, when the relevant control systems are technically sufficient for such faster response rates, consistent with Accepted Electrical Practices.]

10.4 Disconnection. In the event that for any reason the Control Area Operator or any owner or operator of the electrical system to which the Facilities are connected requires that the Facilities or any portion thereof be disconnected from such electrical system (or requires that deliveries of Energy otherwise be curtailed, reduced or interrupted), Seller shall be solely responsible for all costs and expenses incurred by Seller due to such disconnection or interruption.

10.5 Correction. Seller shall correct promptly any condition at the Facilities which necessitates the disconnection of the Facilities or the reduction, curtailment or interruption of electrical output of the Facilities.

10.6 Certificate of Compliance. Seller shall furnish to ESI on each Delivery Anniversary Date a certificate, together with such supporting documentation as ESI shall reasonably request, demonstrating that during the preceding Contract Year, Seller have performed or caused to be performed during such Contract Year all maintenance and testing of the Facilities required by this Article [X].

10.7 Access. During the Delivery Term and all extensions thereof, Seller shall provide one office at each of the Facilities for use by a ESI employee or agent and provide such employee or agent continuing and unrestricted accompanied access to the Facilities and all appurtenant electrical equipment at all times and for any duration for the purpose of (i) verifying, reviewing, and/or monitoring the operation of the Facilities and all appurtenant electrical equipment for the purpose of determining Seller's compliance with this Agreement; (ii) inspecting, examining and testing such equipment and facilities as authorized under this Agreement; and (iii) designating an alternate or additional Delivery Points. In addition, Seller shall provide ESI's other employees and/or agents accompanied access to the Facilities as aforesaid, at reasonable times, subject to Seller's reasonable requirements with respect to safety and security. ESI's employees and/or agents shall conduct themselves so as to not hamper or impede the Facilities' operations.

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10.8 Maintenance of Records. Seller shall keep and maintain accurate and complete records for the Facilities in a manner consistent with Accepted Electrical Practices, applicable statutes, codes, regulations, standards and guidelines adopted by Governmental Authorities, NERC, the Southeastern Electric Reliability Council or the Control Area Operator from time to time, including such information relating to the operation and maintenance of the Facilities and all associated equipment as is appropriate. Seller shall make such records available to ESI for inspection and copying from time to time as ESI may reasonably request. If either Party (the “Notifying Party”) shall propose to discard any records theretofore required to be retained by this Section [10.8] it shall give Notice to the other Party thereof and the other Party may within thirty (30) days elect to take possession of such records by Notice to the Notifying Party, and in such case the Notifying Party shall promptly deliver such records to the other Party at its expense. If the Party receiving a Notice pursuant to this Section [10.8] shall not respond with thirty (30) days, the Notifying Party may discard such records without any further obligation hereunder.

## ARTICLE XI BILLING AND PAYMENT

11.1 Invoices and Payments. On or before the tenth (10th) Day of each Month, Seller shall render to ESI a monthly statement (by regular mail, facsimile or other acceptable means conforming to the provisions of Article [XXII]) in respect of the immediately preceding month substantially in the form attached hereto as Schedule [11.1]. If the tenth (10th) Day is not a Business Day, Seller shall render the statement on the next succeeding Business Day. Such statement shall set forth on an individual Unit basis the amount of Energy delivered by Seller provided to ESI in each hour, the quantities of Gas consumed in each hour, the number Start-Ups of each type requested and accomplished, a computation of the amounts due from ESI to Seller and a computation of any other amounts as may then be due and payable by ESI to Seller, or vice versa, in respect of such Month. ESI shall make payment of the net amount shown to be due to Seller on the monthly statement by wire transfer to an account specified by Seller not later than the twentieth (20th) Day of each Month or the tenth (10th) Day after receipt of the monthly statement, unless such Day is not a Business Day, in which case ESI shall make payment on the next Business Day. If such monthly statement shall reflect a net amount due to ESI from Seller, Seller shall make payment of the net amount shown to be due to ESI on the monthly statement by wire transfer to an account specified by ESI not later than the twentieth (20th) day of such Month, unless the twentieth (20th) day is not a Business Day, in which case Seller shall make payment on the next Business Day. All such payments shall be deemed to be made when said wire transfer is received by Seller or by ESI, as the case may be. Overdue payments shall accrue interest from, and including, the due date to, but excluding, the date of payment at the Interest Rate. If either Party, in good faith, disputes a monthly statement, such Party shall provide to the other Party a written explanation of the basis for the dispute and shall make payment of the portion of such monthly statement not disputed no later than the due date. To the extent any disputed amount is later determined to be properly due and payable, it shall be paid within ten (10) Days after such determination, together with interest accrued at the Interest Rate from the

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due date to the date payment is made, if made within ten (10) Days of such determination, and if not paid within ten (10) Days of such determination, together with interest accrued after such ten (10) Day period to the date payment is made at the Interest Rate plus two percent (2.00%).

11.2 Adjustments. In the event adjustments or corrections to monthly statements are required as a result of inaccurate Electric Metering Equipment, Gas Metering Equipment or Oil Metering Equipment or other errors in computation or billing, the Parties shall promptly recompute amounts due from or to each other hereunder during the period of inaccuracy and otherwise correct any errors in such monthly statement. If the total amount, as recomputed, due from a Party for the period of inaccuracy varies from the total amount due as previously computed, and payment of the previously computed amount has been made, the difference shall be paid to the Party entitled to it within ten (10) Days after correction of the erroneous invoice(s).

11.3 Audit. Each Party (and its representative(s)) has the right, at its sole expense, upon reasonable Notice and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. If requested, a Party shall provide to the other Party statements evidencing the amounts of Energy or the quantities of Gas or fuel oil delivered at the Delivery Point. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be promptly made and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of two years from the rendition thereof, and provided, further, that this Section [11.3] will survive any termination of the Agreement for a period of two (2) years from the date of such termination for the purpose of such statement and payment objections.

11.4 Performance Assurance Not Netted. Unless the Party benefiting from [Performance Assurance] or a Guaranty notifies the other Party in writing, and except in connection with a liquidation and termination in accordance with Article [XIX], all amounts netted pursuant to this Article [XI] shall not take into account or include any [Performance Assurance] or Guaranty which may be in effect to secure a Party's performance under this Agreement.

## ARTICLE XII CREDIT AND COLLATERAL REQUIREMENTS [TO BE DETERMINED]

12.1 [Seller Credit and Collateral Requirements. (a) Financial Information. If Seller so requests, ESI shall deliver (i) within 180 days following the end of each fiscal year, a copy of Entergy Corporation's annual report containing audited consolidated financial statements for such fiscal year and (ii) within 75 days following the end of each calendar quarter, a copy of Entergy Corporation's quarterly report containing unaudited consolidated financial statements for such calendar quarter. In all cases the statements shall be prepared in accordance with

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generally accepted accounting principles; provided, however, should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

(b) Credit Assurances. If at any time Seller has reasonable grounds to believe that ESI's Termination Payment (as defined in Section [19.2(b)]) at such time would exceed \$\_\_\_\_\_, Seller will provide ESI with written notice requesting [Performance Assurance]. Upon receipt of such notice ESI shall have five (5) Business Days to provide to Seller the requested [Performance Assurance]. In the event that ESI fails to provide such [Performance Assurance] or other credit assurance acceptable to Seller, then an Event of Default will be deemed to have occurred and Seller will be entitled to the remedies set forth in Article [XIX] of this Agreement.

12.2 ESI Credit and Collateral Requirements. (a) Financial Information. If ESI so requests, each of Seller and Seller's Guarantor shall deliver (i) within 180 days following the end of each fiscal year, a copy of its annual report containing audited consolidated financial statements for such fiscal year and (ii) within 75 days following the end of each calendar quarter, a copy of its quarterly report containing unaudited consolidated financial statements for such calendar quarter. In all cases the statements shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

(b) Credit Assurances. If at any time ESI has reasonable grounds to believe that Seller's Termination Payment at such time would exceed the limit of the Guaranty issued pursuant to Article [XX], ESI will provide Seller with written notice requesting the limit of such Guaranty to be increased to an amount which is equivalent to the projected Termination Payment (as calculated pursuant to Schedule [19.2(b)]). Upon receipt of such notice Seller shall have five (5) Business Days to provide to ESI the documentation necessary to increase the limit of such Guaranty. In the event that Seller fails to provide such increase to the limit of such Guaranty, or, alternatively, [Performance Assurance] or other credit assurance acceptable to ESI, within five (5) Business Days of receipt of notice, then an Event of Default will be deemed to have occurred and ESI will be entitled to the remedies set forth in Article [XIX] of this Agreement.]

## ARTICLE XIII TAXES

13.1 General. Seller and ESI shall each use reasonable efforts to implement the provisions of and to administer this Agreement in accordance with their intent to minimize Taxes, so long as neither Party is materially adversely affected by such efforts. Either Party, upon written request of the other, shall provide a certificate of exemption or other reasonably

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satisfactory evidence of exemption if either Party is exempt from Taxes, shall use reasonable efforts to obtain and shall cooperate with obtaining any exemption from or reduction of Tax.

13.2 ESI Taxes. ESI shall be responsible for all Taxes imposed on or with respect to Gas and fuel oil, including the use, production or transportation thereof, prior to the relevant Delivery Point, and all Taxes imposed on or with respect to Energy or the transmission thereof pursuant to this Agreement, at and after the relevant Delivery Point.

13.3 Seller Taxes. Seller shall be responsible for all Taxes which are not the responsibility of ESI pursuant to Section [13.2].

13.4 Indemnity. Each Party (the "Tax Indemnifying Party") shall indemnify, release, defend and hold harmless the other Party (the "Tax Indemnified Party") from and against any and all liability for all Taxes imposed or assessed by any Government Authority that are the responsibility of such Party pursuant to this Article [XIII]. A Tax Indemnified Party shall, to the extent practicable, give a Tax Indemnifying Party written notice of any proposed or actual adjustment or assessment of Taxes within such time as will allow the Tax Indemnifying Party a reasonable period in which to evaluate and timely respond to the underlying adjustment or assessment of Taxes; provided, however, that failure to do so shall not affect a Tax Indemnified Party's rights hereunder except to the extent the Tax Indemnifying Party is prejudiced thereby. The Tax Indemnifying Party shall be entitled, at the Tax Indemnifying Party's expense, to participate in, and, to the extent that the Tax Indemnifying Party desires, assume and control the defense of such Taxes; provided, however, that the Tax Indemnifying Party shall have acknowledged in writing its obligation to fully indemnify such Tax Indemnified Party in respect of such Taxes. If the Tax Indemnifying Party has assumed and is controlling the defense of Taxes in accordance with the foregoing, the Tax Indemnified Party's involvement shall be limited to monitoring the progress of such defense which shall include (i) receiving copies of all correspondence between the Tax Indemnifying Party and any Governmental Authority imposing or assessing the Taxes; and (ii) attending and observing meetings between the Tax Indemnifying Party and said Governmental Authority related to such defense; provided, however, that any costs associated with the Tax Indemnified Party's involvement shall be at the Tax Indemnified Party's own expense. The Tax Indemnified Party shall supply the Tax Indemnifying Party with such information and documents reasonably requested by the Tax Indemnifying Party as are necessary for the Tax Indemnifying Party in the defense of such Taxes. For purposes of this Section [13.4], the Tax Indemnifying Party's obligation to indemnify the Tax Indemnified Party for Taxes shall include any reasonable costs to defend such Taxes incurred or paid by the Tax Indemnified Party so long as such costs were incurred or paid prior to the time when the Tax Indemnifying Party has assumed control of the defense of such Taxes.

#### ARTICLE XIV MEDIATION

14.1 Mediation. Any claim, counterclaim, demand, cause of action, dispute or controversy arising out of or relating to this Agreement (or any agreement delivered in

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connection with this Agreement) or in any way relating to the subject matter of this Agreement involving any of the Parties or their representatives (each, a “Dispute”) even if such Dispute may be allegedly extra-contractual in nature, sound in contract, tort or otherwise, or arise under state, federal, or foreign law, shall be subject to non-binding mediation in accordance with this Section [14.1]. The Parties agree that, upon notice from Seller to ESI or vice versa, a senior executive of Seller or his or her designee and a senior executive of ESI or his or her designee, representing Seller on the one hand and ESI on the other hand, shall, within three (3) Business Days, be designated to attempt to resolve the Dispute and the two senior executives or their respective designees shall meet at least once, and shall negotiate in good faith for a period of fifteen (15) Days in an effort to resolve the Dispute. To the extent that the two senior executives or their respective designees shall not resolve any Dispute, the Parties shall have their respective rights and remedies under this Agreement and applicable law.

## ARTICLE XV REPRESENTATIONS, WARRANTIES AND COVENANTS

15.1 Representations and Warranties by Each Party. As of the Effective Date and as of the date on which the Delivery Term commences, each Party hereby represents and warrants that:

- (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
- (b) it has all Approvals necessary for it to legally perform its obligations under this Agreement [except as otherwise described in Schedule [15.1(b)]];
- (c) the execution, delivery and performance of this Agreement and the transactions contemplated hereunder are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;
- (d) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject to any bankruptcy, insolvency, reorganization and other laws affecting creditors’ rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending;
- (e) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;
- (f) there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;

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

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

(i) it is a “forward contract merchant” within the meaning of the United States Bankruptcy Code; and

(j) it has entered into this Agreement in connection with the conduct of its business.

15.2 Additional Representations and Warranties of Seller. As of the Effective Date and as of the date on which the Delivery Term commences, Seller hereby represents and warrants as follows:

(a) The maximum guaranteed rate of change (increase and decrease) in net electrical output per minute, measured over the period beginning at the time of an instruction to change the generator’s net output or schedule and ending at the time that such net output or scheduled energy level is achieved (such rate of change, the “Ramp Rate,” and such maximum guaranteed Ramp Rate, the “Guaranteed Ramp Rate”), is set forth in Schedule [15.2(a)].

(b) The equivalent unplanned Outage Rate and specific computation for each Unit based on actual historical operation for the past three years is set forth in Schedule [15.2(b)].

15.3 Covenants of Seller. Seller hereby further covenants as follows:

(a) During the term of this Agreement, Seller shall obtain, and maintain all Approvals as may be required with respect to the operations of the Facilities or for the performance of its obligations hereunder and shall assist ESI in obtaining Approvals as may be deemed necessary or appropriate by ESI, including but not limited to approvals of full rate recovery of all costs associated with this Agreement or such other regulatory treatment as shall be acceptable to ESI in its sole and absolute discretion, except to the extent the failure to do so would have an immaterial effect on this Agreement, the Parties or the performance of their respective obligations hereunder.

(b) [Seller shall provide to ESI response rates greater than those set forth in Schedule [A] for automatic generation control, when the relevant control systems are technically sufficient for such faster response rates, consistent with Accepted Electrical Practices.]

(c) During the Delivery Term, the Rolling 12 Month Availability for the Purchased Capacity shall be at least 85.00%.

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(d) [Seller shall cause the Credit Agreement to include a provision to the effect that if the financing parties or its agent shall exercise a remedy the effect of which causes the removal or replacement of Seller as operator of the Facilities. ESI shall have the right to designate the replacement operator, subject to the financing parties' reasonable approval.]

(e) [Seller will not refinance the senior indebtedness incurred to finance the acquisition or construction of the Facilities (the "Existing Indebtedness") or incur additional indebtedness (as defined in the Credit Agreement) ("New Indebtedness"), except to the extent that the Debt Service Coverage Ratio reflected in the pro forma statements of income and cashflow prepared by the refinancing Lenders or the new Lenders, as the case may be, and upon which their lending commitments are based, shall not be less than [ ] prior to the [ ] Delivery Anniversary Date and not less than [ ] thereafter (determined on an average annual basis); provided, however, that, notwithstanding the foregoing, a refinancing of Existing Indebtedness or the incurrence of New Indebtedness shall be permitted: (i) to finance capital expenditures with respect to the Facilities required by any law, rule, tariff or regulation or change therein enacted and effective after the Effective Date; and (ii) as reasonably approved by ESI in connection with any transaction between Seller and ESI.]

15.4 Covenants of Each Party Regarding Certain Regulatory Matters. Each Party hereby further covenants as follows:

(a) If an independent system operator or a regional transmission organization shall enact or implement any change in law, rule, regulation, tariff or practice binding on Seller or ESI which materially adversely affects such Party's ability to perform its obligations hereunder, the Parties shall negotiate in good faith an amendment to this Agreement or take other appropriate action the effect of which is to restore each Party, as closely as possible, to its same position as prior to such change. If, within sixty (60) days, the Parties are unable to agree on such amendment or such other appropriate action, each Party will continue to perform its obligations hereunder to the maximum extent possible, taking all reasonable steps to mitigate the effect of such change on each other. Either Party shall also have the right to file with FERC pursuant to Section 205 or 206 of the Federal Power Act proposed revisions to this Agreement necessary to restore the positions of the Parties prior to such change. Either Party may contest any such filing pursuant to applicable FERC procedures. For purposes of this Section [15.4], the Parties stipulate and acknowledge that the creation of a regional transmission organization or independent systems operator encompassing in whole or in part the service territory of the Energy System shall not, in and of itself, be deemed to materially adversely affect either Party's ability to perform its obligations hereunder.

(b) Absent the written agreement of Seller and ESI thereto, neither Party shall file with FERC any proposed change in any rate, term or condition set forth in this Agreement, except that either Party may file an application with FERC pursuant to Section 206 of the Federal Power Act seeking a change in the price to be paid by ESI for the Purchased Capacity and/or associated Energy and Transmission Services that Seller has agreed to deliver or provided to ESI in accordance with Section [15.4(a)]. The standard of review that shall apply to any such application for a price change, whether proposed by either Party or FERC acting *sua sponte*,

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shall be the “public interest” standard of review delineated in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and in *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

## ARTICLE XVI LIABILITY

16.1 Limitations 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 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. NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE (EXCEPT TO THE EXTENT THAT AN INDEMNIFYING PARTY PURSUANT TO THE PROVISIONS OF SECTION [13.4] OR ARTICLE [XVII] HEREOF IS OBLIGATED TO INDEMNIFY AGAINST THIRD PARTY CLAIMS NOT ARISING OUT OF CONTRACTS WITH THE INDEMNIFIED PARTY FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES OR LOST PROFITS OR BUSINESS INTERRUPTION DAMAGES). IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS. THE PROVISIONS OF THIS ARTICLE [XVI] SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT.

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ARTICLE XVII  
INDEMNITY

17.1 General. (a) Each Party (the “Indemnifying Party”) shall indemnify, hold harmless and defend the other Party, its Affiliates, directors, officers, partners, agents and employees (the “Indemnified Party”) from and against any and all loss, liability, damage, cost or expense, including but not limited to, damage and liability for bodily injury to or death of third Persons or damage to property of third Persons (collectively, “Loss”), to the extent arising out of, in connection with or resulting from the Indemnifying Party’s breach of any of the representations or warranties made in, or the Indemnifying Party’s failure to perform any of its obligations under, this Agreement, or the Indemnifying Party’s design, installation, construction, ownership, operation, repair, relocation, replacement, removal or maintenance of, or the failure of, any of such Party’s equipment and/or facilities, including, but not limited to, the Facilities and any natural gas or oil transportation, storage or other facilities, and/or any appurtenances thereto, and any electric transmission facilities used in connection with this Agreement, and regardless whether arising under applicable law, rule or regulation or otherwise, or any event, circumstance, act or incident first occurring or existing on such Party’s side of the Delivery Point; provided, however, that neither Party shall have any indemnification obligations hereunder in respect of any Loss to the extent caused by such other Party’s gross negligence, bad faith or willful misconduct.

(b) Promptly after receipt by either Party of any claim or notice of the commencement of any action or administrative or legal proceeding or investigation as to which the indemnity provided for in Section [17.1(a)] may apply, such Party shall notify the Indemnifying Party of such fact. The Indemnifying Party shall have the right to assume the defense thereof with counsel designated by such Indemnifying Party and reasonably satisfactory to the Indemnified Party; provided, however, that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it and/or other indemnified Parties which are different from or additional to those available to the Indemnifying Party, the Indemnified Party or Parties shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of the action on behalf of such Indemnified Party or parties; provided, further if the claim is one that cannot by its nature be defended solely by the Indemnifying Party, the Indemnified Party shall make available all information and assistance as the Indemnifying Party may reasonably request at the expense of the Indemnifying Party. The Indemnified Party shall be entitled, at its expense, to participate in any action, suit or proceeding, the defense of which has been assumed by the Indemnifying Party. Notwithstanding the foregoing, the Indemnifying Party shall not be entitled to assume and control the defense of any such action, suit or proceeding if and to the extent that, in the opinion of the Indemnified Party and its counsel, such action, suit or proceeding involves the potential imposition of criminal liability on the Indemnified Party or a conflict of interest between the Indemnified Party and the Indemnifying Party, and in such event the Indemnifying Party shall pay the reasonable expenses of the Indemnified Party in such defense.

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(c) Should any Indemnified Party be entitled to indemnification under this Article [XVII] as a result of a claim by a third party, and should the Indemnifying Party fail to assume the defense of such claim, such Indemnified Party may at the expense of the Indemnifying Party contest (or, with the prior consent of the Indemnifying Party, settle) such claim; provided, however, that no such contest need be made, and settlement or full payment of any such claim may be made without the consent of the Indemnifying Party (with the Indemnifying Party remaining obligated to indemnify such Indemnified Party under this Article [XVII]), if an Event of Default as to the Indemnifying Party exists or if, in the opinion of such Indemnified Party's counsel, such claim is meritorious or the defendant has no valid defense to such claim.

(d) In the event that an Indemnifying Party is obligated to indemnify and hold any Indemnified Party harmless under this Article [XVII], the amount owing to the Indemnified Party shall be the amount of such Indemnified Party's actual Loss, net of any insurance or other recovery.

## ARTICLE XVIII FORCE MAJEURE

18.1 Performance Excused. To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under this Agreement (other than an obligation to pay money), and such Party (the "Affected Party") gives notice and details of the Force Majeure to the other Party as soon as practicable, then, the Affected Party shall be excused from the performance of its obligations under this Agreement (other than the obligation to make payments then due or becoming due with respect to performance of its obligations prior to the Force Majeure). The Affected Party shall use all reasonable efforts to overcome the Force Majeure as soon as possible. The non-Affected Party shall not be required to perform or resume performance of its obligations (including payment obligations) to the Affected Party corresponding to the obligations of the Affected Party excused by Force Majeure, until such time and to the extent the Affected Party resumes its performance.

18.2 Termination. If and to the extent an Affected Party (a) shall not overcome a Force Majeure and resume performance of its obligations under this Agreement or (b) ceases using reasonable efforts to overcome the Force Majeure, within twelve (12) months after such performance is interrupted, either Party may terminate this Agreement without any further obligation (other than the obligation to make payment in respect of performance rendered prior to such termination and any other obligation that survives in accordance with Section [24.1].

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ARTICLE XIX  
EVENTS OF DEFAULT; REMEDIES

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

(a) the failure by the Defaulting Party to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) Business Days after written notice, provided the payment is not subject of a good faith dispute as described in Section [11.1];

(b) any representation or warranty herein made by the Defaulting Party shall be false or misleading in any material respect as of the date made or deemed repeated;

(c) failure by the Defaulting Party to perform any material covenant or obligation set forth in this Agreement (other than the failure of a Unit to Schedule and Dispatch in accordance with Article [VII] or the failure (other than as set forth in Section [15.3(c)]) to achieve the Availability Requirements set forth in Section [4.1] if the Non-Defaulting Party is able to recover fully all amounts due it pursuant to Section [5.5];

(d) such Defaulting Party becomes Bankrupt;

(e) the failure by the Defaulting Party to satisfy the creditworthiness/collateral requirements agreed to pursuant to Article [XII];

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

(g) [Cross-default];

(h) [with respect to such Defaulting Party’s Guarantor, if any:

(i) if any representation or warranty made by a Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated;

(ii) the failure of a Guarantor to make any payment required or to perform any other material covenant or obligation in any Guaranty made in connection with this Agreement and such failure shall not be remedied within three (3) Business Days;

(iii) the Guarantor becomes Bankrupt;

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(iv) the failure of a Guarantor's Guaranty to be in full force and effect; or

(v) a Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any Guaranty;] or

(i) [there shall have occurred and be continuing any event of default under, and as defined in, the other material Project Documents or any Credit Agreement].

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

(b) The Non-Defaulting Party shall aggregate all Settlement Amounts into a single amount by: netting out (a) all Settlement Amounts that are due to the Defaulting Party, plus, at the option of the Non-Defaulting Party, any cash or other form of security then available to the Non-Defaulting Party pursuant to Section [11.4] and Article [XII], plus any or all other amounts due to the Defaulting Party under this Agreement against (b) all Settlement Amounts that are due to the Non-Defaulting Party, plus any or all other amounts due to the Non-Defaulting Party under this Agreement, so that all such amounts shall be netted out to a single liquidated amount (the "Termination Payment") payable by one Party to the other. The Termination Payment shall be due to or due from the Non-Defaulting Party as appropriate.

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

(d) If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within two (2) Business Days after receipt of Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party detailed written explanation of the basis for such dispute; provided, however, that the Defaulting Party shall first transfer Performance Assurance to the Non-Defaulting Party in an amount equal to the Termination Payment.

(e) In addition to the foregoing, upon the occurrence of any Event of Default and the expiration of any applicable cure period, the Non-Defaulting Party shall be entitled to (i) commence an action to require the Defaulting Party to remedy such default and specifically

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perform its duties and obligations hereunder in accordance with the terms and conditions hereof and (ii) exercise such other rights and remedies as it may have in equity or at law.

(f) Notwithstanding the foregoing and in addition to all of rights and remedies in equity or at law, either Party shall be entitled to set off against any amounts due and payable by either Party to the other Party, any and all amounts due and payable to such party from the other Party's subsidiaries.

19.3 Suspension of Performance. Notwithstanding any other provision of this Agreement, if (a) an Event of Default or (b) a Potential Event of Default shall have occurred and be continuing, the Non-Defaulting Party, upon written notice to the Defaulting Party, shall have the right (i) to suspend performance under this Agreement; provided, however, in no event shall any such suspension continue for longer than ten (10) Business Days unless an Early Termination Date shall have been declared and notice thereof pursuant to Section[19.2] given, and (ii) to the extent an Event of Default shall have occurred and be continuing, to exercise any remedy available at law or in equity.

## ARTICLE XX [GUARANTY

20.1 Guaranty. On or prior to the Effective Date, Seller shall deliver the Guaranty to ESI.]

## ARTICLE XXI ASSIGNMENT

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

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ARTICLE XXII  
NOTICES

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

If to Seller to:

Attention:  
Telephone:  
Fax:

and

If to ESI to:

Attention:  
Fax:

with a copy to:

Attention:  
Fax:

and

Jones, Day, Reavis & Pogue  
222 East 41<sup>st</sup> Street  
New York, New York 10017

Attention: William F. Henze II  
Fax: 212-755-7306

or to such other Person at such other address as a Party shall designate by like notice to the other Party.

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ARTICLE XXIII  
CONDITIONS

23.1 ESI's and Seller's Conditions. Subject to Section [23.3], the obligations of ESI and Seller to consummate the transactions contemplated hereunder shall be subject to fulfillment of the following conditions at least 30 Days prior to the date on which the Delivery Term commences; provided, however, that subject to Section [23.4], the date for satisfying the condition set forth in Section [23.1(c)] may be extended by ESI to any date thereafter prior to the date on which the Delivery Term commences, as determined by ESI in its sole and absolute discretion.

(a) Seller obtains any necessary regulatory authorizations for providing the service from FERC if Seller is subject to the jurisdiction of FERC.

(b) ESI obtains any necessary regulatory authorizations for providing the service from FERC if Seller is not subject to the jurisdiction of FERC.

(c) The Entergy Transmission Organization shall have determined that the Purchased Capacity to be delivered from the Facilities qualifies as a "Firm Network Resource" and Seller shall have obtained firm transmission service on any other interconnected, coordinated, electric utility system required for delivery of Energy to the Delivery Point.

23.2 ESI's Conditions. Subject to Section [23.3], the obligations of ESI to consummate the transactions contemplated hereunder shall be subject to fulfillment of the following conditions at least 30 Days prior to the date on which the Delivery Term commences, except to the extent waived in writing by ESI.

(a) ESI obtains from the state or local regulatory commission(s) having jurisdiction over the retail operations of the Entergy Operating Company(ies) participating in the purchase either (i) regulatory approval of the purchase including the approval of the full recovery (through base rates and/or fuel adjustment) of all costs associated with this Agreement pursuant to a finding that the participation of those Entergy Operating Companies in this Agreement is prudent or (ii) such other regulatory treatment as is deemed acceptable by such Entergy Operating Company(ies) in the exercise of their sole and absolute discretion.

(b) ESI complies with any applicable federal or state legal requirements, and obtains any Approvals required by any applicable federal or state regulatory agency.

23.3 Obligations of Seller and ESI. Commencing on the Effective Date, on the terms and subject to the conditions of this Agreement, each Party shall use its reasonable best efforts to take, or cause to be taken, all appropriate action, and do, or cause to be done, and assist and cooperate with the other Party in taking or doing, all things necessary, proper or advisable to consummate the transactions contemplated hereby, including, without limitation the satisfaction of the respective conditions set forth in Sections [23.1] and [23.2].

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23.4 Failure to Obtain Firm Network Resource. If at any time prior to the date on which the Delivery Term commences, the Entergy Transmission Organization issues a final determination that the Purchased Capacity to be delivered from the Facilities will not qualify as a “Firm Network Resource,” this Agreement will automatically terminate without any further obligation of the Parties.

23.5 Regulatory Approvals. Promptly after execution of this Agreement, Seller, if required to obtain approval for the sale from one or more regulatory agencies (e.g. the FERC), shall file the Agreement with such regulatory agency(ies) and shall request that the regulatory agency(ies) accept such Agreement for filing without modification or conditions, and without suspension, and with service hereunder to be effective commencing as of the start of the Delivery Term. ESI shall support this filing. If Seller is not subject to the jurisdiction of FERC, ESI shall make such above-described filing with FERC, and Seller will support such filing.

23.6 State and Local Filings. Following execution of this Agreement, the appropriate Entergy Operating Company(ies) may submit such Agreement to the state or local regulatory commission(s) having jurisdiction over the retail operations of the Entergy Operating Company(ies) participating in the purchase together with an application for approval of such Agreement, or request rate recovery of the costs associated with its participation in this Agreement based on a finding that such participation is prudent.

23.7 Confidentiality. Where a filing is made with any regulatory agency for approval of a purchase, the Party responsible for the filing shall request that the regulatory agency approve a suitable confidentiality agreement or protective order that will provide appropriate protections for confidential information.

#### ARTICLE XXIV MISCELLANEOUS PROVISIONS

24.1 Survival. The provision of Articles [XII], [XIII], [XIV], [XVI], [XVII] and [XXIV] and Sections [7.6] and [11.3], including the rights and obligations of the Parties therein provided, shall survive the termination or expiration of this Agreement and the performance by the Parties of their obligations hereunder.

24.2 Expenses. (a) Whether or not the transactions contemplated by this Agreement are consummated, each Party shall pay all of its own costs and expenses incurred in connection with the negotiation and execution of this Agreement.

(b) Each Party shall reimburse the other for the reasonable costs and expenses (including reasonable legal fees and expenses) incurred in connection with such other Party’s agreement to review, execute and deliver any instruments, agreements or documents that may be necessary or appropriate in connection with any assignment requested by a Party or otherwise permitted hereunder.

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24.3 No Third-Party Beneficiaries. This Agreement is not intended to, and does not, confer upon any Person other than the Parties hereto and the Entergy Operating Companies and their respective successors and permitted assigns, any rights or remedies hereunder.

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

24.5 Waiver. Any waiver at any time by either Party of its rights, duties, and/or obligations with respect to any default under this Agreement, or with respect to any other matter arising out of or in connection with this Agreement, shall not be deemed a continuing waiver nor a waiver with respect to any subsequent default or other matter.

24.6 Choice of Law. This Agreement shall be governed, by and construed and interpreted in accordance with the laws of the State of New York, irrespective of the application of any conflict of laws provisions.

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

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

24.9 Entire Agreement. This Agreement, including all Schedules hereto, constitutes the entire agreement between the Parties hereto with respect to the matters contained herein and therein, and all prior agreements with respect to the matters covered herein are superseded, and each Party confirms that it is not relying upon any representations or warranties of the other Party, except as specifically set forth herein or incorporated by reference hereto.

24.10 Severability. Should any provision of this Agreement be held to be invalid or unenforceable, such provision shall be invalid or unenforceable only to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable any other provision hereof.

24.11 Amendment. Subject to Section [15.4], this Agreement may not be amended or modified except by a written instrument signed by each of the Parties hereto.

24.12 Submission to Jurisdiction; Waivers. Each of the Parties hereby irrevocably and unconditionally:

(a) submits for itself and its property in any legal action or proceeding relating to this Agreement, or for recognition and enforcement of any judgment in respect thereof, to the

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exclusive general jurisdiction of the courts of the State of New York, the courts of the United States for the Southern District of New York, and appellate courts from any thereof;

(b) consents and agrees, that any such action or proceeding may be brought in and only in such courts and waives any objection that it may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agrees not to plead or claim the same;

(c) agrees that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to the other Party at its address set forth in Article [XXII], or at such other address of which the other Party shall have been notified pursuant thereto; and

(d) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law.

24.13 ESI Liability. Entergy Services, Inc., is entering into, and is a party to, this Agreement as agent for the Entergy Operating Companies, and shall have no liability hereunder. The liability of the Entergy Operating Companies hereunder, whether in respect of a default or otherwise, shall be several and not joint.

24.14 Certain Interpretive Matters. All calculations and computations pursuant to this Agreement shall be carried and rounded to the nearest two (2) decimal places, except in the case of decimals that can also be expressed as percentages in accordance with this Agreement, in which case all such calculations and computations shall be carried and rounded to the nearest four (4) decimal places.

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IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first set forth above.

ENTERGY SERVICES, INC., as agent for  
the Entergy Operating Companies

By: \_\_\_\_\_  
Name:  
Title:

[SELLER]

By: \_\_\_\_\_  
Name:  
Title:

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## **Schedule A**

### **Facilities[; Response Rates]**

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## **Schedule B**

### **Delivery Points**

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## **Schedule 4.2**

### **Form of Availability Notice**

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## AVAILABILITY NOTICE

Effective  
Date \_\_\_\_\_

Time \_\_\_\_\_

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

Next Day Scheduling (M-F 8 a.m. - 5 p.m.)  
 Phone 800-461-4918  
 Fax 281-297-3733

Current Day Scheduling  
 Phone 281-297-3503  
 Fax 281-297-3730

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## AVAILABILITY NOTICE

Effective  
Date \_\_\_\_\_

Time \_\_\_\_\_

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

Next Day Scheduling (M-F 8 a.m. - 5 p.m.)  
 Phone 800-461-4918  
 Fax 281-297-3733

Current Day Scheduling  
 Phone 281-297-3503  
 Fax 281-297-3730

\*Change from CDST to CST

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## Schedule 5.1

### Capacity Payments

The Capacity Payment for Purchased Capacity shall be \$[\_\_\_\_\_] per kW/Year, based on Summer Dependable Capacity. Capacity Payments shall be made in accordance with the following schedule for the entire Delivery Term of the Agreement:

<u>Month</u>	<u>Allocation</u>	<u>Capacity Payment</u> <u>(\$/ kW Month)</u>
January	7%	_____
February	7%	_____
March	4%	_____
April	4%	_____
May	9%	_____
June	15%	_____
July	15%	_____
August	15%	_____
September	9%	_____
October	4%	_____
November	4%	_____
December	7%	_____

The Capacity Payments constitute Seller's full compensation, including all fixed cost charges, other than Variable Payments and Start-up Payments. Capacity Payments are subject to the Capacity Payment Discount.

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**Schedule 5.2**  
**Variable Payments**

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### Schedule 5.3

#### Start-Up Payments, Procedures and Constraints

##### Start-up Payments:

There are no payments in respect of the first [104] [52] Start-ups each Contract Year, or fuel consumed during such operation.

Payments for Start-ups in excess of [104] [52] per Contract Year are as follows:

A. Fuel

$$\text{HSFP} = (\text{FHS} * \text{GDIP}_D)$$

$$\text{CSFP} = (\text{FCS} * \text{GDIP}_D)$$

Where:

HSFP = Start-up Fuel Payment for a Hot Start

CSFP = Start-up Fuel Payment for a Cold Start

FHS = \_\_\_\_\_ MMBtu (Fuel per Hot Start)

FCS = \_\_\_\_\_ MMBtu (Fuel per Cold Start)

GDIP<sub>D</sub> = Gas Daily Index Price - the Gas price published in Platts *Gas Daily* in its "Daily Price Survey" under the column heading "Midpoint" for Gas to flow at [*Henry Hub* or *Houston Ship Channel*] (*select one*) for the applicable Day [*plus or minus basis adjustment, if any*] [*plus actual applicable sale and use taxes*]

B. Non-Fuel

Hot Start: \$\_\_\_\_\_ per generating unit start

Cold Start: \$\_\_\_\_\_ per generating unit start

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Maximum Start-ups:

Day \_\_\_\_\_

Week \_\_\_\_\_

Month \_\_\_\_\_

Year \_\_\_\_\_

Start-up Notification Lead Times:

Hot Start: \_\_\_\_\_ minutes

Cold Start: \_\_\_\_\_ minutes

Other Procedures and Timing Requirements:

\_\_\_\_\_

Minimum Run Time: \_\_\_\_\_ hours

Minimum Dispatch Level: \_\_\_\_\_ MW

Minimum Downtime: \_\_\_\_\_ hours

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## Schedule 5.5

### Capacity Payment Discount

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

Where:

CPD = Capacity Payment Discount, expressed in dollars.

CP<sub>m</sub> = Capacity Payment for the applicable Month, expressed in dollars.

AR<sub>m</sub> = Availability Requirement for the applicable Month, expressed as a decimal.

MA<sub>m</sub> = Monthly Availability for the applicable Month, expressed as a decimal.

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## Schedule 5.6

### [Capacity Shortfall Payments]

ESI shall pay a Capacity Shortfall Payment in respect of the applicable Contract Year pursuant to Section [5.6], calculated as follows:

$$CS = MWh * HR * AFOM$$

Where:

CS = Capacity Shortfall Payment in respect of a Contract Year, in dollars

MWh = MWh of Energy that would have been Scheduled and Dispatched to ESI if the Annual Capacity Factor in a Contract Year were [\_\_]%, less the total MWh of Energy that is Scheduled and Dispatched by ESI in the applicable Contract Year (but not less than zero).

HR = [\_\_\_\_] MMBtu/MWh.

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

*[if applicable, and in such case only to Limited Dispatch MUCPA Product B]*

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## **Schedule 6.1**

### **Guaranteed Heat Rate Curve**

[To come]

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**Schedule 7.1(c)**

**Form of Scheduling and Dispatch Notice; Form of Tag**

**Scheduling and Dispatch Notice**

**Effective  
Date** \_\_\_\_\_

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

Next Day Scheduling (M-F 8 a.m. - 5 p.m.)  
 Phone 800-461-4918  
 Fax 281-297-3733

Current Day Scheduling  
 Phone 281-297-3503  
 Fax 281-297-3730

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## Scheduling and Dispatch Notice

Effective  
Date \_\_\_\_\_

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

Next Day Scheduling (M-F 8 a.m. - 5 p.m.)  
 Phone 800-461-4918  
 Fax 281-297-3733

Current Day Scheduling  
 Phone 281-297-3503  
 Fax 281-297-3730

\*Change from CDST to CST

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## Form of Tag

Tag Information			
GCA	PSE	Tag Code	LCA

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

Start Date:
Stop Date:
Time Zone:
Transaction

Requests				
	Req	Type	Time	Status

Market Path			
PSE	Product	Contract	Misc (Token/Value)

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

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

Transmission Allocation			
TP	Owner	Product	OASIS

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

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## **Schedule 7.5**

### **Planned Maintenance**

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## **Schedule 11.1**

### **Monthly Statements**

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**Schedule 15.1(b)**

**[Approvals]**

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**Schedule 15.2(a)**

**Guaranteed Ramp Rate**

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**Schedule 15.2(b)**

**Unplanned Outage Rate**

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**Schedule 19.2(b)**

**[Calculation of Termination Payment]**

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**Schedule 20.1**

**[Form of Seller Guaranty]**

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