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

BETWEEN

GULF POWER COMPANY

AND

CORAL POWER L.L.C.

October 19, 2006

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TABLE OF CONTENTS

	Page
ARTICLE 1 DEFINITIONS	2
ARTICLE 2 TERM OF AGREEMENT	26
2.1 Term.....	26
2.2 Survival.....	26
2.3 Conditions Subsequent	26
ARTICLE 3 REPRESENTATIONS, WARRANTIES AND COVENANTS	27
3.1 Representations and Warranties of Seller.....	27
3.2 Representations and Warranties of Buyer	30
3.3 Seller Covenants	32
3.4 Buyer Covenant	34
ARTICLE 4 REGULATORY APPROVALS; COMPLIANCE WITH LAWS, RULES AND REGULATIONS; TAXES; IM FEE AND OTHER COSTS.....	34
4.1 FPSC.....	34
4.2 Preservation of Terms.....	34
4.3 Other Approvals	35
4.4 Federal Acquisition Regulations Compliance	36
4.5 Taxes.....	36
4.6 IM Fee.....	39
4.7 Accounting Determinations.....	39
ARTICLE 5 SALE AND DELIVERY OF CAPACITY AND ENERGY.....	40
5.1 Agreement to Sell and Purchase.....	40
5.2 Calculation of Monthly Capacity Payments.....	47
5.3 Calculation of Monthly Energy Payments.....	48
ARTICLE 6 BILLING AND COLLECTIONS	49
6.1 Capacity and Energy Billing and Payment.....	49
6.2 Billing Disputes and Final Accounting	50
6.3 Interest	50
6.4 Billing and Payment Records	50
ARTICLE 7 PERFORMANCE SECURITY	52
7.1 Seller Performance Security.....	52
7.2 Buyer Performance Security.....	53
7.3 Replacement Collateral, Substituted Collateral, Release of Collateral	54
7.4 Draws, Replenishment.....	55
7.5 Reporting	55

ARTICLE 8	PROJECT IMPLEMENTATION AND CONSTRUCTION	56
8.1	Design and Construction of the Facility	56
8.2	Reserved	57
8.3	Failure to Achieve Commercial Operation by the Required Commercial Operation Date.....	57
ARTICLE 9	INTERCONNECTION AND METERING	59
9.1	Interconnection	59
9.2	Meters	59
9.3	Deficiency in Transmission System Capability or Transportation Capability	62
9.4	Loss Factor Adjustment.....	62
ARTICLE 10	COMMERCIAL OPERATION AND ANNUAL PERFORMANCE TESTING.....	63
10.1	Commercial Operation Test.....	63
10.2	Capacity Examination.....	63
10.3	Disputes Concerning Capacity Tests.....	64
ARTICLE 11	OPERATION AND MAINTENANCE.....	64
11.1	Operation and Maintenance.....	64
11.2	Maintenance Scheduling.....	66
11.3	Permits	69
11.4	Access to the Site and the Facility.....	70
11.5	Availability of Records.....	70
11.6	Disclaimer.....	71
11.7	Operating Committee	71
ARTICLE 12	FUEL SUPPLY	72
12.1	Overview	72
12.2	Natural Gas Transportation Capacity	74
12.3	Fuel Oil	79
ARTICLE 13	ENERGY SCHEDULING AND TRANSMISSION	
13.1	Coordination and Scheduling	82
13.2	Effect of Grid Emergencies	88
13.3	AGC.....	89
ARTICLE 14	INSURANCE	90
14.1	Insurance Required	90
14.2	Certificates of Insurance	91
ARTICLE 15	INDEMNIFICATION	92
15.1	Scope of Indemnity.....	92
15.2	Notice of Proceedings.....	92

ARTICLE 16	FORCE MAJEURE	93
16.1	Definition of Force Majeure Event.....	94
16.2	No Breach or Liability	94
16.3	Capacity and Energy Payments	94
16.4	Declaration and Mitigation.....	95
16.5	Suspension of Performance	95
16.6	Extended Force Majeure Events.....	95
ARTICLE 17	DEFAULT AND REMEDIES	97
17.1	Default by Seller.....	97
17.2	Default by Buyer	105
17.3	Remedies	109
17.4	Rights of Specific Performance.....	112
17.5	Limitation of Remedies, Liability and Damages.....	112
17.6	Disclaimer of Warranties.....	114
17.7	No Interruption	114
17.8	Duty to Mitigate.....	115
ARTICLE 18	CHANGE OF LAW	115
18.1	Change of Law.....	115
18.2	Air Emissions	121
18.3	No Dedication.....	123
ARTICLE 19	ASSIGNMENT AND TRANSFERS OF INTERESTS	123
19.1	Assignment and Assumption of Obligations.....	123
19.2	General Requirements	123
ARTICLE 20	DISPUTE RESOLUTION.....	124
20.1	Notice.....	124
20.2	Dispute Resolution, Arbitration.....	124
ARTICLE 21	MISCELLANEOUS PROVISIONS	129
21.1	Amendments.....	129
21.2	Binding Effect.....	129
21.3	Counterparts.....	129
21.4	Notices.....	129
21.5	Entire Agreement.....	131
21.6	Governing Law	131
21.7	Time of Essence; Waiver.....	131
21.8	Headings	132
21.9	Third Parties	132
21.10	Agency.....	132
21.11	Further Assurances	132
21.12	Severability	132
21.13	Negotiated Agreement.....	133

21.14	Confidentiality	133
21.15	Interpretation	135
21.16	Replacement Index	135
21.17	Recording.....	136
21.18	Transfer of Information Acknowledgement.....	136

APPENDICES

APPENDIX A	CAPACITY PAYMENT CALCULATION
APPENDIX B	ENERGY PAYMENT CALCULATION
APPENDIX C	TECHNICAL LIMITS AND SCHEDULE PROCEDURES
APPENDIX D	PERFORMANCE TESTING PROCEDURES
APPENDIX E	INSURANCE REQUIREMENTS
APPENDIX F	THE SITE
APPENDIX G	FORM OF LETTER OF CREDIT
APPENDIX H	FORM OF GUARANTY
APPENDIX I	TRANSFER OF INFORMATION ACKNOWLEDGEMENT
APPENDIX J	GUARANTEED HEAT RATES FOR NON-AGC OPERATION
APPENDIX K	FINANCIAL SETTLEMENT PROCEDURE
APPENDIX L	FAILURE TO ACHIEVE RCOD LIQUIDATED DAMAGES CALCULATION
APPENDIX M	TECHNICAL SPECIFICATIONS FOR NATURAL GAS AND FUEL OIL
APPENDIX N	AGREEMENTS RELATING TO OPERATION, MANAGEMENT, AND MAINTENANCE OF THE FACILITY

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

1 **THIS POWER PURCHASE AGREEMENT** ("Agreement"), dated as of October 19 ,
2 2006, is between Gulf Power Company, a corporation organized and existing under the laws of
3 the State of Florida, having its principal place of business in Pensacola, Florida ("Buyer"), and
4 Coral Power, L.L.C., a limited liability company, organized and existing under the laws of the
5 State of Delaware ("Seller").

WITNESSETH:

6
7 **WHEREAS**, Buyer is engaged in the distribution and sale of electricity to the public in
8 the State of Florida;

9 **WHEREAS**, Seller's parent, Coral Energy Holding, L.P. ("CEH"), owns 100% of the
10 equity in Tejas Power Generation, LLC. ("Tejas") and Tejas owns a [REDACTED] equity interest in
11 Facility Owner;

12 **WHEREAS**, Seller has contractual rights to the capacity, energy and Ancillary Services
13 of an electric power plant, generating electricity with Natural Gas and with a limited capability to
14 run on Fuel Oil, located in Mitchell County, Georgia (more fully defined in Section 1.1 as the
15 "Facility") pursuant to that certain Second Amended and Restated Tolling Agreement between
16 Coral Power, L.L.C and Baconton Power LLC dated November 1, 2002 (the "Tolling
17 Agreement");

18 **WHEREAS**, Buyer has agreed to purchase from Seller, and Seller has agreed to sell to
19 Buyer, capacity and associated energy and Ancillary Services from the Facility, all in accordance
20 with the provisions of this Agreement.

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

ARTICLE 1

DEFINITIONS

- 1.1 Certain Definitions. In addition to the initially capitalized terms and phrases defined in the preamble of this Agreement, the following initially capitalized terms and phrases as and when used in this Agreement shall have the respective meanings set forth below:
- 1.1.1 “AAA” - has the meaning assigned in Section 20.2.2.2.1.
 - 1.1.2 “Adjustment Period” - has the meaning assigned in Section 9.2.3.
 - 1.1.3 “Affiliate” - means, with respect to Buyer, any Person directly or indirectly controlling or controlled by or under direct or indirect common control of a specified Person. For purposes of this definition, “control” means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise. For purposes of this Agreement, it shall be assumed that the direct or indirect owner of fifty percent (50%) of the outstanding stock or other equity interest of a Person has “control” of such Person. The terms “controlling” and “controlled” have meanings correlative to the foregoing. With respect to Seller, the term “Affiliate” shall mean CEH and each of its subsidiaries in which it owns a controlling interest.
 - 1.1.4 “After-Tax Basis” - means, with respect to any payment received or deemed to have been received by any Person, the amount of such payment (the “base

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

1.1.5 “AGC” - has the meaning assigned in Section 13.3.

1.1.6 “Aggrieved Party” - has the meaning assigned in Section 20.1.

1.1.7 “Air Permit” - has the meaning assigned in Section 11.3.

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

1.1.9 “Alternate Delivery Point” - means any point on the Transmission System (including interfaces between the Transmission System and other transmission systems) at which Buyer is (i) capable of receiving energy in the quantity to be delivered at such point pursuant to the Southern OATT, and (ii) able to transmit such energy to its loads without being required to either materially change the output of generating resources available to Buyer or materially change the

schedule of its preexisting power purchases or sales (other than purchases or sales pursuant to this Agreement) that results in material economic harm to Buyer.

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

1.1.11 "Ancillary Services" - means all commercial products produced by or related to the Facility (other than energy and capacity), including spinning reserves, operating reserves, black start capability, balancing energy, regulation service, reactive power and voltage control, renewable energy credits, any other environmental or regulatory credits or allowances resulting from operation of the Facility or any similar benefit Buyer otherwise would have realized from or related to the Facility if Buyer rather than Seller had entered into the Tolling Agreement with the Facility Owner.

1.1.12 "Annual Capacity Charge" - shall have the meaning assigned in **Appendix A, Section A.4.**

1.1.13 "Annual Period" - means any one of a succession of consecutive twelve (12) Month periods during the Term of this Agreement beginning on June 1 and ending on the following May 31. The first Annual Period is such period beginning on June 1, 2009.

1.1.14 "ASME Performance Test Code" - means the rules and regulations established by the American Society of Mechanical Engineers to govern Performance Tests applicable to the Facility under this Agreement.

- 1.1.15 "Availability Percentage" - has the meaning assigned in Section 17.1.8.
- 1.1.16 "Available" - means all times following the Delivery Commencement Date when the Facility or an Alternate Resource (designated pursuant to Section 5.1.4), as the case may be, is not Unavailable.
- 1.1.17 "Base Operating Mode" - means the normal operating mode at which the Facility runs with full normal utilization of the CT(s).
- 1.1.18 "Base Operating Mode Energy" - means energy produced by the Facility in the Base Operating Mode.
- 1.1.19 "Business Day" - means any Day excluding Saturday, Sunday and NERC-defined holidays.
- 1.1.20 "Buyer Guarantor" - means a Person that, at the time of execution and delivery of its Buyer Guaranty, is a direct or indirect owner of Buyer and (a) is Creditworthy with a consolidated Net Worth of at least five hundred million dollars (\$500,000,000); or (b) is reasonably acceptable to Seller as having verifiable credit worthiness and Net Worth sufficient to secure Buyer Guarantor's obligations under its Buyer Guaranty.
- 1.1.21 "Buyer Guaranty" - means a guarantee provided by a Buyer Guarantor that is substantially in the form of the guaranty attached hereto as **Appendix H**.
- 1.1.22 "Buyer's Maximum Daily Quantity" or "Buyer's MDQ" - means the maximum daily quantity of gas which SNG or any other pipeline supplier, as the case may be, is obligated to deliver on a primary basis under any firm gas supply transportation agreement for Buyer's account at the Primary Gas Delivery Point, if any.

- 1.1.23 "Buyer Performance Security" - has the meaning assigned in Section 7.2.
- 1.1.24 "Buyer Security Account" - means an account designated by Buyer for the benefit of Buyer, under the exclusive control of Buyer free and clear of all liens (including the liens of any lenders) of any person or entity other than Buyer. Any Buyer Security Account shall be established and maintained at the expense of Seller and held by a depository bank acceptable to Buyer pursuant to a control agreement in form and substance acceptable to Buyer.
- 1.1.25 "Change of Control Transaction" - in respect of a Person means any transaction or series of related transactions that, if consummated, would result in such Person being controlled by another ultimate parent entity immediately after such transaction. For purposes of this definition, a Person's ultimate parent entity is the Person who directly or indirectly controls fifty percent (50%) or more of such Person's outstanding capital stock or other equity interests having ordinary voting power and who does not itself have an ultimate parent entity.
- 1.1.26 "Change of Law" - has the meaning assigned in Section 18.1.1.
- 1.1.27 "Commercial Operation" - has the meaning assigned in Section 8.1.1.
- 1.1.28 "Commercial Operation Date" - means the date on which the Facility achieves Commercial Operation.
- 1.1.29 "Confidential Information" - means business or technical information rightfully in the possession of either Party, which information derives actual or potential commercial value from not being generally known or readily ascertainable and includes information furnished or disclosed to the other Party in connection with discussions leading up to execution of this Agreement. Confidential Information

includes, but is not limited to, information related to a Party's or its Affiliate's financial condition, operations, products, services, marketing plans, business policies and practices, or other technical, financial or strategic information, commercial arrangements with third parties, tolling agreements and associated ancillary agreements. Documents containing Confidential Information exchanged between the Parties after the execution of this Agreement must be stamped "CONFIDENTIAL" by the Party supplying such information (the "Disclosing Party," the other Party being the "Receiving Party"). Confidential Information does not include information which: (i) is or becomes publicly available other than as a result of a violation of this Agreement; (ii) was, at the time of the disclosure, already in the Receiving Party's possession; (iii) is disclosed to the Receiving Party by a third Party who, to the Receiving Party's knowledge, is not prohibited from disclosing the information pursuant to any agreement with the Disclosing Party; (iv) the Receiving Party develops or derives without the aid, application or use of the Confidential Information; or (v) the portions of this Agreement which conform to the REVISED Gulf CT PPA contained in Buyer's RFP.

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

1.1.31 "Contracted Capacity" - means the full capacity range of the Facility (in MW) being made available to Buyer pursuant to this Agreement, as specified in

Appendix A.

- 1.1.32 "Costs" - has the meaning assigned in Section 17.3.2.
- 1.1.33 "CPT" - means Central Prevailing Time.
- 1.1.34 "Creditworthy" - means a Person has an investment grade rating such that its senior unsecured debt (or issuer rating if such Person has no senior unsecured debt rating) is rated at least BBB- by Standard & Poor's Rating Group and at least Baa3 by Moody's Investor Services, Inc. and at least BBB- by Fitch Ratings where such Person has a senior unsecured debt rating (or issuer rating if such Person has no senior unsecured debt rating) from each of such foregoing rating agencies which has issued a rating for the Person. While a Person is not required to have a senior unsecured debt rating (or issuer rating if such Person has no senior unsecured debt rating) from each of the foregoing rating agencies, a Person shall no longer be "Creditworthy" if such Person ceases to have a senior unsecured debt rating (or issuer rating if such Person has no senior unsecured debt rating) from at least one of Standard & Poor's Rating Group, Moody's Investor Services, Inc. or Fitch Ratings.
- 1.1.35 "CT" - means combustion turbine.
- 1.1.36 "Cumulative Changes of Law" - has the meaning assigned in Section 18.1.7.
- 1.1.37 "Cure Period" - has the meaning assigned in Section 17.1.9.
- 1.1.38 "Daily Fuel Oil Replacement Price" - means a per gallon price for Fuel Oil equal to the daily average of the high and low prices for dyed Fuel Oil, as issued by the Oil Price Information Service ("OPIS") for Albany, Georgia, or such supply point mutually agreeable to the Parties, plus a commercially reasonable cost-

based Fuel Oil transportation and supplier margin adder to be calculated monthly by Buyer plus any applicable Taxes and surcharges. The Operating Committee shall establish the procedures and methodology that Buyer shall use for determining the Fuel Oil transportation and supplier margin adder.

- 1.1.39 "Day" - means a calendar day.
- 1.1.40 "Defaulting Party" - has the meaning assigned in Section 17.3.1.
- 1.1.41 "Delivery Commencement Date" - means the later of the Commercial Operation Date or June 1, 2009.
- 1.1.42 "Demand" - has the meaning assigned in Section 20.2.2.2.1.
- 1.1.43 "Designated Capacity" - has the meaning assigned in **Appendix A**, Section A.3.
- 1.1.44 "Early Termination Date" - has the meaning assigned in Section 17.3.1.
- 1.1.45 "Eligible Collateral" - means (i) a Letter of Credit, (ii) cash deposited into a Buyer Security Account by Seller or a Seller Security Account by Buyer, as the case may be, or (iii) a Seller Guaranty or Buyer Guaranty as the case may be; provided, however, that at least fifty percent (50%) of any Eligible Collateral required under any provision of this Agreement must be in the form of either a Letter of Credit or cash deposited into either a Buyer Security Account or a Seller Security Account, as appropriate, whenever a Seller Guarantor supplying a Seller Guaranty, or Buyer Guarantor supplying a Buyer Guaranty, under this Agreement has an investment grade rating such that its senior unsecured debt (or issuer rating if such Person has no senior unsecured debt rating) is not rated at least BBB by Standard & Poor's Rating Group and at least Baa2 by Moody's Investor Services, Inc. and at least BBB by Fitch Ratings by each such rating

agency which has issued a rating for the guarantor. For the purposes of the immediately preceding sentence, a Person is not required to have a senior unsecured debt rating (or issuer rating if such Person has no senior unsecured debt rating) from all of Standard & Poor's Rating Group, Moody's Investor Services, Inc. and Fitch Ratings, but must have a senior unsecured debt rating (or issuer rating if such Person has no senior unsecured debt rating) from at least one of Standard & Poor's Rating Group, Moody's Investor Services, Inc. and Fitch Ratings.

1.1.46 "Event of Default" - means an event described in Section 17.1 for Seller and in Section 17.2 for Buyer.

1.1.47 "Excess Change of Law Costs" - has the meaning assigned in Section 18.1.6.

1.1.48 "Extended Force Majeure Event" - has the meaning assigned in Section 16.6.1.

1.1.49 "Extraordinarily Confidential Information" - means the following information stamped "CONFIDENTIAL – LIMITED DISTRIBUTION," highlighted or shaded and furnished by Disclosing Party or its Representatives to Receiving Party or its Representatives in connection with this Agreement, Disclosing Party's tolling agreements and associated ancillary agreements, but excluding: (i) publicly-available information unless made public by Receiving Party or its Representatives in a manner not permitted by this Agreement; (ii) information already known to Receiving Party on a non-confidential basis prior to being furnished by Disclosing Party; and (iii) information disclosed to Receiving Party from a source other than Disclosing Party or its Representative if such source is not subject to any agreement with Disclosing Party prohibiting such disclosure to

1 Receiving Party.

2 1.1.50 "Facility" - means the electric generating plant interconnected to the Transmission
3 System at the Interconnection Point. The Facility shall include, without
4 limitation, four (4) CT's (GE LM6000 combustion turbine generators with
5 generator step-up transformers), specifically identified as CT01, CT04, CT05 and
6 CT06 in the Air Permit (individually, a "Unit" and collectively the "Units"),
7 Natural Gas, Fuel Oil and Electricity metering equipment and all auxiliary
8 equipment and facilities necessary or used for the production, control, delivery or
9 monitoring of electricity produced by the Units, including, but not limited to, the
10 Facility Owner's interest in the common facilities, which includes a [REDACTED]
11 [REDACTED] gallon Fuel Oil storage tank, Fuel Oil unloading
12 equipment, Natural Gas lateral, and 230 kV bus and electrical switchyard.

13 1.1.51 "FASB" - means the Financial Accounting Standards Board.

14 1.1.52 "Facility Owner" - means Baconton Power LLC.

15 1.1.53 "Factored Operating Hour" - means (a) [REDACTED] hours for each hour that Fuel Oil is
16 used to produce energy and (b) one hour for each hour that Natural Gas is used to
17 produce energy; provided however, that any use of Factored Operating Hours
18 Seller utilizes for third party sales, other than those made to accommodate
19 testing, will not limit the hours available to Buyer.

20 1.1.54 "Federal Power Act" - means the Federal Power Act, 16 U.S.C. § § 791a *et seq.*
21 (1994), as such Act may be amended from time to time, and any successor statute
22 of similar import.

23 1.1.55 "FERC" - means the Federal Energy Regulatory Commission or any

Governmental Authority succeeding to the powers and functions thereof under the Federal Power Act.

1.1.56 "Force Majeure Event" - means the events or circumstances described in Section 16.1.

1.1.57 "Force Majeure Remedy Plan" - has the meaning assigned in Section 16.6.1.

1.1.58 "Forced Derate" - means a time during which the Facility is not capable of providing the full Designated Capacity at Reference Conditions for reasons other than a Force Majeure Event.

1.1.59 "Forced Outage" - means a time during which the Facility is not capable of normal operations for reasons other than a Force Majeure Event and which is not a Scheduled Outage or a Maintenance Outage.

1.1.60 "FPSC" - means the Florida Public Service Commission or any Governmental Authority succeeding to the powers and functions thereof.

1.1.61 "Fuel Oil" - means low sulfur No. 2 diesel (*ASTM D 975-06 specification grade No. 2-D S500 (sulfur content max 500 ppm)*) (or in the event that such low sulfur No. 2 diesel is not available or is more expensive, ultra-low sulfur No. 2 diesel (*ASTM D 975-06 specification grade No. 2-D S15 (sulfur content max 15 ppm)*) that satisfies the requirements of the Technical Specifications and the Air Permits.

1.1.62 "GAAP" - means with respect to any Person, accounting principles that are generally accepted in the United States.

1.1.63 "Gains" - has the meaning assigned in Section 17.3.2.

1.1.64 "Gas Contract" - has the meaning assigned in Section 12.2.2.

- 1.1.65 "Gas Day" - has the meaning assigned in Section 12.2.6.
- 1.1.66 "Gas Receipt Facilities" - means the facilities on the Facility Owner's side of the Primary Gas Delivery Point sufficient to enable the Facility to receive Natural Gas in the quantities necessary to produce energy to meet Buyer's Schedules.
- 1.1.67 "GDPIPD" - means the Gross Domestic Product Implicit Price Deflator as reported in the Survey of Current Business published in January of each year for the annual escalation of the previous year, and revised thereafter, by the Bureau of Economic Analysis, United States Department of Commerce, Washington, D.C.
- 1.1.68 "Governmental Approvals" - means any and all licenses, permits, franchises, agreements, approvals, authorizations, consents, waivers, rights, exemptions, releases, variances, exceptions, or orders of or issued by, or filing with, or notice to, any Governmental Authority under Legal Requirements.
- 1.1.69 "Governmental Authority" - means any local, state, regional or federal administrative, legal, judicial or executive agency, court, commission, department or other such entity, but excluding any such agency, court, commission, department or other such entity acting in a capacity as lender, guarantor or mortgagee.
- 1.1.70 "Grid Emergency" - means any system stability, power supply or transmission problem, including voltage abnormalities, adversely affecting or potentially affecting the Transmission System.
- 1.1.71 "Guaranteed Heat Rates" - means the guaranteed heat rates set forth in **Appendix J**.

- 1.1.72 “Hot Gas Path Inspection” - means the hot gas path inspection as defined by the maintenance documents of the original equipment manufacturer.
- 1.1.73 “IM Fee” - has the meaning assigned in Section 4.6.
- 1.1.74 “IM Fee Invoice” - has the meaning assigned in Section 4.6.
- 1.1.75 “Imbalance Charges” - has the meaning assigned in Section 12.2.5.
- 1.1.76 “Indebtedness” - of any Person means all of the following without duplication:
- (a) obligations of such Person for borrowed money evidenced by bonds, debentures, notes, loan agreements or other similar instruments;
 - (b) purchase money indebtedness of such Person constituting an obligation to pay the deferred purchase price of property or services, other than trade payables incurred in the ordinary course of business;
 - (c) lease obligations of such Person which are capitalized on the balance sheet of such Person in accordance with GAAP;
 - (d) liabilities of a second Person secured by any lien on any property of such first Person, whether or not such liabilities have been assumed by such first Person;
 - (e) liabilities of such Person with respect to letters of credit or applications or reimbursement agreements therefor;
 - (f) net obligations of such Person under any swap or hedging agreement; or
 - (g) indebtedness of such Person owing under direct or indirect guarantees of indebtedness of any other Person or constituting obligations to purchase or acquire or to otherwise protect or insure a creditor against loss in respect of indebtedness of any other Person excluding endorsements of negotiable instruments for deposit or collection in the ordinary course of business.
- 1.1.77 “Indemnified Party” - has the meaning assigned in Section 15.1.

- 1.1.78 “Indemnifying Party” - has the meaning assigned in Section 15.1.
- 1.1.79 “Interconnection Agreement” - means that certain Interconnection and Operation and Maintenance Agreement entered into by and between Baconton Power LLC and Georgia Transmission Corporation dated as of May 15, 2000, as subsequently amended, that provides for the construction or operation of the Interconnection Facilities and governs the interconnection and parallel operation of the Facility with the Transmission System.
- 1.1.80 “Interconnection Facilities” - means those facilities described in the Interconnection Agreement as facilities that must be installed or modified in order to enable the Facility to deliver energy from the Facility to the Transmission System.
- 1.1.81 “Interconnection Point” - means the point of connection of the Facility’s electrical facilities at the GTC SOWEGA 230 kV substation, as described in more detail in Appendix A to the Interconnection Agreement.
- 1.1.82 “Interest Rate” - means the interest per annum equal to the prime rate as published in *The Wall Street Journal*, or comparable successor publication, under “Money Rates,” as applied on a daily basis and compounded quarterly.
- 1.1.83 “kV” - means kilovolt(s).
- 1.1.84 “kW” - means kilowatt(s).
- 1.1.85 “Legal Requirement” - means any law, code, statute, regulation, rule, ordinance, judgment, injunction, order, permit or other requirement of a Governmental Authority having jurisdiction over the matter in question that is valid and applicable to the matter in question.

- 1.1.86 “Letter of Credit” - means a standby letter of credit, substantially in the form attached hereto as **Appendix G** and which (i) is issued by a U.S. commercial bank or a U.S. branch of a foreign bank with total assets of at least \$10 billion having a general long-term senior unsecured debt rating of A minus or higher (as rated by Standard & Poor’s Rating Group) or A3 or higher (as rated by Moody’s Investor Services, Inc.).
- 1.1.87 “Losses” - has the meaning assigned in Section 17.3.2.
- 1.1.88 “Maintenance Outage” - means a planned interruption of a portion or all of the Facility’s generation capability that: (i) has been coordinated in advance with Buyer with a mutually agreed start date, time and duration or to which Buyer has consented pursuant to Section 11.2.2; and (ii) is for the purpose of performing work on specific components of the Facility that would limit the power output of the Facility but should not, in the reasonable judgment of Seller, be postponed until the next Scheduled Outage.
- 1.1.89 “Maintenance Schedules” - has the meaning assigned in Section 11.2.1.
- 1.1.90 “Major Inspection” - means major inspection as defined by the maintenance documents of the original equipment manufacturer.
- 1.1.91 “Material Adverse Change” - means, as to Buyer, that Buyer or, if Buyer is providing Eligible Collateral in the form of a Buyer Guaranty, the Buyer Guarantor, experiences any of the events described in clauses (a) or (b), and as to Seller, that Seller or, if Seller is providing Eligible Collateral in the form of a Seller Guaranty, that Seller Guarantor experiences any of the events described in clauses (a) or (b): (a) such Person is no longer Creditworthy; or (b) the maturity

of any Indebtedness of such Person which in the aggregate exceeds seventy-five million dollars (\$75,000,000) or ten percent (10%) of equity, whichever is less, is accelerated by the holder or holders thereof as a result of default by (x) Buyer or Buyer's Guarantor or (y) Seller or Seller's Guarantor, as the case may be.

- 1.1.92 "Metering System" - means all meters, metering devices and related instruments used to measure and record electric energy and to determine the amount of such electric energy that is being made available or delivered to Buyer at the Interconnection Point.
- 1.1.93 "Minimum Capacity" - has the meaning assigned in **Appendix C**, Section I.B.
- 1.1.94 "Month" - means a calendar month, commencing at the beginning of the first Day of such calendar month. "Monthly" has a meaning correlative to that of Month.
- 1.1.95 "Monthly Availability Adjustment" - has the meaning assigned in **Appendix A**, Section D.
- 1.1.96 "Monthly Availability Percentage" or "MAP" - has the meaning assigned in **Appendix A**, Section D.
- 1.1.97 "Monthly Capacity Payment" - means the amount to be paid by Buyer to Seller for Buyer's purchase of the Designated Capacity for a particular Month, as provided in Section 5.2 and **Appendix A**.
- 1.1.98 "Monthly Energy Payment" - means the amount to be paid by Buyer to Seller for Buyer's purchase of energy and Ancillary Services for a particular Month, as provided in Section 5.3 and **Appendix B**, Section A.
- 1.1.99 "Monthly Fuel Adjustment" - has the meaning assigned in **Appendix B**, Sections D and E.

- 1.1.100 "Monthly Fuel Charge" or "MFC" - has the meaning assigned in **Appendix B**, Sections A and F.
- 1.1.101 "Monthly Invoice" - has the meaning assigned in Section 6.1.1.
- 1.1.102 "Monthly Startup Cost" or "MSC" - has the meaning assigned in **Appendix B**, Section C.
- 1.1.103 "Monthly Variable O&M" or "MVOM" - has the meaning assigned in **Appendix B**, Section B.
- 1.1.104 "MW" - means megawatt(s).
- 1.1.105 "MWh" - means megawatt-hour(s).
- 1.1.106 "MWh Delivered" - has the meaning assigned in **Appendix A**, Section C.
- 1.1.107 "MWh Scheduled" - has the meaning assigned in **Appendix A**, Section C.
- 1.1.108 "Natural Gas" - means a mixture of hydrocarbon gases that occurs with petroleum deposits, principally methane, together with varying quantities of ethane, propane, butane, and other gases, but excluding manufactured or artificial gas.
- 1.1.109 "NERC" - means the North American Electric Reliability Council, including any successor thereto and subdivisions thereof.
- 1.1.110 "Net Worth" - means the dollar value calculated by subtracting liabilities from total assets (excluding goodwill and other intangible assets described in FASB Statement 142) as such terms are determined in accordance with GAAP.
- 1.1.111 "Nominal Capability" - shall be 195 MW for the Facility.
- 1.1.112 "Non-Defaulting Party" - has the meaning assigned in Section 17.3.1.
- 1.1.113 "Noticed Party" - has the meaning assigned in Section 20.1.

- 1.1.114 "NOx Allowances" - has the meaning assigned in Section 18.2.
- 1.1.115 "Operating Committee" - means the committee established pursuant to Section 11.7.
- 1.1.116 "Operating Procedures" - means those procedures developed by the Parties pursuant to Section 11.1.2.
- 1.1.117 "Operating Representatives" - means those individuals appointed by each of the Parties to the Operating Committee pursuant to Section 11.7.
- 1.1.118 "Operator Requested Schedule" - has the meaning assigned in Section 13.1.5.
- 1.1.119 "Party" or "Parties" - means either Buyer or Seller, or both, respectively.
- 1.1.120 "Performance Test" or "Performance Testing" - has the meaning assigned in **Appendix A**, Section A.
- 1.1.121 "Person" - means any natural person, corporation, limited liability company, general partnership, limited partnership, proprietorship, other business organization, trust, union, association or Governmental Authority.
- 1.1.122 "Primary Gas Delivery Point" - means the point of interconnection between the Facility and the Southern Natural Gas Company pipeline serving the Facility.
- 1.1.123 "Project" - means the testing, operation, management and maintenance of the Facility, all of which being reasonably expected to enable Seller to fulfill its obligations under this Agreement.
- 1.1.124 "Prudent Industry Practices" - means, any of the practices, methods, standards and acts engaged in or approved by a significant portion of the independent power industry in the United States that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that should reasonably have

been known at the time a decision was made, could have been expected to accomplish the desired result consistent with good business practices, reliability, economy, safety and expedition. Prudent Industry Practices are not intended to be limited to the optimum practices, methods or acts to the exclusion of all others, but rather to be acceptable practices, methods and acts generally accepted in the United States, having due regard for, among other things, manufacturers' warranties, contractual obligations, transmission system operator rules, NERC policies and applicable Legal Requirements.

- 1.1.125 "Reference Conditions" - means ninety-five degrees Fahrenheit (95°F), forty-five percent (45%) relative humidity and the standard barometric pressure at the site at 14.593 psia.
- 1.1.126 "Representatives" - means a Party's directors, officers, employees, auditors, consultants, attorneys, subcontractors and agents and those of its Affiliates.
- 1.1.127 "Required Commercial Operation Date" or "RCOD" - means June 1, 2009.
- 1.1.128 "Rules" - has the meaning assigned in Section 20.2.2.2.1.
- 1.1.129 "Schedule", "Scheduling" and "Scheduling Instructions" - mean instructions issued by Buyer from the Scheduling Center to Seller with respect to the scheduling of the production of electricity by the Facility or other resources in accordance with Article 13 and **Appendix C**.
- 1.1.130 "Scheduled Outage" - has the meaning assigned in Section 11.2.1.
- 1.1.131 "Scheduling Center" - means the scheduling center designated by Buyer from time to time in writing as being the primary control point for Scheduling Instructions and other notifications provided pursuant to Article 13 and

1 Appendix C, Section II. There may only be one Scheduling Center designated
2 at any one time.

3 1.1.132 "Seasonal Availability Adjustment" - has the meaning assigned in Appendix A,
4 Section C.

5 1.1.133 "Seasonal Availability Percentage" or "SAP" - has the meaning assigned in
6 Appendix A, Section C.

7 1.1.134 "Seasonal Performance Period" or "Season" - means one (1) of the following
8 periods during the Annual Period: Summer (June through September); Fall
9 (October through December); Winter (January and February); or Spring (March
10 through May).

11 1.1.135 "Seller Guarantor" - means a Person that, at the time of execution and delivery
12 of its Seller Guaranty, is a direct or indirect owner of Seller and (a) is
13 Creditworthy with a consolidated Net Worth of at least five hundred million
14 dollars (\$500,000,000); or (b) is reasonably acceptable to Buyer as having a
15 verifiable creditworthiness and Net Worth sufficient to secure Seller
16 Guarantor's obligations under its Seller Guaranty.

17 1.1.136 "Seller Guaranty" - means a guaranty provided by the Seller Guarantor that is
18 substantially in the form of the guaranty attached hereto as Appendix H.

19 1.1.137 "Seller's Maximum Daily Quantity" or "Seller's MDQ" - means the maximum
20 daily quantity of gas which SNG is obligated under the [REDACTED] to deliver
21 at the Primary Gas Delivery Point for Buyer's account, [REDACTED]
22 [REDACTED]

23 1.1.138 "Seller Performance Security" - has the meaning assigned in Section 7.1.

- 1.1.139 "Seller Security Account" - means an account designated by Seller for the benefit of Seller, under the exclusive control of Seller free and clear of all liens (including the liens of any lenders) of any person or entity other than Seller. Any Seller Security Account shall be established and maintained at the expense of Buyer and held by a depository bank acceptable to Seller pursuant to a control agreement in form and substance acceptable to Seller.
- 1.1.140 "SERC" - means the Southeastern Electric Reliability Council, including any successor thereto.
- 1.1.141 "Site" - means the land in Mitchell County, in the State of Georgia, on which the Facility is located, as specified in **Appendix F**.
- 1.1.142 "SNG" - has the meaning as set forth in Section 12.2.2.
- 1.1.143 "Sowega" - has the meaning as set forth in Section 12.2.6.
- 1.1.144 Reserved
- 1.1.145 "Southern Control Area" - means the electric system of the Southern Companies that has been recognized by NERC and SERC as a control area.
- 1.1.146 "Southern OATT" - means The Southern Company's Open Access Transmission Tariff and any successor in function thereto.
- 1.1.147 "Startup Energy" - means energy produced during startup when ramping from synchronization to the Minimum Capacity.
- 1.1.148 "Station Service" - means energy produced by the Facility that is used to serve the electrical requirements of the Facility, and includes step-up transformer losses and line losses between the Facility and the Interconnection Point, if any.
- 1.1.149 "Storage Facility" - has the meaning as set forth in Section 12.3.1.

- 1.1.150 "System Emergency" - means that the Scheduling Center has determined pursuant to its prevailing practices that conditions are expected to occur or have occurred that could jeopardize the ability to meet projected loads in the Southern Control Area.
- 1.1.151 "Tariff" - has the meaning as set forth in Section 12.2.2.
- 1.1.152 "Taxes" - means all taxes, fees, levies, licenses or charges imposed by any Governmental Authority, other than taxes, levies, licenses or charges based upon net income or net worth, together with any interest and penalties thereon.
- 1.1.153 "Technical Limits" - means the operational limits and constraints described in **Appendix C**, Section I.
- 1.1.154 "Technical Specifications" - means technical information relating to Natural Gas and Fuel Oil utilized by the Units. Technical Specifications shall be as set forth on **Appendix M** as such Appendix may be modified from time to time by Seller in the event that Facility Owner modifies a similar exhibit under the terms of the Tolling Agreement.
- 1.1.155 "Term" - means the term of this Agreement specified in Section 2.1.
- 1.1.156 "Termination Payment" - has the meaning assigned in Section 17.3.2.
- 1.1.157 "Tested Reliable Capacity" - has the meaning assigned in **Appendix A**, Section A.2.
- 1.1.158 "Threshold Amount" - has the meaning assigned in Section 18.1.3.
- 1.1.159 "Tolling Agreement" - has the meaning as set forth in the Recitals.
- 1.1.160 "Total Maximum Daily Quantity" or "Total MDQ" - means the sum of Buyer's MDQ and Seller's MDQ.

- 1.1.161 "Transmission System" - means the integrated high voltage electricity transmission systems of the electric utility operating companies of The Southern Company (currently Alabama Power Company, Georgia Power Company, Gulf Power Company and Mississippi Power Company), as modified or expanded from time-to-time, as well as any successor in function thereto, and includes the Georgia Integrated Transmission System.
- 1.1.162 "Unavailability Event" - means any single, continuous period during which the Facility or an Alternate Resource (designated pursuant to Section 5.1.4.2), is Unavailable to serve Buyer's Schedules.
- 1.1.163 "Unavailable" or "Unavailability" - means the extent to which at all times following the Delivery Commencement Date the Facility or an Alternate Resource (designated pursuant to Section 5.1.4), as the case may be, is unable to deliver energy pursuant to a Schedule due to a Scheduled Outage, Maintenance Outage, Forced Outage, Forced Derate or a Force Majeure Event.
- 1.1.164 "Unit Hour" - means, for each Unit, an hour in which such Unit(s) is dispatched in order to meet a Schedule by Buyer pursuant to **Appendix A**. For example, in one hour where three (3) Units are required to meet Buyer's Schedule, three (3) Unit Hours shall accumulate.
- 1.1.165 "Variable-Interest Entity" or "VIE" - shall have the meaning as set forth in the FASB Interpretation No. 46 (Revised December 2003) as issued and amended from time to time by FASB.

ARTICLE 2

TERM OF AGREEMENT

- 2.1 Term. This Agreement shall become effective when executed by both Buyer and Seller and, subject to termination as provided in this Article 2 and in other sections of this Agreement, shall remain in full force and effect through May 31, 2014.
- 2.2 Survival. All provisions of this Agreement that expressly or by implication come into or continue in force and effect following the expiration or termination of this Agreement shall remain in effect and be enforceable following such expiration or termination.
- 2.3 Conditions Subsequent. If after two hundred forty (240) Days from the filing date by Buyer of the petition with the FPSC for approval of this Agreement, the FPSC has not approved this Agreement through the issuance of an order, with or without qualifications or conditions, then Buyer or Seller may terminate this Agreement upon written notice to the other Party, provided that such notice is delivered to such other Party no later than thirty (30) Days after the 240 Days from the FPSC filing date. If such Party fails to exercise the aforementioned termination right within such thirty (30) Day period, then such Party shall be deemed to have waived such termination right. Each Party agrees that it will not oppose, protest or contest the petition with the FPSC for approval of this Agreement. Notwithstanding the foregoing, if at any time the FPSC issues an order that is subject to material qualifications or conditions that adversely affect Buyer, Buyer shall have a unilateral right to terminate this Agreement if such material qualifications or conditions are not acceptable to Buyer. Within fifteen (15) Days of the issuance of the FPSC order, Buyer shall provide Seller with a written notice of whether the FPSC order is subject to material qualifications or conditions and, if so, whether the material qualifications or conditions are acceptable to Buyer. If Buyer fails to provide such notice

within such fifteen (15) Day period, the form of the FPSC order will be deemed to be acceptable to Buyer. Once the FPSC order approving this Agreement has been issued and is deemed accepted by Buyer, the Parties agree they will not seek to amend, oppose, protest or contest such FPSC order and will undertake reasonable efforts to support the order if any entity seeks to amend, oppose, protest or contest such FPSC order. Upon a termination pursuant to this Section 2.3, neither Party shall have any liability to the other Party hereunder.

ARTICLE 3

REPRESENTATIONS, WARRANTIES AND COVENANTS

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

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

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

3.1.3 The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby and the fulfillment of and compliance with the

provisions hereof, do not and will not conflict with any of the material terms, conditions or provisions of any Legal Requirements applicable to Seller, of any partnership agreement, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which it or any of its property is bound, or result in a material breach of or a default under any of the foregoing.

- 3.1.4 This Agreement constitutes the legal, valid and binding obligations of Seller that are enforceable in accordance with their terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws relating to or affecting the enforcement of creditors' rights generally or by general equitable principles, regardless of whether such enforceability is considered in a proceeding in equity or at law.
- 3.1.5 There is no pending or, to the knowledge of Seller, threatened action or proceeding affecting Seller before any Governmental Authority that purports to materially adversely affect the legality, validity or enforceability of this Agreement or that reasonably could be expected to have a material adverse effect on Seller's ability to perform its obligations under this Agreement.
- 3.1.6 There are no bankruptcy proceedings pending or being contemplated by Seller or, to Seller's knowledge, threatened against Seller.
- 3.1.7 Seller is not debarred, suspended or proposed for debarment as a contractor or subcontractor to any department, agency or other division of the United States Government.
- 3.1.8 Seller, in good faith, has performed reasonable due diligence and except as set

forth in a letter delivered to Buyer dated October 18, 2006, does not have actual knowledge of any Proposed Laws in existence as of August 22, 2006. For purposes of this Section 3.1.8, "Proposed Laws" shall mean laws that have been passed by a legislative body, pending bills approved by a legislative committee, administrative agency orders, and regulations proposed by an administrative agency nationally, in the State of Georgia, and in the county in which the Facility is located that would effect changes in environmental or tax laws or regulations but which are not yet effective that: (i) if implemented, would constitute a Change(s) of Law resulting in costs to be passed through to Buyer under Section 18.1; and (ii) (A) are posted on a publicly-available website maintained by such agency, (B) are included in a searchable database available to subscribers of Lexis or Westlaw, or (C) are otherwise actually known to Seller. Provided, however, in the event that any Proposed Law(s) not disclosed to Buyer is subsequently discovered by a Party after the execution date of this Agreement, the failure of Seller to disclose such Proposed Law(s) shall not be deemed to be a violation of this Section 3.1.8 or an Event of Default by Seller unless such failure was knowing and intentional.

3.1.9 Seller is a party to that certain *Tolling Agreement* and has the contractual right to acquire and sell the capacity, energy and Ancillary Services, as more fully set forth in this Agreement.

3.1.10 Seller is not a party to or a third party beneficiary of any agreement that may have an impact on this Agreement other than the *Tolling Agreement* and related agreements as listed in **Appendix N** that relate to the operation, management or

maintenance of the Facility or Seller's contractual right to acquire and sell the capacity, energy and Ancillary Services from the Facility.

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

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

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

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

3.2.3 The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby and the fulfillment of and compliance with the provisions of this Agreement do not and will not conflict with any of the material terms, conditions or provisions of any Legal Requirements applicable to Buyer, or

1 of any partnership agreement, deed of trust, mortgage, loan agreement, other
2 evidence of indebtedness or any other agreement or instrument to which Buyer is
3 a party or by which it or any of its property is bound, or result in a material breach
4 of or a default under any of the foregoing.

5 3.2.4 This Agreement constitutes the legal, valid and binding obligation of Buyer that is
6 enforceable in accordance with its terms, except as such enforceability may be
7 limited by bankruptcy, insolvency, reorganization or similar laws relating to or
8 affecting the enforcement of creditors' rights generally or by general equitable
9 principles, regardless of whether such enforceability is considered in a proceeding
10 in equity or at law.

11 3.2.5 There is no pending or, to the knowledge of Buyer, threatened action or
12 proceeding affecting Buyer before any Governmental Authority which purports to
13 materially adversely affect the legality, validity or enforceability of this
14 Agreement or that reasonably could be expected to have a material adverse effect
15 on Buyer's ability to perform its obligations under this Agreement.

16 3.2.6 Buyer is Creditworthy, and there are no bankruptcy proceedings pending or being
17 contemplated by it or, to its knowledge, threatened against it.

18 3.2.7 Buyer acknowledges that Seller has advised that (i) it does not own the Facility;
19 (ii) it has the rights to the capacity, energy and Ancillary Services from the
20 Facility pursuant to the terms of the Tolling Agreement; (iii) [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]

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

- 3.3.1 Seller will not (i) consent to, (ii) fail to exercise any contractual rights it has to reject or (iii) exercise any rights that it may have to require modifications to, or expansion of, the Facility that would have a material adverse effect on Buyer's rights or obligations under this Agreement without the prior written consent of Buyer.
- 3.3.2 Seller will not (i) consent to, (ii) fail to exercise any contractual rights it has to reject or (iii) exercise any rights that it may have to require any conveyance, sale, lease, transfer or other disposition of all or substantially all of Facility Owner's business or assets, whether now owned or hereafter acquired, to the extent that such conveyance, sale, lease, transfer or other disposition would have a material adverse effect on Buyer's rights or obligations under this Agreement without the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed.
- 3.3.3 Throughout the Term of this Agreement, Seller will not materially modify the Tolling Agreement, as in effect on the date of this Agreement, without the prior written consent of Buyer, which shall not be unreasonably withheld, conditioned or delayed.
- 3.3.4 Except as may be allowed pursuant to Sections 3.3.2, 19.2, or any other provisions of this Agreement, Seller, to the extent that it is within its reasonable control, will maintain the contractual rights to the capacity, energy, and Ancillary Services associated with the Facility sufficient to fulfill its obligations under this Agreement.

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

ARTICLE 4

REGULATORY APPROVALS; COMPLIANCE WITH LAWS, RULES AND REGULATIONS; TAXES; IM FEE AND OTHER COSTS

4.1 FPSC. Buyer shall use its reasonable efforts to obtain FPSC approval of this Agreement, and in furtherance thereof, to target a filing for approval as soon as reasonably practicable after execution of this Agreement, and to diligently pursue such FPSC approval. Seller agrees to assist and support Buyer, in a timely manner and to the extent reasonably requested by Buyer, in obtaining FPSC approval.

4.2 Preservation of Terms.

4.2.1 Each Party agrees that, subject to Section 4.1 and 4.3, except with the prior written consent of the other Party, it will not, and will use reasonable efforts to assure that its Affiliates will not, institute or voluntarily cooperate in the institution or conduct of any claim, action or proceeding before FERC under Section 205, Section 206 or any other portion of the Federal Power Act, or any other Governmental Authority under any provision of federal law or state or local law or any other Legal Requirement which claim, action or proceeding is intended for the purpose of, or could reasonably be expected to have the effect of, changing the terms of this Agreement then in effect. Without limiting the foregoing, but subject to the terms of this Agreement, the Parties agree that the rates for service

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

4.2.2 The Parties waive all rights to submit filings to FERC seeking modifications or rescission of this Agreement, under Sections 205 or 206 of the Federal Power Act, on the basis of the “just and reasonable” standard of review contained in those sections. The Parties waive all rights to argue before FERC that the “just and reasonable” standard of review should be applied to any proceeding involving this Agreement brought under Section 206 of the Federal Power Act. In any proceeding before FERC involving this Agreement, the Parties shall request that FERC review any and all aspects of this Agreement under the “public interest” standard of review in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956).

4.3 Other Approvals. Each Party shall diligently pursue or cause to be pursued any and all other Consents required to be possessed by such Party, in a manner that is reasonably expected to enable such Party to perform its obligations under this Agreement. Each Party agrees to assist and support the other Party, in a timely manner and to the extent reasonably requested by the other Party, in obtaining such Consents.

4.4 Federal Acquisition Regulations Compliance. Buyer and its Affiliates are government contractors under Areawide Public Utilities Contracts with the General Services

Administration of the United States Government, and as such, are required to conduct business with entities in compliance with the regulations contained herein. Seller agrees that its performance and the performance of its contractors, subcontractors, vendors and suppliers under this Agreement shall comply with the following Federal Acquisition Regulations which shall be incorporated herein by reference as if set forth herein in full text if the amount of the Agreement and the circumstances surrounding its performance require Buyer to include such regulations in this Agreement:

- (1) 52.203-6 Restrictions on Subcontractor Sales to the Government (JUL 1985);
- (2) 52.203-7 Anti-Kickback Procedures (OCT 1988);
- (3) 52.219-8 Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns (MAY 2004);
- (4) 52.219-9 Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (JUL 2005);
- (5) 52.222-26 Equal Opportunity (APR 2002); and,
- (6) 52.223-14 Toxic Chemical Release Reporting (AUG 2003).

Buyer will provide the full text of any of the above clauses upon written request from Seller.

4.5 Taxes.

4.5.1 Subject to Section 18.1, Seller shall indemnify Buyer for any material adverse effect on Buyer due to any deficiency in the payment of all Taxes on or with respect to the Facility, including its development, permitting, design, engineering, procurement, construction, testing, startup, ownership, leasing, financing, operation, and maintenance. Subject to Section 18.1, Seller shall pay, or cause to be paid, all Taxes on or with respect to: (i) the production and delivery of energy

and Ancillary Services to be provided to Buyer arising, in the case of energy, prior to the time of Seller's delivery of such energy to Buyer at the Interconnection Point, or, in the case of Ancillary Services, prior to the time such Ancillary Services are made available to Buyer, and (ii) Seller's use and conversion of Natural Gas after delivery by Buyer and receipt by Seller of such Natural Gas at the Primary Gas Delivery Point.

4.5.2 Buyer shall pay or cause to be paid all Taxes on or with respect to: (i) Fuel Oil purchased and owned by Buyer; (ii) energy received by Buyer arising at and after the time such energy is delivered by Seller to the Interconnection Point; (iii) Ancillary Services received by Buyer arising at and after the time such Ancillary Services are made available to Buyer; and (iv) Natural Gas received and possessed by Buyer at and prior to the time of delivery of such Natural Gas by Buyer to Seller at the Primary Gas Delivery Point, which Taxes shall include such sales, use, excise or other similar Taxes on the sale to Buyer and purchase from Seller of capacity, energy, and Ancillary Services pursuant to this Agreement. For the avoidance of doubt, and notwithstanding anything to the contrary in this Agreement, Buyer shall be responsible for all Taxes arising out of the delivery by Buyer and receipt by Seller of Natural Gas at the Primary Gas Delivery Point and the procurement and ownership of Fuel Oil by Buyer, including the Taxes listed or described in Ga. Code Ann. §§48-8-6(b), 48-8-30, 48-8-82, 48-8-100, 48-8-110.1, 48-8-201, and in Article VIII, Section VI, Paragraph IV of the Georgia Constitution as such statutes and laws exist as of the date of execution of this Agreement.

- 4.5.3 Upon reasonable request, a Party shall provide a certificate of exemption or other evidence of exemption from any Taxes, and each Party agrees to cooperate with the other in obtaining an exemption and minimizing Taxes payable with respect to all transactions contemplated herein.
- 4.5.4 Each Party shall use reasonable efforts to implement and administer the provisions of this Agreement in accordance with the intent of the Parties to minimize Taxes so long as neither Party is materially adversely affected by such efforts.
- 4.5.5 In the event Seller is required by law or regulation to remit or pay Taxes that are Buyer's responsibility hereunder, Seller may include such Taxes in a Monthly Invoice, and Buyer shall remit payment thereof in accordance with Article 6. Conversely, if Buyer is required by law or regulation to remit or pay Taxes that are Seller's responsibility hereunder, Buyer may deduct the amount of any such Taxes from the sums otherwise due to Seller under this Agreement. Any refunds associated with such Taxes will be handled in the same manner. Nothing herein shall obligate or cause a Party to pay or be liable to pay any Taxes from which it is exempt under applicable Legal Requirements.
- 4.5.6 Notwithstanding anything to the contrary, each Party shall be solely responsible for its own federal income tax, state income tax, franchise tax and all other similar taxes, fees, charges, levies and imposts based upon net income or net worth.
- 4.6 IM Fee. By either the tenth (10th) Day after FPSC approval or the tenth (10th) Day after Buyer declines to exercise its right of termination after 270 Days from the petition filing date for approval of this Agreement by the FPSC as provided in Section 2.3, whichever is

applicable, Buyer shall calculate an independent monitor fee ("IM Fee"), which shall not be in excess of two hundred fifty thousand dollars (\$250,000), and send an invoice to Seller for such amount ("IM Fee Invoice"). The IM Fee Invoice shall be due and payable by Seller in immediately available funds through wire transfer of funds to an account designated by Buyer, or other means acceptable to Buyer, on or before the tenth (10th) Day after Seller's receipt of such invoice. If such tenth (10th) Day is not a Business Day, then payment shall be due on the next succeeding Business Day. Interest on unpaid amounts shall accrue from the date such payments were due at a rate equal to the Interest Rate. Any dispute regarding the IM Fee Invoice shall be resolved through the procedures set forth in Section 6.2.

- 4.7 Accounting Determinations. At the request of Buyer throughout the term of the Agreement, Seller shall provide to Buyer public and non-public financial and business information reasonably necessary for Buyer to make determinations as to whether Buyer will be required to consolidate Seller or any of its Affiliates or permitted assigns as a VIE in Buyer's or any of its Affiliates' financial statements. In the event that Seller determines that it is required by any Legal Requirement or any accounting standard to consolidate Seller or any of its Affiliates or permitted assigns as a VIE in Buyer's or any of Buyer's Affiliates' financial statements, Seller shall notify Buyer promptly of such determination.

ARTICLE 5

SALE AND DELIVERY OF CAPACITY AND ENERGY

5.1 Agreement to Sell and Purchase.

- 5.1.1 At all times following the Delivery Commencement Date, but subject to the terms of this Agreement, including, without limitation, Sections 5.1.2, 5.1.5, 5.1.6 and

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13.1.1, Seller agrees to sell to Buyer the entire electrical capability and all Ancillary Services of the Facility, net of Station Service, when Buyer Schedules such electrical capability. Subject to the terms of this Agreement, Buyer agrees to purchase from Seller such electrical output and Ancillary Services of the Facility, pursuant to Buyer's Scheduling Instructions and reactive power obligations pursuant to Section 13.1.2, and the Designated Capacity associated with the Facility after the Delivery Commencement Date.

5.1.2 Notwithstanding anything else to the contrary, Seller hereby reserves the right, consistent with the Tolling Agreement, for the Facility Owner (i) to provide Ancillary Services to the Transmission System operator as required under the Interconnection Agreement and [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

5.1.3 Except as otherwise provided in Section 5.1.4 with respect to delivery of capacity and energy at Alternate Delivery Points, Seller shall deliver capacity and energy from the Facility to Buyer at the Interconnection Point. The risk of loss of energy shall pass from Seller to Buyer at such point of delivery. The Facility is within the Southern Control Area as of the date of the execution of this Agreement, and Seller shall not take any action or consent to remove the Facility from the Southern Control Area without Buyer's written consent. Buyer shall be responsible for providing generator balancing services with respect to the Southern Control Area necessary for the receipt of energy pursuant to Buyer's Schedules and for any costs thereof. For the avoidance of doubt, Seller shall not be responsible for any generation or energy imbalance charges resulting from delivery or non-delivery of energy pursuant to the Buyer's Schedule.

5.1.4 Unavailability.

5.1.4.1 Following the Delivery Commencement Date, in the event and to the extent that the Facility is Unavailable, beginning with the first hour of the Unavailability Event and ending on the earlier of the date when the Unavailability Event terminates or the second Sunday of the Unavailability Event, in lieu of having such Unavailable hours included in the Seasonal Availability Percentage and Monthly Availability Percentage calculations pursuant to **Appendix A**, Sections C and D, Seller shall have the option to elect the following financial settlement procedure: For each hour of such Unavailability Event during which Buyer Schedules energy, Seller shall pay alternate

liquidated damages based on the formulas included in **Appendices B and K**, attached hereto and incorporated herein by reference, as a reasonable and approximate measure of Buyer's actual damages for Seller's failure to meet Buyer's Schedules. In the event that Seller makes such foregoing election, then, for each hour of Unavailability that is subject to such alternate liquidated damages, such hours (or equivalent hours) shall be a part of *Financial Settlement Hours* that shall be subtracted from *Forced Outage Hours and Equivalent Forced Derated Hours* as shown in the SAP formulas in Section C.1 of **Appendix A** for purposes of the Monthly Availability Percentage and the Seasonal Availability Percentage calculations for Automatic Generating Control. In the event that Seller makes such foregoing election, then for each hour of Unavailability that is subject to such alternate liquidated damages, MWh Scheduled shall be MWh Delivered in the SAP formulas shown in Section C.2 of **Appendix A** for purposes of the Monthly Availability Percentage and the Seasonal Availability Percentage calculations for Non-Automatic Generation Control Scheduling. In order to exercise the foregoing election, Seller must provide Buyer with advance telephonic notice (to be promptly followed by written confirmation) by 10:00 a.m. CPT of the second Day of the Unavailability Event. All hours of Unavailability before Seller notifies Buyer of its election will be subject to the Seasonal Availability Adjustment calculation and are not eligible for financial

settlement. Once Seller has made the foregoing election, Seller shall have the further option to elect to substitute physical Alternate Delivery from an Alternate Resource at an Alternate Delivery Point (all in accordance with the further provisions of Sections 5.1.4.2 and 5.1.4.3) for the entire remaining portion of the Unavailability Event, provided that such further election may only be made upon advance telephonic notice to Buyer given prior to 3:00 p.m. CPT of the Day that is two Business Days prior to the date when such Alternate Delivery will begin, which notice must be promptly followed by written confirmation. By the exercise of this *Alternate Delivery* election, Seller's rights to the financial settlement procedure will terminate beginning on the date that such Alternate Delivery is Scheduled to begin pursuant to Seller's notice, and Seller shall not be entitled to reinstate such financial settlement procedure for the duration of the Unavailability Event. The Parties shall establish such additional procedures in the Operating Procedures as may be necessary to more fully implement the financial settlement described in this Section 5.1.4.1.

5.1.4.2 Following the Delivery Commencement Date, in the event and to the extent that the Facility is Unavailable, beginning with the second Monday of such Unavailability Event or such earlier date as permitted pursuant to Section 5.1.4.1, Seller may elect to provide physical *Alternate Delivery* from an Alternate Resource at an Alternate

Delivery Point for the duration of the Unavailability Event in order to meet Buyer's Schedules (subject to the other provisions of this Agreement). If Seller elects to provide energy from an Alternate Resource, it shall, to the extent that the designated Alternate Resource(s) is Available, and subject to Section 5.1.4.3, provide Buyer with a uniform quantity of energy in each hour that Buyer Schedules at least that quantity of energy. Such Alternate Delivery Point shall be the point of interconnection between the Alternate Resource and the Transmission System or the point(s) of interface between the transmission system to which the Alternate Resource is interconnected and the Transmission System. The hours (or equivalent hours) of delivery of energy from an Alternate Resource shall be Alternate Resource Delivery Hours and shall be subtracted from Forced Outage Hours and Equivalent Forced Derated Hours as shown in the SAP formulas in Section C.1 of **Appendix A** for purposes of the Monthly Availability Percentage and the Seasonal Availability Percentage calculations for Automatic Generation Control. Delivery of energy from an Alternate Resource shall be MWh Delivered in the SAP formula shown in Section C.2 of **Appendix A** for purposes of the Monthly Availability Percentage and Seasonal Availability Percentage calculations for Non-Automatic Generation Control Scheduling. At Buyer's discretion, Buyer shall be entitled to deduct from any Monthly Capacity Payment or Monthly Energy Payment, as the case may be,

the amount of the incremental additional costs incurred by Buyer due to system losses as a result of Seller's delivery of Scheduled energy from an Alternate Resource, as compared to the losses that Buyer would have incurred if such Scheduled energy were delivered from the Facility. Buyer shall determine the amount of incremental additional energy losses in a manner consistent with the methodology utilized by Buyer in applying loss penalties in its system dispatch; provided, however, such methodology shall not treat Seller's Alternate Resource in a materially different manner from Buyer's other generating resources. In the event the incremental additional losses are determined to be less than two percent (2%) of the Scheduled energy in any Day for which such losses are calculated, there shall be no deduction for losses. The incremental additional cost of such amount of energy losses shall be determined in a manner consistent with the financial settlement procedures of Section 5.1.4.1 and **Appendix K**. The Operating Representatives shall further develop Operating Procedures to calculate and bill Seller for such losses consistent with the provisions of this Section 5.1.4.2.

5.1.4.3 In order to exercise its right to deliver energy from an Alternate Resource as provided in Section 5.1.4.2, by 3:00 p.m. CPT of the Thursday before the second Monday following the start of the Unavailability Event, or such earlier time as permitted pursuant to Section 5.1.4.1, Seller must provide Buyer with advance telephonic

notice (to be promptly followed by written confirmation), as more fully provided in the Operating Procedures, which notice shall specify the Alternate Resource to be used. Seller may change the Alternate Resource from week to week, in accordance with procedures to be established in the Operating Procedures, provided that Seller provides Buyer with advance telephonic notice (to be promptly followed by written confirmation) no later than 3:00 p.m. CPT on the Thursday before the change in Alternate Resource is to occur, which notice shall specify the Alternate Resource that Seller intends to utilize. From week to week, after such Alternate Resource notice has been made, Buyer shall provide Seller with a good faith estimate of the projected Schedule for the following week. Should an Alternate Resource designated by Seller become Unavailable during the week for which it is designated, then Seller shall not be permitted to designate another Alternate Resource for the duration of that week, but Seller may designate a different Alternate Resource for delivery of energy for the following week provided Seller gives Buyer advance telephonic notice (to be promptly followed by written confirmation) no later than 3:00 p.m. CPT on the Thursday before the change in Alternate Resource is to occur, which notice shall specify the Alternate Resource that Seller intends to utilize. Seller shall not be permitted to change an Alternate Resource designation except as provided above in this Section 5.1.4.3. For the avoidance of doubt, any failure to deliver energy pursuant to

Buyer's Schedules from a designated Alternate Resource shall reduce the calculated Availability performance pursuant to **Appendix A**, Sections C and D.

5.1.5 Notwithstanding the designation by Seller of the Designated Capacity pursuant to **Appendix A** and subject to Section 5.1.2, Buyer shall be entitled to Schedule and receive the entire energy output that the Facility is capable of producing when operated, subject to the last paragraph of **Appendix A**, Section A.3 and the Technical Limits and Scheduling procedures set forth in **Appendix C**; provided, however, that Buyer shall not be entitled to, and Seller may dispose of at its discretion, any percentage energy output capability of the Facility in excess of the percentage energy output capability of the Facility equal to one hundred two and one-half percent (102.5%) multiplied by the Nominal Capability divided by the Tested Reliable Capacity. For the avoidance of doubt, this Section 5.1.5 entitles Buyer to Schedule and receive energy, on an as-available basis, in excess of the Designated Capacity.

5.1.6 Seller may sell any energy or Ancillary Services of the Facility not Scheduled by Buyer to any Person; provided, however, that, subject to Section 5.1.2, Seller shall make such energy and Ancillary Services available to Buyer in accordance with Buyer's Scheduling Instructions.

5.2 Calculation of Monthly Capacity Payments. Subject to the terms of this Agreement, Buyer shall pay Seller a Monthly Capacity Payment (and separate fixed operation and maintenance charge, if any) calculated in accordance with **Appendix A**, Section B. Except as otherwise expressly provided in this Agreement, such as in Section 5.3 and

Appendix B, Buyer shall have no responsibility for any other payments (including reimbursement for any Taxes or any other costs) to Seller under this Agreement for capacity, energy or Ancillary Services.

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

ARTICLE 6

BILLING AND COLLECTIONS

- 6.1 Capacity and Energy Billing and Payment.

6.1.1 Subject to the provisions of Section 6.2, by the fifteenth (15th) Day of each Month (commencing with July, 2009), Seller shall send Buyer an invoice stating the Monthly Capacity Payment, the Monthly Energy Payment, and, if applicable, any Monthly Availability Adjustment or Seasonal Availability Adjustment for the immediately preceding Month (or cumulative Months of a Season) ("Monthly Invoice"). Such invoice shall also specify any other payments required to be made by either Party pursuant to this Agreement, and with respect to payments to be paid by Seller, such payments shall be netted against payments due to Seller by Buyer.

6.1.2 All Monthly Invoices shall be due and payable by Buyer on or before the tenth (10th) Day after Buyer's receipt of such invoice. If such tenth (10th) Day is not a Business Day, then payment shall be due on the next succeeding Business Day. Subject to the provisions of Section 6.2, Buyer shall make payment to Seller in accordance with such invoices on or before the date due in immediately available funds, through wire transfer of funds to an account designated by Seller, or other

means acceptable to Seller. Interest on unpaid amounts shall accrue from the date such payments were due at a rate equal to the Interest Rate. Each Monthly Invoice shall contain a statement explaining in reasonable detail how such invoice was calculated pursuant to Sections 5.2 and 5.3.

6.2 Billing Disputes and Final Accounting.

- 6.2.1 If Buyer questions or contests the amount or propriety of any payment claimed by Seller to be due pursuant to this Agreement, Buyer shall make payment to Seller of amounts not in dispute, but may withhold amounts disputed in good faith until after the settlement of such question or contest in accordance with this Section 6.2.
- 6.2.2 In the event Buyer questions or contests the correctness of any charge or credit, Buyer shall provide Seller with *written notice of such amount and the basis for Buyer's question or contest*. Seller shall promptly review the questioned charge or credit and shall notify Buyer of any error in Seller's determination of amounts owed by Buyer and issue an amended invoice in the amount of any payment that Buyer is required to make in respect of such re-determination. If Buyer disputes in good faith Seller's amended invoice amount, then the matter shall be resolved pursuant to the provisions of Article 20 applicable to billing disputes. To the extent Seller *disagrees with Buyer's basis for questioning the original invoice*, Seller shall provide a written explanation of its position.
- 6.2.3 Seller shall have until the end of one (1) year after the date of delivery of energy under this Agreement to correct any invoice for payment due for such energy and associated capacity and deliver a corrected invoice to Buyer. Buyer shall have

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

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

6.4 Billing and Payment Records. Each Party will, until the end of one (1) year after its receipt of any invoice, make available to the other Party, and each Party may audit, such

books and records of the other Party as are necessary for such Party to verify the calculation of the Monthly Capacity Payments, the Monthly Energy Payments, any Monthly Availability Adjustment, any Seasonal Availability Adjustment and any other invoice, charge or payment demand made in connection with this Agreement.

ARTICLE 7

PERFORMANCE SECURITY

7.1 Seller Performance Security.

7.1.1 Since Seller does not have issuer ratings necessary to determine Creditworthiness as of the date hereof, Seller Guarantor shall post any Seller's Performance Security required under this Agreement. So long as Seller Guarantor remains one rating level above the minimum investment grade level by Standard & Poor's Ratings Group, Moody's Investor Services, Inc. or Fitch Ratings, Seller Guarantor may satisfy the requirements of this Section 7.1 without providing the Eligible Collateral amounts specified in Table 7.1. In the event that Seller Guarantor is Creditworthy, but is rated at the lowest investment grade level by one or more rating agencies, then Seller or Seller Guarantor may satisfy the requirements of this Section 7.1 by providing only fifty percent (50%) of the Eligible Collateral amount specified in Table 7.1 in the form of either a Letter of Credit or cash deposited into a Buyer Security Account. In the event that a Material Adverse Change occurs in respect of Seller Guarantor at any time during the Term, then within one (1) Business Day Seller or Seller Guarantor shall deliver to Buyer Eligible Collateral in an amount corresponding to the amount shown in Table 7.1 for the date on which such Material Adverse Change occurs; provided, however; that in Buyer's sole discretion, based on a review of the overall circumstances of

Seller Guarantor's Material Adverse Change, the Eligible Collateral that Seller Guarantor is required to provide may be reduced to an amount below that required by this Section 7.1 ("Seller Performance Security"). The Seller Performance Security requirements of this Section 7.1 shall apply until the final settlement of all obligations of the Parties pursuant to Section 7.3.2.

7.1.2 If Seller obtains a credit rating and the credit rating is at least one rating level above Creditworthy, Seller may satisfy the requirement of this Section 7.1 in the same manner as set forth for Buyer in Section 7.2.

TABLE 7.1¹

Applicable Dates	Eligible Collateral Security (\$/kW)
Agreement execution through July 1, 2007	75
From July 1, 2007 through June 1, 2009	100
From June 1, 2009 through the Term of the Agreement	Annual Period 1-3: 100
	Annual Period 4-5: 65

7.2 Buyer Performance Security. So long as Buyer remains one rating level above Creditworthy, Buyer may satisfy the requirements of this Section 7.2 without providing the Eligible Collateral amounts specified in Table 7.1. In the event that Buyer is Creditworthy, but is rated at the lowest investment grade level by one or more rating agencies, then Buyer may satisfy the requirements of this Section 7.2 by providing only fifty percent (50%) of the Eligible Collateral amount specified in Table 7.1 in the form of

¹ The Seller Performance Security and Buyer Performance Security are expressed in 2006 US dollars. However, beginning on January 1, 2007 and continuing every January 1 of each year during the Term, the values shown in Table 7.1 will be adjusted based on the change in GDPIPD between the base year (2006) and each year during the

either a Letter of Credit or cash deposited into a Seller Security Account. In the event that a Material Adverse Change occurs in respect of Buyer at any time during the Term, then within one (1) Business Day Buyer shall deliver to Seller Eligible Collateral in an amount corresponding to the amount shown in Table 7.1 for the date on which such Material Adverse Change occurs; provided, however, that in Seller's sole discretion, based on a review of the overall circumstances of Buyer's Material Adverse Change, the Eligible Collateral that Buyer is required to provide may be reduced to an amount below that required by this Section 7.2 ("Buyer Performance Security"). The Buyer Performance Security requirements of this Section 7.2 shall apply until the final settlement of all obligations of the Parties pursuant to Section 7.3.2.

7.3 Replacement Collateral; Substituted Collateral; Release of Collateral.

7.3.1 Replacement Collateral. To the extent that any replacement of Seller Performance Security or Buyer Performance Security is required to maintain compliance with Section 7.1 or 7.2, the Party responsible for posting any such replacement Eligible Collateral shall deliver same to the beneficiary Party within one (1) Business Day after such replacement is required.

7.3.2 Substituted Collateral; Release of Collateral. Upon any reduction of the amount of the Seller Performance Security or Buyer Performance Security pursuant to Section 7.1 or 7.2, the beneficiary thereof shall, upon written request by the other Party, release within two (2) Business Days any Eligible Collateral that is no longer required. The choice of any Eligible Collateral provided by a Party may be selected from time to time by such Party, and upon receipt of substitute Eligible Collateral, the holder of the Eligible Collateral for which substitution is being

Term, and such escalation shall be capped at a compound escalation rate of 4.75% per year.

made shall promptly release such Eligible Collateral in an amount equal to that which is being substituted. Following any termination of this Agreement, the Parties shall mutually agree to a final settlement of all obligations under this Agreement, which such period shall not exceed six (6) Months from such termination date, and after such settlement, any remaining Eligible Collateral posted by a Party that has not been drawn upon by the other Party pursuant to its rights under this Agreement shall be returned promptly to such Party. Any dispute between the Parties regarding such final settlement shall be resolved according to the applicable procedures set forth in Article 20.

7.4 Draws; Replenishment. A Non-Defaulting Party may draw upon the Eligible Collateral provided by the other Party following the occurrence of an Event of Default by such other Party or pursuant to the other provisions of this Agreement in order to recover any damages to which such Non-Defaulting Party is entitled to under this Agreement. In the event of such a draw on the Eligible Collateral, then, except in the circumstance when the Non-Defaulting Party establishes an Early Termination Date pursuant to Section 17.3 or this Agreement otherwise terminates, the Defaulting Party shall replenish within two (2) Business Days the Eligible Collateral to the full amount required by Sections 7.1 or 7.2, as applicable.

7.5 Reporting.

7.5.1 Seller shall promptly notify Buyer of any circumstance that results in Seller's failure to be in compliance with the Seller Performance Security requirements of this Article 7. From time to time, at Buyer's written request, Seller shall provide Buyer with such evidence as Buyer may reasonably request that Seller and any

Seller Guarantor, Seller Guaranty, Letter of Credit or Security Account is in full compliance with this Agreement.

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

ARTICLE 8

PROJECT IMPLEMENTATION AND CONSTRUCTION

8.1 Design and Construction of the Facility.

8.1.1 The Facility shall be deemed to have achieved "Commercial Operation" upon fulfillment of the following criteria: (i) Seller shall demonstrate that the Facility is capable of producing energy and delivering same to the Transmission System through the Interconnection Point; (ii) the Facility is in compliance with the Interconnection Agreement; (iii) the Facility has either successfully completed the Performance Test in accordance with Section 10.1, or Buyer shall have determined to its reasonable satisfaction through any combination of testing and examination of Facility data that the Facility is fully capable of successfully completing a Performance Test; (iv) Seller shall have provided Buyer a certificate reasonably acceptable to Buyer, stating that the Facility has been designed, engineered, constructed and tested in accordance with Prudent Industry Practices and the terms of this Agreement; and (v) Seller shall have delivered to Buyer a certificate from a responsible officer of Seller certifying that Seller has obtained

all Governmental Approvals required under Legal Requirements for the construction, ownership, operation and maintenance of the Facility in accordance with this Agreement.

8.1.2 Reserved.

8.1.3 Buyer shall have the right to reasonably request information regarding the status of the Facility, and Seller shall provide such information (or cause such information to be provided) to Buyer as may be reasonably requested by Buyer.

8.2 Reserved.

8.3 Failure to Achieve Commercial Operation by the Required Commercial Operation Date.

In the event that Seller fails to achieve Commercial Operation by the RCOD and until such time as it achieves RCOD, Seller shall forfeit the Monthly Capacity Payments and pay to Buyer liquidated damages in accordance with the provisions set forth in **Appendix L**. For each day that Seller fails to achieve Commercial Operation following RCOD, the provisions set forth in Appendix L shall be used to calculate liquidated damages. Notwithstanding the preceding sentences, in no event shall the monthly liquidated damages paid by Seller pursuant to the preceding sentences exceed the following liquidated damage amounts, and Seller's liability for liquidated damages pursuant to the preceding sentence shall end upon the earlier to occur of the Commercial Operation Date and the termination date of this Agreement:

Month	Amount (\$/kW-month) ²
June	4

² All amounts shown herein as \$/kW shall be calculated based on the Nominal Capability of the Facility.

July	8
August	8
September	4
October – April	1
May	2

Buyer shall notify Seller on a Monthly basis of any liquidated damages calculated in accordance with this Section 8.3 owed by Seller to Buyer for failure to meet the RCOD, with such damages owed by Seller to be netted Monthly against payments due to Seller by Buyer pursuant to Section 6.1.1, if any. Any disputes regarding calculation of such liquidated damages shall be resolved in accordance with the procedures set forth in Section 6.2. Thereafter, and in addition to any liquidated damages owed by Seller to Buyer pursuant to the foregoing provisions of this Section 8.3, if Seller notifies Buyer that the Facility cannot achieve Commercial Operation or if Commercial Operation is not achieved by March 1, 2010, then, unless the Parties otherwise agree, this Agreement shall terminate and Seller shall pay Buyer liquidated damages equal to one hundred dollars per kilowatt (\$100.00/kW)³ and, following such termination and payment of liquidated damages, neither Party shall have any further liability to the other Party pursuant to this Agreement.

ARTICLE 9

INTERCONNECTION AND METERING

9.1 Interconnection. Facility Owner has entered into an Interconnection Agreement with the transmission provider, and Seller has received contractual covenants from Facility Owner that such Interconnection Agreement will remain in place at least throughout the term of

³ All amounts shown herein as \$/kW shall be calculated based on the Nominal Capability of the

this Agreement. Upon notification that an amendment has been executed, Seller shall promptly provide a copy, redacted if necessary, of such amendment to such Interconnection Agreement to Buyer in accordance with the notice provisions of Section 21.4. Buyer shall not be responsible under this Agreement for any costs and expenses (including overheads) incurred in connection with the design, construction, installation and maintenance of the Interconnection Facilities. Seller is responsible for determining all transmission-related rules, practices and policies with which it must comply.

9.2 Meters.

9.2.1 Seller has received contractual covenants from Facility Owner that Facility Owner will operate and maintain the Metering System in accordance with Prudent Industry Practices in order to measure and record the amount of energy delivered from the Facility, to calculate the Facility capacity, and to measure the availability of the Facility in meeting Schedules to Buyer, all at the Interconnection Point. Buyer shall have the opportunity to inspect the Metering System prior to the Delivery Commencement Date. If Buyer and Seller mutually determine that the Metering System is not satisfactory, Seller agrees to use commercially reasonable efforts with the Facility Owner to remedy the Metering System deficiencies. All metering equipment used to determine the billing from the Facility shall be sealed, and such seals shall be broken only by Georgia Transmission Corporation or by an independent party, unrelated, directly or indirectly to Seller or the Facility Owner, and only when metering equipment is to be inspected, tested or adjusted, such inspections, testing or adjustments to be conducted at least

Facility.

annually or in accordance with Prudent Industry Practices. None of Seller, Seller's Affiliates or the employees, subcontractors or contractors of any of them shall make adjustments to the Metering System without the written consent of Buyer; provided, however, that Buyer's consent is deemed given to any adjustment made to the Metering System by Georgia Transmission Corporation personnel or representatives. Buyer may, at its own cost, install additional meters or other such facilities, equipment or devices on Buyer's side of the Interconnection Point as Buyer deems necessary or appropriate to monitor the measurements of the Metering System; provided, however, that in all cases Seller will be entitled to base its invoiced amounts solely by reference to its own Metering System. For the avoidance of doubt, the Metering System shall be the sole source for determining the amount of energy delivered from the Facility to the Interconnection Point and in calculating the Facility capacity. Buyer shall reasonably establish the telemetering equipment that is necessary to coordinate the Facility with the Scheduling Center, and Buyer shall, at its sole cost and upon approval from the Facility Owner, install or cause the installation of any such additional telemetering equipment. The telemetered data shall be delivered by Seller to the electrical switchyard of the Facility.

9.2.2 Buyer shall not be responsible for any costs and expenses incurred in connection with inspections or testing of the Metering System.

9.2.3 If the Metering System fails to register, or if the measurement made by a metering device is found upon testing to vary by more than one-half percent (0.5%) from the measurement made by the standard meter used in the test, an adjustment shall

be made correcting all measurements of energy made by the Metering System during: (i) the actual period when inaccurate measurements were made by the Metering System, if that period can be determined to the mutual satisfaction of the Parties; or (ii) if such actual period cannot be determined to the mutual satisfaction of the Parties, the second half of the period from the date of the last test of the Metering System to the date such failure is discovered or such test is made, but not to exceed six months ("Adjustment Period"). If the Parties are unable to agree on the amount of the adjustment to be applied to the Adjustment Period, the amount of the adjustment shall be determined: (i) by correcting the error if the percentage of error is ascertainable by calibration, tests or mathematical calculation; or (ii) if not so ascertainable, by estimating on the basis of deliveries made under similar conditions during the period since the last test. Within thirty (30) Days after the determination of the amount of any adjustment, Buyer shall pay Seller any additional amounts then due for deliveries of energy or Designated Capacity during the Adjustment Period or Buyer shall be entitled to a credit against any subsequent payments for energy or Designated Capacity, as the case may be.

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

9.3 Deficiency in Transmission System Capability or Transportation Capability. Except in the case of a Force Majeure Event affecting (i) Buyer, (ii) the transmission provider or (iii) the Natural Gas transportation provider, if Buyer fails to ensure that the Transmission

System is capable of providing or receiving energy to reasonably accommodate Seller's testing activities for the Facility, or its Natural Gas transportation provider is unable to supply the requisite Natural Gas to reasonably accommodate Seller's testing activities for the Facility, the Designated Capacity shall be deemed to be the most recent Tested Reliable Capacity or if prior to establishment of the initial Tested Reliable Capacity, the Nominal Capability, and as soon as reasonably practical, Seller shall complete a new Performance Test, and the new Designated Capacity shall become effective on the date of such test.

- 9.4 Loss Factor Adjustment. If and to the extent the Metering System is not measuring deliveries of energy physically at the Interconnection Point (*i.e.*, the point of delivery), the metered amount of energy may be adjusted for losses to or from the Interconnection Point by a loss factor determined by the Parties, in accordance with Prudent Industry Practices.

ARTICLE 10

COMMERCIAL OPERATION AND ANNUAL PERFORMANCE TESTING

- 10.1 Commercial Operation Test. The Tested Reliable Capacity shall be established in accordance with **Appendix A** and the Performance Test procedures set forth in **Appendix D**. Seller shall designate the initial Designated Capacity in accordance with **Appendix A**. Upon completion by Seller of any Performance Test, Seller shall promptly provide to Buyer a complete written report, in accordance with **Appendix D**, of any such Performance Test, certified by a responsible officer of Seller, for Buyer's review and verification.

10.2 Capacity Examination.

10.2.1 Prior to each Annual Period following the Delivery Commencement Date, Seller may re-designate the Designated Capacity in accordance with **Appendix A**. Either Seller or Buyer may elect to have a new Performance Test performed as provided in **Appendix A**.

10.2.2 If as a result of any reduction in the Tested Reliable Capacity through a Performance Test the Designated Capacity exceeds the Tested Reliable Capacity, the Designated Capacity shall be reduced to the demonstrated level as provided in **Appendix A**, Section A.3. If as a result of any increase in the Tested Reliable Capacity through a Performance Test the Designated Capacity is less than the Tested Reliable Capacity, the Designated Capacity shall be increased to the demonstrated level as provided in **Appendix A**, Section A.3. The Designated Capacity shall not exceed 102.5% of the Nominal Capability without Buyer's prior written acceptance.

10.2.3 Subject to Section 17.1.9 of this Agreement, the payment of liquidated damages pursuant to Table A-1 of **Appendix A**, Section A.3, shall be Buyer's sole and exclusive remedy for a reduction of the Tested Reliable Capacity below the lower end of the Contracted Capacity range.

10.3 Disputes Concerning Capacity Tests. In the event the Parties disagree with respect to the Performance Test results, the dispute shall be resolved pursuant to the provisions of Article 20 applicable to Performance Test results. If such dispute is not resolved by the first Day of any Annual Period, the Designated Capacity for such Annual Period may not exceed that capacity demonstrated by the most recent undisputed Performance Test,

subject to the outcome of this dispute resolution process. Following the resolution of the dispute, an adjustment shall be made to all Monthly Capacity Payments made with respect to such Annual Period to account for any difference between the new Designated Capacity and the preceding Designated Capacity.

ARTICLE 11

OPERATION AND MAINTENANCE

11.1 Operation and Maintenance.

11.1.1 Pursuant to the terms of the Tolling Agreement, the Facility shall be managed, controlled, operated and maintained in a manner consistent with Prudent Industry Practices. In enforcing its rights under the Tolling Agreement, Seller shall take into account Buyer's right to Schedule the Facility, applicable planning standards and operating policies of the SERC and NERC, and the Operating Procedures to be developed by the Operating Committee (provided that such Operating Procedures do not deviate from this Agreement). Seller shall: (i) be in compliance with all Legal Requirements applicable to it and the Facility and Seller's obligations under this Agreement, and (ii) shall seek to ensure that the Facility Owner diligently seeks to obtain, maintain, comply with and, as necessary, renew and modify from time to time, any and all Consents. For the avoidance of doubt, the requirements of this Section 11.1.1 shall not be interpreted to limit Buyer's Scheduling rights as provided for elsewhere in this Agreement.

11.1.2 Consistent with the Tolling Agreement, Seller and Buyer shall mutually develop and agree upon written Operating Procedures within twelve (12) Months of execution of this Agreement. Topics covered shall include deliveries of energy during start up and testing of the Facility, the method of Day-to-Day

communications, daily capacity availability and energy reports, Facility operations logs, reactive power output, technical limits regarding Facility operation (including minimum run times, maximum ramp rates, minimum down times between starts, quick start capability and other limits specified in **Appendix C**), ramp rates for the delivery of power to the Transmission System, coordination of maintenance scheduling, designation of confidential information, and such other matters as the Operating Representatives shall agree are appropriate. The Operating Representatives shall be responsible for modifying, from time to time, these Operating Procedures in writing to reflect agreed upon changes. In the event of inconsistency or conflict between the Operating Procedures and specific terms of this Agreement, the specific terms of this Agreement shall take precedence.

11.1.3 Consistent with the terms of the Tolling Agreement, the Facility shall be operated utilizing safety devices and safety practices required by Prudent Industry Practices.

11.1.4 Seller has contractual assurances that the Facility shall be operated by qualified and trained personnel consistent with the terms of the Tolling Agreement.

11.1.5 Seller, in its sole discretion, shall determine which Units to dispatch to meet Buyer's Schedule.

11.2 Maintenance Scheduling.

11.2.1 Commencing in the year prior to the year of the Delivery Commencement Date and each year thereafter, Seller shall submit to Buyer, on or before April 15, maintenance schedules, including the scope of the maintenance, and outage plans

for the Facility that conform to Prudent Industry Practices for similar equipment, including in terms of frequency and duration ("Maintenance Schedules"), for the next four (4) Annual Periods or the number of such Annual Periods remaining in the Term, whichever is less. Seller shall not schedule any Scheduled Outages at the Facility during the period from May 15 through September 15 of any Annual Period that would decrease the capacity output of the Facility below the Designated Capacity without the prior written consent of Buyer. Buyer shall have fifteen (15) Days to review the proposed Maintenance Schedules and may approve or reject the Maintenance Schedules in whole or in part. The Maintenance Schedules are subject to the approval of Buyer, which approval shall not be unreasonably withheld or delayed; provided, however, any determination by Buyer to disapprove a Hot Gas Path Inspection or Major Inspection in January or February shall not be considered unreasonable. If any portion of the Maintenance Schedules are rejected by Buyer, Seller shall resubmit revised Maintenance Schedules to Buyer within thirty (30) Days of Buyer's rejection, and Buyer and Seller agree to use reasonable efforts to promptly develop Maintenance Schedules that are mutually acceptable to the Parties considering the burdens that Buyer's changes impose on Seller and Facility Owner compared to the burdens avoided by Buyer as a result of such changes. The outages scheduled in the final, approved Maintenance Schedule shall be the "Scheduled Outages" for purposes of this Agreement. Any dispute concerning this Section 11.2.1 shall be resolved as follows: Seller shall present any timely made proposed changes to the Maintenance Schedule made by Buyer to Facility Owner for its consideration. If

Facility Owner is agreeable to Buyer's proposed Maintenance Schedule but Seller objects to such proposed Maintenance Schedule, the dispute shall be resolved in accordance with the provisions of Article 20. In the event that Facility Owner does not accept Buyer's proposed Maintenance Schedule and Seller disagrees with Facility Owner's decision, Seller agrees to arrange, if possible, a discussion concerning the dispute among Seller, Buyer and Facility Owner. If the Parties and Facility Owner are unable to resolve their differences and if, in Buyer's commercially reasonable opinion, the proposed changes to the Maintenance Schedule are essential to its operation, Seller agrees to utilize the dispute resolution process in the Tolling Agreement as a means to resolve the dispute. Buyer agrees to cooperate with Seller in such dispute resolution process.

11.2.2 In addition to Scheduled Outages, Seller may request an unlimited number of Maintenance Outages during any Annual Period. Seller shall request each Maintenance Outage at least twenty-four (24) hours in advance or less at Buyer's discretion. Such request shall identify the equipment and Designated Capacity that will not be available for Scheduling and the proposed start time and duration of the Maintenance Outage. Buyer shall respond to Seller's request as soon as reasonably practicable. Seller shall not take a Maintenance Outage without Buyer's prior written or telephonic consent, and such consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that the Parties acknowledge that it shall be reasonable for Buyer to deny any request for a Maintenance Outage if Buyer reasonably believes that it may Schedule the Facility to a level that would require the availability of the equipment that is

1 proposed to be Unavailable during the Maintenance Outage. Buyer shall have the
2 right to revoke its consent to a Maintenance Outage if changed conditions require
3 Scheduling of the Designated Capacity Scheduled to be Unavailable during such
4 Maintenance Outage; provided, however, that Buyer shall reimburse Seller for
5 any cost or expense incurred to expedite, cancel or reschedule such Maintenance
6 Outage. If Buyer reasonably requests Seller to return all or part of that portion of
7 the Facility that is affected by the Maintenance Outage to full availability status,
8 Seller shall comply as soon as reasonably practical.

9 11.2.3 If Seller has a Scheduled Outage, and such Scheduled Outage occurs or would
10 occur coincident with a System Emergency, Buyer shall notify Seller of the
11 System Emergency. Due to the System Emergency, Buyer may request Seller to
12 reschedule the Scheduled Outage or, if the Scheduled Outage has begun, to
13 expedite the completion thereof, and Seller shall comply with such request as
14 soon as reasonably practical.

15 11.3 Permits. Seller has received contractual assurances from the Facility Owner that it will
16 obtain and maintain, for the Term, all Consents pertaining to air emissions necessary to
17 operate the Facility as required under this Agreement ("Air Permits"), including the
18 operation of the Facility for a minimum of [REDACTED] Factored
19 Operating Hours per CT Unit per rolling twelve (12) month period throughout the Term
20 inclusive of all CT startup, ramping and any and all testing. Seller agrees that any
21 operation of the Facility for purposes other than for meeting the obligations to Buyer
22 pursuant to this Agreement shall not limit Buyer's dispatch of the Facility, except as
23 otherwise provided in this Agreement. Upon Seller's receipt of notice of renewals or

amendments to an Air Permit(s), Seller shall promptly provide a copy of applicable Air Permit(s) (and any renewals or amendments thereto) to Buyer in accordance with the notice provisions of Section 21.4.

11.4 Access to the Site and the Facility. To the extent that Seller is authorized, Seller grants to Buyer and its designated employees and agents the right to enter the Site with reasonable prior notice to Seller to: (i) inspect the equipment; (ii) monitor or measure energy generated by the Facility in accordance with the terms of this Agreement; (iii) monitor Performance Tests; (iv) inspect the Facility; and (v) inspect the facilities related to the supply of Natural Gas. All activities of Buyer and its designated employees and agents at the Site shall be subject to the reasonable rules and procedures of Seller and Facility Owner.

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

11.5.1 All such records shall be maintained for a minimum of two (2) years after the creation of such record or data and for any additional period of time required by Legal Requirements; provided, however, that such records will be kept for as long as is necessary to complete any audit that began or was announced during such two-year period.

11.5.2 An accurate and up-to-date operating log shall be maintained at the Facility with records of: (i) real and reactive power production for each clock hour; (ii) changes in operating status; (iii) Scheduled Outages, Maintenance Outages, Forced

Outages and Force Majeure Events; (iv) any unusual conditions found during inspections; and (v) any significant events related to the operation of the Facility.

11.5.3 Buyer shall have the right from time to time, upon not less than fourteen (14) Days notice to Seller and during normal business hours, to examine the books, financial data and technical records directly pertaining to this Agreement created on or after the execution date of this Agreement, including test records relating to the Facility, at the Facility or at a location mutually agreed to by the Parties.

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

11.7 Operating Committee.

11.7.1 The Parties shall establish an Operating Committee comprised of two (2) Operating Representatives, one (1) appointed by each of Seller and Buyer. Seller and Buyer, as the case may be, shall provide written notice of such appointments to the other Party. Such appointments may be changed at any time by similar

written notice. The Operating Representatives shall meet as necessary, but not less often than once each calendar year, at a mutually agreeable time and place upon prior written notice. The Operating Representatives shall represent the Parties in all matters arising hereunder that may be delegated to them by mutual agreement of the Parties, but shall not have any authority to modify or amend the terms of this Agreement.

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

ARTICLE 12

FUEL SUPPLY

12.1 Overview.

12.1.1 At all times following the Delivery Commencement Date during the Term, the Facility shall be capable of utilizing Natural Gas as Scheduled by Buyer in order to produce the energy committed to Buyer under this Agreement. Buyer shall have the responsibility for procuring at its sole cost and making available at the Primary Gas Delivery Point the quantities of Natural Gas at the rates of delivery and at an allowable pressure as specified in **Appendix C**. Buyer hereby warrants title to the Natural Gas to be delivered to the Facility by Buyer hereunder from time to time for conversion into energy.

12.1.2 In accordance with **Appendix B**, Section D, Buyer shall receive or pay, as the case may be, a Monthly Fuel Adjustment based on the Guaranteed Heat Rate set forth in **Appendix J** for all Natural Gas and Fuel Oil used to generate energy that is delivered to Buyer pursuant to Buyer's Scheduling Instructions, including (i) from synchronization to Minimum Capacity (Startup Energy) and (ii) from Minimum Capacity to Base Operating Mode Schedule. Such ramping energy shall be multiplied by the appropriate Guaranteed Heat Rates pursuant to **Appendix J** to determine the Daily Guaranteed Fuel quantity during ramping. (The Guaranteed Heat Rate for ramping from synchronization to Minimum Capacity shall be the Guaranteed Heat Rate for Minimum Capacity.) Seller shall be responsible for the cost of Natural Gas and Fuel Oil for start-up of the Facility prior to synchronization. Prior to the Delivery Commencement Date, Seller shall acquire and pay for any Natural Gas and Fuel Oil used at the Facility. Beginning with the Delivery Commencement Date, subject to Section A.2 of Appendix A, Seller shall be responsible for (and reimburse Buyer with respect to the Natural Gas) the actual cost of any Natural Gas commodity, the incremental cost of transportation charges, and applicable Taxes and surcharges necessary in order to perform any Performance Testing.

12.2 Natural Gas Transportation Capacity.

12.2.1 Except as otherwise provided in this Article 12, Buyer shall bear all of the costs incurred under its gas supply plan for the Facility. However, in the event Seller fails to achieve Commercial Operation by the RCOD, Buyer shall take such actions as may be necessary to facilitate Seller's utilization of Buyer's gas supply

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plan as it directly pertains to the Facility, and Seller shall assume all obligations and bear all of the costs of such gas supply plan as it directly pertains to the Facility during such period; provided, however, that Buyer shall assume all obligations under its gas supply plan when the Facility achieves the Commercial Operation Date. To the extent Buyer desires to have or use storage capacity in order to better manage the Natural Gas requirements of the Facility, Buyer shall be obligated to obtain such capacity at its expense.

[REDACTED]

- 1 [REDACTED]
- 2 [REDACTED]
- 3 [REDACTED]
- 4 [REDACTED]
- 5 [REDACTED]
- 6 [REDACTED]
- 7 [REDACTED]
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- 13 [REDACTED]
- 14 [REDACTED]
- 15 [REDACTED]
- 16 [REDACTED]
- 17 [REDACTED]
- 18 [REDACTED]
- 19 [REDACTED]
- 20 [REDACTED]
- 21 [REDACTED]
- 22 [REDACTED]

- 12.2.3 At Seller's expense and subject to the terms of this Agreement, Seller shall ensure the availability of all facilities, infrastructures and property interests that are necessary for Facility Owner to receive, measure and use Natural Gas delivered by Buyer at the Primary Gas Delivery Point so as to enable the Facility to produce energy as committed to Buyer under this Agreement, including without limitation all costs associated with the construction and operation of the gas pipeline lateral(s) necessary to connect the Facility to the gas pipeline(s) of the fuel supplier(s).
- 12.2.4 Seller agrees to accept, or cause to have accepted, at the Primary Gas Delivery Point any Natural Gas that (i) meets the gas quality standards for delivered Natural Gas under the applicable gas transportation provider's FERC gas tariff and the applicable transportation agreement(s) at an allowable pressure as specified in **Appendix C**, or (ii) does not meet the gas quality standards described in (i) so long as such Natural Gas would not, in Facility Owner's discretion as exercised pursuant to the Tolling Agreement, have a material adverse effect on the Facility, or (iii) Seller allows such Natural Gas to flow beyond the Primary Gas Delivery Point.
- 12.2.5 The Parties shall exercise reasonable commercial efforts to minimize any imbalances or other penalties or charges from transporters of Natural Gas delivered to the Facility ("Imbalance Charges"). If Buyer or Seller receives an invoice from a transporter for Imbalance Charges, the Parties shall determine the cause for such charges. To the extent that the Imbalance Charges were incurred as a result of Buyer's actions or inaction, or a CT trip or a Forced Derate

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associated with attempting to respond to Buyer's Schedule, then Buyer shall pay such Imbalance Charges. To the extent that the Imbalance Charges were incurred as a result of Seller's actions or inaction, then Seller shall pay such Imbalance Charges. Imbalance Charges that are not due to the action or inaction of Buyer or Seller or whose cause cannot be determined shall be shared equally by Buyer and Seller. Any disputes under this Section 12.2.5 shall be resolved in accordance with the provisions of Article 20 applicable to Imbalance Charges disputes.

12.2.6 [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED], the Actual Delivery Point Quantity on each Gas Day shall be allocated as follows: (i) Buyer shall be allocated a quantity equal to the Actual Delivery Point Quantity multiplied by the ratio which the Buyer metered quantity, as measured by the Unit gas meters pursuant to Buyer's Schedules ("Buyer Metered Quantity"), bears to the Aggregate Plant Quantity. For purposes of this provision, the term "Actual Delivery Point Quantity" shall mean the total quantity of Natural Gas delivered to the Delivery Point for a Gas Day; the term "Gas Day" shall mean a period of 24 consecutive hours, beginning at 9:00 am Central Prevailing Time on any calendar day, or such other 24-hour period as from time to time is generally recognized in the gas industry as the standard period for measuring Natural Gas deliveries and pricing; and the term "Aggregate Plant Quantity" shall mean the sum of the Buyer Metered Quantity and all metered quantities not attributable to Buyer's Schedules. All Natural Gas

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

12 12.2.7 [REDACTED]
13 [REDACTED]

14 [REDACTED], additional procedures will be developed by the Operating
15 Committee to equitably account for ancillary issues including: allocation of line
16 pack; flow at the Primary Gas Delivery Point when no Units are running; and the
17 optimal set-up on SNG for nominating, confirming and managing imbalances.

18 12.3 Fuel Oil.

19 12.3.1 The Facility currently has the capability for the simultaneous delivery of [REDACTED]
20 [REDACTED] gallon tractor-trailers containing Fuel Oil
21 and [REDACTED] of a [REDACTED]
22 [REDACTED] gallon Fuel Oil storage tank with an approximate working
23 Fuel Oil storage capacity of [REDACTED] gallons (the

“Storage Facility”). Seller has received contractual commitments from the Facility Owner that the Facility Owner shall maintain the Fuel Oil storage facilities, including systems for the receipt of Fuel Oil and the delivery of Fuel Oil, in good repair. Seller represents to Buyer that the Facility is capable of converting Fuel Oil to energy, and Seller has the contractual right to convert Fuel Oil to energy as set forth in this Agreement and the Tolling Agreement. Seller agrees to use commercially reasonable efforts to maintain and exercise its contractual right to convert Fuel Oil to energy as set forth in this Agreement and the Tolling Agreement.

12.3.2 Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, Seller’s interest in the Fuel Oil inventory residing in the Storage Facility as of June 1, 2009. Seller’s Fuel Oil inventory shall meet the Air Permit requirements as of June 1, 2009. Buyer shall pay Seller for such Fuel Oil inventory within ten (10) Days of receiving Seller’s invoice therefor, the amount equal to the quantity of such inventory times the average Daily Fuel Oil Replacement Price during the one hundred twenty day (120) period immediately preceding June 1, 2009. At the end of the Term, Buyer agrees to sell to Seller, and Seller agrees to purchase from Buyer, Buyer’s Fuel Oil inventory residing in the Storage Facility as of the last day of the Term. Seller shall pay Buyer for such inventory within ten (10) Days of receiving Buyer’s invoice at an amount equal to the quantity of such inventory times the average Daily Fuel Oil Replacement Price during the one hundred twenty day (120) period immediately preceding the last day of the Term.

12.3.3 Buyer shall be responsible for procuring Fuel Oil during the Term of this

Agreement. The amount of Fuel Oil consumed by the Facility shall be determined by the individual CT liquid fuel meters.

12.3.4 The risk of loss of Fuel Oil shall be borne by Buyer until the risk of loss passes from Buyer to Seller, which shall occur upon Seller's receipt of the Fuel Oil deliveries at the Facility.

12.3.5 Seller shall have the right to require reasonable sampling and testing of Fuel Oil in order to determine its compliance with the Air Permit and as otherwise needed for problematic conditions, including but not limited to low stability, water and bacteria, which can occur from having Fuel Oil sit in the tanks for a prolonged period of time, and to the extent reasonably necessary to chemically treat Fuel Oil at Buyer's expense. Buyer shall reimburse Seller for its pro rata inventory share of Seller's actual out-of-pocket costs of such testing and treatment.

12.3.6 Reserved.

12.3.7 Seller shall at all times be responsible for the cost of Fuel Oil that it utilizes for third-party sales, for start-up and ramping in excess of the cost of the Fuel Oil that would have been burned at the Guaranteed Heat Rate, or for any other purpose. Seller shall not be excused from failing to satisfy Buyer's Schedule requests to operate on Fuel Oil to the extent such failure is due to Seller's use of Fuel Oil for (i) any purpose other than to generate energy specified in Buyer's Schedules, or, (ii) testing to be conducted in accordance with Prudent Industry Practices. Seller or Buyer may, consistent with Prudent Industry Practices, request that the Facility be tested to determine the reliable operation utilizing Fuel Oil; Buyer shall be responsible for the cost of Fuel Oil consumed during such test; and Buyer shall be

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entitled to all energy resulting from such test at no additional cost. Seller agrees to reasonably cooperate with Buyer to schedule the test utilizing Fuel Oil to maximize the value of energy generated during such test.

12.3.8 Buyer shall have the right to maintain Fuel Oil inventory at the Facility, not to exceed [REDACTED] of the Storage Facility. Seller shall be excused from failing to satisfy Buyer's Schedule requests to operate on Fuel Oil to the extent such failure is due to Buyer's failure to maintain sufficient working storage of Fuel Oil required by the Facility for stable and reliable operation on Fuel Oil.

12.3.9 The Parties recognize that the ability to Schedule the Facility using Fuel Oil is limited by a number of factors including (without limitation): (i) the ability to purchase and transport Fuel Oil to the Facility; (ii) the amount of Fuel Oil inventory at the Facility; (iii) the rate at which such inventory is being depleted pursuant to Buyer's Scheduling Instructions; (iv) the Facility's current maximum hourly replenishment capability of [REDACTED] gallons per hour, and (v) the Air Permits. Through each of their representatives on the Operating Committee, Buyer and Seller agree to cooperate in the development of Operating Procedures establishing parameters applicable to utilization of Fuel Oil by the Facility so as to optimize (without jeopardizing) Buyer's right to Schedule the Facility on Fuel Oil.

12.3.10 Reserved.

12.3.11 Seller will track and report monthly to Buyer the level of Buyer's Fuel Oil inventory, the amount of Fuel Oil delivered that Month, and the amount of Fuel

Oil consumed that Month. The Operating Committee shall develop procedures for the real time reporting of Fuel Oil inventory and other operating protocols, including nomination, scheduling and delivery, inventory accounting, operations reporting and quality control.

ARTICLE 13

ENERGY SCHEDULING AND TRANSMISSION

13.1 Coordination and Scheduling.

13.1.1 Notwithstanding any other provision of this Agreement, Buyer and Seller agree to Schedule the Facility in accordance with the procedures set forth in this Section 13.1 and **Appendix C**, Section II. Seller is not obligated to deliver energy to Buyer in response to those portions of Scheduling Instructions that materially deviate from such procedures. Buyer is not entitled to Schedule energy, and Seller is not obligated to deliver to the Buyer such energy, to the extent that such energy cannot be delivered due to (a) Buyer's failure to deliver to the Facility a sufficient quantity of Natural Gas at an allowable pressure as specified in **Appendix C**, or (b) Buyer's inability to receive such energy at the Interconnection Point or (c) the Facility exceeding 1,800 Factored Operating Hours per Unit, 144 tons of NOx, or 144 tons of SO2 emissions per rolling 12 Month period; provided, however, that Seller shall not be excused from failing to meet Buyer's Schedule pursuant to this subsection (c) if such failure is the result of Seller's operation of the Facility for purposes other than complying with Buyer's Schedules and the associated requirements of this Agreement.

13.1.2 The electrical output committed under this Agreement shall be subject to Scheduling Instructions issued by the Scheduling Center. Seller shall comply

with such Scheduling Instructions at the time designated for compliance therewith, subject to the Technical Limits and the Scheduling procedures set forth in **Appendix C**. In the event and to the extent Seller reasonably demonstrates that the Facility is unable to deliver a portion of a Schedule solely due to ambient conditions being less favorable than the Reference Conditions (i.e., temperature, humidity and barometric pressure), MWh Scheduled shall be reduced by the amount of MWh that were not delivered due solely to such ambient conditions for the duration of such event. At the request of Buyer, Seller shall make reasonable efforts to cause the Facility to control voltage by producing or absorbing reactive power subject to the Technical Limits; provided, however, that such actions do not cause the Facility Owner to violate any provisions of its Interconnection Agreement and provided that Buyer shall reimburse Seller for any incremental costs incurred by Seller (including any negative impact on the Guaranteed Heat Rate and waiving any negative Facility Availability impacts directly attributable to Seller's compliance with such reactive power instructions), in excess of those costs Seller would have otherwise incurred under this Agreement, as a result of Seller's compliance with any such requests.

- 13.1.3 Buyer covenants that determinations to submit Scheduling Instructions to Seller shall be based solely on considerations of the reliability of Buyer's system, economic dispatch order and Buyer's costs associated with economic unit commitment, and not on the availability status of the Facility or any impact that the determination may have on Monthly Capacity Payments.

13.1.4 Buyer and Seller shall maintain written records of the quantities of energy to be delivered each hour during the Term. Following the Delivery Commencement Date, subject to Section 5.1.5, Buyer may Schedule energy at any time during the Term, and subject to Section 5.1.2, Seller shall cause the entire output capability of the Facility to be available to Buyer when Scheduled.

13.1.4.1 If Buyer elects to Schedule energy for delivery on the next Business Day, Buyer shall provide its Schedule for such delivery to Seller no later than 12:00 p.m. CPT on the Business Day prior to the Day of delivery for deliveries from the Facility and no later than 8:30 a.m. CPT on the Business Day prior to the Day of delivery for deliveries from an Alternate Resource. This Day-ahead Scheduling Instruction will also include any electric deliveries from midnight to midnight for any calendar Days that precede the next Business Day (*i.e.*, weekends and holidays). Buyer shall also provide a non-binding, good faith estimate of its Scheduling Instructions for the twenty-four (24) hour period following the next Business Day. Buyer may submit Scheduling Instructions for each hour requesting the minimum number of Units to be operating and, for each Unit, whether the Scheduled amount is the Unit's minimum generation or the Unit's maximum generation. Seller may dispatch any combination of Units at any Unit energy output levels to meet Buyer's Schedule; however, energy payment calculations made pursuant to Appendix B will be based on the Scheduling Instructions. For the purposes of Scheduling an

Alternate Resource, Buyer's Schedule options for such resource shall be determined by the number of Units unavailable. In the event one Unit is unavailable, Buyer may Schedule the Alternate Resource for twenty-five percent (25%) of the Designated Capacity. In the event two Units are unavailable, Buyer may Schedule the Alternate Resource for fifty percent (50%) of the Designated Capacity. In the event three Units are unavailable, Buyer may Schedule the Alternate Resource for either fifty percent (50%) of the Designated Capacity or seventy-five percent (75%) of the Designated Capacity. If all four Units are unavailable, Buyer may Schedule the Alternate Resource for either fifty percent (50%) of the Designated Capacity or the Designated Capacity. Buyer will be required to accept and pay for energy during ramp up and ramp down periods at a price as described in **Appendix B**.

13.1.4.2 For Scheduling Instructions submitted after the Day-ahead deadline, Buyer must provide Seller with a proposed revised Schedule at least one (1) hour prior to the start-up or ramp up of energy delivery. If energy is not already Scheduled, Buyer will be assessed one or more turbine start event(s), as applicable in accordance with **Appendix B**, Section C. Buyer will be responsible for the actual costs (commensurate with the Guaranteed Heat Rate) of implementing the intra-Day Scheduling Instruction (including any associated imbalance penalties, if any, assessed by The Southern Company pursuant to the

Southern OATT); provided, however, such costs shall not include any lost opportunity costs for power sales from the Facility.

13.1.4.3 Notwithstanding anything contained in Section 13.1.4.2 to the contrary, in the event that an Unavailability Event has occurred, Buyer shall not have the right to give intra-Day Scheduling Instructions after Seller has provided notice to Buyer that the Unavailability Event has occurred. The most recent Schedule submitted by Buyer shall be deemed the Schedule for the balance of such Day in which Seller has provided notice that the Unavailability Event has occurred. During an Unavailability Event, Seller shall inform Buyer regularly as to the projected schedule of the Facility's return to service. If the Facility is able to return to service, Seller must notify Buyer by 3:00 p.m. CPT the previous Day to be able to deliver the entire Schedule requested by Buyer from the Facility. If the Facility is able to return to service intra-Day, Seller must give a three-hour notification of ability to operate. Buyer then has the right to submit a new Schedule for the balance of that Day. The previous Day's Schedule remains the obligation of Seller until the end of the three-hour notification. If Buyer chooses to Schedule zero (0) MWh for the balance of the Day, there is no obligation for Seller for the remainder of that Day. If Buyer chooses to Schedule the Facility for greater than the Minimum Capacity, the new forward Schedule becomes Seller's delivery obligation for the remainder of that Day.

13.1.5 Seller may from time to time request that the Facility be allowed to deliver electric energy output to Buyer in order to test and/or evaluate Facility equipment ("Operator Requested Schedule"). Seller shall request such Operator Requested Schedule from Buyer at least one (1) Business Day in advance, and Buyer shall have the right to approve such Operator Requested Schedule (such approval not to be unreasonably withheld, conditioned or delayed). If due to unforeseen and commercially reasonable circumstances and giving due deference to Seller's testing requirements, Buyer determines that it is necessary to Schedule the Facility during an Operator Requested Schedule, then Buyer may cancel or interrupt, as the case may be, the Operator Requested Schedule and subsequently Schedule the Facility.

13.2 Effect of Grid Emergencies. The Parties recognize that pursuant to the Interconnection Agreement, the Facility Owner may be required to reduce generation or take certain actions during a Grid Emergency and may be required to disconnect the Facility from the Transmission System to allow for mitigation of system problems and/or repair or maintenance on the Interconnection Facilities or the Transmission System. To the extent that the Facility Owner is required pursuant to the Interconnection Agreement to take any such action, other than instances where Facility Owner's or Seller's acts or omissions are the cause for the required actions, which will adversely affect its ability to meet Buyer's Schedules, Seller shall be excused from meeting Buyer's Schedules, and the amount of energy that Seller is unable to deliver to Buyer as a result of such action shall not be treated as MWh Scheduled for purposes of the Monthly Availability Percentage or Seasonal Availability Percentage calculations in **Appendix A**.

1 13.3 AGC. The Facility is not currently capable of operating on automatic generation control
2 ("AGC"); however it has a [REDACTED] to
3 accommodate AGC. Within 90 Days following Buyer's written request, Seller shall
4 provide Buyer with cost and time implementation estimates for the installation of
5 additional equipment necessary to make each of the Units at the Facility AGC capable.
6 Buyer understands that such estimates are estimates only, and the actual cost and time for
7 the installation of additional equipment as contemplated herein may be higher or lower
8 than such estimates. Buyer shall have the option to require Seller to exercise the rights
9 that it may have under the Tolling Agreement to make the changes necessary for the
10 Units to be made AGC capable, and Buyer shall be responsible for the additional costs to
11 make such changes. Buyer understands that any additional AGC equipment installed
12 pursuant to this provision shall become the property of the Facility Owner and shall be
13 retained by the Facility Owner upon the expiration or termination of this Agreement.
14 Buyer shall have the right, but not the obligation, to dispatch the Facility in the AGC
15 mode. Buyer shall have the right to operate the Facility on AGC or provide a Schedule to
16 Seller at any time. The integrated net effect of AGC during an hour will be treated as a
17 Schedule and subject to all limitations that otherwise apply to Schedules. For AGC,
18 Buyer may submit Instructions for each hour requesting the minimum number of Units to
19 be operating. Seller may dispatch any combination of Units at any Unit energy output
20 levels to meet Buyer's Instructions. In the event the AGC capability of the Facility is
21 unavailable, Buyer shall utilize non-AGC Scheduling and Seller, at Seller's expense,
22 shall use commercially reasonable efforts to reestablish AGC capability, including
23 exercising its rights under the Tolling Agreement.

If Buyer elects to utilize AGC, the Parties agree to use commercially reasonable efforts to have such AGC capabilities installed at the Facility and tested consistent with Prudent Industry Practice prior to RCOD. However, in the event AGC is not fully installed and tested prior to RCOD, the MWh delivered in the SAP calculation shall be deemed to be the MWh Scheduled for the period of a Schedule during and to the extent the Facility was subject to a Forced Derate or is Unavailable solely due to issues associated with the use of AGC until such time as the Parties mutually agree that reliable AGC capability has been established at the Facility.

ARTICLE 14

INSURANCE

14.1 Insurance Required.

14.1.1 Each Party shall acquire and maintain at its sole cost and expense, the types and amounts of insurance coverage as are consistent with Prudent Industry Practices but in no event less than the types and amounts described in **Appendix E** and this Article 14. All such insurance shall be written by a company or companies with a Best's rating of no less than "A minus."

14.1.2 The Indemnified Party shall be designated as an additional insured as its interests may appear on all required policies but only to the extent of the indemnities contained in this Agreement. Each such policy shall be primary and shall not contribute to any insurance that may otherwise be maintained by, or on behalf of, the Indemnified Party.

14.1.3 To the extent of the indemnities and limitations contained in this Agreement, all insurance required hereunder shall contain provisions waiving the insured's and the insurer's rights of subrogation or recovery of any kind against the Indemnified

Party, its Affiliates and their respective agents, employees, officers, directors, successors and assigns.

14.1.4 Notwithstanding this Agreement's insurance requirements, Seller may self-insure all or any part of the insurance coverage required by this Agreement, so long as Seller does not experience a Material Adverse Change. All self-insurance coverage shall be treated as if it were an insurance policy.

14.2 Certificates of Insurance. Within ten (10) Days of the execution of this Agreement, each Party will provide the other Party with certificates of insurance evidencing the required coverage set forth above and in **Appendix E**. Seller's certificates shall provide for a minimum of sixty (60) Days advance notice to Buyer of cancellation or material change in coverage. Seller shall also provide advance copies of, and obtain prior written approval from Buyer for, any policy endorsements that could modify or restrict Buyer's rights as an additional insured or under the contractual liability provisions of the subject policies. Failure by either Party to cause the procurement of the insurance coverage or the delivery of certificates of insurance required by this Article 14 or **Appendix E** shall not relieve such Party of the insurance requirements set forth herein or therein or in any way relieve or limit such Party's obligations and liabilities under any other provision of this Agreement.

ARTICLE 15

INDEMNIFICATION

15.1 Scope of Indemnity. Each Party (the "Indemnifying Party") expressly agrees to indemnify, hold harmless and defend the other Party and its Affiliates, trustees, agents, officers, directors, employees, members and permitted assigns ("Indemnified Party") against all claims, liability, fines, costs or expenses (on an After-Tax Basis) imposed by

Governmental Authorities or arising from loss, damage or injury to the person or property of third parties in any manner directly or indirectly related to: (a) acts and omissions in connection with the performance, or failure thereof, of obligations or representations and warranties under this Agreement; (b) activities (including prior uses of third parties) on the Indemnifying Party's respective side of the Interconnection Point and Primary Gas Delivery Point; or (c) any other activities to the extent that they involve the negligence or willful misconduct of the Indemnifying Party, except to the extent such loss, damage or injury is the result of the negligence or willful misconduct of the Indemnified Party.

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

Indemnifying Party, contest, settle, or pay such claim; provided, however, that settlement or full payment of any such claim may be made only with the Indemnifying Party's consent or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement.

ARTICLE 16

FORCE MAJEURE

- 16.1 Definition of Force Majeure Event. For the purposes of this Agreement, a "Force Majeure Event" as to a Party means any occurrence, nonoccurrence or set of circumstances that is beyond the reasonable control of such Party and is not caused by such Party's negligence, lack of due diligence, or failure to follow Prudent Industry Practices. The term Force Majeure Event shall not include: (i) the inability to meet a Legal Requirement or the change in a Legal Requirement; (ii) a site specific strike, walkout, lockout or other labor dispute at the Facility; (iii) equipment failure, unless, in the case of the Facility only, such equipment failure results directly from an event that would otherwise constitute a Force Majeure Event hereunder; (iv) changes in market conditions that affect the cost or availability of equipment, materials, supplies or services, including the Facility's fuel supply or the cost of power from resources other than the Facility; (v) failures of contractors, suppliers or vendors, unless such failures are caused by an event which would otherwise constitute a Force Majeure Event hereunder, if experienced by a Party; (vi) climatic temperature and humidity conditions; and (vii) Buyer's inability to (a) obtain Natural Gas supply, (b) deliver Natural Gas to the Primary Gas Delivery Point, (c) obtain electrical transmission or (d) obtain Fuel Oil.
- 16.2 No Breach or Liability. Either Party shall be excused from performance of its obligations hereunder other than payment obligations and shall not be construed to be in default in

respect of such obligations to the extent that and for so long as failure to perform such obligations is due to a Force Majeure Event.

16.3 Capacity and Energy Payments. Buyer's obligation to make Monthly Capacity Payments shall be excused pro rata, based on the number of Days of the Month with respect to which Seller has declared a Force Majeure Event and to the extent that Seller's obligations to honor Scheduling Instructions from Buyer are excused as a result of the Force Majeure Event claimed by Seller; provided, however, that Buyer shall make pro rata Monthly Capacity Payments to the extent that Seller makes the election of financial settlement in accordance with Section 5.1.4.1 and to the extent that Seller satisfies Buyer's Schedules in accordance with Section 5.1.4.2.

16.4 Declaration and Mitigation. Following the occurrence of a Force Majeure Event, the affected Party shall:

16.4.1 give the other Party written notice of the declaration of such event and intent to invoke the provisions of this Article 16, describing the particulars of such Force Majeure Event;

16.4.2 remedy its inability to perform as soon as reasonably practicable; provided, however, that this Section shall not require the settlement of any non-site specific strike, walkout, lockout or other general labor dispute on terms which, in the sole judgment of the Party involved in the dispute, are contrary to its interest; and

16.4.3 when the affected Party is able to resume performance of its obligations under this Agreement, provide the other Party with a written certification reasonably acceptable to such other Party that the Force Majeure Event has been cured.

16.5 Suspension of Performance. The suspension of performance due to a Force Majeure Event shall be of no greater scope and of no longer duration than is required by such Force Majeure Event. No Force Majeure Event shall extend this Agreement beyond its stated Term.

16.6 Extended Force Majeure Events.

16.6.1 If a Party has reason to believe that a Force Majeure Event which is preventing the other Party from performing its obligations hereunder will result in a suspension of such performance for a term of six (6) Months or longer (an "Extended Force Majeure Event"), that Party may request that the other Party submit a "Force Majeure Remedy Plan," which the other Party shall submit to the requesting Party within thirty (30) Days of the request. If the Party claiming an excuse under this Article 16 has reason to believe that a Force Majeure Event is an Extended Force Majeure Event, it shall notify the other Party promptly and shall submit a Force Majeure Remedy Plan to the other Party within thirty (30) Days thereafter. The Force Majeure Remedy Plan shall set forth a course of repairs, improvements, changes to operations or other actions which should permit the affected Party to perform its obligations under this Agreement as soon as reasonably practicable.

16.6.2 While a Force Majeure Remedy Plan is in effect, the Party prevented from performing its obligations due to the Force Majeure Event shall provide Monthly status reports to the other Party, notifying the other Party of the steps which have been taken to remedy the Force Majeure Event and the expected remaining duration of the Party's inability to perform its obligations.

16.6.3 The Party not prevented from performing its obligations due to the Force Majeure Event may at any time terminate this Agreement effective upon ten (10) Days prior written notice to the other Party if: (i) the affected Party fails to provide a Force Majeure Remedy Plan as required by this Section 16.6; (ii) the affected Party fails to carry out the Force Majeure Remedy Plan in a method reasonably designed to cause that Party to be able to perform its obligations hereunder; or (iii) the affected Party remains unable to perform its obligations hereunder twelve (12) Months following the initial suspension of performance resulting from the Force Majeure Event. For the purposes of subsection (iii) of this Section 16.6.3, the twelve (12) Month period need not be continuous if, and only if, each period of suspension of performance comprising the twelve (12) Month period is the result of a common cause such that, if the cause had been cured following the first suspension of performance, the additional suspensions of performance would not have occurred.

16.6.4 Upon termination of this Agreement as provided in Section 16.6.3, the Parties shall have no further liability or obligation to each other except for any obligation arising prior to the date of such termination. For the avoidance of doubt, no payment arising solely due to a termination shall be required to be paid if this Agreement is terminated in accordance with Section 16.6.3.

ARTICLE 17

DEFAULT AND REMEDIES

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

- 17.1.1 Any material representation or warranty made by Seller herein or in any certificate or other document delivered by Seller to Buyer during the negotiation of this Agreement shall prove to be incorrect in any material respect when made, unless Seller shall promptly commence and diligently pursue action to cause such representation or warranty to become true in all material respects and does so within sixty (60) Days after notice thereof has been given to Seller by Buyer (unless such cure is not capable of being effected within such sixty (60) Day period in which case Seller shall have an additional thirty (30) Day period in which to perform such cure) and such cure removes any material adverse effect on Buyer of such representation or warranty having been incorrect.
- 17.1.2 A court having jurisdiction shall enter: (i) a decree or order for relief in respect of Seller in an involuntary case or proceeding under any applicable Federal or state bankruptcy, insolvency, reorganization or other similar law; or (ii) a decree or order adjudicating Seller bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of Seller under any applicable Federal or state law, or appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of Seller or of any substantial part of its affairs.
- 17.1.3 Seller shall: (i) commence a voluntary case or proceeding under any applicable Federal or state bankruptcy, insolvency, reorganization or other similar law or any other case or proceeding to be adjudicated bankrupt or insolvent; (ii) consent to the entry of a decree or order for relief in respect of Seller in any involuntary case or proceeding under any applicable Federal or state bankruptcy, insolvency,

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

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

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

Seller shall have an additional thirty (30) Day period in which to commence such cure and thereafter diligently pursues such cure and completes such cure within sixty (60) Days.

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

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

17.1.8 The Availability Percentage for either one (1) Summer Season or six (6) consecutive Months during which a total of eight hundred (800) or more Unit Hours are Scheduled is below sixty percent (60%); provided, however, that Seller may, within fifteen (15) Days after the end of such Season or six (6) Month period, as applicable, submit a cure plan that is reasonably acceptable to Buyer and expected to resolve the cause of the unsatisfactory Availability Percentage as soon as practicable, but in no event later than one hundred eighty (180) Days from the end of such Season or six (6) Month period, as applicable. If Seller fails to submit such a cure plan in a timely manner or fails to diligently pursue implementation of the cure plan, or if the unsatisfactory Availability Percentage is not, in fact, cured by the end of the one hundred eighty (180) Day period, then Buyer shall have the right to declare an Event of Default. The cause of the unsatisfactory Availability Percentage shall be cured only if (i) Seller is able to resume performance of its obligations under this Agreement and provides Buyer

with a written certification reasonably acceptable to Buyer that the cause of the unsatisfactory Availability Percentage has been cured, and (ii) the Monthly Availability Percentage determined for the first full month following Buyer's receipt of such certification of successful completion of the cure plan is at least sixty percent (60%). For the purposes of this Section 17.1.8, the "Availability Percentage" shall mean the MWh Delivered from the Facility divided by the MWh Scheduled.

17.1.9 Notwithstanding any other provision of this Agreement other than Section 17.1.9.3, the Tested Reliable Capacity determined pursuant to a Performance Test at any time after the Commercial Operation Date is below ninety megawatts (90 MW) and Seller fails to (i) submit to Buyer a cure plan reasonably acceptable to Buyer for such inadequate Tested Reliable Capacity within thirty (30) Days after determination by the Performance Test of such inadequate Tested Reliable Capacity, and (ii) cure such inadequate Tested Reliable Capacity within a reasonable period of time not to exceed one hundred twenty (120) Days from the completion of the Performance Test ("Cure Period"); provided, however, Seller shall be afforded an additional reasonable period of time not to exceed four hundred twenty (420) Days from the end of the Cure Period in which to cause such cure, so long as Seller (i) elects to pay Buyer the financial settlement (with respect to the degraded capacity) pursuant to Section 5.1.4.1, and (ii) elects to cover (to the extent of the degraded capacity) Buyer's Schedules through an Alternate Resource in accordance with Section 5.1.4.2. In the event Seller fails to establish such cure plan within the required thirty (30) Day period or to diligently

implement such cure plan (including implementation of such actions as Buyer may reasonably request), Buyer shall have the right to declare an Event of Default.

17.1.9.1 In the event Seller establishes a cure plan in accordance with Section 17.1.9 but requires additional cure time beyond the Cure Period, no later than fifteen (15) Days prior to the expiration of the Cure Period, Seller shall provide to Buyer (i) a revised cure plan reasonably acceptable to Buyer, and (ii) a written certification reasonably acceptable to Buyer confirming that in order for Seller to cure the inadequate Tested Reliable Capacity Seller must be afforded a reasonable additional period of time not to exceed four hundred twenty (420) Days. In the event Seller fails to (i) establish such revised cure plan fifteen (15) Days prior to the end of the Cure Period, (ii) diligently implement such cure plan (including implementation of such actions as Buyer may reasonably request), or (iii) cure the inadequate Tested Reliable Capacity within such additional four hundred twenty (420) Days, Buyer shall have the right to declare an Event of Default.

17.1.9.2 The cause of the inadequate Tested Reliable Capacity shall be cured under Sections 17.1.9 and 17.1.9.1 only if (i) Seller provides Buyer with a written certification reasonably acceptable to Buyer confirming that the inadequate Tested Reliable Capacity has been cured, and (ii) the inadequate Tested Reliable Capacity is increased to a value equal to or greater than ninety megawatts (90 MW) as demonstrated by the

most recent Performance Test. Throughout the duration of any cure period, the Designated Capacity will be deemed to be the Tested Reliable Capacity determined pursuant to the most recent Performance Test.

17.1.9.3 Notwithstanding the foregoing provisions of Sections 17.1.9, 17.1.9.1 and 17.1.9.2, whenever the Tested Reliable Capacity of the Facility determined pursuant to a Performance Test at any time after the Commercial Operation Date is below ninety megawatts (90 MW), Buyer shall have the unilateral right to elect the remedy specified in **Appendix A**, Section A.3, in which case, such remedy shall be available for inadequate Tested Reliable Capacity above, at and below ninety megawatts (90 MW). In order to elect such remedy Buyer must notify Seller in writing of this election and must waive its right in such notice to declare a Seller Event of Default under Sections 17.1.9 and 17.1.9.1 with respect to such specific event (but not any other additional events) of inadequate Tested Reliable Capacity.

17.1.10 Seller breaches its obligation to deliver energy pursuant to Buyer's Schedule(s) under Sections 5.1.1, 5.1.4, 5.1.5 and/or 5.1.6 to the extent that the Facility or a designated Alternate Resource, as the case may be, is Available and operating, and such breach continues for more than two (2) hours after Buyer provides Seller with written notice of such breach.

17.1.11 Seller or Facility Owner repudiates or rescinds the Tolling Agreement, or the Tolling Agreement is otherwise terminated.

- 17.1.12 Seller, or any of its Affiliates, or any of their employees, contractors, subcontractors, agents or representatives willfully adjusts the Metering System or the Interconnection Facilities without Buyer's written consent and which adjustment has the effect of falsely increasing the amounts owed by Buyer under this Agreement.
- 17.1.13 Any failure of any covenant made by Seller in Section 3.3 herein, unless Seller shall promptly commence and diligently pursue action to cure such failure within thirty (30) Days after notice thereof has been given to Seller by Buyer (unless such cure is not capable of being effected within such thirty (30) Day period in which case Seller shall have an additional thirty (30) Day period in which to perform such cure), and such cure removes any adverse effect on Buyer of such failure of such covenant.
- 17.1.14 Buyer is required by any Legal Requirement or any accounting standard, including but not limited to those implemented or administered by FASB, to consolidate Seller or any of its Affiliates or permitted assigns as a VIE in Buyer's or any of its Affiliates' financial statements and any contractual right of Seller to the power output of the Facility represents forty percent (40%) or more of the total controlled generating capacity of Seller and such condition continues for a period of thirty (30) Days after written notice thereof from Buyer unless such cure is not capable of being effected within such thirty (30) Day period, in which case Seller shall have an additional thirty (30) Day period in which to commence such cure and thereafter diligently pursues such cure and completes such cure within sixty (60) Days.

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

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

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

17.2.2 Buyer fails to perform or observe any material obligation of Buyer under this Agreement, other than those obligations included in this Section 17.2, which failure materially and adversely affects the ability of Seller or Buyer to perform

their respective obligations under this Agreement and continues for a period of thirty (30) Days after written notice thereof from Seller (unless such cure is not capable of being effected within such thirty (30) Day period, in which case Buyer shall have an additional thirty (30) Day period in which to perform such cure.)

17.2.3 Any material representation or warranty made by Buyer herein or in any certificate or other document delivered to Seller by Buyer during the negotiation of this Agreement shall prove to be incorrect in any material respect when made, unless Buyer shall promptly commence and diligently pursue action to cause such representation or warranty to become true in all material respects and does so within sixty (60) Days after notice thereof has been given to Buyer by Seller (unless such cure is not capable of being effected within such sixty (60) Day period in which case Buyer shall have an additional thirty (30) Day period in which to perform such cure) and such cure removes any material adverse effect on Seller of such representation or warranty having been incorrect.

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

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

17.2.6 Buyer fails to comply or cause compliance with the Buyer Performance Security requirements of Section 7.2, or Buyer Guarantor (if applicable) breaches any of its obligations under the Buyer Guaranty or if any representation or warranty made by Buyer Guarantor in the Buyer Guaranty shall prove to be incorrect in any material respect when made, unless any of the foregoing is cured by the end of the next Business Day following receipt of a written notice from Seller of a failure under this Section 17.2.6.

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

17.2.8 Any failure of any covenant made by Buyer in Sections 3.4 and 13.1.3 herein, unless Buyer shall promptly commence and diligently pursue action to cure such failure within thirty (30) Days after notice thereof has been given to Buyer by Seller (unless such cure is not capable of being effected within such thirty (30) Day period in which case Buyer shall have an additional thirty (30) Day period in which to perform such cure), and such cure removes any adverse effect on Seller of such failure of such covenant.

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

17.3 Remedies.

17.3.1 If an Event of Default occurs at any time during the Term, the non-defaulting Party (the "Non-Defaulting Party") may, for so long as the Event of Default is continuing, subject to the provisions of Article 20, take one or more of the following actions: (i) establish a date (which date shall be no more than ten (10) Business Days after the Non-Defaulting Party delivers written notice of such date to the defaulting Party (the "Defaulting Party")) on which this Agreement shall terminate (the "Early Termination Date"), (ii) proceed by appropriate proceedings in accordance with this Agreement at law, in equity or otherwise, to protect and enforce its right to damages (actual or liquidated) or, where the Event of Default is one other than the failure to pay money, equitable relief, including specific performance as contemplated in Section 17.4 and (iii) immediately cease performance or withhold any payments, or both, due in respect of this Agreement.

17.3.2 If an Early Termination Date has been established and the Non-Defaulting Party has not successfully pursued an action for specific performance as contemplated in Section 17.4, the Non-Defaulting Party shall in good faith (a) calculate its Gains, Losses and Costs resulting from the termination of this Agreement, aggregate such Gains, Losses and Costs into a single net amount (the "Termination Payment"), and then (b) notify the Defaulting Party. The Gains, Losses and Costs shall be determined by comparing the cost under this Agreement of the capacity and energy that would be available under this Agreement for the remainder of the Term had this Agreement not been terminated to the market price of capacity and energy of equivalent reliability and Scheduling flexibility

for the remaining Term (had this Agreement not been terminated). For the avoidance of doubt, nothing in Section 7.1 or 7.2 is intended to limit liability under this Section 17.3.2. To ascertain such market price, the Non-Defaulting Party may consider, among other evidence, the settlement prices of NYMEX energy futures contracts, quotations from leading dealers in energy and gas swap contracts, offers for replacement capacity and energy or bids to purchase the remaining capacity and energy that was to be sold pursuant to this Agreement, in either case made by bona fide third-parties (including offers received by the Non-Defaulting Party in response to any request for proposals for capacity and energy contracts), all adjusted for the length of the remaining Term (had this Agreement not been terminated) and differences in locational basis (including without limitation costs of transmission investments and transmission service), reliability, Scheduling flexibility and any other considerations affecting value. Neither Party shall be required to enter into replacement transactions in order to determine the Termination Payment. If the Non-Defaulting Party's aggregate Losses and Costs exceed its aggregate Gains, the Defaulting Party shall, unless it disagrees with such Termination Payment calculation, within fifteen (15) Business Days of receipt of such notice, pay the net amount to the Non-Defaulting Party, which amount shall bear interest at the Interest Rate from the Early Termination Date until paid. If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the Non-Defaulting Party may retain such Gains. If the Defaulting Party disagrees with the calculation of the Termination Payment, the issue shall be resolved

pursuant to the provisions of Article 20 applicable to Termination Payment disputes, and the resulting Termination Payment shall be due and payable within three (3) Business Days after the award. As used in this Section 17.3.2: (i) “Costs” shall mean, brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred by such Party either in terminating any agreement which it has entered into to fulfill its obligations hereunder or entering into new agreements which replace this Agreement, and attorneys’ fees, if any, incurred in connection with enforcing its rights under this Agreement; (ii) “Gains” shall mean, an amount equal to the economic benefit determined on a mark to market basis (exclusive of Costs), if any, to the Non-Defaulting Party resulting from the termination of this Agreement; and (iii) “Losses” shall mean an amount equal to the economic loss determined on a mark to market basis (exclusive of Costs), if any, to the Non-Defaulting Party resulting from the termination of this Agreement.

17.4 Rights of Specific Performance. Seller agrees that monetary damages shall be sufficient to cure any Event of Default by Buyer under this Agreement. Accordingly, Seller hereby waives any right to seek an action of specific performance (other than for payment of monetary damages) of this Agreement against Buyer. The parties recognize that in the event that Seller sells or otherwise causes the sale of energy, capacity and/or Ancillary Services from the Facility in violation of this Agreement, any remedy at law may be inadequate because this Agreement is unique and/or because the actual damages of the Buyer may exceed the amount of any guaranty or other collateral available to the Buyer. The Parties agree that in the event Seller sells or otherwise causes the sale of

energy, capacity and/or Ancillary Services from the Facility in violation of this Agreement, Buyer may, in its sole discretion, pursue an action of specific performance of this Agreement against the Seller, and Seller hereby agrees that it waives all of its rights to assert as a defense to such action that Buyer's remedy at law is adequate.

17.5 Limitation of Remedies, Liability and Damages. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY HEREIN PROVIDED, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, AND EXCEPT FOR THE PAYMENT OF LIQUIDATED DAMAGES SPECIFIED HEREIN, NEITHER PARTY NOR THEIR AFFILIATES SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE; PROVIDED, HOWEVER, THAT THIS SENTENCE SHALL NOT

APPLY TO LIMIT THE LIABILITY OF A PARTY WHOSE ACTIONS GIVING RISE TO SUCH LIABILITY CONSTITUTE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE ACTUAL DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE LIQUIDATED DAMAGES DO NOT CONSTITUTE A PENALTY AND ARE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

WITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, IN NO EVENT SHALL BUYER'S LIABILITY TO SELLER FOR A TERMINATION PAYMENT UNDER THIS AGREEMENT EXCEED AN AMOUNT EQUAL TO THE SUM OF ANY AMOUNTS THEN OWED BY BUYER HEREUNDER PLUS THE TOTAL OF ALL REMAINING MONTHLY CAPACITY PAYMENTS FOLLOWING TERMINATION THAT WOULD HAVE BEEN PAYABLE TO SELLER UNDER THIS AGREEMENT HAD THE AGREEMENT REMAINED IN EFFECT THROUGH THE END OF THE TERM.

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

- 17.7 No Interruption. Except as otherwise provided in this Agreement, unless and until this Agreement has been terminated, neither Party shall, as a result of any breach or alleged breach by the other Party, refuse to deliver, or suspend or delay any delivery of, capacity or associated energy to be provided under this Agreement; refuse to take energy to the extent required under this Agreement; suspend, delay or refuse to make, any of the payments required under this Agreement.
- 17.8 Duty to Mitigate. Notwithstanding any other provision of this Agreement, each Party has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance.

ARTICLE 18

CHANGE OF LAW

18.1 Change of Law.

18.1.1 A "Change of Law" means a change in a Legal Requirement constituting a new environmental or tax law or regulation or a new interpretation of such law or regulation, which change is enacted after the later of the execution date of this Agreement or the filing of the application for the initial air emissions permit for the Facility, and which generally affects the cost of electric generation. The term Change of Law shall exclude any reallocation for NOx Allowances. For the avoidance of doubt, the provisions of Sections 18.1.3 and 18.1.4 shall not apply to a Change of Law that has been reflected in Buyer's capacity and/or energy payments through the previous operation of those Sections.

18.1.2 The Parties acknowledge that, except as provided in Sections 18.1.3 and 18.1.4, the capacity and energy payments made by Buyer shall not be altered as a result

of a Change of Law that causes either Party to incur additional costs or realize savings in carrying out its obligations under this Agreement.

18.1.3 If a Change of Law (or Cumulative Changes of Law) in the aggregate causes Seller to incur additional costs that are projected to increase Seller's annual costs of carrying out its obligations under this Agreement above two dollars per kilowatt (\$2.00/kW)⁴ (the "Threshold Amount"), such additional costs in excess of the Threshold Amount may be passed through to Buyer. Seller shall notify Buyer of the Change of Law and Seller's proposed increase in capacity or energy payments under this Agreement. For purposes of calculating the annual cost increase associated with capitalized additions or modifications to the Facility (determined in accordance with generally accepted accounting principles), the Parties will at that time establish an appropriate levelized fixed charge rate (incorporating an after-tax return of eleven percent (11.0%)) for application to the original capital cost of such additions or modifications. This calculation will represent the total cost associated with the identified addition or modification, including depreciation, carrying costs, and any other cost or expense item related to capital investments. Upon receipt of such notice, Buyer will within thirty (30) Days make a good faith determination whether Seller's proposed price increase results from a Change of Law as specified in this Agreement. In the event Buyer concurs that the proposed price increase results from a Change of Law, the proposed increased rates will take effect consistent with the timing of the additional cost incurrence (but in no event earlier than the end of the thirty (30)

⁴ All amounts shown herein as \$/kW shall be calculated based on the Nominal Capability of the

Day period). If Buyer disagrees with Seller's determination, such disagreement shall be resolved pursuant to the provisions of Article 20 applicable to Change of Law disputes. The results of any such dispute resolution procedures shall be retroactively applied (with interest at the Interest Rate) to reflect any such increase in Seller's costs.

18.1.4 If a Change of Law (or Cumulative Changes of Law) in the aggregate causes Seller to incur a reduction in costs that are projected to decrease Seller's annual costs of carrying out its obligations under this Agreement by more than two dollars per kilowatt (\$2.00/kW)⁵ per year, such reduction in excess of such amount will be passed through to Buyer. Buyer may notify Seller of the Change of Law and Buyer's proposed decrease in capacity or energy payments under this Agreement. Upon receipt of such notice, Seller will within thirty (30) Days make a good faith determination whether Buyer's proposed price decrease results from a Change of Law as specified in this Agreement. In the event that Seller concurs that the proposed price decrease results from a Change of Law, the proposed decreased rates will take effect consistent with the timing of the additional cost reduction (but in no event earlier than the end of the thirty (30) Day period). If Seller disagrees with Buyer's determination, such disagreement shall be resolved pursuant to the provisions of Article 20 applicable to Change of Law disputes. The result of any such dispute resolution procedures shall be retroactively applied (with interest at the Interest Rate) to reflect any such reduction in Seller's costs.

Facility.

⁵ All amounts shown herein as \$/kW shall be calculated based on the Nominal Capability of the Facility.

18.1.5 Under no circumstances can Buyer's determination regarding the applicability of the Change of Law provision to a proposed price increase or Seller's determination regarding the applicability of the Change of Law provision to a proposed price decrease constitute an Event of Default under Article 17 of this Agreement.

18.1.6 Notwithstanding any other provision of this Article 18, except as provided in this Section 18.1.6, in no event shall Buyer be responsible to bear any costs associated with any Change of Law that, together with all prior increases and decreases in costs passed on to Buyer pursuant to Sections 18.1.1 through 18.1.4, exceed fifteen dollars per kilowatt (\$15.00/kW)⁶ per year (hereinafter "Excess Change of Law Costs"). Seller shall be solely responsible for all such Excess Change of Law Costs throughout the Term; provided, however, that Seller shall have the right to provide Buyer with written notice (which notice must provide supporting documentation demonstrating that Seller has incurred Excess Change of Law Costs) of its election to terminate this Agreement, effective six (6) Months after the date of Seller's written notice, and to receive a Termination Payment from Buyer as liquidated damages in the amount of one-half (1/2) of the amount identified in Table 7.1 corresponding to the year in which the effective date of the termination occurs and, in which case, following the effective date of the termination, neither Party shall have any further liability to the other Party except for any obligations incurred prior to the effective date of the termination; provided further, Buyer shall have the right to elect by written notice delivered to Seller

⁶ All amounts shown herein as \$/kW shall be calculated based on the Nominal Capability of the

within thirty (30) Days of Seller's written termination notice to accept responsibility for all valid Excess Change of Law Costs incurred by Seller and, in which case, this Agreement shall not terminate and shall continue in full force and effect as so modified. If Buyer does not provide such written notice within such thirty (30) Day period, then Buyer shall be deemed to have waived such election and this Agreement shall terminate in accordance with Seller's election. Following any occasion when Buyer elects to accept responsibility for Excess Change of Law Costs, Buyer shall have no responsibility to accept any further costs associated with any additional Change of Law, provided that, if Seller incurs such additional Change of Law costs, Seller shall have the right to re-initiate the foregoing Seller election to terminate this Agreement and receive the above-stated liquidated damages which election shall also be subject to Buyer's right to elect to accept responsibility for such additional costs, all in accordance with the foregoing provisions of this Section 18.1.6.

18.1.7 The term "Cumulative Changes of Law" shall mean the summation of the cost impact of all Changes of Law, regardless of whether the cost impact is an increase or decrease in costs. For example, assume that Seller experiences four Change of Law occurrences over a three-year period, as follows: (1) an increase in costs of three dollars per kilowatt (\$3.00/kW) per year in Annual Period 1, (2) a reduction of costs of four dollars per kilowatt (\$4.00/kW) per year in Annual Period 2, (3) an increase in costs of three dollars per kilowatt (\$3.00/kW) per year in Annual Period 3, and (4) an increase in costs of one dollar per kilowatt (\$1.00/kW) per

Facility.

year in Annual Period 4.⁷ Following the first occurrence of Change of Law above, after taking into account the two dollars per kilowatt (\$2.00/kW) per year threshold, Seller would be entitled to recover from Buyer one dollar per kilowatt (\$1.00/kW) per year as Change of Law costs.⁸ Following the second occurrence, the net result of the first two occurrences would be a reduction of one dollar per kilowatt (\$1.00/kW) per year, which is within the two dollars per kilowatt (\$2.00/kW) per year threshold; however, the one dollar per kilowatt (\$1.00/kW) per year cost increase passed along to Buyer following the first occurrence would be eliminated.⁹ Following the third occurrence, the net result of the first three occurrences would be an increase of two dollars per kilowatt (\$2.00/kW) per year, which is within the two dollars per kilowatt (\$2.00/kW) per year threshold; therefore, no adjustment in payments is made.¹⁰ Following the fourth occurrence, the net result of the first four occurrences would be an increase of three dollars per kilowatt (\$3.00/kW) per year, which is above the two dollars per kilowatt (\$2.00/kW) per year threshold; therefore, Seller would be entitled to recover from Buyer one dollar per kilowatt (\$1.00/kW) per year as Change of Law costs.¹¹

18.1.8 For the purpose of determining Change of Law costs, the Parties acknowledge that an appropriate allocation must be made for costs arising from the

⁷ All amounts shown herein as \$/kW shall be calculated based on the Nominal Capability of the Facility.

⁸ All amounts shown herein as \$/kW shall be calculated based on the Nominal Capability of the Facility.

⁹ All amounts shown herein as \$/kW shall be calculated based on the Nominal Capability of the Facility.

¹⁰ All amounts shown herein as \$/kW shall be calculated based on the Nominal Capability of the Facility.

¹¹ All amounts shown herein as \$/kW shall be calculated based on the Nominal Capability of the

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construction, operation and maintenance of common facilities supporting the four (4) Units from which Buyer is purchasing plus any applicable additional Units at the Facility Owner and Sowega electric generating plants.

18.2 Air Emissions. Buyer shall supply Seller with the actual number of allowances required by any Governmental Authority or Consent for emission of nitrogen oxides ("NOx Allowances") and sulfur dioxides ("SO2 Allowances") for energy purchased from Seller and delivered from the Facility pursuant to this Agreement, subject to the following limitations:

18.2.1 Buyer shall not be required to provide NOx Allowances that are needed due to the Facility exceeding the lesser of its permitted equivalent NOx emissions rate and a calendar year average NOx emissions rate of [REDACTED] lbs./MMBtu for operation on Natural Gas and [REDACTED] lbs./MMBtu for operation on Fuel Oil. In determining the maximum quantity of NOx Allowances that Buyer will supply for each calendar year (from the lesser of its permitted equivalent NOx emissions rate and a NOx emission rate of [REDACTED] lbs./MMBtu for operation on Natural Gas and [REDACTED] lbs./MMBtu for operation on Fuel Oil), the MMBtu will be based on the Guaranteed Heat Rates for all energy purchased and delivered (including energy purchased and delivered during ramping) during such calendar year. The Guaranteed Heat Rate for ramping from synchronization to minimum capacity shall be the Guaranteed Heat Rate at minimum capacity. Natural Gas utilized for start up and testing of the Facility prior to synchronization shall not be included in the calculation of NOx Allowances to be provided to Seller by Buyer. Fuel Oil

Facility.

1 utilized for start up and testing of the Facility shall be included in the calculation
2 of NOx Allowances to be provided to Seller by Buyer.

3 18.2.2 In the event Buyer Schedules operation on Fuel Oil more than [REDACTED] MWh in
4 any calendar year, then for all such additional MWh Scheduled on Fuel Oil in
5 such calendar year, Buyer shall provide to Seller the actual number of SO2
6 Allowances required for the Facility to meet such Schedules. Fuel Oil utilized for
7 start up and testing of the Facility shall be included in the calculation of SO2
8 Allowances to be provided to Seller by Buyer. Buyer shall not be required to
9 provide Seller with any SO2 Allowances other than those identified in this
10 Section 18.2.2.

11 18.2.3 Subject to the provisions of Section 18.1, Seller shall be responsible for providing
12 any required emissions offsets for volatile organic compounds and/or NOx and
13 any other emissions offsets, allowances and bearing any other environmental
14 costs of Seller.

15 18.2.4 Any request or Schedule for energy by Buyer that would result in the Facility
16 exceeding a 144 tons rolling twelve month limit for NOx emissions and/or
17 exceeding a 144 tons rolling twelve month limit for SO2 emissions shall be
18 deemed null and void. To the extent that Seller sells energy to third parties and
19 Seller's compliance with Buyer Requested Schedules would cause the Facility
20 Owner to violate its Air Permit, then Seller agrees to provide energy from an
21 Alternate Resource or financial settle with Buyer in an amount equal to the lesser
22 of the amount of the excess over the Air Permit limits or Seller's third party sales.

3 18.3 No Dedication. No undertaking by Seller under this Agreement is intended to constitute

the dedication of the Facility or any part thereof to the public or affect the status of Seller as an independent entity and not a public utility or public service company.

ARTICLE 19

ASSIGNMENT AND TRANSFERS OF INTERESTS

19.1 Assignment and Assumption of Obligations.

19.1.1 Seller. Seller may not assign this Agreement or any portion thereof to any Person other than a Creditworthy Affiliate possessing the ability to and explicitly agreeing to perform and assume the obligations of Seller under this Agreement without the prior written consent of Buyer.

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

19.2 General Requirements. Any consent required by Sections 19.1.1 or 19.1.2 shall not be unreasonably withheld, conditioned or delayed; provided, however, that neither Party shall be required to accept any limitation of its rights under this Agreement or expansion of the liability, risks or obligations imposed on it under this Agreement. It shall be a condition of any assignment, transfer, Change of Control Transaction or other disposition with respect to this Agreement that all security required under Sections 7.1 and 7.2 shall remain in place notwithstanding such disposition, or that replacement security in form, substance and amount in full compliance with this Agreement or otherwise reasonably acceptable to Buyer or Seller, as the case may be, shall have been provided prior to such disposition.

ARTICLE 20

DISPUTE RESOLUTION

20.1 Notice. Either Party ("Aggrieved Party") shall have the right to give notice to the other Party ("Noticed Party") that the Noticed Party is not performing in accordance with the terms and conditions of this Agreement. Such notice shall describe with specificity the basis for the Aggrieved Party's belief and may describe the recommended options to correct the failure.

20.2 Dispute Resolution, Arbitration.

20.2.1 Except as otherwise provided in Section 17.5, any dispute or claims arising under this Agreement that cannot be resolved by the Parties through negotiation by the Parties' managers within thirty (30) Days after notice of such dispute or claim shall be referred to senior executives (president or a vice president) of the Parties for resolution, which executives shall have the authority to decide or resolve the matter in dispute. If such senior executives are unable to resolve any such dispute or claim to the mutual satisfaction of the Parties within thirty (30) Days after such matter has been referred to such senior executives by the Parties' managers, then any such dispute or claim shall be resolved in accordance with Section 20.2.2.

20.2.2 If the Parties are unable to resolve a dispute as provided in Section 20.2.1, (a) the Parties agree to arbitrate those disputes described in the Subsections 20.2.2.1 and 20.2.2.2 using the procedures provided in such subsections, and (b) in the case of any dispute that is not described in the Subsections 20.2.2.1 or 20.2.2.2, either Party may pursue its rights and remedies available under other provisions of this Agreement.

20.2.2.1 If the dispute is with respect to the results of a Performance Test (under any provision of this Agreement), Imbalance Charges (Section 12.2.4), Seller Event of Default under Sections 17.1.8 or 17.1.9, the Parties shall attempt to agree upon the selection of an independent third party expert to make a determination concerning such dispute. If the Parties are unable to mutually agree on the selection of an expert within fifteen (15) Days (following the expiration of the Section 20.2.1 thirty (30) Day period), then the Party asserting the dispute shall provide a list of five (5) qualified experts (none of which shall have performed, or been employed by a firm that has provided, services for the Party proposing the list within the last five (5) years) to the other Party and such other Party shall select one expert from such list, which expert shall not have performed, or been employed by a firm that has provided, services for such other Party within the last five (5) years. Within fifteen (15) Days of the selection of the expert, the Parties shall file with the expert written positions (with supporting documentation) concerning the dispute. The expert may request additional filings and shall render a decision within fifteen (15) Days of receipt of all filings. In the case of a dispute concerning a Performance Test, the independent expert's determination shall be applied to establish the Tested Reliable Capacity as if no dispute had arisen and all capacity billing under Section 5.2 shall (if necessary and as soon as practicable) be adjusted retroactively (with interest at the Interest Rate) to reflect

Designated Capacity equal to such expert's determination. Seller may, however, nominate a different amount of Designated Capacity for prospective application consistent with other provisions of this Agreement. In the case of any dispute resolved under this Section 20.2.2.1, the decision rendered by the independent expert shall be final and binding upon Seller and Buyer. The independent expert's fees and expenses will be shared equally by the Parties.

20.2.2.2 If the dispute concerns the application of Article 18, or the calculation of a Termination Payment pursuant to Section 17.3.2, or a billing dispute under Section 6.2.2, then the Parties agree to arbitrate such dispute in accordance with the following procedures:

20.2.2.2.1 At the request of either Party upon written notice to the other Party (a "Demand"), the dispute shall be finally settled by binding arbitration before a single arbitrator in accordance with the Expedited Procedures of the Commercial Arbitration Rules (the "Rules") of the American Arbitration Association ("AAA") then in effect, except as modified herein. The Demand must include statements of the facts and circumstances surrounding the dispute, the legal obligation breached by the other Party, the amount in controversy and the requested relief accompanied by all relevant documents supporting the Demand.

20.2.2.2.2 The arbitration shall be held at a mutually agreeable location in the State of Florida or such other place as the Parties may mutually agree and shall be governed by the United States Arbitration Act, 9 U.S.C. §§ 1 et seq.

20.2.2.2.3 Unless the Parties otherwise agree, the arbitrator selected shall have a reasonable degree of expertise in the subject matter of the dispute, shall not have provided services to either Party or any of their respective Affiliates within the last five (5) years and shall be selected from a national panel of potential arbitrators.

20.2.2.2.4 The award shall be in writing (stating the award and the reasons therefor) and shall be final and binding upon the Parties, and shall be the sole and exclusive remedy between the Parties regarding any claims, counterclaims, issues, or accountings presented to the arbitrator. The arbitrator shall be authorized in his or her discretion to grant pre-award and post-award interest at the Interest Rate. Judgment upon any award may be entered in any court having jurisdiction. Each of the Parties hereby consents to service of process by registered mail at its address set forth herein and agrees that its consent to service of process by mail is made for the express benefit of the other Party.

20.2.2.2.5 This Agreement and the rights and obligations of the Parties shall remain in full force and effect pending the award in any arbitration proceeding hereunder.

20.2.2.2.6 Each Party shall bear its own costs and fees, including attorneys' fees and expenses. The Parties expressly agree that the arbitrators shall have no power to amend this Agreement or to consider or award any form of damages barred by Section 17.5, or any other multiple or enhanced damages, whether statutory or common law.

20.2.2.2.7 With respect to the disputes covered by Sections 20.2.2.1 and 20.2.2.2, the Parties, to the fullest extent permitted by law, hereby irrevocably waive and exclude any rights of application or appeal or rights to state a special case for the opinion of the courts or any other recourse to the court system other than to enforce the Parties' agreement to resolve disputes in accordance with Article 20.

20.2.2.2.8 EACH PARTY UNDERSTANDS THAT IT WILL NOT BE ABLE TO BRING A LAWSUIT CONCERNING ANY DISPUTE THAT MAY ARISE THAT IS COVERED BY SECTION 20.2.2.

ARTICLE 21

MISCELLANEOUS PROVISIONS

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

- 21.2 Binding Effect. This Agreement and any extension shall inure to the benefit of and shall be binding upon the Parties and their respective permitted successors and assigns.
- 21.3 Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute a single instrument.
- 21.4 Notices. Unless otherwise specified, where notice is required by this Agreement, such notice shall be in writing and shall be deemed given: (i) upon receipt, when mailed by United States registered or certified mail, postage prepaid, return receipt requested; (ii) upon the next Business Day, when sent by overnight delivery, postage prepaid using a recognized courier service; or (iii) upon receipt, when sent by facsimile transmission, provided receipt of such facsimile transmission is confirmed before 4:00 P.M. CPT by facsimile transmission or otherwise in writing. In all instances, notice to the respective Parties should be directed as follows:

To Seller:

Coral Power, L.L.C.
909 Fannin, Plaza Level 1
Houston, Texas 77010
Attn: Contract Administration
Telephone: (713) 767-5400
Facsimile: (713) 767-5414

with a copy to:

Coral Energy Holding, L.P.
909 Fannin, Plaza Level 1
Houston, Texas 77010
Attn: General Counsel
Telephone: (713) 767-5400
Facsimile: (713) 767-5699

To Buyer:

Gulf Power Company
One Energy Place
BIN 0335
Pensacola, FL 32520
Attn: Raymond W. Grove
Telephone: (850) 444-6695
Facsimile: (850) 444-6705

with a copy to:

Gulf Power Company, Corporate Counsel
One Energy Place
BIN 0335
Pensacola, FL 32520
Attn: Jeff A. Stone
Telephone: (850) 444-6550
Facsimile: (850) 469-3330

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

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

21.6 Governing Law. The validity, interpretation and performance of this Agreement and each of its provisions shall be governed by the laws of the State of Florida (without giving effect to the principles of conflict of laws). The Parties agree to submit to the exclusive jurisdiction of either the Circuit Court in Pensacola, Florida or the U.S. District Court for the Northern District of Florida, as appropriate.

21.7 Time of Essence; Waiver.

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

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

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

21.9 Third Parties. This Agreement is intended solely for the benefit of the Parties hereto. Nothing in this Agreement shall be construed to create any duty, standard of care or liability to any Person not a Party to this Agreement. Buyer further understands and agrees that Facility Owner is an independent party, and Seller has no operational control over Facility Owner and does not act for or on behalf of Facility Owner in any way. Seller has no authority to bind Facility Owner or commit Facility Owner to any course of action. Buyer is not a third party beneficiary of any agreement between Seller and Facility Owner, and neither Buyer nor Seller are third party beneficiaries of any agreement between Facility Owner and any other party.

- 21.10 Agency. This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.
- 21.11 Further Assurances. The Parties agree to provide such reasonable cooperation to each other as necessary to give effect to the terms of this Agreement.
- 21.12 Severability. If any term or provision of this Agreement or the application thereof to any person, entity, or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
- 21.13 Negotiated Agreement. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution or other event of negotiation, drafting or execution hereof.
- 21.14 Confidentiality.
- 21.14.1 The Parties acknowledge that portions of this Agreement contain Confidential Information and may require the Parties to disclose additional Confidential Information and Extraordinarily Confidential Information to one another. Each Party agrees that: (i) for a period of three (3) years from June 1, 2009 for Confidential Information contained in this Agreement; and (ii) for a period of

three (3) years from the date of disclosure for additional Confidential Information disclosed during the Term, and (iii) for a period of five years beyond the initial term of the Tolling Agreement¹² for Extraordinarily Confidential Information, it will not, and will ensure that none of its Affiliates, consultants or Representatives do not, without the written consent of the other Party or as otherwise provided herein, disclose to any third party (other than to Affiliates of the disclosing Party or consultants and Representatives to such Affiliates and the disclosing Party who need to know such information in connection with the performance of their duties or services for such Affiliates or the disclosing Party), the portions of this Agreement which do not conform to the REVISED Gulf CT PPA contained in Buyer's RFP, or any additional Confidential Information disclosed pursuant to such Party's performance of this Agreement and identified as Confidential Information or Extraordinarily Confidential Information at the time of such disclosure, except to the extent that disclosure to a third party is required by law, or by a court or by an administrative agency having jurisdiction over the disclosing Party.

21.14.2 The Parties acknowledge that certain terms, conditions and provisions of this Agreement will need to be disclosed in connection with the FPSC approval and agree to seek confidential treatment of the Confidential Information and Extraordinarily Confidential Information in this Agreement from the FPSC, but no assurance or commitment is made regarding the ability of the Parties to obtain the requested confidential treatment in that proceeding or otherwise.

¹² November 1, 2027.

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

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

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

its permitted successors and assigns, and in the case of any Governmental Authority, any Person succeeding to its functions and capacities.

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

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

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

[The next page is the signature page.]

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

GULF POWER COMPANY ("BUYER")

CORAL POWER, L.L.C. ("SELLER")

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DCT

By: Penny M. Manuel

By: V.M. Hanatin

Name: Penny M. Manuel

Name: V. Mark Hanatin

Title: Vice President Power Generation

Title: President and Chief

Attest: Jerry A. Davis

Attest: Kaua

Title: ASST. SECRETARY

Title: Gen Counsel

[SEAL]

[SEAL]

APPENDIX A

CAPACITY PAYMENT CALCULATION

A. Contracted Capacity and Capacity Pricing:

1. **Contracted Capacity:** The Contracted Capacity range for the Term shall be one hundred two and one-half percent (102.5%) of the Nominal Capability of the Base Operating Mode to ninety-two percent (92%) of the Nominal Capability of the Base Operating Mode.

2. **Performance Tests:** Prior to the Delivery Commencement Date, Seller shall establish the initial demonstrated capability of the Facility at Reference Conditions to produce Base Operating Mode Energy (the "Tested Reliable Capacity") pursuant to a performance test conducted in accordance with the procedures set forth in **Appendix D** (a "Performance Test"), provided that such Performance Test shall be conducted no earlier than ninety (90) Days prior to the Delivery Commencement Date. In the event that the Parties are unable to perform an initial Performance Test under the circumstances described in Section 9.3, the provisions of Section 9.3 shall apply.

Following the Delivery Commencement Date, Seller shall cooperate with Buyer's request for information concerning the performance of the Facility that Buyer may reasonably request from time to time. Following the initial Performance Test, each Party shall have the right to request an annual Performance Test to re-determine the Tested Reliable Capacity to be performed during the period from April 1 to May 31 of each Annual Period upon three (3) Business Days written notice to the other Party; provided, however, that upon consent by both Parties, such Performance Test may be performed outside the period from April 1 to May 31 of each Annual Period; provided further that no such Performance Test may be scheduled during any period of Scheduled Outage, Maintenance Outage, Force Majeure Event or during a Forced Outage. Upon request by Buyer, Seller shall make reasonable efforts to complete such test of the Facility during the month of April. The Tested Reliable Capacity determined as a result of such annual Performance Test shall become the new Tested Reliable Capacity. In the event that the Parties are unable to perform a Performance Test due to the circumstances described in Section 9.3, the provisions of Section 9.3 shall apply.

At any time, in its sole discretion and at its expense, Seller may conduct a Performance Test. In the event such test results in a Tested Reliable Capacity that is within the Contracted Capacity range, the Designated Capacity shall be reset to the Tested Reliable Capacity, respectively. In the event such test results in a Tested Reliable Capacity that is greater than the Contracted Capacity range, Seller may offer to increase the Designated Capacity to the Tested Reliable Capacity and Buyer shall, in its sole discretion, either accept or reject such offer. In the event Buyer accepts such offer, then the Designated Capacity shall be reset to the Tested Reliable Capacity as of the date of Buyer's acceptance. In the event Buyer does not accept such offer, the Tested Reliable Capacity shall be deemed to be equal to the highest value of the Contracted Capacity range, and the Buyer is entitled to the percentage energy output capability of the Facility equal to

one hundred two and one-half percent (102.5%) multiplied by the Nominal Capability divided by the Tested Reliable Capacity.

Seller shall bear all costs and expenses (including fuel costs and any losses resulting from the sale of test energy at prices which are below the costs of production) of the initial Performance Test performed. The requesting Party shall bear the costs and expenses (including any fuel costs and losses resulting from the sale of test energy at prices which are below the costs of production) of any subsequent Performance Test performed; provided, however, that Seller shall bear such costs and expenses of any Performance Test requested by Buyer if the Tested Reliable Capacity (as a result of such Performance Test) is determined to be less than ninety-eight percent (98%) of the Designated Capacity immediately prior to such Performance Test, or due to an equipment issue pursuant to Section 3 of **Appendix D**.

3. **Designated Capacity:** Within ten (10) Business Days of establishment of the Tested Reliable Capacity through a Performance Test, or if no Performance Test is performed by May 31 of an Annual Period, Seller shall have the right to designate in a written notice to Buyer the capability to produce Base Operating Mode Energy that is available for Scheduling (the "Designated Capacity"); provided, however, any proposed increase in the Designated Capacity must be supported by a Performance Test that is conducted prior to May 31. Any change to the Designated Capacity shall be effective June 1 following Seller's written notice to designate. The Designated Capacity shall be equal to the Tested Reliable Capacity (either deemed or actual). For Scheduling purposes, the capacity on Fuel Oil will be ninety-five percent (95%) of the Designated Capacity utilizing Natural Gas or if Seller determines that the Fuel Oil capability has changed during the term of this Agreement, Seller shall use commercially reasonable efforts to reestablish this value and maintain its capability during the term of this Agreement. If such commercially reasonable efforts fail to reestablish the capability on Fuel Oil to at least ninety-five percent (95%) of the Designated Capacity utilizing Natural Gas, then for Scheduling purposes, the capacity on Fuel Oil shall be reduced to the then current capability.

In addition to the remedy available to Buyer pursuant to Section 17.1.9, if a Performance Test indicates that the Tested Reliable Capacity is less than the lower end of the then-current Contracted Capacity range but greater than or equal to ninety megawatts (90 MW) and if Buyer makes the election provided under Section 17.1.9.3: (a) Seller shall have thirty (30) Days to submit to Buyer a cure plan for increasing the Facility's capacity which shall be reasonably acceptable to Buyer and shall include a reasonable cure period (not to exceed one hundred twenty (120) Days) during which Seller may conduct additional Performance Tests; provided, however, Seller shall be afforded an additional reasonable cure period, but in no event longer than five hundred forty (540) Days from the completion of the initial Performance Test indicating the inadequate Tested Reliable Capacity, so long as Seller (i) elects to pay Buyer the financial settlement (with respect to the degraded capacity) pursuant to Section 5.1.4.1, and (ii) elects to cover (to the extent of the degraded capacity) Buyer's Schedules through an Alternate Resource in accordance with Section 5.1.4.2; and (b) if the Tested Reliable Capacity remains uncured after such cure period, Seller shall pay Buyer, as liquidated damages, the buy down payment shown

in Table A-1 corresponding to the Annual Period following the Annual Period in which the most recent Performance Test was conducted, based on the difference (in kW) between the then-current lower limit of the Contracted Capacity range and the then-current Tested Reliable Capacity. In addition, the lower limit of the current Contracted Capacity range shall be reset at the Tested Reliable Capacity demonstrated in the most recent Performance Test and the upper limit of the Contracted Capacity range will be lowered by the same amount that the lower limit has been reduced. The inadequate Tested Reliable Capacity shall be deemed cured under this paragraph only if (i) Seller provides Buyer with a written certification reasonably acceptable to Buyer confirming that the inadequate Tested Reliable Capacity has been cured, and (ii) the Tested Reliable Capacity is increased to a value equal to or greater than the lower limit of the original Contracted Capacity range as demonstrated by the most recent Performance Test.

Table A-1¹³
Buy Down Payment for Capacity Reduction
Below Minimum Guarantee

<u>Buy Down Payment (\$/kW)</u>
Annual Period 1-3: 100
Annual Period 4-5: 65

In the event the cure plan fails to restore the capacity to within the original Contracted Capacity range and the Contracted Capacity range is reset (lowered), and thereafter Seller is able to restore the capacity to within the original Contracted Capacity range, Seller must offer the restored capacity increment to Buyer at the price and terms of this Agreement. If Buyer accepts the offer, the Contracted Capacity range will be reset (raised) by an amount equal to the portion of the restored capacity increment accepted by Buyer. If Buyer does not accept the offer, the Contracted Capacity range will not be reset, but Seller will be free to sell the restored capacity increment to third parties; notwithstanding the provisions of Sections 5.1.5 and 13.1.4 that require Seller to deliver the entire output to Buyer; provided, however, in such event, Buyer shall, at all times during the remainder of the Term, be entitled to Schedule the entire energy output of the Facility times a fraction, the numerator of which is the upper limit of the reset (lowered) Contract Capacity range and the denominator of which is the most recent Tested Reliable Capacity. Throughout the duration of any cure period, the Designated Capacity will be deemed to be the Tested Reliable Capacity determined pursuant to the most recent Performance Test.

4. Capacity Pricing:

The "Annual Capacity Charge" for each calendar year will be as follows:

¹³ The buy down payment amounts in Table A-1 are expressed in 2006 US dollars. However, beginning with 2007 and continuing each year thereafter during the Term, the values shown in Table A-1 will be adjusted effective as of June 1st of each year based on the change in GDPIPD between the base year (2006) and January 1st of the then-current year during the Term.

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**Table A-2
Annual Capacity Charges**

Calendar Year	(\$/kW-year)
2009	[REDACTED]
2010	[REDACTED]
2011	[REDACTED]
2012	[REDACTED]
2013	[REDACTED]
2014	[REDACTED]

The Annual Capacity Charge shall include all fixed costs, including without limitation, fixed operation and maintenance charges, unless Buyer and Seller agree to separate provisions to be incorporated herein concerning such fixed costs.

B. Capacity Payment.

For each Month of each Annual Period, subject to the provisions of this Agreement including any adjustment pursuant to Sections C and D of this **Appendix A**, the capacity payment ("Monthly Capacity Payment") shall equal the product of the Designated Capacity multiplied by the Annual Capacity Charge (from Table A-2), which product shall then be multiplied by the applicable Monthly Capacity Payment Factor (from Table A-3). In the event that Buyer's obligation to purchase Designated Capacity begins on a Day other than the first Day of a Month or Seasonal Performance Period, the calculation of the Monthly Capacity Payment (and separate fixed operation and maintenance charge, if any), Monthly Availability Adjustment and Seasonal Availability Adjustment, as appropriate, will be determined on a pro rata basis.

**Table A-3
Monthly Capacity Payment Factor**

Month	Monthly Capacity Payment Factor
January	0.02
February	0.02
March	0.016
April	0.016
May	0.04
June	0.21
July	0.21
August	0.21
September	0.21

October	0.016
November	0.016
December	0.016

C. Seasonal Availability Adjustment

Seller guarantees a minimum Seasonal availability percentage ("Seasonal Availability Percentage" or "SAP") for the Facility of ninety-six percent (96%) determined separately for each Seasonal Performance Period.

1. Automatic Generation Control:

The following formula is applicable when Buyer has dispatched the Units utilizing automatic generation control for less than 200 Unit Hours during a Season:

$$SAP = 100\% - \frac{(FOH + EFDH - ARDH - FSH)}{200 \text{ Unit Hours}}$$

The following formula is applicable when Buyer has dispatched the Units utilizing automatic generation control for 200 Unit Hours or more during a Season:

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

Where:

FOH = The sum of Unplanned (Forced) Outage Unit Hours in which each Unit would have been dispatched.

EFDH = The sum of Equivalent Unplanned (Forced) Derated Unit Hours in which each Unit was or would have been dispatched. (For example, if a Unit with a Designated Capacity of 50 MW was derated by 20 MW for 20 hours, EFDH = 20 * 20 / 50 = 8.)

ARDH = The sum of Alternate Resource Delivery Unit Hours (or equivalent hours based on the ratio of the MWh delivered from an Alternate Resource to the MWh scheduled from an Alternate Resource), which are the Unit Hours during a Forced Outage or Equivalent Unit Hours during a Forced Derate in which delivery is made from an Alternate Resource pursuant to Section 5.1.4.2.

FSH = Financial Settlement Unit Hours, which are the Unit Hours during a Forced Outage or Equivalent Unit Hours during a Forced Derate in which Seller elects to pay the financial settlement pursuant to Section 5.1.4.1.

DH = The sum of Dispatch Hours in which each Unit was or would have been dispatched.

The calculation of the SAP shall not include energy Scheduled during any period of: (i)

Scheduled Outages or Maintenance Outages; (ii) Facility Ramping; (iii) events of Force Majeure declared by Seller in accordance with Article 16; and (iv) events of Unavailability to the extent they are directly caused by the acts or omissions of Buyer. If NERC, SERC or the transmission provider's requirements relating to ramping prevent Seller from delivering the Scheduled quantity of energy in a given hour, the Parties agree to calculate SAP in a manner so that such ramping limitation will not negatively impact Seller in the application of the SAP, and, furthermore, the Parties agree to make appropriate modifications to the Scheduling procedures to accommodate such ramping limitations. Seller's inability to meet a Schedule due to Seller meeting the reactive power/voltage control obligations of the Facility's Interconnection Agreement shall not be excused in the calculation of the SAP.

In the event a Unit is dispatched pursuant to a daily Schedule, the Non-AGC procedures will be used to calculate SAP. If a Unit during a season is dispatched on AGC for a portion of the time and Non-AGC for a portion of the time, the combined SAP for AGC and Non-AGC will be calculated on a MWh Delivered weighted basis.

2. Non-Automatic Generation Control Scheduling

The SAP for each Season will be computed as follows based on the number of hours Scheduled by Buyer:

The following formula is applicable when Buyer has Scheduled a total MWh of energy less than (50 hours)*(Designated Capacity) during a Season:

$$\text{SAP} = \frac{((50 \text{ hours} * \text{ Designated Capacity}) - \text{MWh Scheduled}) + \text{MWh Delivered}}{50 \text{ hours} * \text{ Designated Capacity}}$$

The following formula is applicable when Buyer has Scheduled a total MWh of energy of 50 hours*Designated Capacity of the Facility or more during a Season:

$$\text{SAP} = \frac{\text{MWh Delivered}}{\text{MWh Scheduled}}$$

"MWh Delivered" equals all energy delivered to Buyer in accordance with this Agreement from the Facility, from an Alternate Resource or with respect to Seller's election, if applicable, pursuant to Section 5.1.4.1, during hours that Buyer Scheduled such energy. Solely for purposes of computing SAP, MWh Delivered in any hour may not exceed the lesser of (i) MWh Scheduled from the Unit(s) in such hour; and (ii) the total Designated Capacity of the Unit(s) Scheduled in such hour.

"MWh Scheduled" equals all energy that Seller is required to deliver pursuant to Buyer's Scheduling Instructions in accordance with Article 13. Solely for purposes of computing SAP, MWh Scheduled in any hour may not exceed (1 hour)*(Designated Capacity). This limitation for SAP purposes does not affect Buyer's right to Schedule, or Seller's obligation to deliver, energy above the Designated Capacity as provided in Section 13.1.

The calculation of the SAP shall not include energy Scheduled during any period of: (i) Scheduled Outages or Maintenance Outages; (ii) Facility Ramping; (iii) events of Force Majeure declared by Seller in accordance with Article 16; and (iv) events of Unavailability to the extent they are directly caused by the acts or omissions of Buyer. If NERC, SERC or the transmission provider's requirements relating to ramping prevent Seller from delivering the Scheduled quantity of energy in a given hour, the Parties agree to calculate SAP in a manner so that such ramping limitation will not negatively impact Seller in the application of the SAP, and, furthermore, the Parties agree to make appropriate modifications to the Scheduling procedures to accommodate such ramping limitations. Seller's inability to meet a schedule due to Seller meeting the reactive power/voltage control obligations of the Facility's Interconnection Agreement shall not be excused in the calculation of the SAP.

Within ten (10) Days after the conclusion of a Season, a SAP shall be calculated and an adjustment ("Seasonal Availability Adjustment") shall be made to the amounts paid by Buyer to Seller for Designated Capacity (and the separate fixed operation and maintenance charge, if any) for the most recently completed Seasonal Performance Period, taking into account and truing up any Monthly Availability Adjustment (pursuant to Section D of this **Appendix A**) with respect to the Months of such Season. For each Season, the Seasonal Availability Adjustment shall be determined as follows:

For a SAP of at least sixty percent (60%) but less than ninety-six percent (96%), the weighted capacity payment (and the separate fixed operation and maintenance charge, if any) for the Season in which the availability shortfall occurs shall be reduced by a factor of one and one-half (1.5) multiplied by each percent or fraction thereof of SAP shortfall below ninety-six percent (96%). For example, in the event the SAP is ninety-five and two tenths percent (95.2%), there will be an eight tenths percent (0.8%) shortfall below ninety-six percent (96%), and the weighted capacity payment will be reduced by one and two tenths percent (1.2%).¹⁴ If the SAP is less than sixty percent (60%), there will be no capacity payment (and no separate fixed operation and maintenance charge) for that Season. There will be no increase in capacity payments (and the separate fixed operation and maintenance charge, if any) for a SAP of more than ninety-six percent (96%).

D. Monthly Availability Adjustment

1. First Month of a Season

¹⁴ $1.5 * 0.8\% = 1.2\%$

Following the first Month that Seller has an obligation to deliver energy pursuant to this Agreement, and following each of the first Months of each Season during the Term, Buyer shall calculate an availability percentage for such Month ("Monthly Availability Percentage" or "MAP") determined in the same manner as the SAP and utilizing the applicable SAP formula for the Season in which such Month occurs. The Monthly Capacity Payment shall be adjusted ("Monthly Availability Adjustment") based on the MAP as follows:

For a MAP of at least sixty percent (60%) but less than ninety-six percent (96%), the weighted Monthly Capacity Payment for the Month in which the availability shortfall occurs shall be reduced (a) for any summer Season Month by a factor of fifty percent (50%) of the product of one and one-half (1.5) multiplied by each percent or fraction thereof of shortfall, and (b) for any winter Season Month by one and one-half (1.5) multiplied by each percent or fraction thereof of shortfall. In the event the MAP is less than sixty percent (60%), the Monthly Capacity Payment (and the separate fixed operation and maintenance charge, if any) for that Month shall be (a) twenty-five percent (25%) of the Monthly Capacity Payment for any Summer Season Month (and the separate fixed operation and maintenance charge, if any) that would otherwise be payable, and (b) no capacity payment for any Winter Season Month (and no separate fixed operation and maintenance charge).

2. Second and Remaining Months of a Season.

A MAP shall be calculated for the second and each of the remaining Months of a Season, other than the last Month. Following each Month of a Season, an average MAP for the elapsed Months of the Season shall be calculated utilizing the applicable SAP formula for the Season in which such Months occur in order to determine the Monthly Availability Adjustment for the cumulative elapsed Months of such Season. The Monthly Availability Adjustments previously made in respect of such Season shall be trued up based on such average MAP for the elapsed Months of such Season. After the last Month of each Season, the Monthly Capacity Payments made in respect of such Season shall be trued up as part of the SAP calculation and resulting Seasonal Availability Adjustment (Section C of this **Appendix A**).

APPENDIX B

ENERGY PAYMENT CALCULATION

A. Monthly Energy Payment Calculation

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

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

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

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

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

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

To the extent Seller has elected to pay alternate liquidated damages per Section 5.1.4.1:

$$\text{MEP}_{\text{ALD}} = \text{MVOM} + \text{MFC}_{\text{GAS}} - \text{ALD} \text{ (applies only to hours when ALD > (HDE} \cdot \text{VOMER} + \text{VOMHR} + \text{GHR} \cdot \text{SE} \cdot \text{DFP))}$$

Where:

- MEP = Monthly Energy Payment.
- MVOM = Monthly Variable O&M Charge determined pursuant to Section B.
- MSC = Monthly Startup Charge determined pursuant to Section C.
- MFA_{GAS} = Monthly Fuel Adjustment for non-AGC operation on Natural Gas determined pursuant to Section D1. The Monthly Fuel Adjustment for operation on Natural Gas does not apply when Seller is delivering energy from Alternate Resources or when Seller has elected to pay alternate liquidated damages per Section 5.1.4.1.
- MFA_{OIL} = Monthly Fuel Adjustment for non-AGC operation on Fuel Oil determined pursuant to Section D2. The Monthly Fuel Adjustment for operation on Fuel Oil does not apply when Seller is delivering energy from Alternate Resources or when Seller has elected to pay alternate liquidated damages per Section 5.1.4.1.
- MFA_{GAS-AGC} = Monthly Fuel Adjustment for AGC operation on Natural Gas determined pursuant to Section E1. The Monthly Fuel Adjustment for operation on Natural Gas does not apply when Seller is delivering energy from Alternate Resources or when Seller has elected to pay alternate liquidated damages per Section 5.1.4.1.

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MFA_{OIL-AGC} = Monthly Fuel Adjustment for AGC operation on Fuel Oil determined pursuant to Section E2. The Monthly Fuel Adjustment for operation on Fuel Oil does not apply when Seller is delivering energy from Alternate Resources or when Seller has elected to pay alternate liquidated damages per Section 5.1.4.1.

MFC_{GAS} = Monthly Fuel Charge for Natural Gas determined pursuant to Section F1 with respect to deliveries from Alternate Resources or with respect to the Scheduled amount if Seller has elected to pay alternate liquidated damages per Section 5.1.4.1.

MFC_{OIL} = Monthly Fuel Charge for Fuel Oil determined pursuant to Section F2 with respect to deliveries from Alternate Resources.

ALD = Alternate Liquidated Damages determined pursuant to Appendix K.

HDE = Amount of energy (in MWh) delivered by Seller to Buyer that was Scheduled by Buyer during a given Hour. This energy can come from the Facility and/or an Alternate Resource or can be the Scheduled amount of energy if Seller has elected to pay alternate liquidated damages per Section 5.1.4.1.

VOMER = Variable O&M Energy Rate is \$ [redacted] /MWh for operation on Natural Gas and \$ [redacted] /MWh for operation on Fuel Oil (expressed in 2009 dollars and escalated at actual GDPIPD)

VOMHR = Variable O&M Energy Rate is \$/hour.

GHR = The applicable Guaranteed Heat Rate in MMBtu/MWh pursuant to **Appendix J**. The GHR for an hour will be based upon the MW Scheduled across the hour.

SE = Scheduled energy in MWh delivered in each hour from an Alternate Resource in a given Month or the Scheduled energy if Seller has elected to pay alternate liquidated damages per Section 5.1.4.1.

DFP = Daily Fuel Price in \$/MMBtu.

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

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B. Monthly Variable O&M Charges ("MVOM")

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

$$MVOM = \sum [(HDE \cdot VOMER)_{Hour_1} \dots (HDE \cdot VOMER)_{Hour_N}] + (DH \cdot VOMHR)$$

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The MVOM shall be the sum of the hourly Variable O&M Charges for each delivered output level (from the Facility or Alternate Delivery) that is Scheduled during a given Month. If Seller has elected to pay alternate liquidated damages per Section 5.1.4.1, or if

1 Seller has elected to pay liquidated damages per Section 8.3, the MVOM shall be the sum
 2 of the hourly Variable O&M charges for each applicable Scheduled output level during a
 3 given Month. The Variable O&M Charges for each delivered or Scheduled output level
 4 is the product of the delivered or Scheduled output level and the corresponding Variable
 5 O&M Rate. Variable O&M charges also apply to energy delivered from the Facility
 6 during ramping.

7 Where:

8	MVOM=	Monthly Variable O&M Charge.
9	HDE =	Amount of energy (in MWh) delivered by Seller to Buyer that was Scheduled by Buyer during a given Hour. This energy can come from the Facility and/or an Alternate Resource or can be the Scheduled amount of energy if Seller has elected to pay alternate liquidated damages per Section 5.1.4.1.
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16	VOMER=	Variable O&M Energy Rate is \$ [redacted] /MWh for operation on Natural Gas and \$ [redacted] /MWh for operation on Fuel Oil (expressed in 2009 dollars and escalated at actual GDPIPD)
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20	VOMHR=	Variable O&M Energy Rate is \$ [redacted] /hour.
21	DH=	The number of hours during which Seller delivered energy to Buyer pursuant to Buyer's Schedules (including hours during ramping) during a given Month.

25 C. Monthly Startup Charges ("MSC")

26 The Monthly Startup Charges shall be determined as follows:

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$$MSC = \sum [FSR + O\&MSR]$$

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

31 Where:

32	\sum =	Summation from startup 1 to startup N.
33	MSC=	Monthly Startup Charge.
34	FSR=	Fuel Startup Rate (in \$/Startup Event), as shown in Table B-2 below.
35		
36	O&MSR=	O&M Startup Rate (in \$/Startup Event), as shown in Table B-2

1 For purposes of determining MSC, a Startup event is defined as a change in the hourly
2 delivered quantity according to the Table B-2 below pursuant to Buyer's Scheduling
3 Instructions.

4 Energy produced by Seller and delivered to Buyer from startup to minimum output will
5 be paid for at the Guaranteed Heat Rate at minimum output.

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Table B-2
Startup Rates (\$/Startup Event)

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

22 **D. Monthly Fuel Adjustment for non-AGC Operation**

23 When the Facility is Scheduled by Buyer, the Daily Guaranteed Fuel quantity shall be
24 determined by multiplying the Guaranteed Heat Rate of the Scheduled amount pursuant
25 to **Appendix J** by the amount of energy that was delivered by Seller to Buyer. The
26 Operating Representatives will develop procedures for determining energy produced and
27 delivered pursuant to Buyer's Schedule during ramping of the Facility, including (i) from
28 synchronization to Minimum Capacity (Startup Energy), and (ii) from Minimum
29 Capacity to Base Operating Mode Schedule. Such ramping energy shall be multiplied by
30 the appropriate Guaranteed Heat Rates pursuant to **Appendix J** to determine the Daily
31 Guaranteed Fuel quantity during ramping. The Guaranteed Heat Rate for ramping from
32 synchronization to Minimum Capacity shall be the Guaranteed Heat Rate for Minimum
33 Capacity.

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

¹⁵ The O&M Startup Rate is expressed in 2009 US dollars and escalated at actual GDPIPD.

Gas D1. Monthly Fuel Adjustment (“MFA_{GAS}”) for non-AGC operation on Natural Gas

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

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

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

Where:

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

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

$$DGF_{GAS} = \sum \{ [(GHR_{GAS \text{ hr } 1} \cdot HDE_{GAS \text{ hr } 1}) \dots (GHR_{GAS \text{ hr } N} \cdot HDE_{GAS \text{ hr } N})] \}$$

Where:

- GHR_{GAS} = The applicable Guaranteed Heat Rate in MMBtu/MWh for operation on Natural Gas pursuant to **Appendix J**. The GHR for an hour will be based upon the MW Scheduled for the hour.
- HDE_{GAS} = Amount of energy delivered from the Facility each hour by Seller in MWh for operation on Natural Gas (pursuant to Buyer’s Schedules) including energy produced during ramping of the Facility.

The Daily Actual Fuel quantity for operation on Natural Gas shall be the sum of the hourly MMBtus burned by Seller each Day corresponding to the actual amount of Natural Gas delivered by Buyer each Day to meet Buyer's Schedules on such Day.

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

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

Where:

SGD = The Day's "Gas Daily" midpoint price for its Daily Price Survey for such day for Louisiana – Onshore South, Sonat.

VTA = The Variable Transportation Adders will be SNG's Zone 0 – Zone 3 maximum firm transportation variable charges including all fuel retention and surcharges and applicable Taxes.

IT = The Interruptible Transportation rate will be SNG's Zone 0 – Zone 3 maximum Interruptible Transportation charges, including applicable Taxes, for any amount needed above the Total MDQ.

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

D2. Monthly Fuel Adjustment ("MFA_{OIL}") for non-AGC operation on Fuel Oil

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

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

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

Where:

DGF_{OIL} = The Daily Guaranteed Fuel Oil quantity in MMBtu.
DAF_{OIL} = The Daily Actual Fuel Oil quantity consumed by the Facility (to generate energy pursuant to Buyer's Schedules) in MMBtu as measured by the individual CT liquid fuel meters.
FRP_{OIL} = Daily Fuel Oil Replacement Price in \$/MMBtu. Defined as the Daily Fuel Oil Replacement Price in \$/Gal multiplied by a factor of 7.221 Gal/MMBtu.

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

$$DGF_{OIL} = \sum [(GHR_{OIL, hr 1} \times HDE_{OIL, hr 1}) \dots (GHR_{OIL, hr N} \times HDE_{OIL, hr N})]$$

Where:

GHR_{OIL} = The applicable Guaranteed Heat Rate in MMBtu/MWh for operation on Fuel Oil pursuant to Appendix J. The GHR for an hour will be based upon the MW Scheduled for the hour.
HDE_{OIL} = Amount of energy generated by the Facility each hour using Fuel Oil and delivered by Seller to Buyer (pursuant to Buyer's Schedules) including energy produced during ramping of the Facility.

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

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

E. Monthly Fuel Adjustment for AGC Operation

The Operating Representatives will develop procedures for determining energy produced and delivered pursuant to Buyer's Schedule during ramping of the Facility from

synchronization to Minimum Capacity (Startup Energy). Seller shall be compensated for such Startup Energy in the manner described in Appendix B Section D.

E1. Monthly Fuel Adjustment (“MFA_{GAS-AGC}”) for AGC operation on Natural Gas

The Monthly Fuel Adjustment (“MFA_{GAS-AGC}”) for operation on Natural Gas and AGC shall be determined as follows:

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

The Monthly Fuel Adjustment (“MFA_{GAS-AGC}”) shall be the sum of the daily fuel adjustments for each Day or partial Day in the Month.

Where:

- DAF_{GAS} = The Daily Actual Fuel quantity consumed by the Facility (to generate energy pursuant to operation on AGC at an output level at or above Minimum Capacity) in MMBtu for operation on Natural Gas as measured at the Primary Gas Delivery Point.
- DFC_{GAS} = The Daily Fuel Cost in \$/MMBtu for operation on Natural Gas.
- DAIHRM = The Daily Average Integrated Heat Rate Margin defined as the sum of the Unit Hourly Integrated Heat Rate Margin percentages divided by the sum of the Unit hours operated on AGC for that day.

The Daily Actual Fuel quantity for operation on Natural Gas shall be the sum of the hourly MMBtus burned by Seller each Day corresponding to the actual amount of Natural Gas delivered by Buyer each Day to generate energy pursuant to operation on AGC at an output level at or above Minimum Capacity on such Day.

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

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

Where:

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SGD = The Day's "Gas Daily" midpoint price for its Daily Price Survey for such day for Louisiana – Onshore South, Sonat.
VTA = The Variable Transportation Adders will be SNG's Zone 0 – Zone 3 maximum firm transportation variable charges including all fuel retention and surcharges and applicable Taxes.
IT = The Interruptible Transportation rate will be SNG's Zone 0 – Zone 3 maximum Interruptible Transportation charges, including applicable Taxes, for any amount needed above the Total MDQ.

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The Unit Hourly Integrated Heat Rate Margin percentage will be based upon the heat rate margin percentage which corresponds to the hourly integrated MW value generated by the Unit for such hour as assigned in the table below. Linear interpolation will be used to calculate the Unit Hourly Integrated Heat Rate Margin percentage when the Unit's hourly integrated MW value generated falls between maximum and minimum Unit output.

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19
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<u>Facility Output Level (MW)</u>	<u>Heat Rate Margin %</u>
Unit Maximum	[REDACTED]
Unit Minimum	[REDACTED]

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23
24
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The above Heat Rate margins are based on a limited number of observations and are subject to a one time change based on observations during the period from June 1, 2009 through May 31, 2010. After June 1, 2010, the operating committee shall calculate and assign a more indicative heat rate margin in line with their observation in order to provide Seller when operating on AGC with the same margin that Seller experienced while on non-AGC operation.

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29

Buyer shall pay Seller the amount of the Monthly Fuel Adjustment for operation on Natural Gas when the Unit(s) is operated on Natural Gas and utilizing AGC.

30

E2. Monthly Fuel Adjustment ("MFA_{OIL-AGC}") for AGC operation on Fuel Oil

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32

The Monthly Fuel Adjustment ("MFA_{OIL-AGC}") for operation on Fuel Oil and AGC shall be determined as follows:

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34

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

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The Monthly Fuel Adjustment ("MFA_{OIL-AGC}") shall be the sum of the daily fuel adjustments for each Day or partial Day in the Month.

Where:

DAF_{OIL} = The Daily Actual Fuel Oil quantity consumed by the Facility (to generate energy pursuant to operation on AGC at an output level at or above Minimum Capacity) in MMBtu as measured by the individual CT liquid fuel meters.

FRP_{OIL} = Daily Fuel Oil Replacement Price in \$/MMBtu. Defined as the Daily Fuel Oil Replacement Price in \$/Gal multiplied by a factor of 7.221 Gal/MMBtu.

DAIHRM = The Daily Average Integrated Heat Rate Margin defined as the sum of the Unit Hourly Integrated Heat Rate Margin percentages divided by the sum of the Unit hours operated on AGC for that day.

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

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The Unit Hourly Integrated Heat Rate Margin percentage will be based upon the heat rate margin percentage which corresponds to the hourly integrated MW value generated by the Unit for such hour as assigned in the table below. Linear interpolation will be used to calculate the Unit Hourly Integrated Heat Rate Margin percentage when the Unit's hourly integrated MW value generated falls between maximum and minimum Unit output.

24
25
26
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<u>Facility Output Level (MW)</u>	<u>Heat Rate Margin %</u>
Unit Maximum	
Unit Minimum	

28
29
30
31
32
33

The above Heat Rate margins are based on a limited number of observations and are subject to a one time change based on observations during the period from June 1, 2009 through May 31, 2010. After June 1, 2010, the operating committee shall calculate and assign a more indicative heat rate margin in line with their observation in order to provide Seller when operating on AGC with the same margin that Seller experienced while on non-AGC operation.

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35

Buyer shall pay Seller the amount of the Monthly Fuel Adjustment for operation on Fuel Oil when the Unit(s) is operated on Fuel Oil and utilizing AGC.

F. Monthly Fuel Charge

F1. Monthly Fuel Charge for operation on Natural Gas (“MFC_{GAS}”)

If Seller delivers energy from an Alternate Resource, if Seller has elected to pay alternate liquidated damages per Section 5.1.4.1, or if Seller has elected to pay liquidated damages per Section 8.3, the MFC_{GAS} will be determined as follows:

$$MFC_{GAS} = \sum [(DGF*DFP)_{DAY1} \dots (DGF*DFP)_{DAYN}]$$

The MFC_{GAS} shall be the sum of the daily fuel charges for each Day or partial Day in the Month when delivering from an Alternate Resource, if Seller has elected to pay alternate liquidated damages per Section 5.1.4.1, or if Seller has elected to pay liquidated damages per Section 8.3. The daily fuel charge is the product of the Daily Guaranteed Fuel in MMBtus and the corresponding Daily Fuel Price in \$/MMBtu.

Where:

DGF= Daily Guaranteed Fuel quantity in MMBtus.
DFP= Daily Fuel Price in \$/MMBtu.

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

$$DGF = \sum [(GHR_{hr1} * SE_{hr1}) \dots (GHR_{hrN} * SE_{hrN})]$$

Where:

GHR = The applicable Guaranteed Heat Rate in MMBtu/MWh pursuant to **Appendix J**. The GHR for an hour will be based upon the MW Scheduled across the hour.

SE = Scheduled energy in MWh delivered in each hour from an Alternate Resource in a given Month, the Scheduled energy if Seller has elected to pay alternate liquidated damages per Section 5.1.4.1, or the Scheduled energy if Seller has elected to pay liquidated damages per Section 8.3.

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

$$DFP = (SGD + VTA + IT)$$

Where:

SGD = The Day's "Gas Daily" midpoint price in its Daily Price Survey for such Day for Louisiana – Onshore South, Sonat.

VTA = The Variable Transportation Adders will be SNG's Zone 0 - Zone 3 maximum firm transportation variable charges including all fuel retention and surcharges and applicable Taxes.

IT = The Interruptible Transportation rate will be SNG's Zone 0 – Zone 3 maximum Interruptible Transportation charges, including applicable Taxes, for any amount needed above the Total MDQ.

F2. Monthly Fuel Charge for operation on Fuel Oil ("MFC_{OIL}")

If Seller delivers energy from an Alternate Resource in an hour in which the Unit(s) would have been dispatched utilizing Fuel Oil, the MFC_{OIL} will be determined as follows:

$$MFC_{OIL} = \sum [(DGF * FRP_{OIL})_{DAY1} \dots (DGF * FRP_{OIL})_{DAYN}]$$

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

Where:

DGF = Daily Guaranteed Fuel quantity in MMBtus.

FRP_{OIL} = Daily Fuel Oil Replacement Price in \$/MMBtu.

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

$$DGF = \sum [(GHR_{hr1} * SE_{hr1}) \dots (GHR_{hrN} * SE_{hrN})]$$

Where:

GHR = The applicable Guaranteed Heat Rate in MMBtu/MWh pursuant to **Appendix J**. The GHR for an hour will be based upon the MW Scheduled across the hour.

SE = Scheduled energy in MWh delivered in each hour from an Alternate Resource in a given Month.

APPENDIX C

TECHNICAL LIMITS AND SCHEDULE PROCEDURES

I. TECHNICAL LIMITS

A. General Requirements

Subject to the Technical Limits set forth in subsections B, C, D, E, F and G of this Section I of **Appendix C** and Section 5.1.2, the Facility shall be capable of meeting Buyer's Schedules at all times during the Term following the Delivery Commencement Date, twenty-four (24) hours per Day, seven (7) Days per week, provided that the Schedules do not exceed the Designated Capacity for any hour adjusted to Reference Conditions. Seller shall notify Buyer of any modifications or changes to the Technical Limits based on specifications and recommendations, as modified from time to time, of the equipment manufacturers of the combustion turbine and combustion turbine generator, provided that (1) any such modifications or changes that in Buyer's sole judgment may adversely affect Buyer's Scheduling flexibility (including without limitation, magnitude, duration and response time) under this Agreement shall be subject to the prior written approval of Buyer's Operating Representative, which shall not be unreasonably withheld, and (2) in the event such changes limit Buyer's Scheduling flexibility more than the limits as set forth below, Seller shall make commercially reasonable efforts to minimize the effect of any such equipment manufacturer's specifications or recommendations on Seller's ability to deliver energy in response to Buyer's Schedules.

B. Minimum Capacity Limits / Net Output

Minimum output level shall be established at the level that the Facility is able to remain operationally stable and remain in compliance with permitted emissions limits ("Minimum Capacity"). The Facility is estimated to have a Minimum Capacity of approximately 37 MW per each of the four (4) CT Units, subject to emissions limitations and ambient conditions.

C. Maximum Ramp Rates

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

D. Minimum Schedule and Minimum Down Times

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

E. Starts

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

F. Required Startup Notification Plant start times are as specified in the following table:

Start Classification (Off-line Hours)	Start Time to Minimum (1) (hours)	Start Time to Full Load (1) (hours)
Hot (< 8 hours)	1	1
Warm (8 < hours < 48)	1	1
Cold (> 48 hours)	1	1
Winter Cold (2) (> 48 hours)	2	2

Notes:
1. Start Time equals time of notice. (Seller shall provide Buyer with copies of results of any tests that demonstrate the ability of the Facility to meet the above start times.)
2. Winter cold applies when ambient temperatures are below fifteen degrees Fahrenheit.

G. Natural Gas Pipeline Pressure

Natural Gas deliveries under this Agreement shall be at pressures sufficient to enter the Gas Receipt Facilities at the Primary Gas Delivery Point (not to exceed the maximum allowable operating pressure of the gas transporter's pipeline at the Primary Gas Delivery Point); provided, however that the delivery pressure at the Primary Gas Delivery Point shall not be less than 650 psig. In the event that the Facility becomes able to operate at a minimum pressure of less than 650 psig, and the Facility Owner agrees in writing to allow the Facility to operate at a minimum pressure lower than 650 psig, then the Parties agree to adjust this Appendix C.I.G. appropriately.

II. SCHEDULE PROCEDURES

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

A. Notification Communication

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

B. Reserved

C. Reserved

D. Scheduling and Notification Procedures

1. By 12:00 p.m. CPT (or if Seller is utilizing an Alternate Resource, by 8:30 a.m. CPT) of each Business Day, the Scheduling Center will contact Seller if it anticipates submitting a Schedule for the next Business Day and any subsequent Days which are not Business Days (the period covered by such Schedule being referred to as a "Scheduling Period"). The Scheduling Center will provide a Schedule for each hour of the Scheduling Period in accordance with Article 13. The Scheduling Center shall also provide a good faith, non-binding estimate for the next Scheduling Period. The Scheduling Center is not obligated to contact Seller if it does not plan to submit a Schedule for a Scheduling Period.
2. On or before 1:30 p.m. CPT, Seller shall inform the Scheduling Center if the Facility, or in the case of Alternate Delivery, the Alternate Resource, will be de-rated during the next Scheduling Period. Seller shall provide an estimate of the time and degree to which the generation levels will be reduced. Unless due to the declaration of a Force Majeure Event, such Seller notification does not preclude Buyer from requesting any amount of

energy from the Facility or relieve Seller of its obligation to deliver energy in accordance with any Scheduling Instructions.

3. Seller shall promptly inform the Scheduling Center of any equipment problems or unplanned outages and the expected time and degree to which generation levels will be reduced. During Facility Outages, Seller shall continue to keep Buyer informed as to the expected date when the Facility, or in the case of Alternate Delivery, the Alternate Resource, will be returned to service for dispatch.
4. Intra-Day Scheduling shall be permitted in accordance with the provisions of Article 13.
5. Procedures will be established as needed for the Scheduling of energy delivered from an Alternate Resource; provided, however, that Seller bears the ultimate responsibility for all tagging and other transmission arrangements with respect to such deliveries.

APPENDIX D PERFORMANCE TESTING PROCEDURES

1. Objective

The purpose of this **Appendix D** is to provide an agreed upon method for the determination of Tested Reliable Capacity. Consistent, past performance of the Facility in reliably meeting the Designated Capacity and in reliably meeting the Scheduling Instructions shall be deemed as acceptable demonstration of the capability of the Facility. Performance Tests shall be conducted prior to the Delivery Commencement Date and may be conducted from *April 1 through May 31* in each Annual Period, consistent with Section 10.2 and **Appendix A**.

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

2. Operating Conditions

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

3. Testing

On the date of the Performance Test, the Facility shall be brought to maximum load using Natural Gas. The test shall be scheduled between the weekday hours of 11:00 a.m. and 7:00 p.m. local time and as close as practical with Buyer's Scheduling requirements. During the test period, data shall be collected for a minimum of two (2) hours once the Facility has achieved stable operations at maximum capability. To the extent that the Facility experiences equipment malfunction, unsteady operation, or unreliability during Performance Testing, Buyer may request Seller to perform a new Performance Test of the Facility at Seller's expense in order to demonstrate the capability of the Facility.

Testing will be performed consistent with historic practice and generally in accordance with ASME Performance Test Code and other applicable industry standards and all Legal Requirements. All Performance Test activities will be conducted by, or under the supervision of, Facility Owner and its contractors. Buyer shall have the right to have a representative present to witness Performance Tests conducted pursuant to this Agreement. Each Party will notify the other of its intent to conduct any test with a three (3) Business Day advanced written notice as specified in **Appendix A**.

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

4. Reduction of Data

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

$$\text{Tested Reliable Capacity} = \text{Actual Maximum Net Output} \times F_{\text{wetblb}} \times F_{\text{baro}}$$

where,

Actual Maximum Net Output = actual net Facility output measured during the test conducted at maximum load.

F_{wetblb} = correction factor for dry bulb temperature and relative humidity from actual conditions to Reference Conditions.

F_{baro} = correction for barometric pressure from actual test conditions to Reference Conditions.

APPENDIX E

INSURANCE REQUIREMENTS

1. Seller shall carry commercial general liability insurance policy in an “occurrence” form or an AEGIS “claims first made” form or equivalent with bodily injury and property damage combined liability limits of at least five (5) million dollars per occurrence and which shall include specific coverage for broad form contractual liability including Seller’s indemnification obligations under this Agreement and a separation of insured provision. All such policies shall provide coverage on an “occurrence” basis; provided, however, that coverage may be provided on a “claims made” basis with the provision of a minimum extended reporting period of five (5) years from the termination of this Agreement. The coverage requirements can be met through any combination of primary insurance and following form excess or umbrella insurance as long as the combined limits meet requirements of this Agreement.
2. Pursuant to the terms of the Tolling Agreement, the Facility Owner is required to carry insurance consistent with Prudent Generator Practices as defined in the Tolling Agreement.
3. With respect to Buyer’s entry onto the Facility premises from time to time, Buyer shall carry Commercial general liability insurance policy in an “occurrence” form or an AEGIS “claims first made” form or equivalent with bodily injury and property damage combined liability limits of at least two (2) million dollars per occurrence and which shall include specific coverage for broad form contractual liability including Buyer’s indemnification obligations under this Agreement and a separation of insured provision. All such policies shall provide coverage on an “occurrence” basis; provided, however, that coverage may be provided on a “claims made” basis with the provision of a minimum extended reporting period of five (5) years from the termination of this Agreement. The coverage requirements can be met through any combination of primary insurance and following form excess or umbrella insurance as long as the combined limits meet requirements of this Agreement.

APPENDIX F

THE SITE

The Site shall be defined as:

The land, rights-of-way and related equipment and facilities of the Baconton Power, LLC electric generating plant known as Baconton Power located in Mitchell County, Georgia at 2237 Hatcher Hill Road, Baconton, Georgia 31716.

APPENDIX G

FORM OF LETTER OF CREDIT

_____, 20__

[Name and Address
of Beneficiary]

Dear Sirs:

We hereby establish in your favor, for the account of [NAME AND ADDRESS OF ACCOUNT PARTY] (“[Account Party]”), with respect to the Contract for the Purchase of Firm Capacity and Energy of even date herewith between [Account Party] and you (“Beneficiary”) (the “PPA”), our irrevocable standby letter of credit no. _____ (the “Standby Letter of Credit”) whereby we hereby irrevocably authorize you to draw on us, in accordance with the terms and conditions hereinafter set forth, by your draft or drafts at sight, an amount not to exceed _____ United States Dollars (U.S. \$ _____).

Funds against this Standby Letter of Credit are available to you against your sight draft(s) drawn on us, referring thereon to the number and date of this Standby Letter of Credit, accompanied by a written and completed certificate executed by you in the form attached as Annex 1 hereto, with appropriate insertions. Multiple, partial drafts may be drawn hereunder. Such available funds shall not directly or indirectly constitute funds or collateral deposited with or for the bank account by the [Account Party], or pledged with or for the bank’s account by the [Account Party].

Presentation of such drafts, and such certificates shall be made on any day which is a Business Day, as defined hereinafter for us at or prior to 5:00 p.m. (eastern prevailing time) at our office located at _____, or at any other office in the United States of America which may be designated by us in a written notice delivered to you. If such sight draft and such certificate are received at either such office, all in strict conformity with the terms and conditions of this Standby Letter of Credit, on or prior to the expiration date hereof, we hereby agree with you that we will duly honor the same within three (3) Business Days of such presentation. Notwithstanding the foregoing, Beneficiary may demand payment under this Standby Letter of Credit by facsimile. Originals of documents presented via facsimile need not be presented. The original of this Standby Letter of Credit and all original amendments, if any, may be mailed thereafter.

For the purpose of this Standby letter of Credit, a “Business Day” shall be defined as a day other than Saturday, Sunday or a day on which banks in [_____, _____] are authorized or required to close.

This Standby Letter of Credit is effective immediately and expires at 5:00 p.m. (eastern prevailing time) on _____, 20___. However, it is a condition of this Standby Letter of Credit that it will be deemed automatically extended for successive periods of one year each from the present or any future expiration date but in no event later than _____, 20__ (the "Final Expiration Date), unless we send you notification in writing, by certified or registered mail (return receipt requested) or overnight courier, at your respective addresses, not less than ninety (90) days prior to any such date, that we have elected not to extend such expiration date for any such additional period. Notwithstanding Article 17 of the UCP (as such term is defined below), if the expiration of this Standby Letter of Credit falls during an interruption of business described in said Article 17, we agree to extend such expiration date to a date thirty (30) days after the resumption of our normal business.

We hereby undertake that we will not modify, revoke or terminate this Standby Letter of Credit without your written consent. Except as stated herein, payment of drafts drawn under this Standby Letter of Credit is not subject to any condition or qualification. This Standby Letter of Credit sets forth in full the terms of our undertaking, and such undertaking shall not be modified, annulled or amplified by reference to any other document, instrument or agreement referred to herein or in which the Standby Letter of Credit is referred or to which the Standby Letter of Credit relates, and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement. Our obligations hereunder are primary obligations that shall not be affected by the performance or non-performance by [Account Party] of any obligations under any loan agreement or under any agreement between [Account Party] and you or between [Account Party] and us or between [Account Party] and its agents.

We hereby waive any right to set off and apply any and all deposits (general or special, time or demand, provisional or final) or collateral at any time held and other indebtedness at any time owing by us to or for the credit of or the account of [Account Party] against any and all of the obligations of [Account Party] now or hereafter existing to reimburse us for our disbursements under this Standby Letter of Credit; provided, however, that each such right shall be reinstated if it is determined that such right would not lead to our being released, prevented or restrained from or delayed in, honoring any draft presented in accordance with this Standby Letter of Credit. The foregoing waiver is intended to defeat any possible claim that honor of this Standby Letter of Credit, or of any draft presented hereunder, may constitute a preferential transfer of the bankrupt account party's property securing our right of reimbursement. Nothing herein shall be construed to support the validity of any such claim, to support any delay in our obligation to honor this Standby Letter of Credit or to detract from the independence of our obligation to honor this Standby Letter of Credit at the times and in accordance with the terms stated and incorporated by reference herein.

This Standby Letter of Credit is transferable in its entirety (but not in part). Each letter of credit issued upon any such transfer and assignment may be successively transferred and assigned. Transfer of this Standby Letter of Credit to any transferee shall be affected by the presentation to us of the original of this Standby Letter of Credit and all original amendments, if any, when accompanied by our Request to Transfer a certificate in the form as attached hereto as

Annex 2, along with your payment for our usual and customary charges/fees for same, as specified in the said form.

Per laws of the United States and the regulations of the U.S. Treasury Department, the Department of Commerce and the Office of Foreign Asset Control, any request to transfer this Standby letter of Credit to any party in violation of such laws and/or regulations is strictly prohibited and will not be honored.

To the extent not contrary to the express terms hereof, this Standby Letter of Credit shall be governed by the Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce Publication No. 500 (herein referred to as the "UCP"), or by subsequent Uniform Customs and Practice as may be adopted from time to time by the International Chamber of Commerce. This Standby Letter of Credit shall be deemed to be a contract made under the laws of the State of Florida and shall, as to matters not governed by the UCP, be governed by and construed in accordance with the laws of the [State of New York.]

Yours very truly,

[ISSUING BANK]

ANNEX 1

CERTIFICATE

Re: Contract for the Purchase of Firm Capacity and Energy dated _____, 20__ between [Name of Account Party] (“[Account Party]”) and [Name of Beneficiary] (“[Beneficiary]”) (the “PPA”).

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

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

Pursuant to the provisions of the PPA, an event has occurred under the PPA that entitles Beneficiary to draw on the Standby Letter of Credit in the amount of the sight draft (an example of such an event includes, without limitation, an Event of Default described in the PPA).

or

[Beneficiary] has received written notice from the Bank in accordance with the terms of the Standby Letter of Credit that the Bank has elected not to extend the expiration date of the Standby Letter of Credit for an additional period past its then-expiration date.

(2) The undersigned are each a duly elected and incumbent officer of [Beneficiary] and are authorized to execute and deliver this certificate and to draw upon the Standby Letter of Credit.

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

[BENEFICIARY]

By:
Title:

By:
Title:

ANNEX 2

INSTRUCTION TO ASSIGN IN ENTIRETY

_____, 20

Re: Irrevocable Standby Letter of Credit No. .

Gentlemen:

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

(Name of Assignee)

(Address)

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

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

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

Very truly yours

[Beneficiary]

By:
Title:

By:
Title:

APPENDIX H

FORM OF GUARANTY

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

WHEREAS Beneficiary and _____ (the "Company"), [a subsidiary of the Guarantor], have entered into that certain Power Purchase Agreement dated as of _____, 20__ (the "Agreement");

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

WHEREAS, the Guarantor qualifies as a Seller or Buyer Guarantor as the case may be under the Agreement and this Guaranty qualifies as Eligible Collateral under the Agreement; and

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

NOW, THEREFORE, for and in consideration of the foregoing premises, the mutual agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Guarantor agrees as follows:

ARTICLE 1 - DEFINITIONS

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

ARTICLE 2 - GUARANTY

2.1 *Guaranty.* Guarantor hereby unconditionally and irrevocably guarantees to the Beneficiary and its successors and assigns, the prompt and full payment of any and all obligations of the Company to the Beneficiary when due, whether by acceleration or otherwise, with such interest as may accrue thereon, under the Agreement or under any other documents or instruments now or hereafter evidencing, securing or otherwise relating to the Agreement (the "Guaranteed Obligations"); provided, however, that Guarantor's liability under this Guaranty shall in no event exceed the amount of Eligible Collateral required to be provided by Seller from time to time pursuant to Section 7.1 of the Agreement. If Company fails to pay or any Guaranteed Obligation, then Guarantor will immediately pay such obligation upon demand by the Beneficiary. Guarantor shall not be liable for consequential, exemplary, equitable, lost profits, punitive or other damages except as specifically provided in the Agreement to be due.

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

- (i) any change in the time, manner or place of payment of, or in any other term of, all or any of the Guaranteed Obligations, or any other amendment, modification or waiver of, or any consent to departure from, the terms of such Guaranteed Obligations;
- (ii) any change, restructuring or termination of the corporate structure or existence of the Company or any of its subsidiaries;
- (iii) any lack of validity or enforceability of the Agreement or any agreement or instrument relating thereto;
- (iv) any failure of the Beneficiary to disclose to either the Company or the Guarantor any information relating to the business, condition (financial or otherwise), operations, performance, properties or prospects of either the Company or any of its subsidiaries now or hereafter known to the Beneficiary (the Guarantor waiving any duty on the part of the Beneficiary to disclose such information);
- (v) any failure of the Beneficiary to commence an action against Company;
- (vi) any lack of due diligence by the Beneficiary in the collection or protection of or realization upon any collateral securing the Guaranteed Obligations;
or
- (vii) any circumstance whatsoever (including, without limitation, any statute of limitations) or any act of the Beneficiary or any existence of or reliance on any representation by the Beneficiary that might otherwise constitute a legal or equitable defense available to, or a discharge of, the Guarantor.

This Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Guaranteed Obligations is rescinded or must otherwise be returned by

the Beneficiary or any other Person upon the insolvency, bankruptcy, or reorganization of the Company, all as though such payment had not been made.

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

(c) In the case of an Event of Default under the Agreement or with regard to any of the Guaranteed Obligations, Guarantor hereby consents and agrees that the Beneficiary shall have the right to enforce its rights, powers, and remedies thereunder or hereunder or under any other instrument now or hereafter evidencing, securing, or otherwise relating to the Guaranteed Obligations, and apply any payments or credits received by the Company or Guarantor or realized from any security, in any manner and in any order as the Beneficiary, in its sole discretion, shall see fit, and all rights, powers, and remedies available to the Beneficiary in such event shall be nonexclusive and cumulative of all other rights, powers, and remedies provided thereunder or hereunder or by law or in equity. No election of remedies by Beneficiary shall release or limit Guarantor's liability to Beneficiary hereunder, even if the effect of the election is to deprive Guarantor of its subrogation to Beneficiary's rights or its right to reimbursement from customers for sums paid by Guarantor.

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

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

(c) The Guarantor hereby unconditionally and irrevocably waives any defense based on any right of set-off or counterclaim against or in respect of the obligations of the Guarantor hereunder; provided, however, that Guarantor shall have the same defenses available to the Company with respect to any payment obligations arising under the Agreement, except for defenses arising out of bankruptcy, insolvency, dissolution or liquidation of the Company or the lack of power or authority of the Company to enter into and/or perform the Agreement.

2.4 *Subrogation.* Notwithstanding any payment or payments or performance made by the Guarantor hereunder, the Guarantor hereby irrevocably waives any and all rights of subrogation to the rights of the Beneficiary against the Company and any and all rights of reimbursement, assignment, indemnification or implied contract or any similar rights (including without limitation any statutory rights of subrogation under Section 509 of the Bankruptcy Code, 11 U.S.C. § 509) against the Company or against any other guarantor of all or any part of the

Guaranteed Obligations until such time as the Guaranteed Obligations have been indefeasibly paid or performed in full. If, notwithstanding the foregoing, any amount shall be paid to the Guarantor on account of such subrogation or similar rights at any time when all of the Guaranteed Obligations shall not have been indefeasibly paid in full, such amount shall be held by the Guarantor in trust for the Beneficiary and shall be turned over to the Beneficiary in the exact form received by the Guarantor, to be applied against the Guaranteed Obligations in such order as the Beneficiary may determine in its sole discretion.

ARTICLE 3 - REPRESENTATIONS AND WARRANTIES

The Guarantor hereby represents and warrants as follows:

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

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

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

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

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

ARTICLE 4 - MISCELLANEOUS

4.1 *Continuing Guaranty; Assignment.* This Guaranty is a continuing guaranty and shall (i) remain in full force and effect until all of the Guaranty Obligations have been satisfied, (ii) consistent with the terms hereof, apply to all Guaranteed Obligations whenever arising, (iii) be binding upon the Guarantor, its successors and assigns, and (iv) inure to the benefit of, and be enforceable by, the Beneficiary and its permitted assignees hereunder. The Beneficiary may not assign or delegate its rights or obligations under this Guaranty without the prior written consent of the Guarantor, which consent shall not be unreasonably delayed or withheld. The Guarantor may not assign or delegate its rights or obligations under this Guaranty without (x) the prior

written consent of the Beneficiary, which consent may be withheld in the Beneficiary's sole discretion, and (y) a written assignment and assumption agreement in form and substance reasonably acceptable to the Beneficiary. Without prejudice to the survival of any of the other agreements of the Guarantor under this Guaranty, the agreements and obligations of the Guarantor contained in Section 4.4 (with respect to enforcement expenses) and the last sentence of Section 2.2(a) shall survive the payment in full of the Guaranteed Obligations and all of the other amounts payable under this Guaranty.

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

(i) if to the Beneficiary:

[Company, address, c/o person]

(ii) if to the Guarantor:

[Company, address, c/o person]

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

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

4.4 *Expenses.* The Guarantor agrees to pay or reimburse the Beneficiary and any permitted assignees of the Beneficiary on demand for its reasonable costs, charges and expenses (including reasonable fees and expenses of counsel) incurred in connection with the enforcement of this Guaranty or occasioned by any breach by the Guarantor of any of its obligations under this Guaranty should Guarantor be required to pay under this Guaranty.

4.5 *Entire Agreement; Amendments.* This Guaranty and any agreement, document or instrument attached hereto or referred to herein integrate all the terms and conditions mentioned herein or incidental hereto and supersede all oral negotiations and prior writings in respect to the subject matter hereof. In the event of any conflict between the terms, conditions and provisions

of this Guaranty and any such agreement, document or instrument, the terms, conditions and provisions of this Guaranty shall prevail. This Guaranty may only be amended or modified by an instrument in writing signed by each of the Guarantor and the Beneficiary and any permitted assignees of the Beneficiary.

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

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

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

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

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

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

[Company]

By: _____
Name: _____
Title: _____

APPENDIX I

TRANSFER OF INFORMATION ACKNOWLEDGEMENT

Coral Power, LLC ("Coral") and Gulf Power Company ("Gulf") have entered into that certain Purchased Power Agreement ("the Agreement") dated as of _____, 2006. The Agreement contemplates that certain information necessary for the operational implementation and administration of the Agreement ("Information") will be provided by Coral to Gulf and/or Southern Company Services, Inc. as agent for the transmission owning subsidiaries of Southern Company (Alabama Power Company, Georgia Power Company, Gulf Power Company, and Mississippi Power Company). The Information could be considered to be non-public information that potentially has implications under the Federal Energy Regulatory Commission's Standards of Conduct. Coral acknowledges that such Information is being provided for the purposes of operational implementation and administration of the Agreement (which includes conducting Gulf's system operations and dispatch functions) and will be utilized by individuals in both Transmission Provider and Energy Affiliate/wholesale marketing unit functions under the Standards of Conduct.

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

Gulf hereby accepts Coral's acknowledgements as described herein and will ensure that the Information is disseminated in accordance with the terms of this Agreement and as described in this Acknowledgement.

Acknowledged on behalf of Coral Power, LLC:

By: _____
Name: _____
Date: _____

Acknowledged on behalf of Gulf Power Company:

By: _____
Name: _____
Date: _____

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APPENDIX J

GUARANTEED HEAT RATES
FOR NON-AGC OPERATION

The Guaranteed Heat Rates are as follows:

Natural Gas Operations:

Guaranteed Heat Rate at maximum load (█%): █ MMBtu/MWh
Guaranteed Heat Rate at minimum load (█%): █ MMBtu/MWh

Fuel Oil Operations:

Guaranteed Heat Rate at maximum load (█%): █ MMBtu/MWh
Guaranteed Heat Rate at minimum load (█%): █ MMBtu/MWh

Energy produced by Seller and delivered to Buyer from startup to minimum output will be paid for at the Guaranteed Heat Rates for non-AGC operations ("Guaranteed Heat Rate") at minimum output.

Notes:

15 For operational levels on each CT Unit between █% and █%, the Guaranteed Heat Rates will
16 be determined by straight line interpolation.

17 The Guaranteed Heat Rate of each CT Unit for each hour will be based upon the hourly
18 integrated MW value generated by such Unit for such hour.

19 Example:

20 The hourly integrated generation from Unit 100 for hour ending 15:00 is calculated to be 45
21 MW. The Guaranteed Heat Rate for such hour will be as follows:

22 $(\text{█ MMBtu/MWh} - \text{█ MMBtu/MWh} / 48.75 \text{ MW} - 37.5 \text{ MW}) * (45 \text{ MW} - 37.5$
23 $\text{MW}) + \text{█ MMBtu/MWh} = \text{█ MMBtu/MWh}$

24 The adjusted Guaranteed Heat Rate shall be rounded to two decimal point accuracy. The
25 Guaranteed Heat Rate adjusted for straight line interpolation shall be used for billing purposes
26 for the hour ending 15:00.

27 The Guaranteed Heat Rate of each CT Unit as set forth above shall be subject to degradation of
28 █% over █ Factored Operating Hours of such CT Unit on a straight line basis during the
29 term of this Agreement.

1 Example:

2 At the end of a Month, a CT Unit has operated an aggregate of 400 hours on Natural Gas and 20
3 hours on Fuel Oil:

4 Factored Fired Hours: $(400 \times 1) + (20 \times \text{[REDACTED]}) = 435$

5 Guaranteed Heat Rate degradation for such CT Unit: $\text{[REDACTED]} \% \times 435 / \text{[REDACTED]} = \text{[REDACTED]} \%$

6 Example for calculation of Guaranteed Heat Rate adjusted for degradation applicable for the
7 following Month:

8 Guaranteed Heat Rate on Fuel Oil for operation at minimum load:

9 $\text{[REDACTED]} \text{ MMBtu/MWh} \times (100\% + \text{[REDACTED]} \%) = \text{[REDACTED]} \text{ MMBtu/MWh}$

10 The adjusted Guaranteed Heat Rate shall be rounded to two decimal point accuracy. The
11 Guaranteed Heat Rate adjusted for degradation shall be used for billing purposes in the
12 following Month.

APPENDIX K

FINANCIAL SETTLEMENT PROCEDURE

In the event Seller elects the financial settlement procedures of Section 5.1.4.1, the indexed daily strip price into the Southern Control Area as published in the daily Platts Energy Trader will be used to determine alternate liquidated damages. The following table will be used to distribute the daily sixteen (16) hour strip price (\$/MWh) into an hourly shape for the Months May through September:

1	6:00 – 7:00 AM CPT	Daily Strip Price * 0.54
2	7:00 – 8:00 AM CPT	Daily Strip Price * 0.61
3	8:00 – 9:00 AM CPT	Daily Strip Price * 0.68
4	9:00 – 10:00 AM CPT	Daily Strip Price * 0.77
5	10:00 – 11:00 AM CPT	Daily Strip Price * 0.88
6	11:00 AM – Noon CPT	Daily Strip Price * 0.98
7	Noon – 1:00 PM CPT	Daily Strip Price * 1.07
8	1:00 – 2:00 PM CPT	Daily Strip Price * 1.16
9	2:00 – 3:00 PM CPT	Daily Strip Price * 1.22
10	3:00 – 4:00 PM CPT	Daily Strip Price * 1.24
11	4:00 – 5:00 PM CPT	Daily Strip Price * 1.26
12	5:00 – 6:00 PM CPT	Daily Strip Price * 1.24
13	6:00 – 7:00 PM CPT	Daily Strip Price * 1.19
14	7:00 – 8:00 PM CPT	Daily Strip Price * 1.11
15	8:00 – 9:00 PM CPT	Daily Strip Price * 1.05
16	9:00 – 10:00 PM CPT	Daily Strip Price * 1.00

For January through April and October through December, the multiplier will be 1.00 for all hours. Buyer reserves the right to adjust annually the hourly multipliers for any Season or to change the provider of the daily strip price and/or the product used to calculate financial settlement; provided, however, (i) that the sum of the hourly multipliers shall always equal sixteen (16), (ii) such multipliers shall be distributed across the sixteen (16) hours in a commercially reasonable manner, and (iii) and such hourly distribution will not be based on the anticipated availability status of the Facility.

For each hour that the Facility is Scheduled, the alternate liquidated damages shall equal the Hourly Strip Energy Price corresponding to Buyer's Schedules multiplied by the Schedule amount.

Example 1

If Seller elected financial settlement when Facility was Scheduled and 200 MW were Unavailable between 2:00 and 3:00 PM on a day in June when the indexed daily strip price into the Southern Control Area as published in the daily Platts Energy Trader was \$100/MWh, the alternate liquidated damages would be calculated as follows:

$$\text{alternate liquidated damages (ALD) when } ALD > (HDE * VOMER + GHR * SE * DFP) = \$100/MWH * 1.22 * 200 MW * 1 \text{ Hour} = \$24,400$$

If the PPA energy price (VOMER + GHR*DFP) was \$80/MWH , this hour's contribution to the monthly energy payment (MEP_{ALD}) would be calculated as follows:

$$MEP_{ALD} = MVOM + MFC_{GAS} - ALD = \$80/MWH * 200 MW * 1 \text{ Hour} - \$24,400 = -\$8,400$$

The total monthly energy payment would be reduced by \$8,400 because of this 1 hour of alternate liquidated damages.

Example 2

If the Seller elected financial settlement when Facility was Scheduled and 200 MW were Unavailable between 2:00 and 3:00 PM on a day in April when the indexed daily strip price into the Southern Control Area as published in the daily Platts Energy Trader was \$100/MWH, the alternate liquidated damages would be calculated as follows:

$$\text{alternate liquidated damages (ALD) when } ALD > (HDE * VOMER + GHR * SE * DFP) = \$100/MWH * 1.0 * 200 MW * 1 \text{ Hour} = \$20,000$$

If the PPA energy price (VOMER + GHR*DFP) was \$80/MWH * 200 MW * 1 Hour, this hour's contribution to the monthly energy payment (MEP_{ALD}) would be calculated as follows:

$$MEP_{ALD} = MVOM + MFC_{GAS} - ALD = \$80/MWH * 200 MW * 1 \text{ Hour} - \$20,000 = -\$4,000$$

The total monthly energy payment would be reduced by \$4,000 because of this 1 hour of alternate liquidated damages.

Example 3

If the Seller elected financial settlement when Facility was Scheduled and 200 MW were Unavailable between 2:00 and 3:00 PM on a day in April when the indexed daily strip price into the Southern Control Area as published in the daily Platts Energy Trader was \$70/MWH, the alternate liquidated damages would be calculated to compare with (HDE*VOMER + GHR*SE*DFP) as follows:

$$\text{alternate liquidated damages (ALD)} = \$70/MWH * 1.0 * 200 MW * 1 \text{ Hour} = \$14,000$$

If the PPA energy price (VOMER + GHR*DFP) was \$80/MWH * 200 MW * 1 Hour = \$16,000, this hour's contribution to the monthly energy payment (MEP_{ALD}) would be zero because when ALD < (HDE*VOMER + GHR*SE*DFP), the MEP_{ALD} equation does not apply. The total

monthly energy payment would not be reduced because of this 1 hour of alternate liquidated damages.

APPENDIX L

FAILURE TO ACHIEVE RCOB LIQUIDATED DAMAGES CALCULATION

The Liquidated Damages for Failure to Achieve Commercial Operation by RCOB (LDFCO) described in Section 8.3 shall be determined as follows:

$$LDFCO = ALD_{Month} - (\sum [(DCP)_{Day_1} \dots (DCP)_{Day_N}] + MVOM + MFC_{GAS})$$

(applies only to hours when $ALD_{Hour} > (SE \cdot VOMER + VOMHR + GHR \cdot SE \cdot DFP)$) and only if such hours are in days when $ALD_{Day} > (DCP + \sum [(SE \cdot VOMER + VOMHR + GHR \cdot SE \cdot DFP)_{Hour_1} \dots (SE \cdot VOMER + VOMHR + GHR \cdot SE \cdot DFP)_{Hour_N}])$)

Where:

- ALD = Alternate Liquidated Damages determined pursuant to **Appendix K**.
- MCP = Monthly Capacity Payment.
- DCP = Daily Capacity Payment = MCP/(number of Days per Month).
- MVOM = Monthly Variable O&M Charge determined pursuant to Appendix B Section B.
- MFC_{GAS} = Monthly Fuel Charge for Natural Gas determined pursuant to Appendix B Section D with respect to the Scheduled amount if Seller has elected to pay liquidated damages per Section 8.3
- SE = Scheduled energy in MWh in each hour if Seller has elected to pay liquidated damages per Section 8.3.
- VOMER = Variable O&M Energy Rate is \$XXXX/MWh for operation on Natural Gas and \$XXXX/MWh for operation on Fuel Oil (expressed in 2009 dollars and escalated at actual GDPIPD)
- VOMHR = Variable O&M Hourly Rate is \$XX/hour
- GHR = The applicable Guaranteed Heat Rate in MMBtu/MWh pursuant to **Appendix J**. The GHR for an hour will be based upon the MW Scheduled across the hour.
- DFP = Daily Fuel Price in \$/MMBtu.

APPENDIX M

TECHNICAL SPECIFICATIONS FOR NATURAL GAS AND FUEL OIL

- 1 [REDACTED]
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6 The following requirements and application 38 [REDACTED]
7 guidelines are provided for selection of liquid 39 [REDACTED]
8 fuels that can be fired satisfactorily in 40 [REDACTED]
9 [REDACTED] It is recom- 41 [REDACTED]
10 mended that complete compositional analysis 42 [REDACTED]
11 of all proposed liquid fuels be reviewed by 43 [REDACTED]
12 [REDACTED] prior to extended use. 44 [REDACTED]
45 [REDACTED]

13 [REDACTED] 46 [REDACTED]
47 [REDACTED]
14 Fuels conforming to the following military and 48 [REDACTED]
15 industry specifications are acceptable for use in 49 [REDACTED]
16 [REDACTED] pro- 50 [REDACTED]
17 vided they meet the additional criteria 51 [REDACTED]
18 described in [REDACTED]

19 [REDACTED] 52 [REDACTED]
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27	[REDACTED]	71	[REDACTED]
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31	[REDACTED]	75	[REDACTED]
32	[REDACTED]	76	[REDACTED]
33	[REDACTED]	77	[REDACTED]
34	[REDACTED]	78	[REDACTED]
35	[REDACTED]	79	[REDACTED]
36	[REDACTED]	80	[REDACTED]
37	[REDACTED]	81	[REDACTED]
38	[REDACTED]	82	[REDACTED]
39	[REDACTED]	83	[REDACTED]
40	[REDACTED]	84	[REDACTED]
41	[REDACTED]		

Property	Limit	ASTM Test Method
Ash, Maximum (%)	[REDACTED]	[REDACTED]
Sulfur, Maximum (%)	[REDACTED]	[REDACTED]
Vanadium, Maximum (ppm)	[REDACTED]	[REDACTED]
Alkali Metals, Maximum (ppm)	[REDACTED]	[REDACTED]
Lead, Maximum (ppm)	[REDACTED]	[REDACTED]
Calcium, Maximum (ppm)	[REDACTED]	[REDACTED]
Hydrogen Minimum (%)	[REDACTED]	[REDACTED]
Demulsification Time, Maximum (Minutes)	[REDACTED]	[REDACTED]
Carbon Residue, Maximum (%), 100% Sample	[REDACTED]	[REDACTED]
Particulates, Maximum (mg/gal)	[REDACTED]	[REDACTED]
Water and Sediment, Maximum (Volume %)	[REDACTED]	[REDACTED]
Flash Point, Maximum	[REDACTED]	[REDACTED]
Copper Corrosion, Maximum	[REDACTED]	[REDACTED]

Notes

a. The following alternate methods are acceptable [REDACTED]

b. The total amount of alkali metals in fuels used with engines having marinized (corrosion-resistant) coatings on the HPT blading shall not exceed [REDACTED]. This limit includes all alkali metals, potassium and lithium as well as sodium; however, experience has shown that sodium is generally by far the preponderant alkali metal.

This limit also assumes zero alkali metals in the inlet air or injected water or steam. When actual levels are above zero, the maximum allowable sodium content of the fuel must be reduced in accordance with the following relationship:

Sodium in Inlet Air x Air/Fuel Ratio	ppm
+ Sodium in Water or Steam x Water or Steam/Fuel Ratio	ppm
+ Sodium in Fuel	ppm

0.2 ppm

Total fuel equivalence for sodium from all sources must not exceed

c. For nonmarinized engines with standard coatings on the HPT blading, the total amount of alkali metals from all sources shall not exceed [REDACTED]

d. To achieve the level of sensitivity for detection of sodium to the level required, a flameless (furnace) atomic absorption method may be necessary. Further information on this method can be obtained from the NIPER (National Institute of Petroleum and Energy Research), Bartlesville, Oklahoma.

e. Sampled at engine inlet connection.

f. Maximum particle size, [REDACTED]

g. Legal limits and applicable safety regulations must be met; however, it should be noted that use of fuels having a flash point in excess of 200°F may result in unsatisfactory starting characteristics. Blending for enhancement of spark ignition or use of alternate fuels may be required for starting.

h. Fuels with a higher sulfur content can be burned. Impact on HSRI (Hot Section Repair Interval) will depend on alkali metals present in the fuel, inlet air, and injected water and on operating temperature. Consult GE M&IE for review of higher sulfur fuels.

i. Copper corrosion test conditions are 2 hours at 100°C.

j. Care must be taken with the more viscous fuels to ensure that the minimum hydrogen content is met.

44

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2 September 30, 1997

[REDACTED]

3	[REDACTED]	15	[REDACTED]
4	[REDACTED]	16	[REDACTED]
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APPENDIX N

AGREEMENTS RELATING TO THE OPERATION,
MANAGEMENT AND MAINTENANCE OF THE FACILITY

Second Amended and Restated Tolling Agreement between Coral Power, L.L.C. and Baconton Power, LLC dated November 1, 2002

[REDACTED]

[REDACTED]

[REDACTED]

Interconnection and Operation and Maintenance Agreement between Baconton Power LLC and Georgia Transmission Corporation (an Electric Membership Corporation) dated May 15, 2000, as amended on May 10, 2001 and November 1, 2002

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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Calcium, Maximum (ppm)	[REDACTED]	[REDACTED]
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Demulsification Time, Maximum (Minutes)	[REDACTED]	[REDACTED]
Carbon Residue, Maximum (%), 100% Sample	[REDACTED]	[REDACTED]
Particulates, Maximum (mg/gal)	[REDACTED]	[REDACTED]
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Flash Point, Maximum	[REDACTED]	[REDACTED]
Copper Corrosion, Maximum	[REDACTED]	[REDACTED]

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APPENDIX N

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MANAGEMENT AND MAINTENANCE OF THE FACILITY

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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

BETWEEN

GULF POWER COMPANY

AND

SOUTHERN POWER COMPANY

October 19, 2006

DOCUMENT NUMBER-DATE
07745 AUG 26 8.
FPSC-COMMISSION CLERK

TABLE OF CONTENTS

	Page
ARTICLE 1 DEFINITIONS	2
ARTICLE 2 TERM OF AGREEMENT	20
2.1 Term.....	20
2.2 Survival.....	21
2.3 Conditions Subsequent	21
ARTICLE 3 REPRESENTATIONS, WARRANTIES AND COVENANTS	23
3.1 Representations and Warranties of Seller.....	23
3.2 Representations and Warranties of Buyer	26
3.3 Seller Covenants	27
3.4 Buyer Covenant	28
ARTICLE 4 REGULATORY APPROVALS; COMPLIANCE WITH LAWS, RULES AND REGULATIONS; TAXES; IM FEE AND OTHER COSTS	28
4.1 FPSC.....	28
4.2 Preservation of Terms.....	28
4.3 Other Approvals	29
4.4 Federal Acquisition Regulations Compliance	30
4.5 Taxes.....	30
4.6 IM Fee.....	32
ARTICLE 5 SALE AND DELIVERY OF CAPACITY AND ENERGY.....	32
5.1 Agreement to Sell and Purchase	32
5.2 Calculation of Monthly Capacity Payments.....	37
5.3 Calculation of Monthly Energy Payments.....	38
5.4 Substitution of CTs at the Facility	38
ARTICLE 6 BILLING AND COLLECTIONS	40
6.1 Capacity and Energy Billing and Payment.....	40
6.2 Billing Disputes and Final Accounting	41
6.3 Interest	42
6.4 Billing and Payment Records	43
ARTICLE 7 PERFORMANCE SECURITY	43
7.1 Seller Performance Security	43
7.2 Buyer Performance Security.....	45
7.3 Replacement Collateral, Substituted Collateral, Release of Collateral	45
7.4 Draws, Replenishment.....	46
7.5 Reporting	47

ARTICLE 8	PROJECT IMPLEMENTATION AND CONSTRUCTION	47
8.1	Design and Construction of the Facility	47
8.2	Reserved	48
8.3	Failure to Achieve Commercial Operation by the Required Commercial Operation Date.....	48
ARTICLE 9	INTERCONNECTION AND METERING	50
9.1	Interconnection	50
9.2	Meters	50
9.3	Reserved	52
9.4	Loss Factor Adjustment.....	52
ARTICLE 10	COMMERCIAL OPERATION AND ANNUAL PERFORMANCE TESTING.....	52
10.1	Commercial Operation Test.....	52
10.2	Capacity Examination.....	52
10.3	Disputes Concerning Capacity Tests.....	53
ARTICLE 11	OPERATION AND MAINTENANCE.....	53
11.1	Operation and Maintenance.....	53
11.2	Maintenance Scheduling.....	55
11.3	Permits	57
11.4	Access to the Site and the Facility.....	57
11.5	Availability of Records.....	58
11.6	Disclaimer.....	58
11.7	Operating Committee	59
ARTICLE 12	FUEL SUPPLY	60
12.1	Overview	60
12.2	Natural Gas Transportation Capacity	61
12.3	Fuel Oil.....	64
ARTICLE 13	ENERGY SCHEDULING AND TRANSMISSION	67
13.1	Coordination and Scheduling	67
13.2	Effect of Grid Emergencies	70
ARTICLE 14	INSURANCE	70
14.1	Insurance Required	70
14.2	Certificates of Insurance.....	71
ARTICLE 15	INDEMNIFICATION	72
15.1	Scope of Indemnity.....	72
15.2	Notice of Proceedings.....	72
ARTICLE 16	FORCE MAJEURE.....	73
16.1	Definition of Force Majeure Event.....	73

16.2	No Breach or Liability	74
16.3	Capacity and Energy Payments	74
16.4	Declaration and Mitigation	74
16.5	Suspension of Performance	75
16.6	Extended Force Majeure Events	75
ARTICLE 17 DEFAULT AND REMEDIES		76
17.1	Default by Seller	76
17.2	Default by Buyer	82
17.3	Remedies	84
17.4	Rights of Specific Performance	86
17.5	Limitation of Remedies, Liability and Damages	87
17.6	Disclaimer of Warranties	88
17.7	No Interruption	88
17.8	Duty to Mitigate	89
ARTICLE 18 CHANGE OF LAW		89
18.1	Change of Law	89
18.2	Air Emissions	94
18.3	No Dedication	95
ARTICLE 19 ASSIGNMENT AND TRANSFERS OF INTERESTS		95
19.1	Assignment and Assumption of Obligations	95
19.2	Other Restrictions	96
19.3	General Requirements	96
ARTICLE 20 DISPUTE RESOLUTION		96
20.1	Notice	96
20.2	Dispute Resolution, Arbitration	96
ARTICLE 21 MISCELLANEOUS PROVISIONS		100
21.1	Amendments	100
21.2	Binding Effect	100
21.3	Counterparts	100
21.4	Notices	100
21.5	Entire Agreement	102
21.6	Governing Law	102
21.7	Time of Essence; Waiver	102
21.8	Headings	102
21.9	Third Parties	103
21.10	Agency	103
21.11	Further Assurances	103
21.12	Severability	103
21.13	Negotiated Agreement	103
21.14	Confidentiality	104
21.15	Interpretation	105

21.16	Replacement Index	106
21.17	Recording.....	106
21.18	Transfer of Information Acknowledgement.....	106

APPENDICES

APPENDIX A	CAPACITY PAYMENT CALCULATION
APPENDIX B	ENERGY PAYMENT CALCULATION
APPENDIX C	TECHNICAL LIMITS AND SCHEDULE PROCEDURES
APPENDIX D	PERFORMANCE TESTING PROCEDURES
APPENDIX E	INSURANCE REQUIREMENTS
APPENDIX F	THE SITE
APPENDIX G	FORM OF LETTER OF CREDIT
APPENDIX H	FORM OF GUARANTY
APPENDIX I	TRANSFER OF INFORMATION ACKNOWLEDGEMENT
APPENDIX J	GUARANTEED HEAT RATES
APPENDIX K	FINANCIAL SETTLEMENT PROCEDURE
APPENDIX L	FAILURE TO ACHIEVE RCOD LIQUIDATED DAMAGES CALCULATION

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

THIS POWER PURCHASE AGREEMENT (“Agreement”), dated as of October 19, 2006, is between Gulf Power Company, a corporation organized and existing under the laws of the State of Florida, having its principal place of business in Pensacola, Florida (“Buyer”), and Southern Power Company, a corporation organized and existing under the laws of the State of Delaware (“Seller”).

WITNESSETH:

WHEREAS, Buyer is engaged in the distribution and sale of electricity to the public in the State of Florida;

WHEREAS, Seller intends to own and operate an electric power plant, generating electricity with natural gas, located in Jackson County, Georgia (more fully defined in Section 1.1 as the “Facility”);

WHEREAS, Buyer has agreed to purchase from Seller, and Seller has agreed to sell to Buyer, capacity and associated energy and Ancillary Services from the Facility, all in accordance with the provisions of this Agreement.

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

ARTICLE 1
DEFINITIONS

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

1.1.1 “AAA” - has the meaning assigned in Section 20.2.2.2.1.

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

1.1.3 “Affiliate” - means any Person directly or indirectly controlling or controlled by or under direct or indirect common control of a specified Person. For purposes of this definition, “control” means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise. For purposes of this Agreement, it shall be assumed that the direct or indirect owner of fifty percent (50%) of the outstanding stock or other equity interest of a Person has “control” of such Person. The terms “controlling” and “controlled” have meanings correlative to the foregoing.

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

applicable to corporations for the relevant period or periods, and is subject to state income taxation at the highest applicable statutory rates applicable to corporations in the relevant jurisdiction for the relevant period or periods.

1.1.5 “Aggrieved Party” - has the meaning assigned in Section 20.1.

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

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

1.1.8 “Alternate Delivery Point” - means any point on the Transmission System (including interfaces between the Transmission System and other transmission systems) at which Buyer is (i) capable of receiving energy in the quantity to be delivered at such point pursuant to the Southern OATT, and (ii) able to transmit such energy to its loads without being required to either materially change the output of generating resources available to Buyer or materially change the schedule of its preexisting power purchases or sales (other than purchases or sales pursuant to this Agreement) that results in *material economic harm to Buyer*.

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

1.1.10 “Ancillary Services” - means all commercial products produced by or related to the Facility, including spinning reserves, operating reserves, black start capability, balancing energy, regulation service, reactive power and voltage control, renewable energy credits, any other environmental or regulatory credits or allowance resulting from operation of

the Facility or any similar benefit Buyer otherwise would have realized from or related to the Facility if Buyer rather than Seller had constructed, owned or operated the Facility.

1.1.11 “Annual Capacity Charge” - shall have the meaning assigned in **Appendix A, Section A.4.**

1.1.12 “Annual Period” - means any one of a succession of consecutive twelve (12)-Month periods during the Term of this Agreement beginning on June 1 and ending on the following May 31. The first Annual Period is such period beginning on June 1, 2009.

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

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

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

1.1.16 “Base Operating Mode” – means the normal operating mode at which the Unit(s) runs with full normal utilization of the CT(s).

1.1.17 “Base Operating Mode Capability” – means, at any given time, the generating capability of the Unit(s) in Base Operating Mode.

1.1.18 “Base Operating Mode Energy” - means energy produced by the Unit(s) in the Base Operating Mode.

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

1.1.20 “Buyer Guarantor” - means a Person that, at the time of execution and delivery of its Buyer Guaranty, is a direct or indirect owner of Buyer and (a) is Creditworthy with a consolidated Net Worth of at least five hundred million dollars (\$500,000,000.00); or (b) is reasonably acceptable to Seller as having verifiable credit worthiness and Net Worth sufficient to secure Buyer Guarantor’s obligations under its Buyer Guaranty.

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

1.1.22 “Buyer Performance Security” - has the meaning assigned in Section 7.2.

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

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

1.1.25 “Change of Law” - has the meaning assigned in Section 18.1.1.

1.1.26 “Commercial Operation” – has the meaning assigned in Section 8.1.1.

1.1.27 “Commercial Operation Date” – means the date on which the Facility achieves Commercial Operation.

1.1.28 “Confidential Information” – means business or technical information rightfully in the possession of either Party, which information derives actual or potential commercial value from not being generally known or readily ascertainable through independent development or reverse engineering by persons who can obtain economic value from its disclosure and use, and includes information furnished or disclosed to the other Party in connection with discussions leading up to execution of this Agreement, including this Agreement. Confidential Information must be designated in writing as confidential by the Party supplying such information (the “Disclosing Party,” the other Party being the “Receiving Party”). Confidential Information does not include information which: (i) is or becomes publicly available other than as a result of a violation of this Agreement; (ii) was, at the time of the disclosure, already in the Receiving Party’s possession; (iii) is disclosed to the Receiving Party by a third Party who, to the Receiving Party’s knowledge, is not prohibited from disclosing the information pursuant to any agreement with the Disclosing Party; (iv) the Receiving Party develops or derives without the aid, application or use of the privileged or proprietary information; or (v) the Receiving Party is required to disclose pursuant to Legal Requirements.

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

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

1.1.31 “Costs” - has the meaning assigned in Section 17.3.2.

1.1.32 “CPT” - means Central Prevailing Time.

1.1.33 “Creditworthy” - means a Person has an investment grade rating such that its senior unsecured debt (or issuer rating if such Person has no senior unsecured debt rating) is rated at least BBB- by Standard & Poor’s Rating Group and at least Baa3 by Moody’s Investor Services, Inc. and at least BBB- by Fitch Ratings where such Person has a senior unsecured debt rating (or issuer rating if such Person has no senior unsecured debt rating) from each of such foregoing rating agencies. While a Person is not required to have a senior unsecured debt rating (or issuer rating if such Person has no senior unsecured debt rating) from each of Standard & Poor’s Rating Group, Moody’s Investor Services, Inc. and Fitch Ratings, a Person shall no longer be “Creditworthy” if such Person ceases to have a senior unsecured debt rating (or issuer rating if such Person has no senior unsecured debt rating) from at least one of Standard & Poor’s Rating Group, Moody’s Investor Services, Inc. and Fitch Ratings.

1.1.34 “CT” - means combustion turbine.

1.1.35 “Cumulative Changes of Law” - has the meaning assigned in Section 18.1.7.

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

1.1.37 “Daily Fuel Oil Replacement Price” – means for a given Day, the cost equal to the average of the high and low prices of “Low sulfur diesel” (or such Fuel Oil required under the Air Permit) as specified for such Day in *Platt’s Oilgram U.S. Marketscan* under Gulf Coast Pipeline, in \$/gal., converted to \$/MMBtu (at the rate of 7.22 gal./MMBtu) for the Day on which the Fuel Oil is consumed plus a Fuel Oil transportation and supplier margin adder to be calculated monthly by Seller plus applicable taxes and surcharges. The Operating Committee

shall establish the procedures and methodology that Seller shall use for determining the Fuel Oil transportation and supplier margin adder. If a price is not published in *Platt's Oilgram U.S. Marketscan*, the Parties shall negotiate a price that reflects the actual replacement cost of the Fuel Oil on the Day of delivery.

1.1.38 "Day" - means a calendar day.

1.1.39 "Defaulting Party" - has the meaning assigned in Section 17.3.1.

1.1.40 "Delivery Commencement Date" - means the later of the Commercial Operation Date or June 1, 2009.

1.1.41 "Demand" - has the meaning assigned in Section 20.2.2.2.1.

1.1.42 "Designated Capacity" - has the meaning assigned in **Appendix A**, Section A.3.

1.1.43 "Early Termination Date" - has the meaning assigned in Section 17.3.1.

1.1.44 "Eligible Collateral" - means (i) a Letter of Credit, (ii) cash deposited into a Buyer Security Account by Seller or a Seller Security Account by Buyer, as the case may be, or (iii) a Seller Guaranty or Buyer Guaranty as the case may be; provided, however, that at least fifty percent (50%) of any Eligible Collateral required under any provision of this Agreement must be in the form of either a Letter of Credit or cash deposited into either a Buyer Security Account or a Seller Security Account, as appropriate, whenever a Seller Guarantor supplying a Seller Guaranty, or Buyer Guarantor supplying a Buyer Guaranty, under this Agreement has an investment grade rating such that its senior unsecured debt (or issuer rating if such Person has no senior unsecured debt rating) is not rated at least BBB by Standard & Poor's Rating Group and at least Baa2 by Moody's Investor Services, Inc. and at least BBB by Fitch Ratings. For the purposes of the immediately preceding sentence, a Person is not required to have a senior

2 unsecured debt rating (or issuer rating if such Person has no senior unsecured debt rating) from
3 all of Standard & Poor's Rating Group, Moody's Investor Services, Inc. and Fitch Ratings, but
4 must have a senior unsecured debt rating (or issuer rating if such Person has no senior unsecured
5 debt rating) from at least one of Standard & Poor's Rating Group, Moody's Investor Services,
6 Inc. and Fitch Ratings.

7 1.1.45 "Event of Default" – means an event described in Section 17.1 for Seller
8 and in Section 17.2 for Buyer.

9 1.1.46 "Excess Change of Law Costs" - has the meaning assigned in Section
10 18.1.6.

11 1.1.47 "Extended Force Majeure Event" - has the meaning assigned in Section
12 16.6.1.

13 1.1.48 "Facility" - means the four (4) CTs at Seller's Dahlberg electric generating
14 plant that shall be designated to meet Seller's power supply obligations pursuant to this
15 Agreement. As of the execution date of this Agreement, such CTs shall be those CTs,
16 specifically identified as CT01, CT03, CT05 and CT07 in the Air Permit. For purposes of this
17 definition of "Facility", one or more other CTs at the Dahlberg electric generating plant may be
18 substituted for the then-current CTs comprising the Facility from time to time, pursuant to
19 Section 5.4. The Dahlberg electric generating plant is comprised of ten (10) GE model EA, dual
20 fuel, simple-cycle CTs specifically identified as CT01 through CT10 in the Air Permit,
21 interconnected to the Transmission System at the Interconnection Point, and all auxiliary
22 equipment and facilities necessary or used for the production, control, delivery or monitoring of
23 electricity produced on the Site, including, but not limited to, the [REDACTED]

[REDACTED] gallon Fuel Oil storage tank, Fuel Oil unloading equipment, Natural Gas,

Fuel Oil and Electricity metering equipment, the Natural Gas pipeline lateral, and Facility generation step-up electrical substation and power transformers. All equipment and facilities installed on Seller's side of the Interconnection Point and the Primary Gas Delivery Point at the Site, other than the six (6) CT's not designated to serve Buyer and any equipment that solely supports such six (6) CT's, shall be considered to be part of the Facility.

1.1.49 "FASB" – means the Financial Accounting Standards Board.

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

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

1.1.52 "Force Majeure Event" - means the events or circumstances described in Section 16.1.

1.1.53 "Force Majeure Remedy Plan" - has the meaning assigned in Section 16.6.1.

1.1.54 "Forced Derate" – means a time during which the Unit(s) is not capable of providing the full Unit Designated Capacity for reasons other than a Force Majeure Event.

1.1.55 "Forced Outage" - means a time during which the Unit(s) is not capable of normal operations for reasons other than a Force Majeure Event and which is not a Scheduled Outage or a Maintenance Outage.

1.1.56 "FPSC" - means the Florida Public Service Commission or any Governmental Authority succeeding to the powers and functions thereof.

1.1.57 "Fuel Oil" – means liquid fuel consistent with equipment manufacturer's specifications and Air Permit requirements.

1.1.58 "Gains" - has the meaning assigned in Section 17.3.2.

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

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

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

1.1.62 "Grid Emergency" – means any system stability, power supply or transmission problem, including voltage abnormalities adversely affecting or potentially affecting the Transmission System.

1.1.63 "Guaranteed Heat Rates" - means the guaranteed heat rates set forth in **Appendix J**.

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

1.1.65 "IM Fee" - has the meaning assigned in Section 4.6.

1.1.66 "IM Fee Invoice" - has the meaning assigned in Section 4.6.

1.1.67 "Imbalance Charges" - has the meaning assigned in Section 12.2.4.

1.1.68 "Indemnified Party" - has the meaning assigned in Section 15.1.

1.1.69 "Indemnifying Party" - has the meaning assigned in Section 15.1.

1.1.70 "Interconnection Agreement" - means that certain Interconnection Agreement entered into by and between Seller and Georgia Power Company, dated as of July 31, 2001, pursuant to Section 9.1, that provides for the construction and operation of the Interconnection Facilities and governs the interconnection and parallel operation of the Facility with the Transmission System.

1.1.71 "Interconnection Facilities" - means those facilities described in the Interconnection Agreement as facilities that must be installed or modified in order to enable the Facility to deliver energy from the Facility to the Transmission System.

1.1.72 "Interconnection Point" - means the point of connection between Georgia Power Company's and the Facility's electrical facilities at the Center Primary 230 kV substation located in Jackson County, Georgia, as described in more detail in **Appendix B** to the Interconnection Agreement.

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

1.1.74 "kV" - means kilovolt(s).

1.1.75 "kW" - means kilowatt(s).

1.1.76 "Legal Requirement" - means any law, code, statute, regulation, rule, ordinance, judgment, injunction, order, permit or other requirement of a Governmental Authority

having jurisdiction over the matter in question that is valid and applicable to the matter in question at the time of the execution of this Agreement or any time thereafter during the Term.

1.1.77 "Letter of Credit" - means a standby letter of credit, substantially in the form attached hereto as **Appendix G** and which (i) is issued by a U.S. commercial bank or a foreign bank with a U.S. branch with total assets of at least \$10 billion having a general long-term senior unsecured debt rating of A minus or higher (as rated by Standard & Poor's Rating Group) or A3 or higher (as rated by Moody's Investor Services, Inc.); and (ii) permits presentation at a bank located in Atlanta, Georgia.

1.1.78 "Losses" - has the meaning assigned in Section 17.3.2.

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

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

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

1.1.82 "Material Adverse Change" - means, as to Buyer, that Buyer or, if Buyer is providing Eligible Collateral in the form of a Buyer Guaranty, the Buyer Guarantor, experiences any of the events described in clauses (a) or (b), and as to Seller, if Seller is providing Eligible Collateral in the form of a Seller Guaranty, that Seller Guarantor experiences any of the events described in clauses (a) or (b): (a) such Person is no longer Creditworthy; or (b)

the maturity of any indebtedness of such Person which in the aggregate exceeds one hundred fifty million dollars (\$150,000,000.00) or five percent (5%) of equity, whichever is less is accelerated by the holder or holders thereof as a result of a default thereunder.

1.1.83 "Metering System" - means all meters, metering devices and related instruments used to measure and record electric energy and to determine the amount of such electric energy that is being made available or delivered to Buyer at the Interconnection Point.

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

1.1.85 "Monthly Availability Adjustment" - has the meaning assigned in **Appendix A**, Section D.

1.1.86 "Monthly Availability Percentage" or "MAP" - has the meaning assigned in **Appendix A**, Section D.

1.1.87 "Monthly Capacity Payment" - means the amount to be paid by Buyer to Seller for Buyer's purchase of the Designated Capacity for a particular Month, as provided in Section 5.2 and **Appendix A**.

1.1.88 "Monthly Energy Payment" - means the amount to be paid by Buyer to Seller for Buyer's purchase of energy and Ancillary Services for a particular Month, as provided in Section 5.3 and **Appendix B**, Section A.

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

1.1.90 "Monthly Invoice" - has the meaning assigned in Section 6.1.1.

1.1.91 "Monthly Startup Charge" or "MSC" - has the meaning assigned in **Appendix B**, Section C.

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

1.1.93 “MW” - means megawatt(s).

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

1.1.95 “MWh Delivered” - has the meaning assigned in **Appendix A**, Section C.

1.1.96 “MWh Scheduled” - has the meaning assigned in **Appendix A**, Section C.

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

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

1.1.99 “Net Worth” - means the dollar value calculated by subtracting liabilities from total assets (excluding goodwill and other intangible assets described in Financial Accounting Standards Board Statement 142) as such terms are determined in accordance with generally accepted accounting principles.

1.1.100 “Nominal Capability” - means 73 MW per Unit for a total of 292 MW for the Facility.

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

1.1.102 “Noticed Party” - has the meaning assigned in Section 20.1.

1.1.103 “NO_x Allowances” - has the meaning assigned in Section 18.2.

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

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

1.1.106 "Operating Representatives" - means those individuals appointed by each of the Parties to the Operating Committee pursuant to Section 11.7.

1.1.107 "Operator Requested Schedule" - has the meaning assigned in Section 13.1.5.

1.1.108 "Party" or "Parties" - means either Buyer or Seller, or both, respectively.

1.1.109 "Performance Test" or "Performance Testing" - has the meaning assigned in **Appendix A**, Section A.

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

1.1.111 "Primary Gas Delivery Point" - means the point of interconnection between the Facility and the Transco pipeline serving the Facility.

1.1.112 "Project" - means the design, engineering, construction, testing and commissioning of the Facility and the ownership, operation, management and maintenance of the Facility, all of which being reasonably expected to enable Seller to fulfill its obligations under this Agreement.

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

but rather to be acceptable practices, methods and acts generally accepted in the United States, having due regard for, among other things, manufacturers' warranties, and applicable Legal Requirements.

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

1.1.115 "Required Commercial Operation Date" or "RCOD" - means June 1, 2009.

1.1.116 "Rules" - has the meaning assigned in Section 20.2.2.2.1.

1.1.117 "Schedule", "Scheduling" and "Scheduling Instructions" - mean instructions issued by Buyer from the Scheduling Center to Seller with respect to the scheduling of the production of electricity by the Facility or other resources in accordance with Article 13 and **Appendix C**.

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

1.1.119 "Scheduling Center" - means the scheduling center designated by Buyer from time to time in writing as being the primary control point for Scheduling Instructions and other notifications provided pursuant to Article 13 and **Appendix C**, Section II. There may only be one Scheduling Center designated at any one time.

1.1.120 "Seasonal Availability Adjustment" - has the meaning assigned in **Appendix A**, Section C.

1.1.121 "Seasonal Availability Percentage" or "SAP" - has the meaning assigned in **Appendix A**, Section C.

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

1.1.123 “Seller Guarantor” - means a Person that, at the time of execution and delivery of its Seller Guaranty, is a direct or indirect owner of Seller and (a) is Creditworthy with a consolidated Net Worth of at least five hundred million dollars (\$500,000,000.00); or (b) is reasonably acceptable to Buyer as having a verifiable creditworthiness and Net Worth sufficient to secure Seller Guarantor’s obligations under its Seller Guaranty.

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

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

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

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

1.1.128 “Site” - means the land in Jackson County, in the State of Georgia, on which the Facility is located, as specified in **Appendix F**.

1.1.129 “Southern Control Area” - means the electric system of the Southern Companies that has been recognized by NERC and SERC as a control area.

1.1.130 “Southern OATT” - means The Southern Company’s Open Access Transmission Tariff and any successor in function thereto.

1.1.131 “Station Service” - means energy produced by the Facility that is used to serve the electrical requirements of the Facility, and includes step-up transformer losses and line losses between the Facility and the Interconnection Point.

1.1.132 “System Emergency” – means that the Scheduling Center has determined pursuant to its prevailing practices that conditions are expected to occur or have occurred that could jeopardize the ability to meet projected loads in the Southern Control Area.

1.1.133 “Taxes” - means all taxes, fees, levies, licenses or charges imposed by any Governmental Authority, together with any interest and penalties thereon.

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

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

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

1.1.137 “Tested Reliable Capacity” - has the meaning assigned in **Appendix A**, Section A.2.

1.1.138 “Threshold Amount” - has the meaning assigned in Section 18.1.3.

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

1.1.140 “Unavailability Event” - means any single, continuous period during which the Unit(s) or an Alternate Resource (designated pursuant to Section 5.1.4.2), is Unavailable to serve Buyer’s Schedules.

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

1.1.142 “Unit” or “Units” – means one or more of the four (4) CTs at Seller’s Dahlberg electric generating plant that are designated to meet Seller’s power supply obligations pursuant to this Agreement.

1.1.143 “Unit Hour” – means, for each Unit, an hour in which such Unit is Scheduled by Buyer pursuant to Section 17.1.8. For example, in one hour where Buyer Schedules three (3) Units, three (3) Unit Hours shall accumulate.

1.1.144 “Variable Interest Entity” or “VIE” - shall have the meaning as set forth in the Financial Accounting Standards Board (“FASB”) Interpretation No. 46 (Revised December 2003) as issued and amended from time to time by FASB.

ARTICLE 2

TERM OF AGREEMENT

2.1 Term. This Agreement shall become effective when executed by both Buyer and Seller and, subject to termination as provided in this Article 2 and in other sections of this Agreement, shall remain in full force and effect through May 31, 2014.

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

2.3 Conditions Subsequent.

2.3.1 If FERC acceptance of this Agreement is required by Legal
Requirements, and if (a) FERC issues a valid order rejecting this Agreement, or (b) FERC takes
action which has the effect of delaying the date when FERC will issue an order accepting this
Agreement [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] then in the case of (a)
or (b) the Parties shall meet within ten (10) Business Days of such order or action to negotiate
amendments to this Agreement, an extension of time for FERC to accept the Agreement beyond
[REDACTED] or other appropriate measures, so
that this Agreement is legal and fully enforceable without materially increasing the risks for
either Party or adversely affecting the value of the economic bargain to either Party contemplated
by this Agreement in its original form. If the Parties are unable to negotiate any acceptable
amendment, or other appropriate measures, then either Party may terminate this Agreement upon
written notice to the other Party, provided that such notice is delivered to the non-terminating
Party no later than thirty (30) Days after [REDACTED]

[REDACTED] In no event shall this termination right be available to the Parties, and the Parties shall
be deemed to have waived such termination right, absent receipt of such notice by the non-
terminating Party prior to the expiration of such thirty (30) Day period. Notwithstanding the

1 foregoing, if, prior to [REDACTED], FERC
2 issues a valid order accepting this Agreement subject to material modifications or conditions,
3 including acceptance subject to refund following an administrative proceeding, then the
4 adversely affected Party or Parties shall have the right to terminate this Agreement if such
5 material modifications or conditions are not acceptable to such Party or Parties. Within fifteen
6 (15) Days of the issuance of a FERC order, Seller shall provide Buyer with a copy of the FERC
7 order along with written notice of whether the FERC order is subject to material modifications or
8 conditions that adversely affect Seller and, if so, whether such material modifications or
9 conditions are acceptable to Seller. If Seller fails to provide such written notice within such
10 fifteen (15) Day period, then any FERC order accepting this Agreement subject to material
11 modifications or conditions shall be deemed to be acceptable to Seller. Within fifteen (15) Days
12 of receipt of a copy of the FERC order from Seller, Buyer shall provide Seller with written notice
13 of whether the FERC order is subject to material modifications or conditions that adversely
14 affect Buyer and, if so, whether such material modifications or conditions are acceptable to
15 Buyer. If Buyer fails to provide such notice within such fifteen (15) Day period, then any FERC
16 order accepting this Agreement subject to material modifications or conditions shall be deemed
17 to be acceptable to Buyer. If either Party provides written notice that such material
18 modifications are not acceptable, then the Parties shall meet within ten (10) Business Days of
19 such notice to negotiate amendments to this Agreement, or other appropriate measures, so that
20 this Agreement is legal and fully enforceable without materially increasing the risks for either
21 Party or adversely affecting the value of the economic bargain to either Party contemplated by
22 this Agreement in its original form. If the Parties are unable to negotiate any acceptable
23 amendments, or other appropriate measures, then the Party who delivers the notice shall have the

right to terminate this Agreement upon written notice to the other Party provided that such written notice is delivered no later than thirty (30) Days after the two hundred and seventy (270) Days from the FPSC Approval. Upon a termination pursuant to this Section 2.3.1, neither Party shall have any liability to the other Party hereunder.

2.3.2 If after two hundred forty (240) Days from the filing date by Buyer of the petition with the FPSC for approval of this Agreement, the FPSC has not approved this Agreement through the issuance of an order, with or without qualifications or conditions, then Buyer may terminate this Agreement upon written notice to Seller, provided that such notice is delivered to Seller no later than thirty (30) Days after the 240 days from the FPSC filing date. If Buyer fails to exercise the aforementioned termination right within such thirty (30) Day period, then Buyer shall be deemed to have waived such termination right. Notwithstanding the foregoing, if at any time the FPSC issues an order with respect to this Agreement that is subject to material qualifications or conditions that adversely affect Buyer, Buyer shall have a unilateral right to terminate this Agreement if such material qualifications or conditions are not acceptable to Buyer. Within fifteen (15) Days of the issuance of the FPSC order, Buyer shall provide Seller with written notice of whether the FPSC order is subject to material qualifications or conditions and, if so, whether the material qualifications or conditions are acceptable to Buyer. If Buyer fails to provide such notice within such fifteen (15) Day period, the form of the FPSC order will be deemed to be acceptable to Buyer. Upon a termination pursuant to this Section 2.3.2, neither Party shall have any liability to the other Party hereunder.

ARTICLE 3

REPRESENTATIONS, WARRANTIES AND COVENANTS

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

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

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

3.1.3 The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby and the fulfillment of and compliance with the provisions hereof, do not and will not conflict with any of the terms, conditions or provisions of any Legal Requirements applicable to Seller, of any partnership agreement, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which it or any of its property is bound, or result in a breach of or a default under any of the foregoing.

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

1 3.1.5 There is no pending or, to the knowledge of Seller, threatened action or
2 proceeding affecting Seller before any Governmental Authority that purports to materially
3 adversely affect the legality, validity or enforceability of this Agreement or that reasonably could
4 be expected to have a material adverse effect on Seller's ability to perform its obligations under
5 this Agreement.

6 3.1.6 There are no bankruptcy proceedings pending or being contemplated by
7 Seller or, to Seller's knowledge, threatened against Seller.

8 3.1.7 Seller is not debarred, suspended or proposed for debarment as a
9 contractor or subcontractor to any department, agency or other division of the United States
10 Government.

11 3.1.8 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]

6 3.2 Representations and Warranties of Buyer. Buyer hereby makes the following
7 representations and warranties to Seller as of the date of this Agreement:

8 3.2.1 Buyer is a corporation, duly organized, validly existing and in good
9 standing under the laws of the State of Florida, that is qualified to do business in the State of
10 Florida and has the legal power and authority to own its properties, to carry on its business as
11 now being conducted and to enter into this Agreement and carry out the transactions
12 contemplated hereby and perform and fulfill all covenants and obligations on its part to be
13 performed under and pursuant to this Agreement.

14 3.2.2 The execution, delivery and performance by Buyer of this Agreement
15 have been duly authorized by all necessary corporate action, and do not and will not require any
16 consent or approval of Buyer's Board of Directors or shareholders other than that which has
17 already been obtained.

18 3.2.3 Subject to Section 2.3, the execution and delivery of this Agreement, the
19 consummation of the transactions contemplated hereby and the fulfillment of and compliance
20 with the provisions of this Agreement do not and will not conflict with any of the terms,
21 conditions or provisions of any Legal Requirements applicable to Buyer, or of any partnership
22 agreement, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other

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

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

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

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

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

3.3.1 No modifications to, or expansion of, the Facility that would have a material adverse effect on Buyer's rights or obligations under this Agreement will occur without the prior written consent of Buyer.

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

3.3.3 Buyer will not be required by any Legal Requirement or any accounting standard, including but not limited to those implemented or administered by the Financial Accounting Standards Board, to consolidate Seller or any of its Affiliates or permitted assigns as a VIE in Buyer's or any of its Affiliates' financial statements.

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

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

ARTICLE 4

REGULATORY APPROVALS; COMPLIANCE WITH LAWS, RULES AND REGULATIONS; TAXES; IM FEE AND OTHER COSTS

4.1 FPSC. Buyer shall use its reasonable efforts to obtain FPSC approval of this Agreement, and in furtherance thereof, to target a filing for approval as soon as reasonably practicable after execution of this Agreement, and to diligently pursue such FPSC approval. Seller agrees to assist and support Buyer, in a timely manner and to the extent reasonably requested by Buyer, in obtaining FPSC approval.

4.2 Preservation of Terms

4.2.1 Each Party agrees that, subject to Section 4.1 and 4.3, except with the prior written consent of the other Party, it will not, and will use reasonable efforts to assure that its Affiliates will not, institute or voluntarily cooperate in the institution or conduct of any claim,

action or proceeding before FERC under Section 205, Section 206 or any other portion of the Federal Power Act, or any other Governmental Authority under any provision of federal law or state or local law or any other Legal Requirement which claim, action or proceeding is intended for the purpose of, or could reasonably be expected to have the effect of, changing the terms of this Agreement then in effect. Without limiting the foregoing, but subject to the terms of this Agreement, the Parties agree that the rates for service specified herein shall remain in effect for the Term and shall not be subject to change through application to FERC pursuant to the provisions of Section 205 or 206 of the Federal Power Act, or to any other Governmental Authority under any provision of federal law or state or local law or any other Legal Requirement, absent written agreement of the Parties.

4.2.2 The Parties waive all rights to submit filings to FERC seeking modifications or rescission of this Agreement, under Sections 205 or 206 of the Federal Power Act, on the basis of the “just and reasonable” standard of review contained in those sections. The Parties waive all rights to argue before FERC that the “just and reasonable” standard of review should be applied to any proceeding involving this Agreement brought under Section 206 of the Federal Power Act. In any proceeding before FERC involving this Agreement, the Parties shall request that FERC review any and all aspects of this Agreement under the “public interest” standard of review in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956).

4.3 Other Approvals. Each Party shall diligently pursue or cause to be pursued any and all other Consents required to be possessed by such Party, in a manner that is reasonably expected to enable such Party to perform its obligations under this Agreement. Each Party

agrees to assist and support the other Party, in a timely manner and to the extent reasonably requested by the other Party, in obtaining such Consents.

4.4 Federal Acquisition Regulations Compliance. Buyer and its Affiliates are government contractors under Areawide Public Utilities Contracts with the General Services Administration of the United States Government, and as such, are required to conduct business with entities in compliance with the regulations contained herein. Seller agrees that its performance and the performance of its contractors, subcontractors, vendors and suppliers under this Agreement shall comply with the following Federal Acquisition Regulations which shall be incorporated herein by reference as if set forth herein in full text if the amount of the Agreement and the circumstances surrounding its performance require Buyer to include such regulations in this Agreement:

- (1) 52.203-6 Restrictions on Subcontractor Sales to the Government (JUL 1985);
- (2) 52.203-7 Anti-Kickback Procedures (OCT 1988);
- (3) 52.219-8 Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns (MAY 2004);
- (4) 52.219-9 Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (JUL 2005);
- (5) 52.222-26 Equal Opportunity (APR 2002); and,
- (6) 52.223-14 Toxic Chemical Release Reporting (AUG 2003).

Buyer will provide the full text of any of the above clauses upon written request from Seller.

4.5 Taxes.

4.5.1 Subject to Section 18.1, Seller shall pay, or cause to be paid, all Taxes on or with respect to: (i) the Facility, including its development, permitting, design, engineering, procurement, construction, testing, startup, ownership, leasing, financing, operation, and

maintenance; (ii) the production and delivery of energy and Ancillary Services to be provided to Buyer arising, in the case of energy, prior to the time of Seller's delivery of such energy to Buyer at the Interconnection Point, or, in the case of Ancillary Services, prior to the time such Ancillary Services are made available to Buyer; (iii) Seller's use and conversion of Natural Gas after delivery by Buyer and receipt by Seller of such Natural Gas at the Primary Gas Delivery Point, and (iv) Seller's use and conversion of Fuel Oil.

4.5.2 Buyer shall pay or cause to be paid all Taxes on or with respect to: (i) energy received by Buyer arising at and after the time such energy is delivered by Seller to the Interconnection Point, (ii) Ancillary Services received by Buyer arising at and after the time such Ancillary Services are made available to Buyer, (iii) Natural Gas received and possessed by Buyer at and prior to the time of delivery of such Natural Gas by Buyer to Seller at the Primary Gas Delivery Point, (iv) property taxes on Fuel Oil stored for Buyer at the Facility, and (v) the procurement of Fuel Oil by Seller on behalf of Buyer, which Taxes shall include such sales, use, excise or other similar Taxes on the sale to Buyer and purchase from Seller of capacity, energy, and Ancillary Services pursuant to this Agreement. For the avoidance of doubt, and notwithstanding anything to the contrary in this Agreement, Buyer shall be responsible for all Taxes arising out of the transfer and delivery by Buyer and receipt by Seller of Natural Gas at the Primary Gas Delivery Point and the procurement of Fuel Oil by Seller on behalf of Buyer, including the Taxes listed or described in Ga. Code Ann. §§48-8-6(b), 48-8-30, 48-8-82, 48-8-100, 48-8-110.1, 48-8-201, and in Article VIII, Section VI, Paragraph IV of the Georgia Constitution as such statutes and laws exist as of the date of execution of this Agreement.

4.5.3 Each Party shall use reasonable efforts to implement and administer the provisions of this Agreement in accordance with the intent of the Parties to minimize Taxes so

long as neither Party is materially adversely affected by such efforts.

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

4.6 IM Fee. By the tenth (10th) Day after FPSC approval, or, if such FPSC approval is subject to qualifications or conditions, acceptance by Buyer of such qualifications or conditions as provided in Section 2.3.2, Buyer shall calculate an independent monitor fee ("IM Fee") not to exceed two hundred fifty thousand dollars (\$250,000) and send an invoice to Seller for such amount ("IM Fee Invoice"). The IM Fee Invoice shall be due and payable by Seller in immediately available funds through wire transfer of funds to an account designated by Buyer, or other means acceptable to Buyer, on or before the tenth (10th) Day after Seller's receipt of such invoice. If such tenth (10th) Day is not a Business Day, then payment shall be due on the next succeeding Business Day. Interest on unpaid amounts shall accrue from the date such payments were due at a rate equal to the Interest Rate. Any dispute regarding the IM Fee Invoice shall be resolved through the procedures set forth in Section 6.2.

ARTICLE 5

SALE AND DELIVERY OF CAPACITY AND ENERGY

5.1 Agreement to Sell and Purchase

5.1.1 At all times following the *Delivery Commencement Date*, but subject to the terms of this Agreement, Seller agrees to sell to Buyer the entire electrical capability and all *Ancillary Services of the Facility, net of Station Service*, when Buyer Schedules such electrical capability. Subject to the terms of this Agreement, Buyer agrees to purchase from Seller such electrical output and *Ancillary Services of the Facility*, pursuant to Buyer's Scheduling Instructions and reactive power obligations pursuant to Section 13.1.2, and the *Designated Capacity* associated with the Facility after the *Delivery Commencement Date*.

5.1.2 Reserved.

5.1.3 Except as otherwise provided in Section 5.1.4 with respect to delivery of capacity and energy at *Alternate Delivery Points*, Seller shall deliver capacity and energy from the Facility to Buyer at the *Interconnection Point*. The risk of loss of energy shall pass from Seller to Buyer at such point of delivery. The Facility shall be within the Southern Control Area, and Buyer shall be responsible for providing generator balancing services with respect to the Southern Control Area necessary for the receipt of energy pursuant to Buyer's Schedules and for any costs thereof.

5.1.4 Unavailability.

5.1.4.1 Following the *Commercial Operation Date*, in the event that the Unit(s) is Unavailable, beginning with the first hour of the *Unavailability Event* and ending on the earlier of the date when the *Unavailability Event* terminates or the second Sunday of the *Unavailability Event*, in lieu of having such Unavailable hours included in the *Seasonal Availability Percentage* and *Monthly Availability Percentage* calculations pursuant to **Appendix A**, Sections C and D, Seller shall have the option to elect the following financial settlement procedure: For each hour of such *Unavailability Event* during which Buyer Schedules energy,

Seller shall pay alternate liquidated damages based on the formulas included in **Appendices B and K**, attached hereto and incorporated herein by reference, as a reasonable and approximate measure of Buyer's actual damages for Seller's failure to meet Buyer's Schedules. In the event that Seller makes such foregoing election, then, for each hour of Unavailability that is subject to such alternate liquidated damages, "MWh Delivered" shall equal "MWh Scheduled" for purposes of the Monthly Availability Percentage and the Seasonal Availability Percentage calculations. In order to exercise the foregoing election, Seller must provide Buyer with advance telephonic notice (to be promptly followed by written confirmation) by 10:00 a.m. CPT of the second Day of the Unavailability Event. All hours of Unavailability before Seller notifies Buyer of its election will be subject to the Seasonal Availability Adjustment calculation and are not eligible for financial settlement. Once Seller has made the foregoing election, Seller shall have the further option to elect to substitute physical Alternate Delivery from an Alternate Resource at an Alternate Delivery Point (all in accordance with the further provisions of Sections 5.1.4.2 and 5.1.4.3) for the entire remaining portion of the Unavailability Event, provided that such further election may only be made upon advance telephonic notice to Buyer given prior to 3:00 p.m. CPT of the Day that is two Business Days prior to the date when such Alternate Delivery will begin, which notice must be promptly followed by written confirmation. By the exercise of this Alternate Delivery election, Seller's rights to the financial settlement procedure will terminate beginning on the date that such Alternate Delivery is Scheduled to begin pursuant to Seller's notice, and Seller shall not be entitled to reinstate such financial settlement procedure for the duration of the Unavailability Event. The Parties shall establish such additional procedures in the Operating Procedures as may be necessary to more fully implement the financial settlement described in this Section 5.1.4.1.

5.1.4.2 Following the Commercial Operation Date, in the event that the Unit(s) is Unavailable, beginning with the second Monday of such Unavailability Event or such earlier date as permitted pursuant to Section 5.1.4.1, Seller may elect to provide physical Alternate Delivery from an Alternate Resource at an Alternate Delivery Point for the duration of the Unavailability Event in order to meet Buyer's Schedules (subject to the other provisions of this Agreement). If Seller elects to provide energy from an Alternate Resource, it shall, to the extent that the designated Alternate Resource(s) is Available, and subject to Section 5.1.4.3, provide Buyer with a uniform quantity of energy in each hour that Buyer Schedules at least that quantity of energy. Such Alternate Delivery Point shall be the point of interconnection between the Alternate Resource and the Transmission System or the point(s) of interface between the transmission system to which the Alternate Resource is interconnected and the Transmission System. Delivery of energy from an Alternate Resource shall be MWh Delivered for purposes of the Monthly Availability Percentage and the Seasonal Availability Percentage calculations. At Buyer's discretion, Buyer shall be entitled to deduct from any Monthly Capacity Payment or Monthly Energy Payment, as the case may be, the amount of the incremental additional costs incurred by Buyer due to system losses as a result of Seller's delivery of Scheduled energy from an Alternate Resource, as compared to the losses that Buyer would have incurred if such Scheduled energy were delivered from the Unit(s). Buyer shall determine the amount of incremental additional energy losses in a manner consistent with the methodology utilized by Buyer in applying loss penalties in its system dispatch. In the event the incremental additional losses are determined to be less than two percent (2%) of the Scheduled energy in any Day for which such losses are calculated, there shall be no deduction for losses. The incremental additional cost of such amount of energy losses shall be determined in a manner consistent with

the financial settlement procedures of Section 5.1.4.1 and Appendix K. The Operating Representatives shall further develop Operating Procedures to calculate and bill Seller for such losses consistent with the provisions of this Section 5.1.4.2.

5.1.4.3 In order to exercise its right to deliver energy from an Alternate Resource as provided in Section 5.1.4.2, by 3:00 p.m. CPT of the Thursday before the second Monday following the start of the Unavailability Event, or such earlier time as permitted pursuant to Section 5.1.4.1, Seller must provide Buyer with advance telephonic notice (to be promptly followed by written confirmation), as more fully provided in the Operating Procedures, which notice shall specify the Alternate Resource to be used. Seller may change the Alternate Resource from week to week, in accordance with procedures to be established in the Operating Procedures, provided that Seller provides Buyer with advance telephonic notice (to be promptly followed by written confirmation) no later than 3:00 p.m. CPT on the Thursday before the change in Alternate Resource is to occur, which notice shall specify the Alternate Resource that Seller intends to utilize. From week to week, after such Alternate Resource notice has been made, Buyer shall provide Seller with a good faith estimate of the projected Schedule for the following week. Should an Alternate Resource designated by Seller become Unavailable during the week for which it is designated, then Seller shall not be permitted to designate another Alternate Resource for the duration of that week, but Seller may designate a different Alternate Resource for delivery of energy for the following week provided Seller gives Buyer advance telephonic notice (to be promptly followed by written confirmation) no later than 3:00 p.m. CPT on the Thursday before the change in Alternate Resource is to occur, which notice shall specify the Alternate Resource that Seller intends to utilize. Seller shall not be permitted to change an Alternate Resource designation except as provided above in this Section 5.1.4.3. For the

avoidance of doubt, any failure to deliver energy pursuant to Buyer's Schedules from a designated Alternate Resource shall reduce the calculated Availability performance pursuant to **Appendix A**, Sections C and D.

5.1.5 Notwithstanding the designation by Seller of the Unit and Facility Designated Capacity pursuant to Appendix A, Buyer shall be entitled to Schedule and receive the entire energy output that the Unit(s) is capable of producing when operated, subject to the last paragraph of Appendix A, Section A.3 and the Technical Limits and Scheduling procedures set forth in Appendix C; provided, however, that Buyer shall not be entitled to, and Seller may dispose of at its discretion, any percentage energy output capability of the Facility in excess of the percentage energy output capability of the Facility equal to one hundred two and one-half percent (102.5%) multiplied by the Nominal Capability divided by the Facility Tested Reliable Capacity. For the avoidance of doubt, this Section 5.1.5 entitles Buyer to Schedule and receive energy, on an as-available basis, in excess of the Facility Designated Capacity.

5.1.6 Seller may sell any energy of the Facility not Scheduled by Buyer to any Person; provided, however, that Seller shall make such energy available to Buyer in accordance with Buyer's Scheduling Instructions.

5.2 Calculation of Monthly Capacity Payments. Subject to the terms of this Agreement, Buyer shall pay Seller a Monthly Capacity Payment (and separate fixed operation and maintenance charge, if any) calculated in accordance with **Appendix A**, Section B. Except as otherwise expressly provided in this Agreement, such as in Section 5.3 and **Appendix B**, Buyer shall have no responsibility for any other payments (including reimbursement for any Taxes or any other costs) to Seller under this Agreement for capacity, energy or Ancillary Services.

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

5.4 Substitution of CT's at the Facility.

5.4.1 As a means of enhancing reliability of supply to Buyer, on or before each March 1 of the Term, Seller may provide notice to Buyer that it desires, commencing with the beginning of the next Annual Period, to replace one or more Units then comprising the Facility (including CTs that had been previously substituted under this Section 5.4) (each a "Current CT") with one or more other CTs at the Dahlberg electric generating plant (each a "Substitute CT"); provided, however, Seller shall only be entitled to provide such notice to replace a Current CT with a Substitute CT if: (i) such Substitute CT had a forced outage rate during the 365 Day period prior to such notice that was less than the forced outage rate during the same period for such Current CT; (ii) Seller reasonably anticipates that the generating capability of such Substitute CT would be greater than or equal to the generating capability of such Current CT during the next Annual Period; or (iii) Seller reasonably anticipates that the availability of such Substitute CT during the next Annual Period will be greater than the availability of such Current CT (e.g., due to anticipated maintenance outages or forced outages) (such conditions in the foregoing (i) through (iii) are hereafter referred to as the "Substitution Conditions"). Any such notice provided by Seller shall contain reasonable support demonstrating the applicability of at least one of the Substitution Conditions.

5.4.2 If Seller provides notice of a desire to designate a Substitute CT or CTs pursuant to Section 5.4.1, Seller shall, at Seller's expense, complete a Performance Test prior to April 1 on the proposed Substitute CT or CTs consistent with the procedures of **Appendix D**.

Buyer, in its sole discretion, shall be entitled to reject Seller's proposed substitution of a CT by providing notice to Seller within fifteen (15) Days after receiving the results of such Performance Test(s), but only if: (a) Seller has failed to reasonably demonstrate the existence of at least one of the Substitution Conditions with respect to such substitution; or (b) the generating capability of the Substitute CT is greater than the higher of (1) the Designated Capacity currently attributable to the Current CT, or (2) the lower end of the then-current Contracted Capacity range divided by four; provided, however, if Buyer rejects pursuant to the foregoing (b) and Seller agrees within fifteen (15) Days after receiving such rejection to exclude the Excess Capability (as it may exist at the Substitute CT from time to time) from the Facility Designated Capacity for the applicable Annual Period, Buyer shall withdraw its rejection of the Substitute CT on such grounds. As used in Article 5, the term "Excess Capability" shall mean the generating capability of the Substitute CT (as it exists from time to time) that exceeds the higher of (1) the Designated Capacity attributable to the Current CT at the time of notice under Section 5.4.1, or (2) the lower end of the then-current Contracted Capacity range divided by four. Nothing in this Section 5.4.2 shall be construed as permitting the Facility Designated Capacity to exceed the upper limit of the Contracted Capacity range as set forth in Section 1 of Appendix A. For the avoidance of doubt, Seller may substitute a CT or CTs, if permissible under the provisions of this Section 5.4, to avoid a pending Capacity Buydown, which might otherwise occur under the provisions of **Appendix A** absent such substitution.

5.4.3 In the event that Buyer does not reject the proposed substitution of a CT pursuant to Section 5.4.2 (or is required to withdraw such rejection), for purposes of the definition of "Facility" under this Agreement, the applicable Current CT(s) shall be deemed to be

replaced with the applicable Substitute CT(s) effective as of the beginning of the next Annual Period.

5.4.4 In the event that Seller declares a Force Majeure Event with respect to any Current CT under Article 16, for purposes of the definition of "Facility" under this Agreement, Seller shall be entitled to, by notice to Buyer, designate a Substitute CT that shall be substituted for such Current CT beginning at a time to be declared by Seller and continuing until such time that another substitution occurs for such Substitute CT pursuant to this Section 5.4. If Seller provides notice designating a Substitute CT or CTs pursuant to this Section 5.4.4, Seller shall, along with such notice, provide Buyer with information that demonstrates to Buyer's reasonable satisfaction the Substitute CT's(s') generating capability and reliability. Buyer shall have the right to require Seller to conduct a Performance Test, at Seller's expense, promptly after the substitution event. In the event a substitution occurs pursuant to this Section 5.4.4, (i) the capacity of the Substitute CT must be between (A) the upper end of the Contracted Capacity range divided by four, and (B) the lower end of the Contracted Capacity range divided by four; and (ii) the Designated Capacity of the Substitute CT shall be the lesser of the Designated Capacity of the Substitute CT, determined pursuant to the generating capability based upon past performance or a Performance Test, as applicable, and the Designated Capacity of such Current CT.

ARTICLE 6

BILLING AND COLLECTIONS

6.1 Capacity and Energy Billing and Payment.

6.1.1 Subject to the provisions of Section 6.2, by the tenth (10th) Day of each Month (commencing with July, 2009), Seller shall send Buyer an invoice stating the Monthly Capacity Payment, the Monthly Energy Payment, and, if applicable, any Monthly Availability

Adjustment or Seasonal Availability Adjustment for the immediately preceding Month (or cumulative Months of a Season) ("Monthly Invoice"). Such invoice shall also specify any other payments required to be made by either Party pursuant to this Agreement, and with respect to payments to be paid by Seller, such payments shall be netted against payments due to Seller by Buyer.

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

6.2 Billing Disputes and Final Accounting.

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

6.2.2 In the event Buyer questions or contests the correctness of any charge or credit, Buyer shall provide Seller with written notice of such amount and the basis for Buyer's question or contest. Seller shall promptly review the questioned charge or credit and shall notify Buyer of any error in Seller's determination of amounts owed by Buyer and issue an amended

invoice in the amount of any payment that Buyer is required to make in respect of such re-determination. If Buyer disputes in good faith Seller's amended invoice amount, then the matter shall be resolved pursuant to the provisions of Article 20 applicable to billing disputes. To the extent Seller disagrees with Buyer's basis for questioning the original invoice, Seller shall provide a written explanation of its position.

6.2.3 Seller shall have until the end of one (1) year after the date of delivery of energy under this Agreement to correct any invoice for payment due for such energy and associated capacity and deliver a corrected invoice to Buyer. Buyer shall have until the end of one (1) year after its receipt of any invoice to question or contest the correctness of any charge or credit made to Buyer on such invoice. If within such one (1) year period, Buyer has made payment under an invoice and thereafter questions or contests the correctness thereof, Seller shall not be required to refund any payment received from Buyer until such time as it is finally determined that Seller's invoice was in error.

6.3 Interest. If either Party does not make a payment required by this Agreement when due, then interest at the Interest Rate from the date such overdue payment was due until such overdue payment, together with interest, is paid shall be added to the due payment. If either Party makes a payment pursuant to an invoice that is later determined to have been incorrect, then interest at the Interest Rate from the date such overpayment was made, together with interest, shall be added to the overpayment until such overpayment is refunded to such Party. Remittance received by mail, if mail is a means of payment acceptable to a Party owed such payment, will be accepted without interest charges if such payment is postmarked on or before the due date. If the due date of any payment falls on a Day other than a Business Day, the next succeeding Business Day shall be the last Day on which payment can be postmarked without

interest charges being assessed. Notwithstanding this Section 6.3, no interest shall be paid with respect to any Monthly Availability Adjustment or Seasonal Availability Adjustment except to the extent that such Monthly Availability Adjustment or Seasonal Availability Adjustment was not correctly calculated and/or invoiced in accordance with this Agreement.

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

ARTICLE 7

PERFORMANCE SECURITY

7.1 Seller Performance Security. In recognition that as of the date of the execution of this Agreement the Seller has a Net Worth in excess of five hundred million dollars (\$500,000,000) and is Creditworthy with ratings of its senior unsecured debt at least one rating level above minimum investment grade by Standard & Poor's Rating Group, Moody's Investor Services, Inc. and Fitch Ratings, simultaneous with the execution of this Agreement, Seller shall not be required to deliver to Buyer Eligible Collateral as the Seller's Performance Security. In the event that, at any time during the Term, Seller's senior unsecured debt is downgraded by Standard & Poor's Rating Group, Moody's Investor Services, Inc. or Fitch Ratings to minimum investment grade, then within one (1) Business Day Seller shall deliver to Buyer Eligible Collateral in an amount corresponding to fifty percent (50%) of the amount shown in Table 7.1 for the applicable

period. Such Eligible Collateral shall remain in place until the ratings of Seller's senior unsecured debt are at least one rating level above minimum investment grade. In the event that a Material Adverse Change occurs in respect of Seller at any time during the Term, then within one (1) Business Day Seller shall deliver to Buyer Eligible Collateral in an amount such that the Seller's total Eligible Collateral is equal to the amount shown in Table 7.1 for the date on which such Material Adverse Change occurs; provided, however, that in Buyer's sole discretion, based on a review of the overall circumstances of Seller's Material Adverse Change, the Eligible Collateral that Seller is required to provide may be reduced to an amount below that required by this Section 7.1 ("Seller Performance Security"). The Seller Performance Security requirements of this Section 7.1 shall apply until the final settlement of all obligations of the Parties pursuant to Section 7.3.2.

TABLE 7.1¹

Applicable Dates	Eligible Collateral Security (\$/kW)
Agreement execution through July 1, 2007	75
From July 1, 2007 through June 1, 2009	100
From June 1, 2009 through the Term of the Agreement	Annual Period 1-3: 100
	Annual Period 4-5: 65

¹ The values shown in Table 7.1 are expressed in 2006 US dollars. However, beginning with 2007 and continuing each year thereafter during the Term, the values shown in Table 7.1 will be adjusted, effective as of June 1st of each year (except 2007 when the adjustment shall be effective October 1, 2007) based on the change in GDPIPD between the base year (2006) and January 1st of the then-current year during the Term, and such escalation shall be capped at a compound escalation rate of 4.75% per year.

7.2 Buyer Performance Security. In recognition that as of the date of the execution of this Agreement the Buyer has a Net Worth in excess of five hundred million dollars (\$500,000,000) and is Creditworthy with ratings of its senior unsecured debt at least one rating level above minimum investment grade by Standard & Poor's Rating Group, Moody's Investor Services, Inc. and Fitch Ratings, simultaneous with the execution of this Agreement, Buyer shall not be required to deliver to Seller Eligible Collateral as the Buyer's Performance Security. In the event that, at any time during the Term, Buyer's senior unsecured debt is downgraded by Standard & Poor's Rating Group, Moody's Investor Services, Inc. or Fitch Ratings to minimum investment grade, then within one (1) Business Day Buyer shall deliver to Seller Eligible Collateral in an amount corresponding to fifty percent (50%) of the amount shown in Table 7.1 for the applicable period. Such Eligible Collateral shall remain in place until the ratings of Buyer's senior unsecured debt are at least one rating level above minimum investment grade. In the event that a Material Adverse Change occurs in respect of Buyer at any time during the Term, then within one (1) Business Day Buyer shall deliver to Seller Eligible Collateral in an amount such that the Buyer's total Eligible Collateral is equal to the amount shown in Table 7.1 for the date on which such material Adverse Change occurs; provided, however, that in Seller's sole discretion, based on a review of the overall circumstances of Buyer's Material Adverse Change, the Eligible Collateral that Buyer is required to provide may be reduced to an amount below that required by this Section 7.2 ("Buyer Performance Security"). The Buyer Performance Security requirements of this Section 7.2 shall apply until the final settlement of all obligations of the Parties pursuant to Section 7.3.2.

7.3 Replacement Collateral; Substituted Collateral; Release of Collateral.

7.3.1 Replacement Collateral. To the extent that any replacement of Seller

Performance Security or Buyer Performance Security is required to maintain compliance with Section 7.1 or 7.2, the Party responsible for posting any such replacement Eligible Collateral shall deliver same to the beneficiary Party within one (1) Business Day after such replacement is required.

7.3.2 Substituted Collateral; Release of Collateral. Upon any reduction of the amount of the Seller Performance Security or Buyer Performance Security pursuant to Section 7.1 or 7.2, the beneficiary thereof shall upon two (2) Business Days written request by the other Party release any Eligible Collateral that is no longer required. The choice of any Eligible Collateral provided by a Party may be selected from time to time by such Party, and upon receipt of substitute Eligible Collateral, the holder of the Eligible Collateral for which substitution is being made shall promptly release such Eligible Collateral in an amount equal to that which is being substituted. Following any termination of this Agreement, the Parties shall mutually agree to a final settlement of all obligations under this Agreement, which such period shall not exceed six (6) Months from such termination date, and after such settlement, any remaining Eligible Collateral posted by a Party that has not been drawn upon by the other Party pursuant to its rights under this Agreement shall be returned to such Party. Any dispute between the Parties regarding such final settlement shall be resolved according to the applicable procedures set forth in Article 20.

7.4 Draws; Replenishment. A Non-Defaulting Party may draw upon the Eligible Collateral provided by the other Party following the occurrence of an Event of Default by such other Party or pursuant to the other provisions of this Agreement in order to recover any damages to which such Non-Defaulting Party is entitled to under this Agreement. In the event of such a draw on the Eligible Collateral, then, except in the circumstance when the Non-Defaulting Party

establishes an Early Termination Date pursuant to Section 17.3 or this Agreement otherwise terminates, the Defaulting Party shall within two (2) Business Days replenish the Eligible Collateral to the full amount required by Sections 7.1 or 7.2, as applicable.

7.5 Reporting.

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

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

ARTICLE 8

PROJECT IMPLEMENTATION AND CONSTRUCTION

8.1 Design and Construction of the Facility.

8.1.1 The Project shall be completed in accordance with Prudent Industry Practices and all applicable Legal Requirements. Seller shall use all diligent efforts to achieve Commercial Operation on or before the RCOD and to otherwise carry out its obligations under this Agreement. The Project shall be deemed to have achieved "Commercial Operation" upon fulfillment of the following criteria: (i) Seller shall demonstrate that the Facility is capable of producing energy and delivering same to the Transmission System through the Interconnection Point; (ii) the Facility is in compliance with the Interconnection Agreement, and the Facility

shall have demonstrated the reliability of its communication systems with the Scheduling Center; (iii) the Facility has successfully completed the Performance Tests in accordance with Section 10.1 or Buyer shall have determined to its reasonable satisfaction through any combination of testing and examination of Facility data that the Facility is fully capable of successfully completing Performance Tests; (iv) Seller shall have provided Buyer a certificate reasonably acceptable to Buyer, stating that the Facility has been designed, engineered, constructed and tested in accordance with Prudent Industry Practices and is capable of performing in accordance with the terms of this Agreement; and (v) Seller shall have delivered to Buyer a certificate from a responsible officer of Seller certifying that Seller has obtained all Governmental Approvals required under Legal Requirements for the construction, ownership, operation and maintenance of the Facility in accordance with this Agreement.

8.1.2 Reserved.

8.1.3 Buyer shall have the right to reasonably request information regarding the status of the Facility, and Seller shall provide such information (or cause such information to be provided) to Buyer as may be reasonably requested by Buyer. Seller shall coordinate physical inspections of the Facility as may be reasonably requested by Buyer. Buyer shall provide reasonable prior notice to Seller regarding such inspections. All activities of Buyer, its designated employees and agents at the Site shall be subject to the rules and procedures of Seller (including, without limitation, those related to health and safety).

8.2 Reserved .

8.3 Failure to Achieve Commercial Operation by the Required Commercial Operation Date. In the event that Seller fails to achieve Commercial Operation by the RCOD, Seller shall forfeit the Monthly Capacity Payments and pay to Buyer liquidated damages in accordance with

the provisions set forth in Appendix L. For each day that the Seller fails to achieve Commercial Operation following RCOD, the provisions set forth in Appendix L shall be used to calculate liquidated damages. Notwithstanding the preceding sentences, in no event shall the monthly liquidated damages paid by Seller pursuant to the preceding sentences exceed the following liquidated damage amounts and Seller's liability for liquidated damages pursuant to the preceding sentence shall end upon the earlier to occur of the Commercial Operation Date and the termination date of this Agreement:

Month	Amount (\$/kW-month)²
June	4
July	8
August	8
September	4
October – April	1
May	2

Buyer shall notify Seller on a Monthly basis of any liquidated damages calculated in accordance with this Section 8.3 owed by Seller to Buyer for failure to achieve Commercial Operation by the RCOD, with such damages owed by Seller to be netted Monthly against payments due to Seller by Buyer pursuant to Section 6.1.1, if any. Any disputes regarding calculation of such liquidated damages shall be resolved in accordance with the procedures set forth in Section 6.2. Thereafter, and in addition to any liquidated damages owed by Seller to Buyer pursuant to the foregoing provisions of this Section 8.3, if Seller notifies Buyer that the Facility cannot achieve Commercial Operation or if Commercial Operation is not achieved by March 1, 2010, then, unless the Parties otherwise agree, this Agreement shall terminate and Seller shall pay Buyer

² All amounts shown herein as \$/kW shall be calculated based on the Nominal Capability of the Facility.

liquidated damages equal to one hundred dollars per kilowatt (\$100.00/kW)³ and, following such termination and payment of liquidated damages, neither Party shall have any further liability to the other Party pursuant to this Agreement.

ARTICLE 9

INTERCONNECTION AND METERING

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

9.2 Meters.

9.2.1 Seller shall design, locate, construct, install, own, operate and maintain the Metering System in accordance with Prudent Industry Practices in order to measure and record the amount of energy delivered from the Facility, to calculate the Facility capacity, and to measure the availability of the Facility in meeting Schedules to Buyer, all at the Interconnection Point. The meters shall be of a mutually acceptable accuracy range and type. None of Seller, Seller's Affiliates or the employees, subcontractors or contractors of any of them shall make adjustments to the Metering System without the written consent of Buyer. Buyer may, at its own cost, install additional meters or other such facilities, equipment or devices on Buyer's side of

³ All amounts shown herein as \$/kW shall be calculated based on the Nominal Capability of the Facility.

the Interconnection Point as Buyer deems necessary or appropriate to monitor the measurements of the Metering System; provided, however, that in all cases Seller will be entitled to base its invoiced amounts solely by reference to its own Metering System. Buyer shall reasonably establish the telemetering equipment that is necessary to coordinate the Facility with the Scheduling Center and Seller shall, at its sole cost, install or cause the installation of such telemetering equipment. The telemetered data shall be delivered by Seller to the electrical switchyard of the Facility.

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

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

amount of any adjustment, Buyer shall pay Seller any additional amounts then due for deliveries of energy or Designated Capacity during the Adjustment Period or Buyer shall be entitled to a credit against any subsequent payments for energy or Designated Capacity, as the case may be.

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

9.3 Reserved..

9.4 Loss Factor Adjustment. If and to the extent Buyer's meters are not measuring deliveries of energy physically at the Interconnection Point (*i.e.*, the point of delivery), the metered amount of energy may be adjusted for losses to or from the Interconnection Point by a loss factor determined by Buyer, in accordance with Prudent Industry Practices. Seller will be provided with a copy of any study or analysis prepared by Buyer in determining such loss factor.

ARTICLE 10

COMMERCIAL OPERATION AND ANNUAL PERFORMANCE TESTING

10.1 Commercial Operation Test. The Unit and Facility Tested Reliable Capacity shall be established in accordance with **Appendix A** and the Performance Test procedures set forth in **Appendix D**. Seller shall designate the initial Unit and Facility Designated Capacity in accordance with **Appendix A**. Upon completion by Seller of any Performance Test, Seller shall promptly provide to Buyer a complete written report, in accordance with **Appendix D**, of any such Performance Test, certified by a responsible officer of Seller, for Buyer's review and verification.

10.2 Capacity Examination.

10.2.1 Prior to each Annual Period following the Delivery Commencement Date, Seller may re-designate the Unit and Facility Designated Capacity in accordance with **Appendix**

A. Either Seller or Buyer may elect to have a new Performance Test(s) performed as provided in **Appendix A**.

10.2.2 If as a result of any reduction in the Facility Tested Reliable Capacity through a Performance Test(s), the Facility Designated Capacity exceeds the Facility Tested Reliable Capacity, the Facility Designated Capacity shall be reduced to the demonstrated level as provided in **Appendix A**, Section A.3.

10.2.3 Subject to Section 17.1.9 of this Agreement, the payment of liquidated damages pursuant to Table A-1 of **Appendix A**, Section A.3, shall be Buyer's sole and exclusive remedy for a reduction of the Facility Tested Reliable Capacity below the lower end of the Contracted Capacity range.

10.3 Disputes Concerning Capacity Tests. In the event the Parties disagree with respect to the Performance Test results for a Unit(s), the dispute shall be resolved pursuant to the provisions of Article 20 applicable to Performance Test results. If such dispute is not resolved by the first Day of any Annual Period, the Facility Designated Capacity for such Annual Period may not exceed that capacity demonstrated by the most recent undisputed Performance Test for such Unit(s), subject to the outcome of this dispute resolution process. Following the resolution of the dispute, an adjustment shall be made to all Monthly Capacity Payments made with respect to such Annual Period to account for any difference between the new Facility Designated Capacity and the preceding Facility Designated Capacity.

ARTICLE 11

OPERATION AND MAINTENANCE

11.1 Operation and Maintenance.

11.1.1 Seller shall manage, control, operate and maintain all parts of the Facility in a manner consistent with Prudent Industry Practices, taking into account Buyer's right to

Schedule the Facility, and in accordance with applicable planning standards and operating policies of the SERC and NERC and in accordance with the Operating Procedures to be developed by the Operating Committee. Seller shall: (i) be in compliance with all Legal Requirements applicable to the Facility and Seller's obligations under this Agreement, and (ii) diligently seek to obtain, maintain, comply with and, as necessary, renew and modify from time to time, any and all Consents. For the avoidance of doubt, the requirements of this Section 11.1.1 shall not be interpreted to limit Buyer's Scheduling rights as provided for elsewhere in this Agreement.

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

11.1.3 Seller shall employ at the Facility all safety devices and safety practices required by Prudent Industry Practices. Seller shall keep accurate records of any accident or

other occurrence at the Site that results in injury to persons or damage to property. Seller shall provide to Buyer reasonable access to these records upon not less than seven (7) Days notice during normal business hours, but shall not be required to provide access to employment records regarding Facility personnel.

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

11.2 Maintenance Scheduling.

11.2.1 Commencing in the year prior to the year of the RCOD and each year thereafter, Seller shall submit to Buyer, before September 1, maintenance schedules, including the scope of the maintenance, and outage plans for the Facility that conform to Prudent Industry Practices for similar equipment, including in terms of frequency and duration (“Maintenance Schedules”), for the next four (4) Annual Periods or the number of such Annual Periods remaining in the Term, whichever is less. Seller shall not schedule any maintenance of the Facility during the Months of May through September of any Annual Period that would decrease the capacity output of the Facility below the Designated Capacity without the prior written consent of Buyer. Buyer shall have thirty (30) Days to review the proposed Maintenance Schedules and may approve or reject the Maintenance Schedules in whole or in part. The Maintenance Schedules are subject to the approval of Buyer, which approval shall not be unreasonably withheld or delayed; provided, however, any determination by Buyer to disapprove a Hot Gas Path Inspection or Major Inspection in January or February shall not be considered unreasonable. If any portion of the Maintenance Schedules are rejected by Buyer, Seller shall resubmit revised Maintenance Schedules to Buyer within thirty (30) Days of Buyer’s rejection and Buyer and Seller agree to use best efforts to promptly develop Maintenance Schedules that

are mutually acceptable to the Parties considering the burdens that Buyer's changes impose on Seller compared to the burdens avoided by Buyer as a result of such changes. Any dispute concerning this Section 11.2.1 shall be resolved in accordance with the provisions of Article 20 applicable to Maintenance Schedule disputes. The outages scheduled in the final, approved Maintenance Schedule shall be the "Scheduled Outages" for purposes of this Agreement.

11.2.2 In addition to Scheduled Outages, Seller may request an unlimited number of Maintenance Outages during any Annual Period. Seller shall request each Maintenance Outage at least twenty-four (24) hours in advance. Such request shall identify the equipment and Designated Capacity that will not be available for Scheduling and the proposed start time and duration of the Maintenance Outage. Buyer shall respond to Seller's request as soon as reasonably practicable. Seller shall not take a Maintenance Outage without Buyer's prior written or telephonic consent, and such consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that the Parties acknowledge that it shall be reasonable for Buyer to deny any request for a Maintenance Outage if Buyer reasonably believes that it may Schedule the Facility to a level that would require the availability of the equipment that is proposed to be Unavailable during the Maintenance Outage. Buyer shall have the right to revoke its consent to a Maintenance Outage if changed conditions require Scheduling of the Designated Capacity Scheduled to be Unavailable during such Maintenance Outage. If Buyer reasonably requests Seller to return all or part of that portion of the Facility that is affected by the Maintenance Outage to full availability status, Seller shall comply as soon as reasonably practical. Notwithstanding the foregoing provisions of this Section 11.2.2, in the event Seller requests a Maintenance Outage and such request is reasonably denied by Buyer, whether at the time of the request or as a result of a revocation of consent previously given, Seller shall have the option to

substitute one or more CTs at the Dahlberg electric generating plant for the Unit or Units currently comprising the Facility for which such Maintenance Outage has been denied by Buyer. Such substitute designation shall cease upon the cessation of such Maintenance Outage for such Unit or Units.

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

11.3 Permits. Seller shall obtain and maintain, for the period required by Legal Requirements during the Term, all Consents pertaining to air emissions necessary for the performance of Seller's obligations under this Agreement ("Air Permit"), including the operation of the Facility for a minimum of three thousand (3,000) hours per CT per Annual Period throughout the Term. Seller agrees that any operation of the Facility for purposes other than for meeting the obligations to Buyer pursuant to this Agreement shall not limit Buyer's dispatch of the Facility, except as otherwise provided in this Agreement. Upon Seller obtaining any initial Air Permit, or renewal or amendment to an Air Permit, Seller shall promptly provide a copy of such Air Permit to Buyer in accordance with the notice provisions of Section 21.4.

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

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

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

11.5.1 All such records shall be maintained for a minimum of two (2) years after the creation of such record or data and for any additional period of time required by Legal Requirements; provided, however, that such records will be kept for as long as is necessary to complete any audit that began or was announced during such two-year period.

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

11.5.3 Buyer shall have the right from time to time, upon not less than seven (7) Days notice to Seller and during normal business hours, to examine the records and data relating to this Agreement, including all historical test records relating to the Facility, at the Facility or at a location mutually agreed to by the Parties.

11.6 Disclaimer. Seller understands and agrees that Buyer's receipt and/or review of any material related to the Project or any physical inspection of the Facility conducted by Buyer under any provision of this Agreement is solely for its own information. By conducting such reviews or inspections, Buyer makes no endorsement of the design or representation or warranty of the safety, durability or reliability of the Facility, all of which are the sole responsibility of

Seller in accordance with the terms of this Agreement, and Buyer shall not be deemed to have accepted any condition of the Facility that is not in full compliance with the terms hereof. Seller shall in no way represent to any third party that, as a result of Buyer's receipt and review of any material or any inspections, Buyer is in any way responsible for the engineering or construction soundness of the Facility.

11.7 Operating Committee.

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

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

ARTICLE 12
FUEL SUPPLY

12.1 Overview.

12.1.1 At all times following the Delivery Commencement Date during the Term, (i) the Facility shall be capable of utilizing Natural Gas as Scheduled by Buyer in order to produce the energy committed to Buyer under this Agreement and (ii) Seller shall use commercially reasonable efforts to maintain in the Facility's Air Permit the ability to utilize Fuel Oil, and to the extent allowed by such Air Permit, the Facility shall be capable of utilizing Fuel Oil as Scheduled by Buyer in order to produce the energy committed to Buyer under this Agreement. The Buyer shall have the right to Schedule the Facility utilizing Fuel Oil in order to produce the energy committed to Buyer under this Agreement when Natural Gas or Natural Gas transportation capability is not available. In addition, under certain conditions Buyer may have the right to Schedule the Facility utilizing Fuel Oil when Natural Gas and Natural Gas transportation capability are available. The Parties agree to cooperate in the development of Operating Procedures to define such conditions such that Buyer may Schedule operation on Fuel Oil , with due regard for the requirements of the Air Permit. Buyer shall have the responsibility for procuring at its sole cost and making available at the Primary Gas Delivery Point the quantities of Natural Gas at the rates of delivery required to accommodate Buyer's Scheduling Instructions.

12.1.2 In accordance with **Appendix B**, Section D, Buyer shall receive or pay, as the case may be, a Monthly Fuel Adjustment based on the Guaranteed Heat Rate set forth in **Appendix J** for all Natural Gas and Fuel Oil used to generate energy that is delivered to Buyer pursuant to Buyer's Scheduling Instructions from synchronization to Base Operating Mode. Such ramping energy shall be multiplied by the appropriate Guaranteed Heat Rate pursuant to

Appendix J to determine the Daily Guaranteed Fuel quantity during ramping. Seller shall be responsible for the cost of Natural Gas and Fuel Oil for start-up of the Facility prior to synchronization. Prior to the Delivery Commencement Date, Seller shall acquire and pay for any Natural Gas and Fuel Oil used at the Facility. Beginning with the Delivery Commencement Date, subject to Section A.2 of Appendix A, Seller shall be responsible for (and reimburse Buyer with respect to the Natural Gas) the actual cost of any Fuel Oil or Natural Gas commodity and the incremental cost of transportation charges necessary in order to perform any Performance Testing.

12.2 Natural Gas Transportation Capacity.

12.2.1 Except as otherwise provided in this Article 12, Buyer shall bear all of the costs incurred under the gas supply plan. However, in the event Seller fails to achieve Commercial Operation by the Required Commercial Operation Date, Buyer shall take such actions as may be necessary to facilitate Seller's utilization of any gas supply plan and Seller shall assume all obligations and bear all of the costs of such gas supply plan during such period; provided, however, that Buyer shall assume all obligations under the gas supply plan when the Facility achieves the Commercial Operation Date. To the extent Buyer desires to have or use storage capacity in order to better manage the Natural Gas requirements of the Facility, Buyer shall be obligated to obtain such capacity at its expense.

12.2.2 At Seller's expense, Seller shall cause to be acquired, constructed, owned, operated and maintained, all facilities, infrastructures and property interests that are necessary for Seller to receive, measure and use Natural Gas delivered by Buyer at the Primary Gas Delivery Point so as to enable the Facility to produce energy as committed to Buyer under this Agreement,

including without limitation all costs associated with the construction and operation of the gas pipeline lateral(s) necessary to connect the Facility to the gas pipeline(s) of the fuel supplier(s).

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

12.2.4 The Parties shall exercise best efforts to minimize any imbalances or other penalties or charges from transporters of Natural Gas delivered to the Facility ("Imbalance Charges"). If Buyer or Seller receives an invoice from a transporter for Imbalance Charges, the Parties shall determine the cause for such charges. To the extent that the Imbalance Charges were incurred as a result of Buyer's actions or inaction, then Buyer shall pay such Imbalance Charges. To the extent that the Imbalance Charges were incurred as a result of Seller's actions or inaction, then Seller shall pay such Imbalance Charges. Imbalance Charges that are not due to the action or inaction of Buyer or Seller or whose cause cannot be determined shall be shared equally by Buyer and Seller. Any disputes under this Section 12.2.4 shall be resolved in accordance with the provisions of Article 20 applicable to Imbalance Charges disputes.

12.2.5 All Natural Gas delivered to the Facility shall be measured at the Primary Gas Delivery Point (the "Gas Interconnection Meter") on a continuous real time basis, in accordance with Prudent Industry Practices and the transporter's tariff. Natural Gas consumed at a Buyer's Unit during any Day shall be deemed to be equal to the Natural Gas measured by the Gas Interconnection Meter during such Day multiplied by a fraction, the numerator of which

shall be Buyer's Scheduled energy delivered from the Facility and the denominator of which shall be the sum of Buyer's Scheduled energy delivered from the Facility and the energy delivered from the other CTs at the Facility Site as measured by all the meters during such Day, with the result of this calculation rounded to the nearest MMBtu. The Parties may review to determine if the methodology in the preceding sentences appropriately allocates Natural Gas between the Buyer's Units and the other CTs at the Facility Site and may change such methodology from time to time.

12.2.6 Given the complexity associated with fuel consumption and allocating flows through the Primary Gas Delivery Point to the Facility and other CTs at the Facility Site based on unit burn, additional procedures will be developed by the Operating Committee to equitably account for ancillary issues including: allocation of fuel among the CTs, allocation of line pack, flow at the Primary Gas Delivery Point when no CTs are running, and the optimal set-up on Transco for nominating, confirming and managing imbalances.

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

1 12.3 Fuel Oil.

2 12.3.1(a) At Seller's sole cost and expense, Seller shall own, operate and maintain
3 all facilities, infrastructures and property interests necessary for the simultaneous delivery of at
4 least [REDACTED] gallon tractor-trailers containing Fuel Oil and
5 working storage for the sole use by Buyer of [REDACTED]
6 gallons of Fuel Oil in such a manner so as to enable the Facility to produce the energy
7 contemplated under this Agreement.

8 12.3.1(b) Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller,
9 [REDACTED] gallons of the Fuel Oil inventory residing in the Facility's [REDACTED]
10 [REDACTED] gallon Fuel Oil storage tank as of the Delivery
11 Commencement Date. Buyer shall pay Seller for such Fuel Oil inventory within ten (10) days of
12 receiving Seller's invoice therefor, the amount equal to the quantity of such inventory times the
13 average Daily Fuel Oil Replacement Price during the one hundred twenty day (120) period
14 immediately preceding the Delivery Commencement Date. At the end of the Term, Buyer agrees
15 to sell to Seller, and Seller agrees to purchase from Buyer, Buyer's Fuel Oil inventory residing in
16 the Facility's [REDACTED] gallon Fuel Oil storage tank as of
17 the last day of the Term. Seller shall pay Buyer for such inventory within ten (10) days of
18 receiving Buyer's invoice therefor the amount equal to the quantity of such inventory times the
19 average Daily Fuel Oil Replacement Price during the one hundred twenty day (120) period
20 immediately preceding the last day of the Term.

21 12.3.1(c) Seller shall make best efforts to procure Fuel Oil at Buyer's direction.
22 Fuel Oil consumed by the Facility shall be determined by the Fuel Oil flow meters located at
23 each Unit.

12.3.1(d) Seller shall at all times bear the risk of loss of Fuel Oil unless and until Buyer elects to assume Fuel Oil procurement responsibilities pursuant to Section 12.3.1(j), in which event the risk of loss of Fuel Oil shall be borne by Buyer until the risk of loss passes from Buyer to Seller, which shall occur upon Seller's receipt of the Fuel Oil deliveries at the Facility.

12.3.1(e) Seller shall conduct reasonable testing of Fuel Oil for problematic conditions, including but not limited to low stability, water and bacteria, which can occur from having Fuel Oil sit in the tanks for a prolonged period of time, and to the extent reasonably necessary to chemically treat Fuel Oil at Buyer's expense. Buyer shall reimburse Seller for its pro rata inventory share of Seller's actual out-of-pocket costs of such testing and treatment.

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

12.3.1 (g) Seller shall at all times be responsible for the cost of Fuel Oil that it utilizes for performance testing, third-party sales or for start-up and ramping in excess of the cost of the Fuel Oil that would have been burned at the Guaranteed Heat Rate, or for any other purpose. Seller shall not be excused from failing to satisfy Buyer's Schedule requests to operate on Fuel Oil to the extent such failure is due to Seller's use of Fuel Oil for any purpose other than to generate energy specified in Buyer's Schedules, or for testing to be conducted in accordance with Prudent Industry Practices.

1 12.3.1(h) Buyer shall have the ongoing right to direct Seller to maintain during
2 specified time periods a specific level of Fuel Oil inventory at the Facility, not to exceed [REDACTED]
3 [REDACTED] gallons.

4 12.3.1(i) The Parties recognize that the ability to Schedule the Facility using
5 Fuel Oil is limited by a number of factors including (without limitation): (i) the amount of Fuel
6 Oil inventory at the Facility; (ii) the rate at which such inventory is being depleted pursuant to
7 Buyer's Scheduling Instructions; (iii) Seller's maximum hourly replenishment capability of
8 [REDACTED] gallons per hour; (iv) the Air Permit; and (v) the availability of Fuel
9 Oil and transportation for Fuel Oil to the Facility. Through each of their representatives on the
10 Operating Committee, Buyer and Seller agree to cooperate in the development of Operating
11 Procedures establishing parameters applicable to utilization of Fuel Oil by the Facility so as to
12 optimize (without jeopardizing) Buyer's right to Schedule the Facility on Fuel Oil.

13 12.3.1(j) Buyer shall have the right to assume the responsibilities of procuring and
14 supplying the Fuel Oil to the Facility necessary to meet the Buyer's Scheduling at any time
15 during the Term of this Agreement upon reasonable notice to Seller. In the event Buyer elects to
16 assume such responsibilities, the Parties shall mutually agree on revisions to the Operating
17 Procedures to reflect the change in responsibilities.

18 12.3.1(k) Seller will track and report monthly to Buyer the level of Buyer's Fuel
19 Oil inventory, the amount of Fuel Oil delivered that month, and the amount of Fuel Oil
20 consumed that month. The Operating Committee shall develop procedures for the real time
21 reporting of Fuel Oil inventory and other operating protocols, including nomination, scheduling
22 and delivery, inventory accounting, operations reporting and quality control.

ARTICLE 13

ENERGY SCHEDULING AND TRANSMISSION

13.1 Coordination and Scheduling.

13.1.1 Notwithstanding any other provision of this Agreement, Buyer and Seller agree to Schedule the Facility in accordance with the procedures set forth in Section 13.1 and **Appendix C**. Seller is not obligated to deliver energy in response to those portions of Scheduling Instructions that materially deviate from Section 13.1 and **Appendix C**. Buyer is not entitled to Schedule energy, and Seller is not obligated to deliver such energy, to the extent that such energy cannot be delivered due to (a) Buyer's failure to deliver to the Facility a sufficient quantity of fuel to generate such energy at the applicable Guaranteed Heat Rate, or (b) Buyer's inability to receive such energy at the Interconnection Point.

13.1.2 The electrical output committed under this Agreement shall be subject to Scheduling Instructions issued by the Scheduling Center. Seller shall comply with such Scheduling Instructions at the time designated for compliance therewith, subject to the Technical Limits and the Scheduling procedures set forth in **Appendix C**; provided, however, that such Technical Limits shall not be construed to limit the amount of energy that could be Scheduled by Buyer due to ambient conditions that are more adverse than the Reference Conditions (*e.g.*, ambient temperatures greater than ninety-five degrees Fahrenheit (95°F)). At the request of Buyer, Seller shall make reasonable efforts to cause the Facility to control voltage by producing or absorbing reactive power subject to the Technical Limits; provided, however, that such actions do not cause Seller to violate any provisions of its Interconnection Agreement and provided that Buyer shall reimburse Seller for any incremental costs incurred by Seller (including waiving any negative Facility Availability impacts directly attributable to Seller's compliance with such reactive power instructions), in excess of those costs Seller would have

incurred under the Interconnection Agreement, as a result of Seller's compliance with any such requests.

13.1.3 Buyer covenants that determinations to submit Scheduling Instructions to Seller shall be based solely on considerations of the reliability of Buyer's system, economic dispatch order and Buyer's costs associated with economic unit commitment, and not on the availability status of the Facility or any impact that the determination may have on Monthly Capacity Payments.

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

13.1.4.1 If Buyer elects to Schedule energy for delivery on the next Business Day, Buyer shall provide its Schedule for such delivery to Seller no later than 12:00 p.m. CPT on the Business Day prior to the Day of delivery. This Day-ahead Scheduling Instruction will also include any electric deliveries from midnight to midnight for any calendar Days that precede the next Business Day (*i.e.*, weekends and holidays). Buyer shall also provide a non-binding, good faith estimate of its Scheduling Instructions for the twenty-four (24) hour period following the next Business Day. For each hour, Buyer shall submit Scheduling Instructions for each CT at either zero (0) MW or the Base Operating Mode Capability. Buyer will be required to accept and pay for energy during ramp up and ramp down periods at a price as described in **Appendix B**.

13.1.4.2 For Scheduling Instructions submitted after the Day-ahead deadline, Buyer must provide Seller with a proposed revised Schedule at least one (1) hour prior

to the start-up or ramp up of energy delivery. If energy is not already Scheduled, Buyer will be assessed a turbine start event, in accordance with **Appendix B**, Section C. Buyer will be responsible for the actual costs (commensurate with the guaranteed heat rate) of implementing the intra-Day Scheduling Instruction (including any associated imbalance penalties, if any, assessed pursuant to the Southern OATT); provided, however, such costs shall not include any lost opportunity costs for power sales from the Facility.

13.1.4.3 Notwithstanding anything contained in Section 13.1.4.2 to the contrary, in the event that an Unavailability Event has occurred, Buyer shall not have the right to give intra-Day Scheduling Instructions after Seller has provided notice to Buyer that the Unavailability Event has occurred. The most recent Schedule submitted by Buyer shall be deemed the Schedule for the balance of such Day in which the Seller has provided notice that the Unavailability Event has occurred. During an Unavailability Event, Seller shall inform Buyer regularly as to the projected schedule of the Unit(s)' return to service. If the Unit(s) is able to return to service, Seller must notify Buyer by 3:00 p.m. CPT the previous Day to be able to deliver the entire Schedule requested by Buyer from the Unit(s). If the Unit(s) is able to return to service intra-Day, Seller must give a three-hour notification of ability to operate. Buyer then has the right to submit a new Schedule for the balance of that Day. The previous Day's Schedule remains the obligation of Seller until the end of the three-hour notification. If Buyer chooses to Schedule zero (0) MWh for the balance of the Day, there is no obligation for Seller for the remainder of that Day. If Buyer chooses to Schedule the Unit(s) for Base Operating Mode Capability, the new forward Schedule becomes Seller's delivery obligation for the remainder of that Day.

13.1.5 Seller may from time to time request that the Unit(s) be allowed to deliver electric energy output to Buyer in order to test and/or evaluate Facility equipment (“Operator Requested Schedule”). Seller shall request such Operator Requested Schedule from Buyer at least one (1) Business Day in advance, and Buyer shall have the right to approve such Operator Requested Schedule (such approval not to be unreasonably withheld, conditioned or delayed). If, for whatever reason, Buyer determines that it is necessary to Schedule the Unit(s) during an Operator Requested Schedule, then Buyer may cancel or interrupt, as the case may be, the Operator Requested Schedule and subsequently Schedule the Unit(s) as it deems appropriate.

13.2 Effect of Grid Emergencies. The Parties recognize that pursuant to the Interconnection Agreement, Seller may be required to take certain actions during a Grid Emergency and may be required to disconnect the Facility from the Transmission System to allow for repair or maintenance on the Interconnection Facilities or the Transmission System. To the extent that Seller is required pursuant to the Interconnection Agreement to take any action, other than instances where Seller’s acts or omissions are the cause for the required actions, which will adversely affect its ability to meet Buyer’s Schedules, Seller shall be excused from meeting Buyer’s Schedules, and the amount of energy that Seller is unable to deliver to Buyer as a result of such action shall not be treated as MWh Scheduled for purposes of the Monthly Availability Percentage or Seasonal Availability Percentage calculations in **Appendix A**.

ARTICLE 14

INSURANCE

14.1 Insurance Required.

14.1.1 Seller shall acquire and maintain at its sole cost and expense, the types and amounts of insurance coverage as are consistent with Prudent Industry Practices but in no event

less than the types and amounts described in **Appendix E** and this Article 14. All such insurance shall be written by a company or companies with a Best's rating of no less than "A minus."

14.1.2 Buyer shall be designated as an additional insured as its interests may appear on all required policies, and each such policy shall be primary and shall not contribute to any insurance that may otherwise be maintained by, or on behalf of, Buyer.

14.1.3 All insurance required hereunder shall contain provisions waiving the insured's and the insurer's rights of subrogation or recovery of any kind against Buyer, its Affiliates and their respective agents, employees, officers, directors, successors and assigns.

14.1.4 Notwithstanding this Agreement's insurance requirements, Seller may self-insure all or any part of the insurance coverage required by this Agreement, subject to Buyer's prior written consent. All self-insurance coverage shall be treated as if it were an insurance policy.

14.2 Certificates of Insurance. Within ten (10) Days of the execution of this Agreement, Seller will provide Buyer with certificates of insurance evidencing the required coverage set forth above and in **Appendix E**. Such certificates shall provide for a minimum of sixty (60) Days advance notice to Buyer of cancellation or material change in coverage. Seller shall also provide advance copies of, and obtain prior written approval from Buyer for, any policy endorsements that could modify or restrict Buyer's rights as an additional insured or under the contractual liability provisions of the subject policies. Failure by Seller to cause the procurement of the insurance coverage or the delivery of certificates of insurance required by this Article 14 or **Appendix E** shall not relieve Seller of the insurance requirements set forth herein or therein or in any way relieve or limit Seller's obligations and liabilities under any other provision of this Agreement.

ARTICLE 15

INDEMNIFICATION

15.1 Scope of Indemnity. Each Party (the “Indemnifying Party”) expressly agrees to indemnify, hold harmless and defend the other Party and its Affiliates, trustees, agents, officers, directors, employees, members and permitted assigns (“Indemnified Party”) against all claims, liability, fines, costs or expenses (on an After-Tax Basis) imposed by Governmental Authorities or arising from loss, damage or injury to the person or property of third parties in any manner directly or indirectly related to: (a) acts and omissions in connection with the performance, or failure thereof, of obligations or representations and warranties under this Agreement; (b) activities (including prior uses of third parties) on the Indemnifying Party’s respective side of the Interconnection Point and Primary Gas Delivery Point; or (c) any other activities to the extent that they involve the negligence or willful misconduct of the Indemnifying Party, except to the extent such loss, damage or injury is the result of the negligence or willful misconduct of the Indemnified Party.

15.2 Notice of Proceedings. An Indemnified Party which becomes entitled to indemnification under this Agreement shall promptly notify the other Party of any claim or proceeding in respect of which it is to be indemnified. Such notice shall be given as soon as reasonably practicable after the Indemnified Party obligated to give such notice becomes aware of such claim or proceeding. Failure to give such notice shall not excuse an indemnification obligation except to the extent failure to provide notice adversely affects the Indemnifying Party’s interests. The Indemnifying Party shall assume the defense thereof with counsel designated by the Indemnifying Party; provided, however, that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party reasonably concludes that there may be legal defenses available to it that are different from or

additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the expense of the Indemnifying Party. If the Indemnifying Party fails to assume the defense of a claim, the indemnification of which is required under this Agreement, the Indemnified Party may, at the expense of the Indemnifying Party, contest, settle, or pay such claim; provided, however, that settlement or full payment of any such claim may be made only with the Indemnifying Party's consent or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement.

ARTICLE 16

FORCE MAJEURE

16.1 Definition of Force Majeure Event. For the purposes of this Agreement, a "Force Majeure Event" as to a Party means any occurrence, nonoccurrence or set of circumstances that is beyond the reasonable control of such Party and is not caused by such Party's negligence, lack of due diligence, or failure to follow Prudent Industry Practices. The term Force Majeure Event shall not include: (i) the inability to meet a Legal Requirement or the change in a Legal Requirement; (ii) a site-specific strike, walkout, lockout or other labor dispute; (iii) equipment failure, unless, in the case of the Facility only, such equipment failure results directly from an event that would otherwise constitute a Force Majeure Event hereunder; (iv) changes in market conditions that affect the cost or availability of equipment, materials, supplies or services, including the Facility's fuel supply or the cost of power from resources other than the Facility; (v) failures of contractors, suppliers or vendors, unless such failures are caused by an event which would otherwise constitute a Force Majeure Event hereunder, if experienced by a Party; and (vi) climatic temperature and humidity conditions.

16.2 No Breach or Liability. Either Party shall be excused from performance of its obligations hereunder other than payment obligations and shall not be construed to be in default in respect of such obligations to the extent that and for so long as failure to perform such obligations is due to a Force Majeure Event.

16.3 Capacity and Energy Payments. Buyer's obligation to make Monthly Capacity Payments shall be excused pro rata, based on the number of Days of the month with respect to which Seller has declared a Force Majeure Event and to the extent that Seller's obligations to honor Scheduling Instructions from Buyer are excused as a result of the Force Majeure Event claimed by Seller; provided, however, that Buyer shall make pro rata Monthly Capacity Payments to the extent that Seller makes the election of financial settlement in accordance with Section 5.1.4.1 and to the extent that Seller satisfies Buyer's Schedules in accordance with Section 5.1.4.2.

16.4 Declaration and Mitigation. Following the occurrence of a Force Majeure Event, the affected Party shall:

(i) give the other Party written notice of the declaration of such event and intent to invoke the provisions of this Article 16, describing the particulars of such Force Majeure Event;

(ii) remedy its inability to perform as soon as reasonably practicable; provided, however, that this Section shall not require the settlement of any non-site specific strike, walkout, lockout or other general labor dispute on terms which, in the sole judgment of the Party involved in the dispute, are contrary to its interest; and

(iii) when the affected Party is able to resume performance of its obligations under this Agreement, provide the other Party with a written certification reasonably acceptable to such other Party that the Force Majeure Event has been cured.

16.5 Suspension of Performance. The suspension of performance due to a Force Majeure Event shall be of no greater scope and of no longer duration than is required by such Force Majeure Event. No Force Majeure Event shall extend this Agreement beyond its stated Term.

16.6 Extended Force Majeure Events.

16.6.1 If a Party has reason to believe that a Force Majeure Event which is preventing the other Party from performing its obligations hereunder will result in a suspension of such performance for a term of six (6) Months or longer (an "Extended Force Majeure Event"), that Party may request that the other Party submit a "Force Majeure Remedy Plan," which the other Party shall submit to the requesting Party within thirty (30) Days of the request. If the Party claiming an excuse under this Article 16 has reason to believe that a Force Majeure Event is an Extended Force Majeure Event, it shall notify the other Party promptly and shall submit a Force Majeure Remedy Plan to the other Party within thirty (30) Days thereafter. The Force Majeure Remedy Plan shall set forth a course of repairs, improvements, changes to operations or other actions which should permit the affected Party to perform its obligations under this Agreement as soon as reasonably practicable.

16.6.2 While a Force Majeure Remedy Plan is in effect, the Party prevented from performing its obligations due to the Force Majeure Event shall provide Monthly status reports to the other Party notifying the other Party of the steps which have been taken to remedy the Force

Majeure Event and the expected remaining duration of the Party's inability to perform its obligations.

16.6.3 The Party not prevented from performing its obligations due to the Force Majeure Event may at any time terminate this Agreement effective upon ten (10) Days prior written notice to the other Party if: (i) the affected Party fails to provide a Force Majeure Remedy Plan as required by this Section 16.6; (ii) the affected Party fails to carry out the Force Majeure Remedy Plan in a method reasonably designed to cause that Party to be able to perform its obligations hereunder; or (iii) the affected Party remains unable to perform its obligations hereunder twelve (12) Months following the initial suspension of performance resulting from the Force Majeure Event. For the purposes of subsection (iii) of this Section 16.6.3, the twelve (12)-month period need not be continuous if, and only if, each period of suspension of performance comprising the twelve (12)-month period is the result of a common cause such that, if the cause had been cured following the first suspension of performance, the additional suspensions of performance would not have occurred.

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

ARTICLE 17

DEFAULT AND REMEDIES

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

17.1.1 Any representation or warranty made by Seller herein or in any certificate or other document delivered to Buyer pursuant hereto shall prove to be incorrect in any material respect when made, unless Seller shall promptly commence and diligently pursue action to cause

such representation or warranty to become true in all material respects and does so within thirty (30) Days after notice thereof has been given to Seller by Buyer (unless such cure is not capable of being effected within such thirty (30) Day period in which case Seller shall have an additional thirty (30) Day period in which to perform such cure) and such cure removes any material adverse effect on Buyer of such representation or warranty having been incorrect.

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

17.1.3 Seller shall: (i) commence a voluntary case or proceeding under any applicable Federal or state bankruptcy, insolvency, reorganization or other similar law or any other case or proceeding to be adjudicated a bankrupt or insolvent; (ii) consent to the entry of a decree or order for relief in respect of Seller in any involuntary case or proceeding under any applicable Federal or state bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against it; (iii) file any petition, answer or consent seeking reorganization or relief under any applicable Federal or state law; (iv) consent to the filing of any petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or similar official of Seller or of any substantial part of its property; (v) make an assignment for the benefit of creditors; (vi) admit

in writing its inability to generally pay its debts as they become due; or (vii) take any action in furtherance of any of the foregoing.

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

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

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

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

17.1.8 The Availability Percentage for either one (1) Summer Season or six (6) consecutive Months during which a total of eight hundred (800) or more Unit Hours are Scheduled is below sixty percent (60%); provided, however, that Seller may, within fifteen (15) Days after the end of such Season or six (6)-Month period, as applicable, submit a cure plan that is reasonably acceptable to Buyer and expected to resolve the cause of the unsatisfactory Availability Percentage as soon as practicable, but in no event later than one hundred eighty (180) Days from the end of such Season or six (6)-Month period, as applicable. For example, if Buyer Schedules three (3) of the Units for two hundred (200) hours each and the fourth Unit for two hundred ten (210) hours, the total Unit Hours would be eight hundred ten (810) hours, and this provision would apply if the Availability Percentage is below sixty percent (60%). If Seller fails to submit such a cure plan in a timely manner or fails to diligently pursue implementation of the cure plan, or if the unsatisfactory Availability Percentage is not, in fact, cured by the end of the one hundred eighty (180) Day period, then Buyer shall have the right to declare an Event of Default. The cause of the unsatisfactory Availability Percentage shall be cured only if (i) Seller is able to resume performance of its obligations under this Agreement and provides Buyer with a written certification reasonably acceptable to Buyer that the cause of the unsatisfactory Availability Percentage has been cured, and (ii) the Monthly Availability Percentage determined for the first full month following Buyer's receipt of such certification of successful completion of the cure plan is at least sixty percent (60%). For the purposes of this Section 17.1.8, the "Availability Percentage" shall mean the MWh Delivered from the Facility divided by the MWh Scheduled.

17.1.9 Notwithstanding any other provision of this Agreement other than Section 17.1.9.3, the Facility Tested Reliable Capacity determined pursuant to a Performance Test(s) at

any time after the Commercial Operation Date is below seventy percent (70%) of the Nominal Capability, and Seller fails to (i) submit to Buyer a cure plan reasonably acceptable to Buyer for such inadequate Facility Tested Reliable Capacity within ten (10) Days after determination by the Performance Test(s) of such inadequate Facility Tested Reliable Capacity, and (ii) cure such inadequate Facility Tested Reliable Capacity within a reasonable period of time not to exceed one hundred twenty (120) Days from the completion of the Performance Test(s) (“Cure Period”); provided, however, Seller shall be afforded an additional reasonable period of time not to exceed four hundred twenty (420) Days from the end of the Cure Period in which to cause such cure, so long as Seller (i) elects to pay Buyer the financial settlement (with respect to the degraded capacity) pursuant to Section 5.1.4.1, and (ii) elects to cover (to the extent of the degraded capacity) Buyer’s Schedules through an Alternate Resource in accordance with Section 5.1.4.2. In the event Seller fails to establish such cure plan within the required ten (10) Day period or to diligently implement such cure plan (including implementation of such actions as Buyer may reasonably request), Buyer shall have the right to declare an Event of Default.

17.1.9.1 In the event Seller establishes a cure plan in accordance with Section 17.1.9 but requires additional cure time beyond the Cure Period, no later than fifteen (15) Days prior to the expiration of the Cure Period, Seller shall provide to Buyer (i) a revised cure plan reasonably acceptable to Buyer, and (ii) a written certification reasonably acceptable to Buyer confirming that in order for Seller to cure the inadequate Facility Tested Reliable Capacity Seller must be afforded a reasonable additional period of time not to exceed four hundred and twenty (420) Days. In the event Seller fails to (i) establish such revised cure plan fifteen (15) Days prior to the end of the Cure Period, (ii) diligently implement such cure plan (including implementation of such actions as Buyer may reasonably request), or (iii) cure the inadequate

Facility Tested Reliable Capacity within such additional four hundred and twenty (420) Days, Buyer shall have the right to declare an Event of Default.

17.1.9.2 The cause of the inadequate Facility Tested Reliable Capacity shall be cured under Sections 17.1.9 and 17.1.9.1 only if (i) Seller provides Buyer with a written certification reasonably acceptable to Buyer confirming that the inadequate Facility Tested Reliable Capacity has been cured, and (ii) the inadequate Facility Tested Reliable Capacity is increased to a value equal to or greater than seventy percent (70%) of the Nominal Capability as demonstrated by the most recent Performance Test(s). Throughout the duration of any cure period, the Facility Designated Capacity will be deemed to be the Facility Tested Reliable Capacity determined pursuant to the most recent Performance Test(s).

17.1.9.3 Notwithstanding the foregoing provisions of Sections 17.1.9, 17.1.9.1 and 17.1.9.2, whenever the Facility Tested Reliable Capacity determined pursuant to Performance Tests at any time after the Commercial Operation Date is below seventy percent (70%) of the Nominal Capability, Buyer shall have the unilateral right to elect the remedy specified in **Appendix A**, Section A.3, in which case, such remedy shall be available for inadequate Facility Tested Reliable Capacity above, at and below seventy percent (70%) of Nominal Capability. In order to elect such remedy Buyer must notify Seller in writing of this election and must waive its right in such notice to declare a Seller Event of Default under Sections 17.1.9 and 17.1.9.1 with respect to such specific event (but not any other additional events) of inadequate Facility Tested Reliable Capacity.

17.1.10 Seller breaches its obligation to deliver energy pursuant to Buyer's Schedule(s) under Sections 5.1.1, 5.1.4, 5.1.5 and/or 5.1.6 to the extent that the Facility or a designated Alternate Resource, as the case may be, is Available, and such breach continues for

more than two (2) hours after Buyer provides Seller with written notice of such breach.

17.1.11 Seller abandons the Facility prior to the Delivery Commencement Date.

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

17.1.13 Any failure of any covenant made by Seller in Section 3.3 herein, unless Seller shall promptly commence and diligently pursue action to cure such failure within thirty (30) Days after notice thereof has been given to Seller by Buyer (unless such cure is not capable of being effected within such thirty (30) Day period in which case Seller shall have an additional thirty (30) Day period in which to perform such cure), and such cure removes any adverse effect on Buyer of such failure of such covenant.

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

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

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

(30) Day period, in which case Buyer shall have an additional thirty (30) Day period in which to perform such cure.)

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

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

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

petition, answer or consent seeking reorganization or relief under any applicable Federal or state law; (iv) consent to the filing of any petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or similar official of Buyer or of any substantial part of its property; (v) make an assignment for the benefit of creditors; (vi) admit in writing its inability to generally pay its debts as they become due; or (vii) take any action in furtherance of any of the foregoing.

17.2.6 Buyer fails to comply or cause compliance with the Buyer Performance Security requirements of Section 7.2, or Buyer Guarantor (if applicable) breaches any of its obligations under the Buyer Guaranty or if any representation or warranty made by Buyer Guarantor in the Buyer Guaranty shall prove to be incorrect in any material respect when made, unless any of the foregoing is cured by the end of the next Business Day following receipt of a written notice from Seller of a failure under this Section 17.2.6.

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

17.3 Remedies.

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

one other than the failure to pay money, equitable relief, including specific performance, and (iii) immediately cease performance or withhold any payments, or both, due in respect of this Agreement.

17.3.2 If an Early Termination Date has been established, and the Non-Defaulting Party has not successfully pursued an action for specific performance, the Non-Defaulting Party shall in good faith calculate its Gains, Losses and Costs resulting from the termination of this Agreement, aggregate such Gains, Losses and Costs into a single net amount (the "Termination Payment"), and then notify the Defaulting Party. The Gains, Losses and Costs shall be determined by comparing the cost under this Agreement of the capacity and energy that would be available under this Agreement for the remainder of the Term had this Agreement not been terminated to the market price of capacity and energy of equivalent reliability and Scheduling flexibility for the remaining Term (had this Agreement not been terminated). For the avoidance of doubt, nothing in Section 7.1 or Section 7.2 is intended to limit liability under this Section 17.3.2. To ascertain such market price, the Non-Defaulting Party may consider, among other evidence, the settlement prices of NYMEX energy futures contracts, quotations from leading dealers in energy and gas swap contracts, offers for replacement capacity and energy or bids to purchase the remaining capacity and energy that was to be sold pursuant to this Agreement, in either case made by bona fide third-parties (including offers received by the Non-Defaulting Party in response to any request for proposals for capacity and energy contracts), all adjusted for the length of the remaining Term (had this Agreement not been terminated) and differences in locational basis (including without limitation costs of transmission investments and transmission service), reliability, Scheduling flexibility and any other considerations affecting value. Neither Party shall be required to enter into replacement transactions in order to

determine the Termination Payment. If the Non-Defaulting Party's aggregate Losses and Costs exceed its aggregate Gains, the Defaulting Party shall, unless it disagrees with such Termination Payment calculation, within fifteen (15) Business Days of receipt of such notice, pay the net amount to the Non-Defaulting Party, which amount shall bear interest at the Interest Rate from the Early Termination Date until paid. If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the Non-Defaulting Party may retain such Gains. If the Defaulting Party disagrees with the calculation of the Termination Payment, the issue shall be resolved pursuant to the provisions of Article 20 applicable to Termination Payment disputes, and the resulting Termination Payment shall be due and payable within three (3) Business Days after the award. As used in this Section 17.3.2: (i) "Costs" shall mean, brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred by such Party either in terminating any agreement which it has entered into to fulfill its obligations hereunder or entering into new agreements which replace this Agreement, and attorneys' fees, if any, incurred in connection with enforcing its rights under this Agreement; (ii) "Gains" shall mean, an amount equal to the economic benefit determined on a mark to market basis (exclusive of Costs), if any, to the Non-Defaulting Party resulting from the termination of this Agreement; and (iii) "Losses" shall mean an amount equal to the economic loss determined on a mark to market basis (exclusive of Costs), if any, to the Non-Defaulting Party resulting from the termination of this Agreement.

17.4 Rights of Specific Performance. In the case of an Event of Default, the Parties recognize that any remedy at law may be inadequate because this Agreement is unique and/or because the actual damages of the Non-Defaulting Party may exceed the amount of any guaranty or other collateral available to the Non-Defaulting Party. The Parties agree that in such an event,

the Non-Defaulting Party shall be entitled to pursue an action for specific performance and the Defaulting Party waives all of its rights to assert as a defense to such action that the Non-Defaulting Party's remedy at law is adequate. For the avoidance of doubt, the Non-Defaulting Party shall not be entitled to receive both specific performance and a Termination Payment from the Defaulting Party.

17.5 Limitation of Remedies, Liability and Damages. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY HEREIN PROVIDED, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, AND EXCEPT FOR THE PAYMENT OF LIQUIDATED DAMAGES SPECIFIED HEREIN, NEITHER PARTY NOR THEIR AFFILIATES SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE; PROVIDED, HOWEVER, THAT THIS SENTENCE SHALL NOT APPLY TO LIMIT THE

LIABILITY OF A PARTY WHOSE ACTIONS GIVING RISE TO SUCH LIABILITY CONSTITUTE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE ACTUAL DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE LIQUIDATED DAMAGES DO NOT CONSTITUTE A PENALTY AND ARE A REASONABLE APPROXIMATION OF THE HARM OR LOSS. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, IN NO EVENT SHALL BUYER'S LIABILITY TO SELLER FOR A TERMINATION PAYMENT UNDER THIS AGREEMENT EXCEED AN AMOUNT EQUAL TO THE SUM OF ANY AMOUNTS THEN OWED BY BUYER HEREUNDER PLUS THE TOTAL OF ALL REMAINING MONTHLY CAPACITY PAYMENTS FOLLOWING TERMINATION THAT WOULD HAVE BEEN PAYABLE TO SELLER UNDER THIS AGREEMENT HAD THE AGREEMENT REMAINED IN EFFECT THROUGH THE END OF THE TERM.

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

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

required under this Agreement; suspend, delay or refuse to make, any of the payments required under this Agreement.

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

ARTICLE 18

CHANGE OF LAW

18.1 Change of Law.

18.1.1 A "Change of Law" means a change in a Legal Requirement constituting a new environmental or tax law or regulation or a new interpretation of such law or regulation, which change is enacted after the execution date of this Agreement, and which generally affects the cost of electric generation. The term Change of Law shall exclude any reallocation for NOx Allowances. For the avoidance of doubt, the provisions of Sections 18.1.3 and 18.1.4 shall not apply to a Change of Law that has been reflected in Buyer's capacity and/or energy payments through the previous operation of those sections.

18.1.2 The Parties acknowledge that, except as provided in Sections 18.1.3 and 18.1.4, the capacity and energy payments made by Buyer shall not be altered as a result of a Change of Law that causes either Party to incur additional costs or realize savings in carrying out its obligations under this Agreement.

18.1.3 If a Change of Law (or Cumulative Changes of Law) in the aggregate causes Seller to incur additional costs that are projected to increase Seller's annual costs of

carrying out its obligations under this Agreement above two dollars per kilowatt (\$2.00/kW)⁴ (the "Threshold Amount"), such additional costs in excess of the Threshold Amount may be passed through to Buyer. Seller shall notify Buyer of the Change of Law and Seller's proposed increase in capacity or energy payments under this Agreement. For purposes of calculating the annual cost increase associated with capitalized additions or modifications to the Facility (determined in accordance with generally accepted accounting principles), the Parties will at that time establish an appropriate levelized fixed charge rate (incorporating an after-tax return of eleven percent (11.0%)) for application to the original capital cost of such additions or modifications. This calculation will represent the total cost associated with the identified addition or modification, including depreciation, carrying costs, and any other cost or expense item related to capital investments. Upon receipt of such notice, Buyer will within thirty (30) Days make a good faith determination whether Seller's proposed price increase results from a Change of Law as specified in this Agreement. In the event Buyer concurs that the proposed price increase results from a Change of Law, the proposed increased rates will take effect consistent with the timing of the additional cost incurrence (but in no event earlier than the end of the thirty (30) Day period). If Buyer disagrees with Seller's determination, such disagreement shall be resolved pursuant to the provisions of Article 20 applicable to Change of Law disputes. The results of any such dispute resolution procedures shall be retroactively applied (with interest at the Interest Rate) to reflect any such increase in Seller's costs.

18.1.4 If a Change of Law (or Cumulative Changes of Law) in the aggregate causes Seller to incur a reduction in costs that are projected to decrease Seller's annual costs of carrying out its obligations under this Agreement by more than two dollars per kilowatt

⁴ All amounts shown herein as \$/kW shall be calculated based on the Nominal Capability of the Facility.

(\$2.00/kW)⁵ per year, such reduction in excess of such amount will be passed through to Buyer. Buyer may notify Seller of the Change of Law and Buyer's proposed decrease in capacity or energy payments under this Agreement. Upon receipt of such notice, Seller will within thirty (30) Days make a good faith determination whether Buyer's proposed price decrease results from a Change of Law as specified in this Agreement. In the event that Seller concurs that the proposed price decrease results from a Change of Law, the proposed decreased rates will take effect consistent with the timing of the additional cost reduction (but in no event earlier than the end of the thirty (30) Day period). If Seller disagrees with Buyer's determination, such disagreement shall be resolved pursuant to the provisions of Article 20 applicable to Change of Law disputes. The result of any such dispute resolution procedures shall be retroactively applied (with interest at the Interest Rate) to reflect any such reduction in Seller's costs.

18.1.5 Under no circumstances can Buyer's determination regarding the applicability of the Change of Law provision to a proposed price increase or Seller's determination regarding the applicability of the Change of Law provision to a proposed price decrease constitute an Event of Default under Article 17 of this Agreement.

18.1.6 Notwithstanding any other provision of this Article 18, except as provided in this Section 18.1.6, in no event shall Buyer be responsible to bear any costs associated with any Change of Law that, together with all prior increases and decreases in costs passed on to Buyer pursuant to Sections 18.1.1 through 18.1.4, exceed fifteen dollars per kilowatt (\$15.00/kW)⁶ per year (hereinafter "Excess Change of Law Costs"). Seller shall be solely responsible for all such Excess Change of Law Costs throughout the Term; provided, however,

⁵ All amounts shown herein as \$/kW shall be calculated based on the Nominal Capability of the Facility.

⁶ All amounts shown herein as \$/kW shall be calculated based on the Nominal Capability of the Facility.

that Seller shall have the right to provide Buyer with written notice (which notice must provide supporting documentation demonstrating that Seller has incurred Excess Change of Law Costs) of its election to terminate this Agreement, effective six (6) Months after the date of Seller's written notice, and to receive a Termination Payment from Buyer as liquidated damages in the amount of one-half (1/2) of the amount identified in Table 7.1 corresponding to the year in which the effective date of the termination occurs and, in which case, following the effective date of the termination, neither Party shall have any further liability to the other Party except for any obligations incurred prior to the effective date of the termination; provided further, Buyer shall have the right to elect by written notice delivered to Seller within thirty (30) Days of Seller's written termination notice to accept responsibility for all valid Excess Change of Law Costs incurred by Seller and, in which case, this Agreement shall not terminate and shall continue in full force and effect as so modified. If Buyer does not provide such written notice within such thirty (30)-Day period, then Buyer shall be deemed to have waived such election and this Agreement shall terminate in accordance with Seller's election. Following any occasion when Buyer elects to accept responsibility for Excess Change of Law Costs, Buyer shall have no responsibility to accept any further costs associated with any additional Change of Law, provided that, if Seller incurs such additional Change of Law costs, Seller shall have the right to re-initiate the foregoing Seller election to terminate this Agreement and receive the above-stated liquidated damages which election shall also be subject to Buyer's right to elect to accept responsibility for such additional costs, all in accordance with the foregoing provisions of this Section 18.1.6.

18.1.7 The term "Cumulative Changes of Law" shall mean the summation of the cost impact of all Changes of Law, regardless of whether the cost impact is an increase or decrease in costs. For example, assume that Seller experiences four Change of Law occurrences

over a three-year period, as follows: (1) an increase in costs of three dollars per kilowatt (\$3.00/kW) per year in Annual Period 1, (2) a reduction of costs of four dollars per kilowatt (\$4.00/kW) per year in Annual Period 2, (3) an increase in costs of three dollars per kilowatt (\$3.00/kW) per year in Annual Period 3, and (4) an increase in costs of one dollar per kilowatt (\$1.00/kW) per year in Annual Period 4.⁷ Following the first occurrence of Change of Law above, after taking into account the two dollars per kilowatt (\$2.00/kW) per year threshold, Seller would be entitled to recover from Buyer one dollar per kilowatt (\$1.00/kW) per year as Change of Law costs.⁸ Following the second occurrence, the net result of the first two occurrences would be a reduction of one dollar per kilowatt (\$1.00/kW) per year, which is within the two dollars per kilowatt (\$2.00/kW) per year threshold; however, the one dollar per kilowatt (\$1.00/kW) per year cost increase passed along to Buyer following the first occurrence would be eliminated.⁹ Following the third occurrence, the net result of the first three occurrences would be an increase of two dollars per kilowatt (\$2.00/kW) per year, which is within the two dollars per kilowatt (\$2.00/kW) per year threshold; therefore, no adjustment in payments is made.¹⁰ Following the fourth occurrence, the net result of the first four occurrences would be an increase of three dollars per kilowatt (\$3.00/kW) per year, which is above the two dollars per kilowatt (\$2.00/kW) per year threshold; therefore, Seller would be entitled to recover from Buyer one

⁷ All amounts shown herein as \$/kW shall be calculated based on the Nominal Capability of the Facility.

⁸ All amounts shown herein as \$/kW shall be calculated based on the Nominal Capability of the Facility.

⁹ All amounts shown herein as \$/kW shall be calculated based on the Nominal Capability of the Facility.

¹⁰ All amounts shown herein as \$/kW shall be calculated based on the Nominal Capability of the Facility.

1 dollar per kilowatt (\$1.00/kW) per year as Change of Law costs.¹¹

2 18.1.8 For the purpose of determining Change of Law costs, the Parties
3 acknowledge that an appropriate allocation must be made for costs arising from the construction,
4 operation and maintenance of common facilities supporting the four (4) Units from which Buyer
5 is purchasing plus any applicable additional CTs at the Dahlberg electric generating plant.

6 18.2 Air Emissions. Buyer shall supply Seller with the actual number of allowances
7 required by any Governmental Authority or Consent for emission of nitrogen oxides ("NOx
8 Allowances") for energy purchased from Seller and delivered from the Facility pursuant to this
9 Agreement, subject to the following limitations:

10 (i) Buyer shall not be required to provide NOx Allowances that are needed
11 due to the Facility exceeding the lesser of its permitted equivalent NOx emission rate and a
12 calendar year average NOx emissions rate of [REDACTED] lbs./MMBtu for operation on Natural Gas,
13 and [REDACTED] lbs./MMBtu for operation on Fuel Oil. In determining the maximum quantity of
14 NOx Allowances that Buyer will supply for each calendar year (from the lesser of its permitted
15 equivalent NOx emissions rate and a NOx emissions rate of [REDACTED] lbs/MMBtu for operation on
16 Natural Gas and [REDACTED] lbs/MMBtu for operation on Fuel Oil), the MMBtu will be based on the
17 Guaranteed Heat Rates for all energy purchased and delivered (including energy purchased and
18 delivered during ramping) during such calendar year. The Guaranteed Heat Rate for ramping
19 from synchronization to Base Operating Mode Capability shall be the Guaranteed Heat Rate
20 pursuant to **Appendix J**. Natural Gas utilized for start up of the Facility prior to synchronization
21 shall not be included in the calculation of NOx Allowances to be provided to Seller by Buyer.

¹¹ All amounts shown herein as \$/kW shall be calculated based on the Nominal Capability of the Facility.

(ii) Subject to the provisions of Section 18.1, Seller shall be responsible for providing any required emission offsets for volatile organic compounds and/or NOx and any other emission offsets or emission allowances, and bearing any other environmental costs of Seller.

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

ARTICLE 19

ASSIGNMENT AND TRANSFERS OF INTERESTS

19.1 Assignment and Assumption of Obligations.

19.1.1 Seller.

19.1.1.1 Seller may not assign this Agreement or any portion thereof to any Person without the prior written consent of Buyer; provided, however, (i) any assignee shall expressly assume assignor's obligations hereunder, and (ii) unless otherwise expressly approved by Buyer, no assignment whether or not consented to, shall relieve the assignor of its obligations hereunder in the event its assignee fails to perform.

19.1.1.2 Notwithstanding Section 19.1.1.1, Seller may, without the consent of Buyer, assign this Agreement to a lender for collateral security purposes in connection with any financing or the refinancing of the Facility; provided, however, that such collateral assignment shall not place any limitation on Buyer's rights under this Agreement or expand the liability, risks or obligations imposed on Buyer under this Agreement.

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

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

19.3 General Requirements. Any consent required by Sections 19.1 or 19.2 shall not be unreasonably withheld, conditioned or delayed; provided, however, that neither Party shall be required to accept any limitation of its rights under this Agreement or expansion of the liability, risks or obligations imposed on it under this Agreement. It shall be a condition of any assignment, transfer, Change of Control Transaction or other disposition with respect to this Agreement and/or the Facility that all security required under Sections 7.1 and 7.2 shall remain in place notwithstanding such disposition, or that replacement security in form, substance and amount in full compliance with this Agreement or otherwise reasonably acceptable to Buyer or Seller, as the case may be, shall have been provided prior to such disposition.

ARTICLE 20

DISPUTE RESOLUTION

20.1 Notice. Either Party ("Aggrieved Party") shall have the right to give notice to the other Party ("Noticed Party") that the Noticed Party is not performing in accordance with the terms and conditions of this Agreement. Such notice shall describe with specificity the basis for the Aggrieved Party's belief and may describe the recommended options to correct the failure.

20.2 Dispute Resolution, Arbitration.

20.2.1 Except as otherwise provided in Section 17.5, any dispute or claims arising under this Agreement that cannot be resolved by the Parties through negotiation by the Parties' managers within thirty (30) Days after notice of such dispute or claim shall be referred to senior executives (president or a vice president) of the Parties for resolution, which executives

shall have the authority to decide or resolve the matter in dispute. If such senior executives are unable to resolve any such dispute or claim to the mutual satisfaction of the Parties within thirty (30) Days after such matter has been referred to such senior executives by the Parties' managers, then any such dispute or claim shall be resolved in accordance with Section 20.2.2.

20.2.2 If the Parties are unable to resolve a dispute as provided in Section 20.2.1, (a) the Parties agree to arbitrate those disputes described in the Subsections 20.2.2.1 and 20.2.2.2 using the procedures provided in such subsections, and (b) in the case of any dispute that is not described in the Subsections 20.2.2.1 or 20.2.2.2, either Party may pursue its rights and remedies available under other provisions of this Agreement.

20.2.2.1 If the dispute is with respect to the results of a Performance Test (under any provision of this Agreement), Imbalance Charges (Section 12.2.4), Seller Event of Default under Sections 17.1.8 or 17.1.9, or the development of Maintenance Schedules (Section 11.2.1), the Parties shall attempt to agree upon the selection of an independent third party expert to make a determination concerning such dispute. If the Parties are unable to mutually agree on the selection of an expert within fifteen (15) Days (following the expiration of the Section 20.2.1 thirty (30)-Day period), then the Party asserting the dispute shall provide a list of five (5) qualified experts (none of which shall have performed, or been employed by a firm that has provided, services for the Party proposing the list within the last five (5) years) to the other Party and such other Party shall select one expert from such list, which expert shall not have performed, or been employed by a firm that has provided, services for such other Party within the last five (5) years. Within fifteen (15) Days of the selection of the expert, the Parties shall file with the expert written positions (with supporting documentation) concerning the dispute. The expert may request additional filings and shall render a decision within fifteen (15) Days of

receipt of all filings. In the case of a dispute concerning a Performance Test, the independent expert's determination shall be applied to establish the Tested Reliable Capacity as if no dispute had arisen and all capacity billing under Section 5.2 shall (if necessary and as soon as practicable) be adjusted retroactively (with interest at the Interest Rate) to reflect Designated Capacity equal to such expert's determination. Seller may, however, nominate a different amount of Designated Capacity for prospective application consistent with other provisions of this Agreement. In the case of any dispute resolved under this Section 20.2.2.1, the decision rendered by the independent expert shall be final and binding upon Seller and Buyer. In the event the independent expert adopts the position of one of the Parties, then the other Party shall pay the fees and expenses of such expert. Otherwise, such fees and expenses will be shared equally by the Parties.

20.2.2.2 If the dispute concerns the application of Article 18, or the calculation of a Termination Payment pursuant to Section 17.3.2, or a billing dispute under Section 6.2.2, then the Parties agree to arbitrate such dispute in accordance with the following procedures:

20.2.2.2.1 At the request of either Party upon written notice to the other Party (a "Demand"), the dispute shall be finally settled by binding arbitration before a single arbitrator in accordance with the Expedited Procedures of the Commercial Arbitration Rules (the "Rules") of the American Arbitration Association ("AAA") then in effect, except as modified herein. The Demand must include statements of the facts and circumstances surrounding the dispute, the legal obligation breached by the other Party, the amount in controversy and the requested relief accompanied by all relevant documents supporting the Demand.

20.2.2.2.2 The arbitration shall be held in Pensacola, Florida and shall be governed by the United States Arbitration Act, 9 U.S.C. §§ 1 et seq.

20.2.2.2.3 Unless the Parties otherwise agree, the arbitrator selected shall have a reasonable degree of expertise in the subject matter of the dispute, shall not have provided services to either Party or any of their respective Affiliates within the last five (5) years and shall be selected from a national panel of potential arbitrators.

20.2.2.2.4 The award shall be in writing (stating the award and the reasons therefor) and shall be final and binding upon the Parties, and shall be the sole and exclusive remedy between the Parties regarding any claims, counterclaims, issues, or accountings presented to the arbitrator. The arbitrator shall be authorized in his or her discretion to grant pre-award and post-award interest at commercial rates. Judgment upon any award may be entered in any court having jurisdiction. Each of the Parties hereby consents to service of process by registered mail at its address set forth herein and agrees that its consent to service of process by mail is made for the express benefit of the other Party.

20.2.2.2.5 This Agreement and the rights and obligations of the Parties shall remain in full force and effect pending the award in any arbitration proceeding hereunder.

20.2.2.2.6 Unless otherwise ordered by the arbitrators, each Party shall bear its own costs and fees, including attorneys' fees and expenses. The Parties expressly agree that the arbitrators shall have no power to consider or award any form of damages barred by Section 17.5, or any other multiple or enhanced damages, whether statutory or common law.

20.2.2.2.7 With respect to the disputes covered by Sections 20.2.2.1 and 20.2.2.2, the Parties, to the fullest extent permitted by law, hereby irrevocably

waive and exclude any rights of application or appeal or rights to state a special case for the opinion of the courts or any other recourse to the court system other than to enforce the Parties' agreement to resolve disputes in accordance with Article 20.

20.2.2.2.8 EACH PARTY UNDERSTANDS THAT IT WILL NOT BE ABLE TO BRING A LAWSUIT CONCERNING ANY DISPUTE THAT MAY ARISE THAT IS COVERED BY SECTION 20.2.2.

ARTICLE 21

MISCELLANEOUS PROVISIONS

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

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

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

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

To Seller:

Southern Power Company
c/o Southern Company Services, Inc
30 Ivan Allen Jr. Blvd., N.W.
BIN SC1106
Atlanta, GA 30308
Attn: Contract Administration
Telephone: (404) 506-0680
Facsimile: (404)506-0320

with a copy to:

Southern Power Company
c/o Southern Company Services, Inc
30 Ivan Allen Jr. Blvd., N.W
BIN SC1103
Atlanta, Georgia 30308
Attn: Vice President, Business Development
Telephone: (404) 506-0346
Facsimile: (404) 506-0399

To Buyer:

Gulf Power Company
One Energy Place
BIN 0335
Pensacola, FL 32520
Attn: Raymond W. Grove
Telephone: (850) 444-6695
Facsimile: (850) 444-6705

with a copy to:

Gulf Power Company, Corporate Counsel
One Energy Place
BIN 0335
Pensacola, FL 32520
Attn: Jeff A. Stone
Telephone: (850) 444-6550
Facsimile: (850) 469-3330

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

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

21.6 Governing Law. The validity, interpretation and performance of this Agreement and each of its provisions shall be governed by the laws of the State of Florida (without giving effect to the principles of conflict of laws). The Parties agree to submit to the exclusive jurisdiction of either the Circuit Court in Pensacola, Florida or the U.S. District Court for the Northern District of Florida, as appropriate

21.7 Time of Essence; Waiver.

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

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

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

be used to aid in any manner in the construction of this Agreement.

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

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

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

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

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

21.14 Confidentiality.

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

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

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

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

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

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

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

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


[The next page is the signature page.]

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

GULF POWER COMPANY ("BUYER")

SOUTHERN POWER COMPANY
("SELLER")

By: Penny M. Manuel

By: 

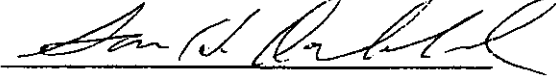
Name: Penny M. Manuel

Name: Ronnie L. Bates

Title: Vice President Power Generation

Title: President and CEO

Attest: 
ASST. SECRETARY

Attest: 

Title: _____

Title: SAM H. DABBS, JR.
ASSISTANT SECRETARY

[SEAL]

[SEAL]

APPENDIX A

CAPACITY PAYMENT CALCULATION

A. Contracted Capacity and Capacity Pricing:

1. **Contracted Capacity:** The Contracted Capacity range for the Term shall be one hundred and two and one-half percent (102.5%) of the Nominal Capability of the Facility to ninety-two percent (92%) of the Nominal Capability of the Facility.

2. **Performance Tests:** Prior to the Delivery Commencement Date, Seller shall establish the initial demonstrated capability of each Unit of the Facility at Reference Conditions to produce Base Operating Mode Energy (the "Unit Tested Reliable Capacity") pursuant to a performance test conducted for each Unit in accordance with the procedures set forth in **Appendix D** (each a "Performance Test"), provided that such Performance Tests shall be conducted no earlier than ninety (90) Days prior to the Delivery Commencement Date. The sum of the Unit Tested Reliable Capacities will be the Facility Tested Reliable Capacity.

Following the Delivery Commencement Date, Seller shall cooperate with Buyer's request for information concerning the performance of the Facility that Buyer may reasonably request from time to time. Following the initial Performance Test for each Unit, each Party shall have the right to request a Performance Test(s) to re-determine the Unit(s) and Facility Tested Reliable Capacity to be performed during the period from March 15 to April 15 of each Annual Period upon ten (10) Business Days written notice to the other Party; provided, however, that upon consent by both Parties, such Performance Test(s) may be performed outside the period from March 15 to April 15 of each Annual Period; provided further that no such Performance Test(s) may be scheduled during any period of Scheduled Outage, Maintenance Outage, Force Majeure Event or during a Forced Outage. The Unit(s) and Facility Tested Reliable Capacity determined as a result of such additional Performance Test(s) shall become the new Unit(s) and Facility Tested Reliable Capacity, respectively.

At any time, in its sole discretion and at its expense, Seller may conduct a Performance Test for any Unit(s). In the event such test(s) results in a Facility Tested Reliable Capacity that is within the Contracted Capacity range, the Unit(s) and Facility Designated Capacity shall be reset to the Unit(s) and Facility Tested Reliable Capacity, respectively. In the event such test results in a Facility Tested Reliable Capacity that is greater than the Contracted Capacity range, Seller may offer to increase the Facility Designated Capacity to the Facility Tested Reliable Capacity and Buyer shall, in its sole discretion, either accept or reject such offer. In the event Buyer accepts such offer, then the Facility Designated Capacity shall be reset to the Facility Tested Reliable Capacity as of the date of Buyer's acceptance. In the event Buyer does not accept such offer, the Facility Tested Reliable Capacity shall be deemed to be equal to the highest value of the Contracted Capacity range, and the Buyer is entitled to the percentage energy output capability of the Facility equal to one hundred two and one-half percent (102.5%) multiplied by the Nominal Capability divided by the Facility Tested Reliable Capacity.

Seller shall bear all costs and expenses (including fuel costs and any losses resulting from the sale of test energy at prices which are below the costs of production) of the initial Performance Tests performed for each Unit. The requesting Party shall bear the costs and expenses (including any fuel costs and losses resulting from the sale of test energy at prices which are below the costs of production) of any subsequent Performance Tests performed; provided, however, that Seller shall bear such costs and expenses of any Performance Test(s) requested by Buyer if the Unit(s) and Facility Tested Reliable Capacity (as a result of such Performance Test(s)) is determined to be less than the Unit(s) and Facility Designated Capacity immediately prior to such Performance Test(s), or due to an unreliability issue pursuant to Section 3 of Appendix D.

3. **Designated Capacity:** Within ten (10) Business Days of establishment of the Unit(s) and Facility Tested Reliable Capacity through Performance Tests, or if Performance Tests are not performed for a Unit(s) by April 15 of an Annual Period, Seller shall have the right to designate in a written notice to Buyer the capability of such Unit(s) to produce Base Operating Mode Energy that is available for Scheduling at the Facility (the "Unit Designated Capacity"); provided, however, any proposed increase in the Unit(s) and Facility Designated Capacity must be supported by a Performance Test(s) that is conducted prior to April 15. The sum of the Unit Designated Capacities will be the Facility Designated Capacity. Any change to the Unit(s) and Facility Designated Capacity shall be effective June 1 following Seller's written notice to designate. The Unit(s) and Facility Designated Capacity shall be equal to the respective Unit(s) and Facility Tested Reliable Capacity (either deemed or actual). Note that in the event the Interconnection Agreement requires Seller to produce reactive power for the Transmission System, the Unit(s) and Facility Designated Capacity shall not exceed the capability of the Facility assuming that the maximum production of reactive power is being supplied to satisfy the Interconnection Agreement requirements.

In addition to the remedy available to Buyer pursuant to Section 17.1.9, if a Performance Test indicates that the Facility's Tested Reliable Capacity is less than the lower end of the then-current Contracted Capacity range but greater than or equal to seventy percent (70%) of the Nominal Capability or any other percentage if Buyer makes the election provided under Section 17.1.9.3: (a) Seller shall have ten (10) Days to submit to Buyer a cure plan for increasing the Facility's capacity which shall be reasonably acceptable to Buyer and shall include a reasonable cure period (not to exceed one hundred twenty (120) Days) during which Seller may conduct additional Performance Tests; provided, however, Seller shall be afforded an additional reasonable cure period, but in no event longer than five hundred and forty (540) Days from the completion of the initial Performance Test(s) indicating the inadequate Facility Tested Reliable Capacity, so long as Seller (i) elects to pay Buyer the financial settlement (with respect to the degraded capacity) pursuant to Section 5.1.4.1, and (ii) elects to cover (to the extent of the degraded capacity) Buyer's Schedules through an Alternate Resource in accordance with Section 5.1.4.2; and (b) if the Facility Tested Reliable Capacity remains uncured after such cure period, Seller shall pay Buyer, as liquidated damages, the buy down payment shown in Table A-1 corresponding to the Annual Period following the Annual Period in which the most recent Performance Test(s) was conducted, based on the difference (in kW) between the then-current lower limit of the Contracted Capacity range and the then-current Facility Tested Reliable Capacity. In addition, the lower limit of the current Contracted Capacity range

shall be reset at the Facility Tested Reliable Capacity demonstrated in the most recent Performance Tests and the upper limit of the Contracted Capacity range will be lowered by the same amount that the lower limit has been reduced. The inadequate Facility Tested Reliable Capacity shall be deemed cured under this paragraph only if (i) Seller provides Buyer with a written certification reasonably acceptable to Buyer confirming that the inadequate Facility Tested Reliable Capacity has been cured, and (ii) the Facility Tested Reliable Capacity is increased to a value equal to or greater than the lower limit of the original Contracted Capacity range as demonstrated by the most recent Performance Tests.

Table A-1¹²
Buy Down Payment for Capacity Reduction
Below Minimum Guarantee

Buy Down Payment (\$/kW)
Annual Period 1-3: 100
Annual Period 4-5: 65

In the event the cure plan fails to restore the capacity to within the original Contracted Capacity range and the Contracted Capacity range is reset (lowered), and thereafter Seller is able to restore the capacity to within the original Contracted Capacity range, Seller must offer the restored capacity increment to Buyer at the price and terms of this Agreement. If Buyer accepts the offer, the Contracted Capacity range will be reset (raised) by an amount equal to the portion of the restored capacity increment accepted by Buyer. If Buyer does not accept the offer, the Contracted Capacity range will not be reset, but Seller will be free to sell the restored capacity increment to third parties, notwithstanding the provisions of Sections 5.1.5 and 13.1.4 that require Seller to deliver the entire output to Buyer; provided, however, in such event, Buyer shall, at all times during the remainder of the Term, be entitled to Schedule the entire energy output of the Facility times a fraction the numerator of which is the upper limit of the reset (lowered) Contract Capacity range and the denominator of which is the most recent Facility Tested Reliable Capacity. Throughout the duration of any cure period, the Facility Designated Capacity will be deemed to be the Facility Tested Reliable Capacity determined pursuant to the most recent Performance Test(s).

4. Capacity Pricing:

The "Annual Capacity Charge" for each calendar year will be as follows:

¹² The buy down payment amounts in Table A-1 are expressed in 2006 US dollars. However, beginning with 2007 and continuing each year thereafter during the Term, the values shown in Table A-1 will be adjusted effective as of June 1st of each year based on the change in GDPIPD between the base year (2006) and January 1st of the then-current year during the Term.

Table A-2
Annual Capacity Charges

Calendar Year	(\$/kW-year)
2009	[REDACTED]
2010	[REDACTED]
2011	[REDACTED]
2012	[REDACTED]
2013	[REDACTED]
2014	[REDACTED]

The Annual Capacity Charge shall include all fixed costs, including without limitation, fixed operation and maintenance charges, unless Buyer and Seller agree to separate provisions to be incorporated herein concerning such fixed costs.

B. Capacity Payment.

For each Month of each Annual Period, subject to the provisions of this Agreement including any adjustment pursuant to Sections C, D and E of this **Appendix A**, the capacity payment ("Monthly Capacity Payment") shall equal the product of the Facility Designated Capacity multiplied by the Annual Capacity Charge (from Table A-2), which product shall then be multiplied by the applicable Monthly Capacity Payment Factor (from Table A-3). In the event that Buyer's obligation to purchase the Facility Designated Capacity begins on a Day other than the first Day of a Month or Seasonal Performance Period, the calculation of the Monthly Capacity Payment (and separate fixed operation and maintenance charge, if any), Monthly Availability Adjustment and Seasonal Availability Adjustment, as appropriate, will be determined on a pro rata basis.

Table A-3
Monthly Capacity Payment Factor

Month	Monthly Capacity Payment Factor
January	0.02
February	0.02
March	0.016
April	0.016
May	0.04
June	0.21
July	0.21
August	0.21
September	0.21
October	0.016
November	0.016
December	0.016

C. Seasonal Availability Adjustment

Seller guarantees a minimum Seasonal availability percentage (“Seasonal Availability Percentage” or “SAP”) of ninety-six percent (96%) determined separately for each Seasonal Performance Period.

The SAP for each Season will be computed as follows based on the number of hours Scheduled by Buyer:

The following formula is applicable when Buyer has Scheduled a total MWh of energy less than 50 hours times the Facility Designated Capacity during a Season:

$$\text{SAP} = \frac{((50 \text{ hours} * \text{Facility Designated Capacity}) - \text{MWh Scheduled}) + \text{MWh Delivered}}{50 \text{ hours} * \text{Facility Designated Capacity}}$$

The following formula is applicable when Buyer has Scheduled a total MWh of energy of 50 hours times the Facility Designated Capacity or more during a Season:

$$\text{SAP} = \frac{\text{MWh Delivered}}{\text{MWh Scheduled}}$$

“MWh Delivered” equals all energy delivered to Buyer in accordance with this Agreement from the Facility, from an Alternate Resource or with respect to Seller’s election, if applicable, pursuant to Section 5.1.4.1, during hours that Buyer Scheduled such energy. Solely for purposes of computing SAP, MWh Delivered in any hour shall not exceed the total Designated Capacity of the Unit(s) Scheduled in such hour times one hour.

“MWh Scheduled” equals all energy that Seller is required to deliver pursuant to Buyer’s Scheduling Instructions in accordance with Article 13. Solely for purposes of computing SAP, MWh Scheduled in any hour in which the Scheduling Instruction is for Base Operating Mode Capability shall be the total Designated Capacity of the Unit(s) Scheduled in such hour times one hour. This limitation for SAP purposes does not affect Buyer’s right to Schedule, or Seller’s obligation to deliver energy above the total Designated Capacity of the Unit(s) Scheduled as provided in Section 13.1.

The calculation of the SAP shall not include energy Scheduled during any period of: (i) Scheduled Outages or Maintenance Outages; (ii) Facility ramping; (iii) events of Force Majeure declared by Seller in accordance with Article 16; and (iv) events of Unavailability to the extent they are directly caused by the acts or omissions of Buyer.

Within ten (10) Days after the conclusion of a Season, a SAP shall be calculated and an adjustment (“Seasonal Availability Adjustment”) shall be made to the amounts paid by Buyer to Seller for Designated Capacity (and the separate fixed operation and maintenance charge, if any) for the most recently completed Seasonal Performance

Period, taking into account and truing up any Monthly Availability Adjustment (pursuant to Section D of this **Appendix A**) with respect to the Months of such Season. For each Season, the Seasonal Availability Adjustment shall be determined as follows:

For a SAP of at least sixty percent (60%) but less than ninety-six percent (96%), the weighted capacity payment (and the separate fixed operation and maintenance charge, if any) for the Season in which the availability shortfall occurs shall be reduced by a factor of one and one-half (1.5) multiplied by each percent or fraction thereof of SAP shortfall below ninety-six percent (96%). For example, in the event the SAP is ninety-five and two tenths percent (95.2%), there will be an eight tenths percent (0.8%) shortfall below ninety-six percent (96%), and the weighted capacity payment will be reduced by one and two tenths percent (1.2%).¹³ If the SAP is less than sixty percent (60%), there will be no capacity payment (and no separate fixed operation and maintenance charge) for that Season. There will be no increase in capacity payments (and the separate fixed operation and maintenance charge, if any) for a SAP of more than ninety-six percent (96%).

D. Monthly Availability Adjustment

1. First Month of a Season

Following the first Month that Seller has an obligation to deliver energy pursuant to this Agreement, and following each of the first Months of each Season during the Term, Buyer shall calculate an availability percentage for such Month ("Monthly Availability Percentage" or "MAP"), determined in the same manner as the SAP and utilizing the applicable SAP formula for the Season in which such Month occurs. The Monthly Capacity Payment shall be adjusted ("Monthly Availability Adjustment") based on the MAP as follows:

For a MAP of at least sixty percent (60%) but less than ninety-six percent (96%), the weighted Monthly Capacity Payment for the Month in which the availability shortfall occurs shall be reduced (a) for any summer Season Month by a factor of fifty percent (50%) of the product of one and one-half (1.5) multiplied by each percent or fraction thereof of shortfall, and (b) for any winter Season Month by one and one-half (1.5) multiplied by each percent or fraction thereof of shortfall. In the event the MAP is less than sixty percent (60%), the Monthly Capacity Payment (and the separate fixed operation and maintenance charge, if any) for that Month shall be (a) twenty-five percent (25%) of the Monthly Capacity Payment for any Summer Season Month (and the separate fixed operation and maintenance charge, if any) that would otherwise be payable, and (b) no capacity payment for any Winter Season Month (and no separate fixed operation and maintenance charge).

2. Second and Remaining Months of a Season.

A MAP shall be calculated for the second and each of the remaining Months of a Season, other than the last Month. Following each Month of a Season, an average MAP for the

¹³ 1.5 * 0.8% = 1.2%

elapsed Months of the Season shall be calculated utilizing the applicable SAP formula for the Season in which such Months occur in order to determine the Monthly Availability Adjustment for the cumulative elapsed Months of such Season. The Monthly Availability Adjustments previously made in respect of such Season shall be trued up based on such average MAP for the elapsed Months of such Season. After the last Month of each Season, the Monthly Capacity Payments made in respect of such Season shall be trued up as part of the SAP calculation and resulting Seasonal Availability Adjustment (Section C of this **Appendix A**).

APPENDIX B

ENERGY PAYMENT CALCULATION

A. Monthly Energy Payment Calculation

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

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

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

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

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

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

To the extent Seller has elected to pay alternate liquidated damages per Section 5.1.4.1:

$$\text{MEP}_{\text{ALD}} = \text{MVOM} + \text{MFC}_{\text{GAS}} - \text{ALD} \text{ (applies only to hours when } \text{ALD} > (\text{HDE} \cdot \text{VOMER} + \text{VOMHR} + \text{GHR} \cdot \text{SE} \cdot \text{DFP}))$$

Where:

MEP =	Monthly Energy Payment.
MVOM =	Monthly Variable O&M Charge determined pursuant to Section B.
MSC =	Monthly Startup Charge determined pursuant to Section C.
MFA _{GAS} =	Monthly Fuel Adjustment for operation on Natural Gas determined pursuant to Section D1. The Monthly Fuel Adjustment for operation on Natural Gas does not apply when Seller is delivering energy from Alternate Resources or when Seller has elected to pay alternate liquidated damages per Section 5.1.4.1.
MFA _{OIL} =	Monthly Fuel Adjustment for operation on Fuel Oil determined pursuant to Section D2. The Monthly Fuel Adjustment for operation on Fuel Oil does not apply when Seller is delivering energy from Alternate Resources or when Seller has elected to pay alternate liquidated damages per Section 5.1.4.1.
MFC _{GAS} =	Monthly Fuel Charge for Natural Gas determined pursuant to Section D with respect to deliveries from Alternate Resources or with respect to the Scheduled amount if Seller has elected to pay alternate liquidated damages per Section 5.1.4.1.
MFC _{OIL} =	Monthly Fuel Charge for Fuel Oil determined pursuant to Section D with respect to deliveries from Alternate Resources.

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ALD = Alternate Liquidated Damages determined pursuant to Appendix K.
HDE = Amount of energy (in MWh) delivered by Seller to Buyer that was Scheduled by Buyer during a given Hour. This energy can come from the Facility and/or an Alternate Resource or can be the Scheduled amount of energy if Seller has elected to pay alternate liquidated damages per Section 5.1.4.1.
VOMER = Variable O&M Energy Rate is \$ [redacted] /MWh for operation on Natural Gas and \$ [redacted] /MWh for operation on Fuel Oil (expressed in 2005 dollars and escalated at CPI)
VOMHR = Variable O&M Energy Rate is \$ [redacted] /MWh
GHR = The applicable Guaranteed Heat Rate in MMBtu/MWh pursuant to Appendix J. The GHR for an hour will be based upon the MW Scheduled across the hour.
SE = Scheduled energy in MWh delivered in each hour from an Alternate Resource in a given Month or the Scheduled energy if Seller has elected to pay alternate liquidated damages per Section 5.1.4.1.
DFP= Daily Fuel Price in \$/MMBtu.

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

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B. Monthly Variable O&M Charges ("MVOM")

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

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$$MVOM = \sum [(HDE + VOMER)_{Hour_1} \dots (HDE + VOMER)_{Hour_N}] + (DH + VOMHR)$$

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The MVOM shall be the sum of the hourly Variable O&M Charges for each delivered output level (from the Facility or Alternate Delivery) that is Scheduled during a given Month. If Seller has elected to pay alternate liquidated damages per Section 5.1.4.1, or if Seller has elected to pay liquidated damages per Section 8.3, the MVOM shall be the sum of the hourly Variable O&M charges for each applicable Scheduled output level during a given Month. The Variable O&M Charges for each delivered or Scheduled output level is the product of the delivered or Scheduled output level and the corresponding Variable O&M Rate. Variable O&M charges also apply to energy delivered from the Facility during ramping.

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Where:

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MVOM= Monthly Variable O&M Charge.

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HDE = Amount of energy (in MWh) delivered by Seller to Buyer that was Scheduled by Buyer during a given Hour. This energy can come from the Facility and/or an Alternate Resource or can be the Scheduled amount of energy if Seller has elected to pay alternate liquidated damages per Section 5.1.4.1.

VOMER= Variable O&M Energy Rate is \$[redacted]/MWh for operation on Natural Gas and \$[redacted]/MWh for operation on Fuel Oil (expressed in 2005 dollars and escalated at CPI)

VOMHR= Variable O&M Energy Rate is \$[redacted]/MWh

DH= The number of hours during which Seller delivered energy to Buyer pursuant to Buyer's Schedules (including hours during ramping) during a given Month.

C. Monthly Startup Charges ("MSC")

The Monthly Startup Charges shall be determined as follows:

$$MSC = \sum [FSR + O\&MSR]$$

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

Where:

\sum = Summation from startup 1 to startup N.

MSC= Monthly Startup Charge.

FSR= Fuel Startup Rate (in \$/Startup event), as shown in Table B-2 below.

O&MSR= O&M Startup Rate (in \$/Startup event), as shown in Table B-2

For purposes of determining MSC, a Startup event is defined as a change in the hourly delivered quantity according to the Table B-2 below pursuant to Buyer's Scheduling Instructions.

Table B-2
Startup Rates (\$/Startup Event)

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

Note: The start costs are on a per Unit per start basis.

D. Monthly Fuel Adjustment.

When the Facility is Scheduled by Buyer, Buyer shall determine the Daily Guaranteed Fuel quantity by multiplying the Guaranteed Heat Rate pursuant to **Appendix J** by the amount of energy that was delivered by Seller.

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

D1. Monthly Fuel Adjustment ("MFA_{GAS}") for operation on Natural Gas

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

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

The Monthly Fuel Adjustment ("MFA_{GAS}") shall be the sum of the daily fuel adjustments for each Day or partial Day in the Month. The daily fuel

adjustment is the product of the difference of Daily Guaranteed Fuel and Daily Actual Fuel in MMBtu and the corresponding Daily Fuel Cost in \$/MMBtu.

Where:

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

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

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

Where:

- GHR_{GAS} = The applicable Guaranteed Heat Rate in MMBtu/MWh for operation on Natural Gas pursuant to **Appendix J**. The GHR for an hour will be based upon the MW Scheduled for the hour.
- HDE_{GAS} = Amount of energy delivered from the Facility each hour by Seller in MWh for operation on Natural Gas (pursuant to Buyer's Schedules) including energy produced during ramping of the Facility.

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

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

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DFC_{GAS} = (SGD + VTA + IT)

Where:

SGD = The Day's "Gas Daily" midpoint price for its Daily Price Survey for [REDACTED]

VTA = The Variable Transportation Adders will be [REDACTED]

IT = The Interruptible Transportation will be [REDACTED]

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

D2. Monthly Fuel Adjustment ("MFA_{OIL}") for operation on Fuel Oil

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

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

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

Where:

DGF_{OIL} = The Daily Guaranteed Fuel Oil quantity in MMBtu.

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

FRP_{OIL} = Daily Fuel Oil Replacement Price in \$/MMBtu.

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

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

Where:

GHR_{OIL} = The applicable Guaranteed Heat Rate in MMBtus/MWh for operation on Fuel Oil pursuant to **Appendix J**. The GHR for an hour will be based upon the MW Scheduled for the hour.

HDE_{OIL} = Amount of energy generated by the Facility each hour using Fuel Oil and delivered by Seller to Buyer (pursuant to Buyer’s Schedules) including energy produced during ramping of the Facility.

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

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

E. Monthly Fuel Charge

E1. Monthly Fuel Charge for operation on Natural Gas (“MFC_{GAS}”)

If Seller delivers energy from an Alternate Resource, if Seller has elected to pay alternate liquidated damages per Section 5.1.4.1, or if Seller has elected to pay liquidated damages per Section 8.3, the MFC_{GAS} will be determined as follows:

$$MFC_{GAS} = \sum [(DGF * DFP)_{DAY1} \dots (DGF * DFP)_{DAYN}]$$

The MFC_{GAS} shall be the sum of the daily fuel charges for each Day or partial Day in the Month when delivering from an Alternate Resource, if Seller has elected to pay alternate liquidated damages per Section 5.1.4.1, or if Seller has elected to pay liquidated damages per Section 8.3. The daily fuel charge is the product of the Daily Guaranteed Fuel in MMBtus and the corresponding Daily Fuel Price in \$/MMBtu.

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Where:

DGF= Daily Guaranteed Fuel quantity in MMBtus.
DFP= Daily Fuel Price in \$/MMBtu.

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

$$DGF = \sum [(GHR_{hr1} * SE_{hr1}) \dots (GHR_{hrN} * SE_{hrN})]$$

Where:

GHR = The applicable Guaranteed Heat Rate in MMBtu/MWh pursuant to **Appendix J**. The GHR for an hour will be based upon the MW Scheduled across the hour.

SE = Scheduled energy in MWh delivered in each hour from an Alternate Resource in a given Month, the Scheduled energy if Seller has elected to pay alternate liquidated damages per Section 5.1.4.1, or the Scheduled energy if Seller has elected to pay liquidated damages per Section 8.3.

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

$$DFP = SGD + VTA$$

Where:

SGD = The Day's "Gas Daily" midpoint price in its Daily Price Survey for such Day for [REDACTED]

VTA = The Variable Transportation Adders will be [REDACTED]

E2. Monthly Fuel Charge for operation on Fuel Oil (“MFC_{OIL}”)

If Seller delivers energy from an Alternate Resource, the MFC_{OIL} will be determined as follows:

$$MFC_{OIL} = \sum [(DGF * FRP_{OIL})_{DAY1} \dots (DGF * FRP_{OIL})_{DAYN}]$$

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

Where:

DGF= Daily Guaranteed Fuel quantity in MMBtus.
FRP_{OIL} = Daily Fuel Oil Replacement Price in \$/MMBtu.

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

$$DGF = \sum [(GHR_{hr1} * SE_{hr1}) \dots (GHR_{hrN} * SE_{hrN})]$$

Where:

GHR = The applicable Guaranteed Heat Rate in MMBtu/MWh pursuant to **Appendix J**. The GHR for an hour will be based upon the MW Scheduled across the hour.

SE = Scheduled energy in MWh delivered in each hour from an Alternate Resource in a given Month.

APPENDIX C

TECHNICAL LIMITS AND SCHEDULE PROCEDURES

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

I. TECHNICAL LIMITS

A. General Requirements

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

B. Net Output

Each Unit is estimated to have a net output capability of 73 MW in Base Operating Mode at Reference Conditions.

C. Maximum Ramp Rates

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

D. Minimum Schedule and Minimum Down Times

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

E. Starts

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

F. Required Startup Notification

Plant start times are as specified in the following table:

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

II. SCHEDULE PROCEDURES

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

A. Notification Communication

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

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

B. *Reserved.*

C. *Reserved.*

D. Scheduling and Notification Procedures

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

APPENDIX D PERFORMANCE TESTING PROCEDURES

1. Objective

The purpose of this **Appendix D** is to provide an agreed upon method for the determination of the Unit(s) Tested Reliable Capacity. Consistent, past performance of the Facility in reliably meeting the Unit(s) Designated Capacity and in reliably meeting the Scheduling Instructions shall be deemed as acceptable demonstration of the capability of the Unit(s). A Performance Test for each Unit shall be conducted prior to the Delivery Commencement Date, and a Performance Test for any or all Units may be conducted from March 15 through April 15 in each Annual Period, consistent with Section 10.2 and **Appendix A**.

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

2. Operating Conditions

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

3. Testing

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

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

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

4. Reduction of Data

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

$$\text{Tested Reliable Capacity} = \text{Measured Base Load Net Output} \times F_{\text{wetblb}} \times F_{\text{baro}} \times F_{\text{pf}}$$

where,

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

F_{wetblb} = correction factor for dry bulb temperature and relative humidity from actual conditions to Reference Conditions.

F_{baro} = correction for barometric pressure from actual test conditions to Reference Conditions.

F_{pf} = correction for reactive power output from actual test conditions to Reference Conditions.

APPENDIX E

INSURANCE REQUIREMENTS

1. Commercial general liability insurance policy in an “occurrence” form or an AEGIS “claims first made” form or equivalent with bodily injury and property damage combined liability limits of at least fifteen (15) million dollars per occurrence and which shall include specific coverage for broad form contractual liability including Seller’s indemnification obligations under this Agreement and a separation of insured provision. All such policies shall provide coverage on an “occurrence” basis; provided, however, that coverage may be provided on a “claims made” basis with the provision of a minimum extended reporting period of five (5) years from the termination of this Agreement. The coverage requirements can be met through any combination of primary insurance and following form excess or umbrella insurance as long as the combined limits meet requirements of this Agreement.
2. All risk property insurance providing coverage for the full replacement value of the Facility.

APPENDIX F

THE SITE

The Site shall be defined as:

The land, rights-of-way and related equipment and facilities of the Combustion Turbine electric generating plant known as Dahlberg located in Jackson County, Georgia at 585 Jarret Road, Nicholson, GA 30565

APPENDIX G

FORM OF LETTER OF CREDIT

_____, 20__

[Name and Address
of Beneficiary]

Dear Sirs:

We hereby establish in your favor, for the account of [NAME OF ACCOUNT PARTY] (“[Account Party]”), with respect to the Contract for the Purchase of Firm Capacity and Energy of even date herewith between [Account Party] and you (“Beneficiary”) (the “PPA”), our irrevocable standby letter of credit no. _____ (the “Standby Letter of Credit”) whereby we hereby irrevocably authorize you to draw on us, in accordance with the terms and conditions hereinafter set forth, by your draft or drafts at sight, an amount not to exceed _____ United States Dollars (U.S. \$ _____).

Funds against this Standby Letter of Credit are available to you against your sight draft(s) drawn on us, referring thereon to the number and date of this Standby Letter of Credit, accompanied by a written and completed certificate executed by you in the form attached as Annex 1 hereto, with appropriate insertions. Multiple, partial drafts may be drawn hereunder. Such available funds shall not directly or indirectly constitute funds or collateral deposited with or for the bank account by the [Account Party], or pledged with or for the bank’s account by the [Account Party].

Presentation of such drafts, and such certificates shall be made on any day which is a business day for us at or prior to 5:00 p.m. (Atlanta time) at our office located at _____, or at any other office in the United States of America which may be designated by us in a written notice delivered to you. If such sight draft and such certificate are received at either such office, all in strict conformity with the terms and conditions of this Standby Letter of Credit, on or prior to the expiration date hereof, we hereby agree with you that we will duly honor the same within three (3) business days of such presentation. Notwithstanding the foregoing, Beneficiary may demand payment under this Standby Letter of Credit by telecopy or e-mail when promptly confirmed by written demand; however, actual disbursement of funds pursuant to a demand presented by telecopy or e-mail shall not occur until we are presented with the original Standby Letter of Credit.

This Standby Letter of Credit is effective immediately and expires upon the earlier of (a) the expiration of one hundred and twenty (120) consecutive days after the termination of the PPA [and the payment in full of all indebtedness owing to you thereunder (during which no general assignment for the benefit of creditors shall have been made by [Account Party] and no petition in

bankruptcy by or against [Account Party] shall have been filed under the Federal Bankruptcy Code of 1978, as amended)) and (b) 5:00 p.m. (Atlanta time) on _____, 20___. It is a condition of this Standby Letter of Credit that it will be deemed automatically extended for successive periods of one year each from the present or any future expiration date under clause (b) above (but in no event later than _____, 20__), unless we notify you, in writing, by certified or registered mail at your respective addresses, not less than ninety (90) days prior to any such date, that we have elected not to extend such expiration date for such additional period. Notwithstanding Article 16 of the UCP (as such term is defined below), any notice of our election not to extend the expiration date of this Standby Letter of Credit shall be effective only upon actual receipt by you and no such notice shall have any effect absent such actual receipt. In the event that the expiration date of this Standby Letter of Credit occurs at such time as the events described in Article 17 of the UCP (as such term is defined below) are occurring, said expiration date shall be automatically extended by a period of time equal to the duration of such events.

We hereby undertake that we will not modify, revoke or terminate this Standby Letter of Credit without your written consent. Except as stated herein, payment of drafts drawn under this Standby Letter of Credit is not subject to any condition or qualification. This Standby Letter of Credit sets forth in full the terms of our undertaking, and such undertaking shall not be modified, annulled or amplified by reference to any other document, instrument or agreement referred to herein or in which the Standby Letter of Credit is referred or to which the Standby Letter of Credit relates, and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement. Our obligations hereunder are primary obligations that shall not be affected by the performance or non-performance by [Account Party] of any obligations under any loan agreement or under any agreement between [Account Party] and you or between [Account Party] and us or between [Account Party] and its agents.

We hereby waive any right to set off and apply any and all deposits (general or special, time or demand, provisional or final) or collateral at any time held and other indebtedness at any time owing by us to or for the credit of or the account of [Account Party] against any and all of the obligations of [Account Party] now or hereafter existing to reimburse us for our disbursements under this Standby Letter of Credit; provided, however, that each such right shall be reinstated if it is determined that such right would not lead to our being released, prevented or restrained from or delayed in, honoring any draft presented in accordance with this Standby Letter of Credit. The foregoing waiver is intended to defeat any possible claim that honor of this Standby Letter of Credit, or of any draft presented hereunder, may constitute a preferential transfer of the bankrupt account party's property securing our right of reimbursement. Nothing herein shall be construed to support the validity of any such claim, to support any delay in our obligation to honor this Standby Letter of Credit or to detract from the independence of our obligation to honor this Standby Letter of Credit at the times and in accordance with the terms stated and incorporated by reference herein.

This Standby Letter of Credit is transferable in its entirety (but not in part). Each letter of credit issued upon any such transfer and assignment may be successively transferred and assigned. Transfer of this Standby Letter of Credit to any transferee shall be affected by the presentation to us of this Standby Letter of Credit accompanied by a certificate in the form attached as Annex 2 hereto, with appropriate insertions. Upon such presentation we shall forthwith issue an irrevocable

letter of credit to such transferee with provisions therein consistent with this Standby Letter of Credit.

To the extent not contrary to the express terms hereof, this Standby Letter of Credit shall be governed by the Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce Publication No. 500 (herein referred to as the "UCP"), or by subsequent Uniform Customs and Practice fixed by subsequent Congresses of the International Chamber of Commerce. This Standby Letter of Credit shall be deemed to be a contract made under the laws of the State of Georgia and shall, as to matters not governed by the UCP, be governed by and construed in accordance with the laws of the State of Georgia.

Yours very truly,

[ISSUING BANK]

ANNEX 1

CERTIFICATE

Re: Contract for the Purchase of Firm Capacity and Energy dated _____, 20__ between [Name of Account Party] (“[Account Party]”) and [Name of Beneficiary] (“[Beneficiary]”) (the “PPA”).

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

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

Pursuant to the provisions of the PPA, an event has occurred under the PPA that entitles Beneficiary to draw on the Standby Letter of Credit in the amount of the sight draft (an example of such an event includes, without limitation, an Event of Default described in the PPA).

or

[Beneficiary] has received written notice from the Bank in accordance with the terms of the Standby Letter of Credit that the Bank has elected not to extend the expiration date of the Standby Letter of Credit for an additional period past its then-expiration date.

(2) The undersigned are each a duly elected and incumbent officer of [Beneficiary] and are authorized to execute and deliver this certificate and to draw upon the Standby Letter of Credit.

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

[BENEFICIARY]

By:
Title:

By:
Title:

ANNEX 2

INSTRUCTION TO ASSIGN IN ENTIRETY

_____, 20

Re: Irrevocable Standby Letter of Credit No.

Gentlemen:

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

(Name of Assignee)

(Address)

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

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

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

Very truly yours

[Beneficiary]

By:
Title:

By:
Title:

APPENDIX H

FORM OF GUARANTY

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

WHEREAS Beneficiary and _____ (the "Company"), [a subsidiary of the Guarantor], have entered into that certain Power Purchase Agreement dated as of _____, 20__ (the "Agreement");

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

WHEREAS, the Guarantor qualifies as a Seller or Buyer Guarantor as the case may be under the Agreement and this Guaranty qualifies as Eligible Collateral under the Agreement; and

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

NOW, THEREFORE, for and in consideration of the foregoing premises, the mutual agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Guarantor agrees as follows:

ARTICLE 1 - DEFINITIONS

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

ARTICLE 2 - GUARANTY

2.1 *Guaranty.* Guarantor hereby unconditionally and irrevocably guarantees to the Beneficiary and its successors and assigns, the prompt and full payment and performance of any and all obligations of the Company to the Beneficiary when due, whether by acceleration or otherwise, with such interest as may accrue thereon, under the Agreement or under any other documents or instruments now or hereafter evidencing, securing or otherwise relating to the Agreement (the "Guaranteed Obligations"); provided, however, that Guarantor's liability under this Guaranty shall in no event exceed the amount of Eligible Collateral required to be provided by Seller from time to time pursuant to Section 7.1 of the Agreement. If Company fails to pay or perform any Guaranteed Obligation, then Guarantor will immediately pay for or perform or cause the performance of such obligation upon demand by the Beneficiary.

2.2 *Guaranty Absolute.* (a) The Guarantor absolutely guarantees that the Guaranteed Obligations will be paid and performed strictly in accordance with the terms of the Agreement,

regardless of any law or regulation now or hereafter in effect in any jurisdiction affecting any of such terms or the rights of the Beneficiary with respect thereto. This Guaranty constitutes a guarantee of payment and performance and not of collection. The obligations of the Guarantor hereunder are several from the Company or any other person, and are primary obligations concerning which the Guarantor is the principal obligor. The liability of Guarantor under this Guaranty shall be direct and immediate and not conditional or contingent upon the pursuit of any remedies against the Company or any other person, nor against securities or liens available to the Beneficiary, its successors or assigns. The liability of the Guarantor under this Guaranty shall be irrevocable, absolute and unconditional irrespective of, and the Guarantor hereby irrevocably waives any defenses it may now have or hereafter acquire in any way relating to, any or all of:

- (i) any change in the time, manner or place of payment of, or in any other term of, all or any of the Guaranteed Obligations, or any other amendment, modification or waiver of, or any consent to departure from, the terms of such Guaranteed Obligations;
- (ii) any change, restructuring or termination of the corporate structure or existence of the Company or any of its subsidiaries;
- (iii) any lack of validity or enforceability of the Agreement or any agreement or instrument relating thereto;
- (iv) any failure of the Beneficiary to disclose to either the Company or the Guarantor any information relating to the business, condition (financial or otherwise), operations, performance, properties or prospects of either the Company or any of its subsidiaries now or hereafter known to the Beneficiary (the Guarantor waiving any duty on the part of the Beneficiary to disclose such information);
- (v) any failure of the Beneficiary to commence an action against Company, including without limitation the provisions of O.C.G.A. Section 10-7-24, as amended;
- (vi) any lack of due diligence by the Beneficiary in the collection or protection of or realization upon any collateral securing the Guaranteed Obligations; or
- (vii) any circumstance whatsoever (including, without limitation, any statute of limitations) or any act of the Beneficiary or any existence of or reliance on any representation by the Beneficiary that might otherwise constitute a legal or equitable defense available to, or a discharge of, the Guarantor.

This Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Guaranteed Obligations is rescinded or must otherwise be returned by the Beneficiary or any other Person upon the insolvency, bankruptcy, or reorganization of the Company, all as though such payment had not been made.

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

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

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

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

(c) The Guarantor hereby unconditionally and irrevocably waives any defense based on any right of set-off or counterclaim against or in respect of the obligations of the Guarantor hereunder; provided, however, that Guarantor shall have the same defenses available to the Company with respect to any payment obligations arising under the Agreement, except for defenses arising out of bankruptcy, insolvency, dissolution or liquidation of the Company.

2.4 *Subrogation.* Notwithstanding any payment or payments or performance made by the Guarantor hereunder, the Guarantor hereby irrevocably waives any and all rights of subrogation to the rights of the Beneficiary against the Company and any and all rights of reimbursement, assignment, indemnification or implied contract or any similar rights (including without limitation any statutory rights of subrogation under Section 509 of the Bankruptcy Code, 11 U.S.C. § 509) against the Company or against any other guarantor of all or any part of the Guaranteed Obligations until such time as the Guaranteed Obligations have been indefeasibly

paid or performed in full. If, notwithstanding the foregoing, any amount shall be paid to the Guarantor on account of such subrogation or similar rights at any time when all of the Guaranteed Obligations shall not have been indefeasibly paid in full, such amount shall be held by the Guarantor in trust for the Beneficiary and shall be turned over to the Beneficiary in the exact form received by the Guarantor, to be applied against the Guaranteed Obligations in such order as the Beneficiary may determine in its sole discretion.

ARTICLE 3 - REPRESENTATIONS AND WARRANTIES

The Guarantor hereby represents and warrants as follows:

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

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

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

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

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

ARTICLE 4 - MISCELLANEOUS

4.1 *Continuing Guaranty; Assignment.* This Guaranty is a continuing guaranty and shall (i) remain in full force and effect until all of the Guaranty Obligations have been satisfied, (ii) consistent with the terms hereof, apply to all Guaranteed Obligations whenever arising, (iii) be binding upon the Guarantor, its successors and assigns, and (iv) inure to the benefit of, and be enforceable by, the Beneficiary and its permitted assignees hereunder. The Beneficiary may not assign or delegate its rights or obligations under this Guaranty without the prior written consent of the Guarantor, which consent shall not be unreasonably delayed or withheld. The Guarantor may not assign or delegate its rights or obligations under this Guaranty without (x) the prior written consent of the Beneficiary, which consent may be withheld in the Beneficiary's sole

discretion, and (y) a written assignment and assumption agreement in form and substance reasonably acceptable to the Beneficiary. Without prejudice to the survival of any of the other agreements of the Guarantor under this Guaranty, the agreements and obligations of the Guarantor contained in Section 4.4 (with respect to enforcement expenses) and the last sentence of Section 2.2(a) shall survive the payment in full of the Guaranteed Obligations and all of the other amounts payable under this Guaranty.

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

(i) if to the Beneficiary:

[Company, address, c/o person]

(ii) if to the Guarantor:

[Company, address, c/o person]

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

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

4.4 *Expenses.* The Guarantor agrees to pay or reimburse the Beneficiary and any permitted assignees of the Beneficiary on demand for its reasonable costs, charges and expenses (including reasonable fees and expenses of counsel) incurred in connection with the enforcement of this Guaranty or occasioned by any breach by the Guarantor of any of its obligations under this Guaranty should Guarantor be required to pay under this Guaranty.

4.5 *Entire Agreement; Amendments.* This Guaranty and any agreement, document or instrument attached hereto or referred to herein integrate all the terms and conditions mentioned herein or incidental hereto and supersede all oral negotiations and prior writings in respect to the subject matter hereof. In the event of any conflict between the terms, conditions and provisions of this Guaranty and any such agreement, document or instrument, the terms, conditions and

provisions of this Guaranty shall prevail. This Guaranty may only be amended or modified by an instrument in writing signed by each of the Guarantor and the Beneficiary and any permitted assignees of the Beneficiary.

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

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

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

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

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

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

[Company]

By: _____
Name: _____
Title: _____

APPENDIX I

TRANSFER OF INFORMATION ACKNOWLEDGEMENT

Southern Power Company ("SPC") and Gulf Power Company ("Gulf") have entered into that certain Purchased Power Agreement ("the Agreement") dated as of _____, 2006. The Agreement contemplates that certain information that could be considered to be non-public information that potentially has implications under the Federal Energy Regulatory Commission's Standards of Conduct will be provided by SPC to Gulf and/or Southern Company Services, Inc. as agent for the transmission owning subsidiaries of Southern Company (Alabama Power Company, Georgia Power Company, Gulf Power Company, and Mississippi Power Company). SPC acknowledges that such information is being provided for the purposes of operational implementation and administration of the Agreement (which includes conducting Gulf Power Company's system operations and dispatch functions) and will be utilized by individuals in both Transmission Provider and Energy Affiliate/wholesale marketing unit functions under the Standards of Conduct.

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

Acknowledged on behalf of Southern Power Company:

By: _____
Name: _____
Date: _____

APPENDIX J

GUARANTEED HEAT RATES

Dahlberg CT01, CT03, CT05, and CT07
Table J-1
Natural Gas
Guaranteed Higher Heating Value Heat Rates
(Btus/kWh)

Unit Output Level (MW)	Winter Season	Unit Output Level (MW)	Spring, Summer and Fall Season
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Dahlberg CT01, CT03, CT05, and CT07
Table J-2
Fuel Oil
Guaranteed Higher Heating Value Heat Rates
(Btus/kWh)

Unit Output Level (MW)	Winter Season	Unit Output Level (MW)	Spring and Fall Season
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

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APPENDIX K

FINANCIAL SETTLEMENT PROCEDURE

In the event Seller elects the financial settlement procedures of Section 5.1.4.1, the indexed daily strip price into the Southern Control Area as published in the daily Platts Energy Trader will be used to determine alternate liquidated damages. The following table will be used to distribute the daily sixteen (16) hour strip price (\$/MWh) into an hourly shape for the Months May through September:

Hour	Hourly Strip Energy Price
1 6:00 – 7:00 AM CPT	Daily Strip Price * 0.54
2 7:00 – 8:00 AM CPT	Daily Strip Price * 0.61
3 8:00 – 9:00 AM CPT	Daily Strip Price * 0.68
4 9:00 – 10:00 AM CPT	Daily Strip Price * 0.77
5 10:00 – 11:00 AM CPT	Daily Strip Price * 0.88
6 11:00 AM – Noon CPT	Daily Strip Price * 0.98
7 Noon – 1:00 PM CPT	Daily Strip Price * 1.07
8 1:00 – 2:00 PM CPT	Daily Strip Price * 1.16
9 2:00 – 3:00 PM CPT	Daily Strip Price * 1.22
10 3:00 – 4:00 PM CPT	Daily Strip Price * 1.24
11 4:00 – 5:00 PM CPT	Daily Strip Price * 1.26
12 5:00 – 6:00 PM CPT	Daily Strip Price * 1.24
13 6:00 – 7:00 PM CPT	Daily Strip Price * 1.19
14 7:00 – 8:00 PM CPT	Daily Strip Price * 1.11
15 8:00 – 9:00 PM CPT	Daily Strip Price * 1.05
16 9:00 – 10:00 PM CPT	Daily Strip Price * 1.00

For January through April and October through December, the multiplier will be 1.00 for all hours. Buyer reserves the right to adjust annually the hourly multipliers for any Season or to change the provider of the daily strip price and/or the product used to calculate financial settlement, provided, however, that the sum of the hourly multipliers shall always equal sixteen (16).

For each hour that the Facility is Scheduled, the alternate liquidated damages shall equal the Hourly Strip Energy Price corresponding to Buyer's Schedules multiplied by the Schedule amount.

Example 1

If the Seller elected financial settlement when Facility was Scheduled and 200 MW were Unavailable between 2:00 and 3:00 PM on a day in June when the indexed daily strip price into the Southern Control Area as published in the daily Platts Energy Trader was \$100/MWH, the alternate liquidated damages would be calculated as follows:

$$\text{alternate liquidated damages (ALD) when } ALD > (HDE * VOMER + GHR * SE * DFP) = \\ \$100/\text{MWH} * 1.22 * 200 \text{ MW} * 1 \text{ Hour} = \$24,400$$

If the PPA energy price (VOMER + GHR*DFP) was \$80/MWH , this hour's contribution to the monthly energy payment (MEP_{ALD}) would be calculated as follows:

$$MEP_{ALD} = MVOM + MFC_{GAS} - ALD = \$80/\text{MWH} * 200 \text{ MW} * 1 \text{ Hour} - \$24,400 = \\ -\$8400$$

The total monthly energy payment would be reduced by \$8400 because of this 1 hour of alternate liquidated damages.

Example 2

If the Seller elected financial settlement when Facility was Scheduled and 200 MW were Unavailable between 2:00 and 3:00 PM on a day in April when the indexed daily strip price into the Southern Control Area as published in the daily Platts Energy Trader was \$100/MWH, the alternate liquidated damages would be calculated as follows:

$$\text{alternate liquidated damages (ALD) when } ALD > (HDE * VOMER + GHR * SE * DFP) = \\ \$100/\text{MWH} * 1.0 * 200 \text{ MW} * 1 \text{ Hour} = \$20,000$$

If the PPA energy price (VOMER + GHR*DFP) was \$80/MWH * 200 MW * 1 Hour, this hour's contribution to the monthly energy payment (MEP_{ALD}) would be calculated as follows:

$$MEP_{ALD} = MVOM + MFC_{GAS} - ALD = \$80/\text{MWH} * 200 \text{ MW} * 1 \text{ Hour} - \$20,000 = \\ -\$4000$$

The total monthly energy payment would be reduced by \$4000 because of this 1 hour of alternate liquidated damages.

Example 3

If the Seller elected financial settlement when Facility was Scheduled and 200 MW were Unavailable between 2:00 and 3:00 PM on a day in April when the indexed daily strip price into the Southern Control Area as published in the daily Platts Energy Trader was \$70/MWH, the alternate liquidated damages would be calculated to compare with (HDE*VOMER + GHR*SE*DFP) as follows:

$$\text{alternate liquidated damages (ALD)} = \$70/\text{MWH} * 1.0 * 200 \text{ MW} * 1 \text{ Hour} = \$14,000$$

If the PPA energy price (VOMER + GHR*DFP) was \$80/MWH * 200 MW * 1 Hour = \$16,000, this hour's contribution to the monthly energy payment (MEP_{ALD}) would be zero because when ALD < (HDE*VOMER + GHR*SE*DFP), the MEP_{ALD} equation does not apply.

The total monthly energy payment would not be reduced because of this 1 hour of alternate liquidated damages.

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APPENDIX L

FAILURE TO ACHIEVE RCOD LIQUIDATED DAMAGES CALCULATION

The Liquidated Damages for Failure to Achieve Commercial Operation by RCOD (LDFCO) described in Section 8.3 shall be determined as follows:

$$\text{LDFCO} = \text{ALD}_{\text{Month}} - \left(\sum [(\text{DCP})_{\text{Day}_1} \dots (\text{DCP})_{\text{Day}_N}] + \text{MVOM} + \text{MFC}_{\text{GAS}} \right)$$

(applies only to hours when $\text{ALD}_{\text{Hour}} > (\text{SE} \cdot \text{VOMER} + \text{VOMHR} + \text{GHR} \cdot \text{SE} \cdot \text{DFP})$) and only if such hours are in days when $\text{ALD}_{\text{Day}} > (\text{DCP} + \sum [(\text{SE} \cdot \text{VOMER} + \text{VOMHR} + \text{GHR} \cdot \text{SE} \cdot \text{DFP})_{\text{Hour}_1} \dots (\text{SE} \cdot \text{VOMER} + \text{VOMHR} + \text{GHR} \cdot \text{SE} \cdot \text{DFP})_{\text{Hour}_N}])$)

Where:

- ALD = Alternate Liquidated Damages determined pursuant to **Appendix K**.
- MCP = Monthly Capacity Payment.
- DCP = Daily Capacity Payment = MCP/(number of Days per Month).
- MVOM = Monthly Variable O&M Charge determined pursuant to Appendix B Section B.
- MFC_{GAS} = Monthly Fuel Charge for Natural Gas determined pursuant to Appendix B Section D with respect to the Scheduled amount if Seller has elected to pay liquidated damages per Section 8.3
- SE = Scheduled energy in MWh in each hour if Seller has elected to pay liquidated damages per Section 8.3.
- VOMER = Variable O&M Energy Rate is \$XXXX/MWh for operation on Natural Gas and \$XXXX/MWh for operation on Fuel Oil (expressed in 2005 dollars and escalated at CPI)
- VOMHR = Variable O&M Hourly Rate is \$XX/hour
- GHR = The applicable Guaranteed Heat Rate in MMBtu/MWh pursuant to **Appendix J**. The GHR for an hour will be based upon the MW Scheduled across the hour.
- DFP = Daily Fuel Price in \$/MMBtu.