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December 26, 2012

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 COMMISSION
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Ms. Ann Cole
 Division of the Commission Clerk and
 Administrative Services
 Florida Public Service Commission
 Betty Easley Conference Center
 2540 Shumard Oak Boulevard, Room 110
 Tallahassee, FL 32399-0850

REDACTED

Re: Docket No. 120314-EQ - Florida Power & Light Company's Petition for Approval of Negotiated Renewable Energy Contracts with U.S. EcoGen Okeechobee, LLC, U.S. EcoGen Clay, LLC, and U.S. EcoGen Martin, LLC

Dear Ms. Cole:

Please find enclosed for filing an original and seven (7) copies of Florida Power & Light Company's Petition for Approval of Negotiated Renewable Energy Contracts with U.S. EcoGen Okeechobee, LLC, U.S. EcoGen Clay, LLC, and U.S. EcoGen Martin, LLC (collectively the "Contracts"). The contents of FPL's submittal include:

1. FPL's Petition;
2. Appendix A: U.S. EcoGen Okeechobee, LLC Contract (REDACTED);
3. Appendix B: U.S. EcoGen Clay, LLC Contract (REDACTED);
4. Appendix C: U.S. EcoGen Martin, LLC Contract (REDACTED);
5. Appendix D: Summary of Contracts;
6. Appendix E: FPL System Cost Including and Without U.S. EcoGen PPA;
7. Testimony and Exhibit of Thomas L. Hartman; and
8. Compact Disc Containing FPL's Petition in Microsoft Word format.

This filing replaces all of the documents described above and previously filed with the Commission on December 18, 2012, due to confidential information that was inadvertently included in the Testimony and Exhibit of Thomas L. Hartman. With this filing, Mr. Hartman's testimony has been revised to remove all confidential information previously included in his testimony. All of the documents listed above, as filed on December 18, 2012, are hereby withdrawn and replaced with the documents included in this filing.

COM _____
 AFD _____
 APA _____
 ECO _____
 ENG 5td
 GCL _____
 IDM _____
 TEL _____
 CLK _____


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Ms. Cole
December 26, 2012
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The Request for Confidential Classification of certain information contained in the Contracts, previously filed under a separate cover on December 18, 2012, in this docket, remains unchanged as filed and is not part of this revised filing.

Thank you for your assistance. Please contact me should you or your staff have any additional questions regarding this filing.

Sincerely,


for

William P. Cox
Senior Attorney
Florida Bar No. 0093531

WPC/bag
Enclosures

Boulevard, Juno Beach, Florida 33408. The Commission has jurisdiction pursuant to Section 366.91, F.S., to establish rates at which a public utility shall purchase capacity and/or energy from renewable energy facilities, and FPL invokes that jurisdiction in filing this Petition. FPL has a substantial interest in the rates it pays renewable energy facilities for capacity and energy.

2. Pleadings, motions, notices, orders, or other documents required to be served upon the petitioner or filed by any party to this proceeding should be served upon the following individuals:

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850-521-3939 (fax)

3. U.S. EcoGen plans to install and operate renewable generating plants in Okeechobee County, Clay County, and Martin County, Florida (each a “Facility” and collectively, the “Facilities”). Under the Contracts, U.S. EcoGen would begin delivering energy on or before 2019 (assuming such date occurs less than 76 months after the Commission approves these Contracts) and firm capacity two years thereafter (*i.e.*, in 2021). The proposed Contracts’ terms extend for 30 contract years (*i.e.*, 2049), unless terminated earlier in accordance with the Contracts. Each U. S. EcoGen Facility would be designed to produce an expected net power output of 60,000 kilowatts (“kW”) of electric power using a steam turbine synchronous generator. Energy will be produced by a bubbling bed fluidized boiler using biomass as fuel. The biomass will be a farmed fuel

crop on dedicated land, making the overall process a “closed loop biomass” system. Accordingly, each Facility will constitute a “Renewable Generating Facility” within the meaning of Section 366.91(2)(a), F.S., and Rule 25-17.210(1), F.A.C.

4. For the reasons explained below, the purchase of firm capacity and energy from U.S. EcoGen’s proposed Facilities pursuant to the rates, terms, and other conditions of the Contracts can reasonably be expected to contribute towards the deferral or avoidance of capacity-related costs by FPL, as well as provide fuel diversity and energy security at a cost to FPL’s customers which is not expected to exceed full avoided costs, giving consideration to the characteristics of the capacity and energy (including renewable characteristics) to be delivered under the Contracts. See Rule 25-17.240(2), F.A.C. While the Contracts do not convey to FPL the environmental attributes or renewable energy credits associated with the electric generation of the Facilities, FPL has a right of first refusal to purchase such environmental characteristics at any time during the Contract term. A summary of each Contract setting forth the information required to be provided pursuant to Rule 25-17.0832(b), F.A.C., is attached as Appendix D to this Petition.

5. U.S. EcoGen and FPL negotiated pricing based upon generating savings to FPL’s customers over the life of the Contract as compared to FPL’s system costs without the Contracts. As a result of negotiations, Contract pricing was adjusted to be consistent with a proposed 2019 initial operation date and providing firm capacity starting in 2021. A summary of projected capacity and energy costs under the Contracts, compared with the forecast system costs taking into account these proposed energy and capacity operations dates, is attached as Appendix E to this Petition.

6. Each Facility's proposed 60,000 kW of firm capacity can be expected to avoid some firm capacity resources that would otherwise be needed during periods of higher than expected system demand and/or electric generating constraints. Capacity payments use a formulary approach. In order to receive full capacity payments under each Contract, U.S. EcoGen has to operate each Facility at an annual capacity billing factor of 90% (based on a 12 month rolling average). Accordingly, the purchase of firm capacity and energy from the U.S. EcoGen renewable generating Facilities "can reasonably be expected to contribute towards the deferral or avoidance of additional capacity construction or other capacity-related costs." Rule 25-17.240(2), F.A.C.

7. An additional benefit of the purchase of firm capacity and energy by FPL from the U.S. EcoGen renewable generating Facilities is provided by the utilization of biomass as fuel. As a result of the use of biomass at the Facilities for the primary fuel, rather than natural gas delivered by pipeline, purchases from the U.S. EcoGen Facilities will enhance FPL's fuel diversity and help enhance energy security and fuel supply reliability. Rule 25-17.240(1), F.A.C.

8. As presented in the direct testimony of Thomas L. Hartman, the Contracts provide a number of unique features to protect FPL's customers. Two of these unique factors are the requirement that U.S. EcoGen post a letter of credit and the required operation of the Facilities for a two-year commissioning period prior to the delivery of firm capacity. As respects the first, while in the early years the Contract payments are above FPL's system costs, U.S. EcoGen will post a letter of credit which, at all times, will provide security for these excess costs, including time value of money. Each year the cumulative excess payments to U.S. EcoGen to date are calculated, as well as the

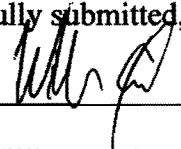
estimate for the coming year, and U.S. EcoGen is required to provide security for the entire amount. Should U.S. EcoGen fail, or fail to provide adequate security, customers are fully reimbursed for their excess payments. With regard to the second, the Contracts provide for a two-year commissioning period before firm capacity is delivered by each Facility. At present, there are no closed loop biomass projects in operation in the United States. This two-year commissioning period allows U.S. EcoGen to demonstrate that not only is each Facility capable of providing the rated capacity, but also that the fuel supply for the Facility is adequate to maintain the output at Contract levels. Additionally, U.S. EcoGen annually certifies that the inventory of biomass fuel at or near each Facility was sufficient during the prior calendar year to fuel reliable operation of the Facility.

WHEREFORE, for the foregoing reasons, FPL respectfully requests that the Commission grant this Petition and (i) approve each of the renewable energy Contracts between FPL and U.S. EcoGen in the forms attached hereto as Appendices A, B, and C; and (ii) enter a finding that the Contracts are prudent for capacity and energy clause cost recovery purposes.

Dated: December 18, 2012

Respectfully submitted,

By: _____


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APPENDIX A

U.S. EcoGen Okeechobee, LLC Contract

REDACTED

**AGREEMENT FOR THE PURCHASE OF
CAPACITY
AND ENERGY**

between

U.S. ECOGEN OKEECHOBEE, LLC

and

FLORIDA POWER & LIGHT COMPANY


Dated: December 14, 2012

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AGREEMENT FOR THE PURCHASE OF CAPACITY AND ENERGY

THIS CONTRACT is made and entered this ____ day of November, 2012 (the "Execution Date"), by and between U.S. EcoGen Okeechobee, LLC (hereinafter "Qualified Seller" or "QS"), a limited liability company organized and existing under the laws of the State of Delaware and developer of a Qualifying Facility, and Florida Power & Light Company in its capacity as a wholesale energy purchaser and retail electric distributor (hereinafter "FPL"), a public utility corporation organized and existing under the laws of the State of Florida. The QS and FPL are each a "Party" and shall be jointly identified herein as the "Parties".

WITNESSETH:

WHEREAS, the QS desires to sell, and FPL desires to purchase, firm capacity and energy to be generated at a facility (as described in Appendices 1 and 2, the "Facility") to be developed by the QS consistent with the terms of this Contract, Section 366.91, Florida Statutes, and/or Florida Public Service Commission ("FPSC") Rules 25-17.082 through 25-17.091, F.A.C. and FPSC Rules 25-17.200 through 25.17.310, F.A.C.;

WHEREAS, the QS will enter into an interconnection agreement (the "Interconnection Agreement") with Florida Power & Light Company in its separate capacity as a transmission provider ("FPL Transmission Provider");

WHEREAS, the Facility, when completed, will be a Qualifying Facility (as defined herein) capable of delivering firm capacity and energy to FPL for the term of this Contract in a manner consistent with the provisions of this Contract;

WHEREAS, Section 366.91(3), Florida Statutes, provides that the "[p]rudent and reasonable costs associated with a renewable energy contract shall be recovered from the ratepayers of the contracting utility, without differentiating among customer classes, through the appropriate cost-recovery clause mechanism" administered by the FPSC; and

WHEREAS, each public utility in the State of Florida has an obligation to continuously offer a purchase contract to producers of renewable energy for the benefit of the ratepayers, and as such, the ratepayers bear the risks associated with the contract, not the shareholders of the public utility, provided that the public utility has acted in a prudent and reasonable manner.

NOW, THEREFORE, for mutual consideration and intending to be bound hereby, the Parties agree as follows:

1. Defined Terms

1.1 Definitions.

The following capitalized terms shall have meaning assigned to them unless the context clearly requires otherwise:

"Affiliate" means with respect to any Person, any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person.

1 “Annual Capacity Billing Factor” or “ACBF” has the meaning set forth in Appendix 3.

2
3 “Annual Capacity Factor” means the sum of the twelve (12) consecutive Monthly Capacity
4 Factors, including the month to be calculated, divided by twelve (12).

5
6 “Applicable Law” means any and all applicable provisions of any constitution, statute, law,
7 ordinance, code, rule, regulation, decision, order, decree, judgment, release, license, condition, standard
8 and/or objective criteria applicable to this Contract or to any Party’s obligations, performance, or rights
9 under this Contract and/or contained in any Governmental Authorization applicable hereto.

10
11 “As-Available Avoided Energy Costs” means costs computed pursuant to FPSC Rule 25-
12 17.825(2) set forth in FPSC Order No. 12443, issued September 2, 1983, as it may subsequently be
13 amended from time to time, or any successor or substitute calculation, formula or methodology relating
14 thereto approved by the FPSC. FPL’s Northeast South operating area shall be the designated avoided cost
15 pricing area for purposes of this Contract.

16
17 “Avoided Unit” means the electrical generating unit described in Appendix 1.

18
19 “Avoided Unit In-Service Date” has the meaning set forth in Appendix 1.

20
21 “Base Production” means the quantity of Energy produced by the Facility operating at the design
22 Committed Capacity with a capacity factor of 90%.

23
24 “Biomass” means any fuel sources that meet the requirements of the definition of “Biomass” set
25 forth in Section 366.91(2)(a), Florida Statutes.

26
27 “Business Day” means any day except a day on which banks licensed to operate in the State of
28 Florida are authorized, directed or permitted to close, Saturday, Sunday or a weekday that is observed as a
29 public holiday in the State of Florida. Notwithstanding the foregoing, with respect to notices only, a
30 Business Day shall not include the Friday immediately following the U.S. Thanksgiving holiday.

31
32 “Capacity” means the amount of electric power in megawatts that the Facility is capable of
33 generating and delivering to FPL’s system.

34
35 “Capacity Delivery Status” means that (a) the Facility is in material compliance with all
36 applicable Governmental Authorizations and (b) the Facility has maintained an hourly MW output, as
37 metered at the Delivery Point, equal to or greater than the Minimum Committed Capacity over the
38 Committed Capacity Test Period.

39
40 “Capacity Payment” means the payment by FPL to QS hereunder for Committed Capacity as
41 calculated in accordance with and at the rate set forth in Appendices 3 and 4.

42
43 “Cash Collateral” has the meaning set forth in Appendix 5.

44
45 “COG Tariff” means the tariff schedule , including FPL’s tariff schedule, for purchase of as-
46 available energy from qualifying cogeneration and small power production facilities on file with the
47 FPSC at the Effective Date of this Contract and as may be amended and approved by the FPSC from time
48 to time.

49
50 “Commissioning Commencement Date” has the meaning set forth in Section 6.4.

1 “Commissioning Period” means the two (2) year period commencing on the Commissioning
2 Commencement Date.

3
4 “Committed Capacity” means the maximum Capacity in any one hour which QS contractually
5 commits to sell to FPL and FPL contractually commits to purchase from QS pursuant to the terms of this
6 Contract.

7
8 “Committed Capacity Test” has the meaning set forth in Section 6.2.

9
10 “Committed Capacity Test Period” has the meaning set forth in Section 7.2.

11
12 “Condemnation Event” means the actual or threatened exercise by any Governmental Authority
13 of the power of eminent domain, condemnation, or other right, power, or authority to acquire or use
14 property which results in the taking ownership of or control over all or any material portion of the Site
15 and/or the Facility.

16
17 “Conditions Precedent” means the FPL Conditions Precedent and the QS Conditions Precedent.

18
19 “Confidential Information” has the meaning set forth in Section 19.20(a).

20
21 A large rectangular area of text is completely redacted with black ink, covering approximately lines 21 through 24 of the document.

22
23
24
25 “Contract” means this “Agreement for the Purchase of Capacity and Energy” and the appendices
26 and attachments hereto, as it may be amended from time to time in accordance with the terms hereof.

27
28 “Contract Year” means the twelve (12) consecutive calendar months starting on the first day of
29 the calendar month following the Commissioning Commencement Date and each subsequent twelve (12)
30 consecutive calendar month period through the end of the Term; provided that the first Contract Year
31 shall include the days in the prior month in which the Commissioning Commencement Date occurred.

32
33 “Credit Rating” means with respect to any entity, on any date of determination, the respective
34 ratings then assigned to such entity’s unsecured, senior long-term debt or deposit obligations (not
35 supported by third party credit enhancement) by S&P, Moody’s or other specified rating agency or
36 agencies or if such entity does not have a rating for its unsecured, senior long-term debt or deposit
37 obligations, then the rating assigned to such entity as its “corporate credit rating” by S&P.

38
39 “Defaulting Party” has the meaning set forth in Section 14.1.

40
41 “Default Rate” means, for any date, the lesser of (a) FPL’s senior secured debt rate; and, (b) the
42 maximum rate permitted by applicable law.

43
44 “Delivery Point” means the point of interconnection between the Facility and FPL Transmission
45 Provider’s Transmission System, as specifically described in the Interconnection Agreement.

46
47 “Demonstration Period” has the meaning set forth in Section 7.1.

48
49 “Design Committed Capacity” means the design Capacity of the Facility as of the Execution
50 Date, as set forth in Appendix 2.

1 “Dispute” has the meaning set forth in Section 19.7(a).

2
3 “Drop Dead Date” means the later of [REDACTED] and (ii) the first day of the calendar
4 month following [REDACTED] months after the FPSC Approval Date, as each of such dates shall be
5 extended for an event of Force Majeure.

6
7 “Early Termination Date” means in respect of an Event of Default hereunder, a day designated by
8 a Non-Defaulting Party (by providing written notice to the Defaulting Party), which day shall be within
9 ninety (90) days after the occurrence of an Event(s) of Default by the Defaulting Party, no earlier than the
10 day such notice is effective and be no later than twenty (20) days after the delivery of such notice to the
11 Defaulting Party, as the date that this Contract terminates early and all amounts owing between the Parties
12 are accelerated and this Contract is liquidated and terminated.

13
14 “Eastern Prevailing Time” or “EPT” means the time in effect in the Eastern Time Zone of the
15 United States of America, whether Eastern Standard Time or Eastern Daylight Savings Time.

16
17 “Effective Date” has the meaning set forth in Section 4.6.

18
19 “Electrical Interconnection Facilities” means the interconnection facilities that physically connect
20 the Facility with the Transmission System, as well as any required network upgrades thereto.

21
22 “Emergency Condition” means a condition or situation that presents an imminent physical threat
23 of danger to life, health or property, and/or could reasonably be expected in the opinion of the
24 Transmission Provider to cause a significant disruption to the Transmission System or otherwise be
25 required in accordance with the requirements of the FPSC, NAERC or other regulatory entity of
26 competent jurisdiction or any system condition not consistent with Prudent Industry Practices.

27
28 “Emission Reduction Credits” means any offset, allowance, or credit of any kind created or
29 administered under any current or future voluntary standard, statutory and/or regulatory regime,
30 associated with (a) the underlying Fuel used for the generation of electricity and pursuant to which the
31 generation of electricity using the Fuel is recognized as avoiding the emissions of pollutants to the air,
32 soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other
33 pollutants; and (b) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide,
34 hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs), ozone
35 depleting substances, ozone, and non-methane volatile organic compounds that have been or may be
36 determined by the United Nations Intergovernmental Panel on Climate Change, by law, or otherwise by
37 science or in the voluntary markets to contribute to the actual or potential threat of altering the Earth’s
38 climate by trapping heat in the atmosphere. Emission Reduction Credits shall exclude (i) any energy or
39 capacity of the Facility, or (ii) investment, production, or other Tax credits, grants, benefits, and/or
40 deductions associated with the use of the Fuel at the Facility or the construction, ownership, use, and/or
41 operation of the Facility and financial incentives, including credits, reductions, or allowances associated
42 with the Facility that are applicable to local, state or federal Tax obligations.

43
44 “Energy” means the electrical energy in megawatt-hours generated by the Facility and delivered
45 to FPL’s system at the interconnection voltage level.

46
47 “Energy Payment” means the payment by FPL to QS hereunder for the Energy produced at the
48 Facility as calculated in accordance with and at the rate set forth in Appendix 4.

49
50 “Energy Rate” means the charge for Energy delivered to FPL after the Commissioning
51 Commencement Date as set forth in Appendix 4.

1
2 “Environmental Attributes” means all attributes of an environmental or other nature, including
3 Emission Reduction Credits, that are created or otherwise arise from the Facility’s generation of Energy
4 using the Fuel, in contrast with the generation of electricity using nuclear or fossil fuels or other
5 traditional resources, and the displacement of conventional energy by the Energy generated by the
6 Facility. Such attributes include RECs, however defined under any voluntary standard or local, state or
7 federal law, regulation or ordinance. Environmental Attributes shall exclude (i) any energy, capacity,
8 ancillary services or other products or services generated by or attributable to or capable of being
9 generated by or attributed to operation of the Facility and not otherwise specifically included in this
10 definition of Environmental Attributes, or (ii) investment, production, or other Tax Credits, grants,
11 benefits, depreciation and/or deductions associated with the use of the Fuel at the Facility or the
12 construction, ownership, use, and/or operation of the Facility and financial incentives, including credits,
13 reductions, or allowances associated with the Facility that are applicable to local, state or federal Tax
14 obligations.

15
16 “Environmental Law Changes” has the meaning set forth in Section 19.10.

17
18 “EPC Agreement” means the turnkey Engineering, Procurement and Construction Agreement or
19 other agreements entered into between QS and a contractor or contractors selected by QS to manage,
20 perform and complete the design, engineering, procurement, testing, commissioning and construction of
21 the Facility.

22
23 “Event(s) of Default” means an FPL Event of Default or a QS Event of Default, as applicable.

24
25 “Execution Date” has meaning set forth in the first paragraph of this Contract.

26
27 “Facility” means QS’s baseload, must-run electric generating facility to be located in the State of
28 Florida, as further described in Appendices 1 and 2.

29
30 “Facility Contracts” means the EPC Agreement, the Interconnection Agreement, major Fuel
31 supply agreements, and any operation and maintenance agreement, to the extent applicable.

32
33 “FERC” means the Federal Energy Regulatory Commission.

34
35 “Financial Closing” means the fulfillment of each of the following conditions: (a) the execution
36 and delivery of the Financing Documents; and (b) all conditions to the availability and first disbursement
37 of funds under the Financing Documents are satisfied or waived.

38
39 “Financial Closing Date” means the date upon which Financial Closing is achieved.

40
41 “Financing Documents” means documentation with respect to any private equity investment in
42 QS, any loan agreements or credit agreements (including agreements for any subordinated debt), notes,
43 bonds, indentures, guarantees, mortgages, collateral agreements, intercreditor agreements, security
44 agreements, pledge agreements, letters of credit, credit support, credit enhancement and swap and other
45 hedging agreements, and all consents, certificates, opinions and other documents to be delivered at the
46 closing of any financing or re-financing and the availability of funds or disbursement thereof relating to
47 the financing or refinancing of the design, development, permitting, interconnection, construction, testing,
48 commissioning, operation, maintenance, repair, reconstruction and decommissioning of the Facility or
49 any guarantee by any Financing Party of the repayment of all or any portion of any such financing or
50 refinancing.
51

1 “Financing Party(ies)” means any Person that provides debt funding in connection with any
2 development, bridge, construction, permanent debt or tax-equity financing or re-financing for the Facility
3 and any Person issuing a Letter of Credit, and any assignee or transferee of such Person, and any trustee,
4 collateral agent, administrative agent or other similar entity acting on behalf of such a party, as identified
5 by notice to FPL. In the event that a Person ceases to be the collateral agent [REDACTED]
6 [REDACTED], the QS shall provide prompt notice thereof to FPL.
7

8 “Force Majeure” means an event, condition or circumstance described in the first paragraph of
9 Article 17.
10

11 “Forced Outage” means a reduction of, or cessation in the delivery of, or inability to deliver,
12 Energy that is not the result of (a) a Planned Outage, (b) a Force Majeure, or (c) an Emergency Condition.
13

14 “FPL” has the meaning set forth in the first paragraph of this Contract.
15

16 “FPL Conditions Precedent” has the meaning set forth in Section 4.2.
17

18 “FPL Event of Default” has the meaning set forth in Section 13.2.
19

20 “FPL Termination Payment” means the amount to be paid by FPL to the QS upon termination of
21 this Contract by the QS for an FPL Event of Default calculated as set forth in Section 14.1(b).
22

23 “FPL Transmission Provider” has the meaning set forth in the second recital of this Contract.
24

25 “FPSC” means the Florida Public Service Commission.
26

27 “FPSC Approval” means the FPSC has issued its final written order that is no longer subject to
28 re-hearing or appeal, where such final order does any of the following: (a) approves this Contract as
29 submitted and without any conditions and including provision for full recovery of all costs from FPL’s
30 retail customers, (b) holds that no FPSC approval of this Contract is required for FPL to fully recover its
31 costs hereunder from FPL’s retail customers, or (c) approves this Contract in part or subject to conditions,
32 provided that each of QS and FPL agrees, subject to its reasonable discretion, to accept those conditions
33 or such partial approval as sufficient.
34

35 “FPSC Approval Date” means the date of the FPSC Approval of this Contract.
36

37 “FRCC” means the Florida Reliability Coordinating Council.
38

39 “Fuel” means biomass, including any fuel sources that meet the requirements of the definition of
40 “Biomass” set forth in Section 366.91(2)(a), Florida Statutes
41

42 “GAAP” means accounting principles generally accepted in the United States of America.
43

44 “Governmental Authorization” means any authorization, consent, approval, license, ruling,
45 appeal, permit, waiver, exemption, variance, order, judgment, instruction, condition of approval,
46 direction, directive, decree, declaration for regulation by any Governmental Authority relating to the
47 construction, development, ownership, occupancy, start-up, testing, operation or maintenance of the
48 Facility or the execution, delivery or performance of this Contract.
49

50 “Governmental Authority” means any federal, state or local legislative, executive, judicial, quasi-
51 judicial or other public authority, agency, department, bureau, division, unit, court, tribunal, or other

1 public body, person or entity having jurisdiction over a Party, the Facility or this Contract, which shall
2 include, in appropriate context, the FERC, the FPSC, the NAERC, the Florida Reliability Coordinating
3 Council, or their respective successor organizations.

4
5 “Indemnified Party” has the meaning set forth in Section 15.4.

6
7 “Indemnifying Party” has the meaning set forth in Section 15.4.

8
9 “Interconnection Agreement” has the meaning set forth in the third paragraph of this Contract.

10
11 “Letter of Credit” or “LC” means a stand-by letter of credit from a Qualified Issuer the form of
12 which shall be substantially similar to the form in Appendix 7.

13
14 “Maintenance Outage” means a time period during which the Facility is shut down or its output
15 reduced for purposes of performing maintenance, servicing and repairs necessary for the reliable
16 operation of the Facility.

17
18 “Management Reconciliation” has the meaning set forth in Section 19.7(b).

19
20 “Material Casualty Event” means the occurrence of a casualty event (a) if prior to the
21 Commissioning Commencement Date, that is reasonably likely to extend achievement of the
22 Commissioning Commencement Date by more than one (1) year or (b) if after the Commissioning
23 Commencement Date, that shall have reduced the Capacity of the Facility below the Minimum
24 Committed Capacity and the period for full restoration or repair of that portion of the Facility damaged by
25 the casualty event is reasonably likely to exceed one (1) year.

26
27 “Maximum Committed Capacity” means the maximum amount of Capacity of the Facility that
28 FPL commits to purchase hereunder, as set out in Appendix 2.

29
30 “Meters” has the meaning set forth in Section 9.11(b).

31
32 “Minimum Committed Capacity” means the minimum amount of Capacity of the Facility that QS
33 must demonstrate to achieve Capacity Delivery Status during a Committed Capacity Test Period, as set
34 out in Appendix 2.

35
36 “Monthly Billing Period” means the period beginning on the first calendar day of each calendar
37 month, except that the initial Monthly Billing Period shall consist of the period beginning 12:01 a.m. on
38 the Commissioning Commencement Date and ending at 12:00 midnight on the last calendar day of such
39 month.

40
41 “Monthly Capacity Factor” or “MCF” has the meaning set forth in Appendix 3.

42
43 “Monthly Capacity Payment” or “MCP” means the monthly payment by FPL to QS for Capacity
44 calculated in accordance with Appendix 3.

45
46 “Moody’s” means Moody’s Investors Service, Inc., or its successor.

47
48 “MW” means one or more megawatts of capacity, as the context requires.

49
50 “MWh” means one or more megawatt-hours of electric energy, as the context requires.

1 “NAERC” means the North American Electric Reliability Corporation.

2
3 “Non-Defaulting Party” has the meaning set forth in Section 14.1.

4
5 “Operating Representative” means a representative of a Party who shall have authority to act for
6 such Party in all technical, real-time or routine matters relating to construction, testing, operation and
7 maintenance of the Facility and performance of this Contract, and to attempt to resolve disputes or
8 potential disputes, which representatives shall have no authority to amend, modify or waive any provision
9 of this Contract.

10
11 “Party” and “Parties” each has the meaning set forth in the first paragraph of this Contract.

12
13 “Payment Security” has the meaning set forth in Appendix 5.

14
15 “Performance Security” has the meaning set forth in Appendix 5.

16
17 “Person” means any individual, partnership, limited partnership, corporation, limited liability
18 company, limited liability partnership, association, joint stock company, trust, joint venture,
19 unincorporated organization, or Governmental Authority (or any department, agency, or political
20 subdivision thereof).

21
22 “Petition” has the meaning set forth in Section 4.3.

23
24 “Planned Outage” means a time period during which the Facility is shut down or its output is
25 reduced in order for pre-scheduled Maintenance Outage to be performed or such other period as otherwise
26 agreed by the Parties.

27
28 “Prudent Industry Practices” means the practices, methods, standards and acts that, at a particular
29 time, in the exercise of reasonable judgment in light of the facts known or that should reasonably have
30 been known at the time a decision was made, could have been expected to accomplish the required result
31 reliably, economically, safely, expeditiously and consistent with good business practices, which practices,
32 methods, standards and acts generally conform to operation and maintenance standards recommended by
33 equipment suppliers and manufacturers, the design limits, applicable Governmental Authorizations and
34 Applicable Law. Prudent Industry Practices are not intended to be limited to any particular set of
35 optimum practices, methods, standards or acts to the exclusion of all others, but rather is intended to
36 include practices, methods, standards or acts generally accepted in the United States, having due regard
37 for, among other things, manufacturers’ recommendations and warranties, contractual obligations,
38 Applicable Law and requirements or guidance of Governmental Authorities and NAERC.

39
40 “Put Right” means the valid and enforceable right, power and authority of the QS as the owner of
41 a Qualifying Facility and/or renewable energy source to deliver and sell to public utilities the capacity and
42 energy produced by the Facility and the obligation of such public utilities to receive and pay for such
43 capacity and energy under the terms of any applicable COG Tariff, Standard Offer Contract or other
44 contract, arrangement or transaction mandated by Applicable Law.

45
46 “Qualified Issuer” means a U.S. commercial bank or the U.S. branch of a foreign bank having a
47 credit rating of A- or higher by S&P or A3 or higher by Moody’s.

48
49 “Qualifying Facility” or “QF” means a generator of energy that by order of the FERC or self-
50 certification meets certain ownership, operating and efficiency criteria established by the FERC pursuant

1 to the Public Utility Regulatory Policies Act of 1978, as amended, and as further provided for under
2 applicable federal regulations.

3
4 “Qualifying Facility Status” means QS has submitted FERC Form No. 556 to FERC and has filed
5 with FERC an application for FERC certification of qualifying facility status pursuant to 18
6 C.F.R. §292.207(b)(1) that has been granted.

7
8 “QS” has the meaning set forth in the first paragraph of this Contract.

9
10 “QS Conditions Precedent” has the meaning set forth in Section 4.4.

11
12 “QS Event of Default” has the meaning set forth in Section 13.1.

13
14 “QS Insurance” has the meaning set forth in Section 16.1.

15
16 “QS Termination Payment” means the amount to be recovered by FPL by a draw on security
17 provided by the QS under Appendix 5 upon termination of this Contract on the Early Termination Date.

18
19 “Renewable Energy Credits” or “RECs” means renewable energy credits, green tags, green
20 tickets, renewable certificates, tradable renewable energy credits or any tradable certificate that is
21 produced by a renewable energy generator in addition to and in proportion to the production of electrical
22 energy.

23
24 “Renewable Energy Requirements” means the renewable energy requirements set forth in
25 Section 3.66.91(2)(a), Florida Statutes and FPSC Rules 25-17.210(1) and (2), F.A.C.

26
27 “Required Commissioning Commencement Date” means the later of (i) June 1, 2019 and (ii) the
28 first day of the calendar month following seventy-six (76) months after the FPSC Approval Date.

29
30 “S&P” means Standard & Poor’s Ratings Group (a division of The McGraw-Hill Companies,
31 Inc.), or its successor.

32
33 “Scheduled Maintenance Period” means any period of time established pursuant to Section 9.2
34 during which QS plans to subject the Facility to a scheduled complete or partial reduction in Capacity for
35 routine or periodic maintenance; provided, however, for purposes of calculating the Annual Capacity
36 Factor, that up to two (2) Scheduled Maintenance Periods, of a duration not to exceed a total of twenty-
37 eight (28) days in any calendar year, shall be excludable from the computation so as not to reduce the
38 Annual Capacity Factor.

39
40 “Site” means the property located in FPL’s service territory on which the Facility is to be
41 constructed and operated, as further described in Appendix 2.

42
43 “Standard Offer Contract” means the standard offer contract of a public utility, including FPL’s
44 standard offer contract, for purchase of capacity and energy from small power producers on file with the
45 FPSC at the Effective Date of this Contract and as amended and approved by the FPSC from time to time.

46
47 “Submission Date” means the date upon which the FPL submits this Contract to the FPSC for
48 FPSC Approval, which shall be within ten (10) days after the Execution Date.

49
50 “Tax” or “Taxes” means all taxes, assessments, charges, duties, fees, levies or other
51 governmental charges, including all federal, state, local, foreign or other income, profits, unitary,

1 business, franchise, capital stock, real property, personal property, intangible, withholding, FICA,
2 unemployment compensation, disability, transfer, sales, use, excise and other taxes, assessments, charges,
3 duties, fees, or levies of any kind whatsoever (whether or not requiring the filing of returns) and all
4 deficiency assessments, additions to tax, penalties and interest.

5
6 “Taxation Authority” means any revenue, customs, fiscal, statutory, federal, state, local
7 governmental or municipal authority having the power, authority and jurisdiction to impose any tax,
8 charge, impost, duty, levy or fee in the nature of taxation payable in the United States.

9
10 “Tax Credits” means any credit against local, state or federal Taxes, including but not limited to
11 such credits as investment tax credits, production tax credits or similar such tax credits, and all of which,
12 to the extent that they arise out of, result from or relate to tax credits associated with the Facility and
13 associated with the electricity produced by the Facility shall be retained by QS, regardless of whether QS
14 sells all or a portion of such electricity or consumes all or a portion of such electricity in one or more QS
15 operations or operations of Affiliates of QS.

16
17 “Term” has the meaning set forth in Section 3.

18
19 “Termination Payment” means an FPL Termination Payment or a QS Termination Payment, as
20 applicable.

21
22 “Transmission Provider” means the operator(s) of the Transmission System(s) or any successor
23 thereof or any other entity or entities authorized to transmit Energy from the Delivery Point.

24
25 “Transmission System” means the system of electric lines comprised wholly or substantially of
26 high voltage lines, associated system protection, system stabilization, voltage transformation, and
27 capacitance, reactance and other electric plant used for conveying electricity from any Delivery Point or
28 to ultimate consumers and shall include any interconnection owned by the Transmission Provider, but
29 shall in no event include any lines which the Transmission Provider has specified to be part of the
30 distribution system.

31 1.2 Instructions.

32 The headings of Articles and Sections in this Contract are provided for convenience of reference
33 only and will not affect the construction, meaning or interpretation of this Contract. All references to
34 “Articles,” “Sections,” or “Appendices” refer to the corresponding Articles, Sections or Appendices of or
35 to this Contract. All Appendices to this Contract are hereby incorporated by reference. All words used in
36 this Contract will be construed to be of such gender or number as the circumstances require. Unless
37 otherwise expressly provided, the words “include,” “includes” and “including” shall be interpreted to
38 mean “including without limitation.” Unless otherwise stated, any reference to a Person, whether or not a
39 Party, includes its permitted successors and assigns and, in the case of any Government Authority, any
40 Person succeeding to its functions and capacities. Other grammatical forms of defined words or phrases
41 have corresponding meanings. A reference to writing includes any mode of representing or reproducing
42 words, figures or symbols in a lasting and visible form. Unless otherwise provided, a reference to a
43 specific time of day for the performance of an obligation is a reference to the time in the place where that
44 obligation is to be performed. A reference to a document, law, code, contract or agreement, including this
45 Contract, includes a reference to that document, code, contract or agreement as novated, amended,
46 modified, revised, supplemented, replaced or restated from time to time in accordance with the relevant
47 provisions thereof. If any payment, act, matter or thing hereunder would occur on a day that is not a
48 Business Day, then such payment, act, matter or thing shall, unless otherwise expressly provided for
49 herein, occur on the next succeeding Business Day. The words “hereof,” “herein” and “hereunder” and

1 words of similar import shall refer to this Contract as a whole and not to any particular provision of this
2 Contract. The Parties shall act reasonably and in accordance with the principles of good faith and fair
3 dealing in the performance of this Contract and, unless expressly provided otherwise in this Contract, (a)
4 where this Contract requires the consent, approval, or similar action by a Party, such consent or approval
5 shall not be unreasonably withheld, conditioned or delayed, and (b) wherever this Contract gives a Party a
6 right to determine, require, specify or take similar action with respect to a matter, such determination,
7 requirement, specification or similar action shall be reasonable.

8 2. QS Facility

9 2.1 Status of Facility.

10 The QS intends to develop, finance, install, own and operate the Facility in accordance with the
11 terms and conditions of this Contract. The Facility is a must-run, baseload facility, subject to the
12 provisions of Section 9.10, having a design, location and generation capabilities described in Appendices
13 1 and 2. The QS will use commercially reasonable efforts to satisfy the QS Conditions Precedent relating
14 to permitting and financing of the Facility set forth in Section 4.4(b) on or before the applicable date
15 therefor and thereafter to construct the Facility and attain Capacity Delivery Status on or before the
16 Required Commissioning Commencement Date.

- 17 (a) Commencing after the Commissioning Commencement Date, QS shall, on or before
18 March 31 of each year during the Term of this Contract, deliver to FPL a report certified
19 by an officer of the QS: (i) stating the type and amount of each source of fuel or power
20 used by the QS to produce Energy during the prior calendar year; (ii) verifying that one
21 hundred percent (100%) of the Energy generated at the Facility and sold by the QS to
22 FPL during the prior calendar year complied with Sections 2.1(b) and 18.2(c) of this
23 Contract, and (iii) attesting that the inventory of Fuel at or near the Facility was at all
24 times during the prior calendar year sufficient to fuel reliable operation of the Facility for
25 a period of [REDACTED] days.
- 26 (b) FPL shall have the right during business hours after reasonable prior written request to
27 the QS (i) to inspect the Facility and to examine any books, records, or other documents
28 of the Facility that are necessary to verify that the Facility meets the Renewable Energy
29 Requirements as of the Execution Date and that the Facility continues to meet Qualifying
30 Facility Status and (ii) after the Drop Dead Date, to inspect land owned, leased or
31 operated by the QS or an Affiliate of QS for the cultivation, storage or processing of Fuel.
- 32 (c) Commencing after the Commissioning Commencement Date, the QS shall, on or before
33 March 31 of each year during the Term of this Contract, deliver to FPL a certificate
34 signed by an officer of the QS certifying that the Facility has continuously maintained its
35 Qualifying Facility Status.

36 3. Term of Contract

37 Except as otherwise provided herein in Section 5 with respect to the rights and obligations of the
38 Parties relating to the production, delivery, sale and purchase of Committed Capacity and Energy, and
39 subject to such conditions contained herein, including the conditions contained in Section 4, this Contract
40 shall become effective immediately upon its execution by the Parties and shall have the termination date
41 on the last day of the thirtieth (30th) Contract Year (the "Term"), unless terminated earlier in accordance
42 with the provisions hereof.

1 **4. Conditions Precedent; Minimum Specifications**

2 4.1 FPSC Approval.

3 The Parties acknowledge and agree that this Contract is subject to FPSC Approval.

4 4.2 FPL Conditions Precedent.

5 The following are conditions precedent to FPL's obligation to receive delivery of and purchase
6 Committed Capacity and Energy (other than test Energy) hereunder ("FPL Conditions Precedent"): (a)
7 FPSC Approval be obtained within [REDACTED] days after the Submission Date or such later
8 date as agreed upon by the Parties; and (b) if the FPSC's approval of this Contract is subject to changes in
9 the Contract or is subject to conditions, such changes or conditions are approved by FPL management in
10 its sole discretion.

11 4.3 FPSC Petition.

12 Within ten (10) Business Days after the Execution Date, FPL shall submit a copy of this Contract
13 and related documentation (with Confidential Information redacted) to the FPSC and shall file a petition
14 for FPSC Approval (the "Petition"). The QS agrees to cooperate with and assist FPL in obtaining FPSC
15 Approval as FPL may reasonably request. FPL shall promptly notify the QS of any significant
16 developments in obtaining FPSC Approval. The QS shall have the right to request and receive the final
17 draft of any proposed submission by FPL to the FPSC relating to the petition for FPSC Approval as soon
18 as practicable prior to submission and to confer with FPL for purposes including the redaction of
19 Confidential Information of the QS contained in any submission to the FPSC. As the primary purpose of
20 the Petition is for FPL to obtain FPSC Approval for cost recovery of the amounts payable under this
21 Contract, which QS supports, FPL shall pay all of the costs associated with such Petition filing. In the
22 event QS decides to participate in said Petition proceedings before the FPSC through representation by
23 legal counsel, QS will retain mutually acceptable competent legal counsel to facilitate a coordinated and
24 expeditious proceeding for attainment of such FPSC Approval, such acceptance not to be unreasonably
25 withheld or delayed.

26 4.4 QS Conditions Precedent.

27 The following are conditions precedent to the obligations of the QS ("QS Conditions Precedent")
28 to construct, interconnect, complete, test, commission and commence operation of the Facility and the
29 obligations and rights of the Parties in respect of the production, delivery, sale and purchase of
30 Committed Capacity and Energy from the Facility:

- 31 (a) By thirty (30) days after the FPSC Approval Date, if FPSC Approval does not impose
32 any changes or conditions on the Contract, the QS shall have provided the applicable
33 security required pursuant to Appendix 5; or, if FPSC Approval imposes any changes or
34 conditions on the Contract, then QS shall use commercially reasonable and diligent
35 efforts to secure its management's approval of such changes or conditions, provided that
36 the QS's decision is in the QS's sole discretion. If QS approves such changes and
37 conditions, then QS shall have provided the applicable security required under Appendix
38 5 within thirty (30) days following FPSC Approval;
- 39 (b) The following conditions shall have been satisfied or deemed waived by QS unless
40 written notice of non-satisfaction of the QS Conditions Precedent is given by QS to FPL,
41 subject to any extension of the date pursuant to Section 17.2:

- 1 (i) By the later of (A) February 1, 2015 and (B) the first day of the calendar month
2 following twenty-four (24) months after the FPSC Approval Date, the QS shall
3 have executed an agreement or option agreement for the ownership or lease of a
4 Site that is reasonably acceptable to the QS;
- 5 (ii) By the later of (A) August 1, 2016 and (B) the first day of the calendar month
6 following thirty (30) months after the FPSC Approval Date, the QS and FPL
7 shall have executed the Interconnection Agreement, which shall be in a form and
8 substance reasonably satisfactory to the QS;
- 9 (iii) By the later of (A) August 1, 2016 and (B) the first day of the calendar month
10 following thirty (30) months after the FPSC Approval Date, the QS shall have
11 obtained Governmental Authorizations and all other consents, approvals or
12 authorizations of other Persons necessary for the commencement of full-scope
13 construction of the Facility under the EPC Agreement, all of which shall be in a
14 form and substance reasonably satisfactory to the QS;
- 15 (iv) By the later of (A) December 1, 2016 and (B) the first day of the calendar month
16 following thirty-four (34) months after the FPSC Approval Date, the QS shall
17 have entered into Financing Documents for the construction of the Facility and
18 have achieved Financial Closing, in a form and substance and on terms and
19 conditions reasonably satisfactory to the QS;
- 20 (v) By the later of (A) August 1, 2016 and (B) the first day of the calendar month
21 following thirty (30) months after the FPSC Approval Date, the QS shall have
22 entered into the Facility Contracts, including one or more Fuel supply agreements
23 or arrangements for supply of Fuel for the first Contract Year after the
24 Commissioning Commencement Date, all of which shall be in a form and
25 substance reasonably satisfactory to the QS;
- 26 (vi) By the later of (A) December 1, 2016 and (B) the first day of the calendar month
27 following thirty-four (34) months after the FPSC Approval Date, the QS shall
28 have obtained insurance policies or coverage necessary in order to commence
29 full-scope construction of the Facility, in compliance with Section 16.1; and
- 30 (vii) By the later of (A) August 1, 2013 and (B) the first day of the calendar month
31 following six (6) months after the FPSC Approval Date the Facility shall have
32 achieved Qualifying Facility Status.

33 4.5 Satisfaction of Conditions Precedent.

34 The QS shall use commercially reasonable efforts to achieve the satisfaction of each of the QS
35 Conditions Precedent by each respective applicable date. An enlargement of the time for satisfaction of
36 QS Conditions Precedent or waiver of the QS Conditions Precedent set forth in Section 4.4(b) may be
37 requested by the QS in writing from FPL, which approval shall not be withheld if the QS reasonably
38 demonstrates to FPL that the non-satisfaction of a QS Condition Precedent by the specified date therefor
39 will not materially adversely affect the ability of the QS to achieve commencement of full scope
40 construction of the Facility under the EPC Agreement on or before [REDACTED] months prior to the
41 Required Commissioning Commencement Date. FPL shall use commercially reasonable efforts to satisfy
42 Conditions Precedent which are its responsibility and, at the QS's request, FPL will reasonably cooperate
43 with the QS as may be necessary in order to assist the QS in achieving the satisfaction of the QS
44 Conditions Precedent that are to be satisfied by QS.

1 4.6 Effective Date.

2 Promptly upon satisfaction (or written waiver) of each of the Conditions Precedent to be satisfied
3 or waived on or before its applicable date, the Party having satisfied the same shall deliver to the other
4 Party a certificate evidencing such satisfaction. Subject to there being no QS Event of Default or FPL
5 Event of Default which is continuing as of the date on which the last of such certificates is delivered, the
6 date of such last certificate (however, in no event later than the Drop Dead Date except as provided in
7 Section 4.5) shall constitute the effective date of this Contract with respect to the Parties' respective rights
8 and obligations relating to the production, delivery, purchase and sale of the Committed Capacity and
9 Energy (the "Effective Date"). Each Party shall designate its Operating Representative within ten (10)
10 days after the Effective Date and shall promptly send notice thereof to the other Party. A Party may
11 designate additional or different Operating Representative(s) upon notice to the other Party.

12 4.7 Termination for Non-Satisfaction or Waiver of Conditions Precedent.

- 13 (a) Failure of FPL Condition Precedent. If FPSC Approval is not obtained under Sections
14 4.2 and 4.3, including as a result of any approval in part or conditions to approval by the
15 FPSC not being accepted by both QS and FPL pursuant to Sections 4.2(b) and 4.4(a),
16 respectively, each in its sole discretion, within [REDACTED] days after the
17 Submission Date, or such longer period as the Parties may agree, then this Contract shall
18 terminate upon ten (10) days notice by either Party.
- 19 (b) Failure of QS Conditions Precedent. If all QS Conditions Precedent to be satisfied or
20 waived on or before their applicable date, are not satisfied on or before such applicable
21 dates, or such QS Conditions Precedent are not waived on written notice by QS to FPL,
22 this Contract shall terminate upon ten (10) days notice by either Party.

23 4.8 Effect of Termination for Non-Satisfaction of Conditions Precedent.

- 24 (a) Any expiration or termination of this Contract for failure to satisfy a Condition Precedent
25 to be satisfied or waived, shall not relieve either Party of any liability accrued or arising
26 from conduct or activities prior to the effective date of the expiration or termination, and
27 such expiration or termination shall not affect the continued operation or enforcement of
28 any provision of this Contract which by its express terms or by reasonable implication is
29 to survive any expiration or termination.
- 30 (b) Termination of this Contract pursuant to Section 4.7(a) shall not constitute an Event of
31 Default hereunder and neither Party shall have any further liability under this Contract as
32 a result of such termination.
- 33 (c) In the event that the QS Conditions Precedent set forth in Section 4.4(b) are not satisfied
34 by the QS or waived by QS prior to the applicable date therefor (which date shall be
35 extended day-for-day for any delay due to Force Majeure or an FPL Event of Default
36 pursuant to Section 13.2(a)) or such QS Condition Precedent is not met by any mutually
37 agreed upon extension of such date, FPL shall have the right to draw on the Performance
38 Security provided by QS under Appendix 5, which shall be FPL's sole and exclusive
39 remedy and compensation therefor, and terminate this Contract by notice to QS not later
40 than thirty (30) days after the Drop Dead Date, without further obligations, duties or
41 liability of either Party to the other relating to such termination.

1 **5. Sale of Energy and Capacity by the QS**

2 5.1 Purchase and Sale.

3 Commencing on the Commissioning Commencement Date and through the end of the Term,
4 consistent with the terms and conditions hereof, the QS shall sell and deliver to FPL at the Delivery Point
5 and FPL shall purchase and receive from the QS at the Delivery Point all of the Energy and any other
6 products or services (excluding Capacity (until the expiration of the Commissioning Period), RECs,
7 Environmental Attributes and any other products or services retained by the QS in this Contract)
8 associated with generation of Energy by the Facility. During the Commissioning Period, FPL shall also
9 pay the Energy performance bonus. Commencing on the first day after the end of the Commissioning
10 Period and through the end of the Term, consistent with the terms and conditions hereof, the QS shall sell
11 and deliver to FPL at the Delivery Point and FPL shall purchase and receive from the QS at the Delivery
12 Point all Committed Capacity and Energy. The billing and price methodology for Committed Capacity
13 and Energy sold hereunder and the Energy performance bonus is set forth in Appendices 3 and 4.

14 5.2 Operating Costs.

15 The QS shall not rely on interruptible standby service for the start up requirements (initial or
16 otherwise) of the Facility. The QS shall be responsible for all costs, charges and penalties, if any,
17 associated with the operation of the Facility, except as elsewhere provided in this Contract.

18 5.3 Delivery.

19 The QS shall be responsible for delivery of Committed Capacity and Energy to the Delivery Point
20 and, as between the Parties, shall be responsible for and shall indemnify, hold harmless and defend FPL
21 from and against all costs, liabilities, Taxes, losses, and charges of any kind imposed or assessed with
22 respect to the delivery of Committed Capacity and Energy to the Delivery Point. Except as otherwise
23 expressly provided in the Interconnection Agreement, FPL shall be responsible for providing or obtaining
24 transmission and distribution service from the Delivery Point and, as between the Parties, FPL shall be
25 responsible for and shall indemnify, hold harmless and defend the QS from and against all costs,
26 liabilities, Taxes, losses, and charges of any kind imposed or assessed at and after the delivery of
27 Committed Capacity and Energy at the Delivery Point.

28 **6. Committed Capacity/Commissioning Commencement Date**

29 6.1 Capacity.

30 The QS commits to sell the Committed Capacity and Energy to FPL at the Delivery Point, the
31 amount of which Committed Capacity shall be determined in accordance with this Section 6. Subject to
32 Section 6.3, and except as otherwise provided herein during the Commissioning Period, the Committed
33 Capacity is set at the Design Committed Capacity. The Commissioning Commencement Date shall be
34 attained no later than the Required Commissioning Commencement Date.

35 6.2 Committed Capacity Test.

36 Testing of the Capacity of the Facility (each such test, a "Committed Capacity Test") shall be
37 performed in accordance with the procedures set forth in Article 7. The Demonstration Period for the first
38 Committed Capacity Test to verify attainment of Capacity Delivery Status shall commence no earlier than
39 [REDACTED] prior to the commencement date for continuous deliveries of Energy from the Facility as
40 estimated in progress reports delivered by QS to FPL during construction of the Facility, or such earlier

1 dates as the Parties may agree upon in writing, and testing must be completed by 11:59 p.m. on the
2 Required Commissioning Commencement Date. The first Committed Capacity Test shall be deemed
3 successfully completed when the QS demonstrates that the Facility has attained Capacity Delivery Status.
4 Subject to Section 7.1, the QS may schedule and perform up to [REDACTED] Committed Capacity Tests
5 during each Demonstration Period to demonstrate attainment of Capacity Delivery Status. The QS may
6 schedule additional Demonstration Periods to satisfy the requirements hereunder with respect to the first
7 Committed Capacity Test; provided that such periods do not extend beyond the Required Commissioning
8 Commencement Date. The QS will coordinate with FPL the production and delivery of Energy during
9 initial testing, and prior to the Commissioning Commencement Date, FPL shall purchase and receive all
10 Energy produced during the initial testing at a price equal to [REDACTED] of the As-Available
11 Avoided Energy Cost.

12 6.3 Maximum Committed Capacity.

13 Notwithstanding anything to the contrary herein, the Committed Capacity shall not exceed the
14 Maximum Committed Capacity without the consent of FPL, which consent may be withheld by FPL in its
15 sole discretion.

16 6.4 Commissioning Commencement Date.

17 The “Commissioning Commencement Date” shall be defined as the first calendar day
18 immediately following the date of the Facility’s attainment of Capacity Delivery Status, but no later than
19 the Required Commissioning Commencement Date. The Commissioning Period shall commence on the
20 Commissioning Commencement Date.

21 6.5 Capacity Payment.

22 The QS shall be entitled to receive Monthly Capacity Payments beginning on the first day
23 following the end of the Commissioning Period, provided, the Commissioning Commencement Date
24 occurs on or before the Required Commissioning Commencement Date (or such later date permitted by
25 FPL in its reasonable discretion).

26 6.6 Additional Testing.

27 After the end of the Commissioning Period, FPL shall have the right to require the QS, by notice
28 thereto, to validate the Committed Capacity of the Facility within sixty (60) days after such notice by
29 means of subsequent Committed Capacity Tests as follows: (a) at FPL’s cost and expense once per
30 Contract Year without cause; (b) within sixty (60) days after any time the QS has restored normal
31 operation of the Facility after having been unable to comply with any material obligation under this
32 Contract for a period of ninety (90) days or more in the aggregate as a consequence of a single event of
33 Force Majeure; and (c) at any time the QS fails (for reasons other than a Force Majeure or breach, default
34 or non-performance by FPL) in three (3) consecutive months to achieve a Monthly Capacity Factor equal
35 to or greater than seventy percent (70%). The results of any such test shall be provided to FPL within
36 seven (7) days of the conclusion of such test. On and after the date of such requested Committed Capacity
37 Test, and until the completion of a subsequent Committed Capacity Test performed at the request of
38 either the QS or FPL, the Committed Capacity shall be deemed as the lower of the tested capacity or the
39 Maximum Committed Capacity.

1 **7. Testing Procedures**

2 **7.1 Demonstration Period.**

3 The Committed Capacity Test to demonstrate Capacity Delivery Status must be completed
4 successfully within a [REDACTED] period (the "Demonstration Period"), which period, including the
5 approximate start time of the Committed Capacity Test, shall be initially selected and scheduled by the
6 QS by means of a written notice to FPL delivered at least thirty (30) days prior to the start of such period,
7 and which may thereafter be changed by the QS upon three (3) days notice. The written notice shall
8 include detailed procedures reasonably acceptable to FPL for the conduct of Committed Capacity Tests.
9 The provisions of the foregoing sentences shall not apply to any Committed Capacity Test required by
10 FPL or performed by the QS under any other provisions of this Contract if such provision sets forth a
11 different procedure. FPL shall have the right to be present at the Site to monitor any Committed Capacity
12 Test required or permitted under this Contract. The QS shall have the right to commence, conduct and
13 complete any Committed Capacity Test if FPL's representative does not attend the test or departs from
14 the Site prior to the conclusion of the test, provided that required notice has been given.

15 **7.2 Testing Period.**

16 Committed Capacity Test results shall be based on a test period of [REDACTED]
17 [REDACTED] (the "Committed Capacity Test Period") at the highest sustained net KW rating at which the
18 Facility can operate without exceeding the design operating conditions, temperature, pressures, and other
19 parameters defined by the applicable manufacturer(s) for steady state operations at the Facility. The
20 Committed Capacity Test shall be conducted utilizing Fuel. The Committed Capacity Test Period shall
21 commence at the time designated by the QS pursuant to Section 7.1 or at such other time requested by
22 FPL pursuant to Section 6.6 or by the QS; provided, however, that the Committed Capacity Test Period
23 may commence earlier than such time in the event that FPL is notified of, and consents to, such earlier
24 time, such consent not to be unreasonably withheld, conditioned or delayed.

25 **7.3 Unit Auxiliaries.**

26 For the avoidance of doubt, normal station service use of unit auxiliaries, including cooling
27 towers, heat exchangers, and other equipment required by Applicable Law, shall be in service during the
28 Committed Capacity Test Period. FPL agrees to purchase and receive all net Energy produced during the
29 initial Committed Capacity Tests at a price equal to the As-Available Avoided Energy Cost.

30 **7.4 Committed Capacity.**

31 The Committed Capacity of the Facility shall be the average net capacity (generator output minus
32 auxiliary) measured over the Committed Capacity Test Period or such lesser amount as designated by the
33 QS, provided that such Capacity is not less than the Minimum Committed Capacity and subject to the
34 limitation that regardless of the outcome of a Committed Capacity Test it shall not exceed the Maximum
35 Committed Capacity unless the Parties agree otherwise. The Committed Capacity as of the end of the
36 Commissioning Period shall be the greater of (a) the Capacity established on the basis of the last
37 Committed Capacity Test conducted prior to the end of such period and (b) the Capacity which, over the
38 preceding twelve (12) month period, would result in an Annual Capacity Billing Factor of ninety percent
39 (90%).

40 **7.5 Capacity Shortfall.**

41 If at any time after the Commissioning Commencement Date the Capacity falls below the

1 Committed Capacity at the Commissioning Commencement Date, the QS shall have an initial period of
2 sixty (60) days to address the cause of the Facility's failure to generate at such Capacity, and on or before
3 the sixtieth (60th) day, the QS shall provide FPL with a reasonable cure plan describing the cause of the
4 deficiency and setting forth a plan and timetable for curing the deficiency. During this diagnostic and cure
5 period, the QS shall, at its sole expense, have the right to schedule and conduct (within commercially
6 reasonable scheduling limitations) such additional Committed Capacity Tests as it reasonably considers
7 necessary or appropriate or which the EPC Agreement contractor or any equipment vendor has the right
8 to perform or cause to be performed to demonstrate that the Capacity of the Facility equals or exceeds the
9 Minimum Committed Capacity.

10 7.6 Force Majeure.

11 After the end of the Commissioning Period, during a Force Majeure declared by the QS, the QS
12 may temporarily redesignate the Committed Capacity for up to [REDACTED];
13 provided, however, that no more than one such temporary redesignation may be made by the QS within
14 any [REDACTED] period as relates to such Force Majeure. Within one (1) month after any such
15 Force Majeure is cured, as set forth in notice by the QS to FPL, the QS shall, without penalty or other
16 condition, designate a new Committed Capacity; provided, however, that such new Committed Capacity
17 shall be equal to or greater than the Minimum Committed Capacity, but not greater than the Maximum
18 Committed Capacity.

19 7.7 Test Procedures.

20 Committed Capacity Tests shall be performed according to Prudent Industry Practices using
21 testing procedures appropriate for the equipment and technology of the Facility established pursuant to
22 Section 7.1.

23 7.8 Change to Committed Capacity.

24 After the end of the Commissioning Period, the QS may conduct a Committed Capacity Test at
25 any time after a Committed Capacity Test requested by FPL pursuant to Section 6.6 demonstrates a
26 decrease in the Committed Capacity. The QS may also on one other occasion per year only, increase or
27 decrease the Committed Capacity by no more than [REDACTED] of the then existing Committed
28 Capacity, provided that (i) in no case shall the Committed Capacity exceed the Maximum Committed
29 Capacity and (ii) in no case shall the Committed Capacity be lower than the Minimum Committed
30 Capacity, and provided further that the QS shall give FPL at least thirty (30) days notice of any such
31 increase or decrease in the Committed Capacity and shall conduct a Committed Capacity Test within
32 thirty (30) days after providing such notice. Any Committed Capacity Test conducted by the QS pursuant
33 to this Section 7.8 shall be performed in accordance with the requirements of this Article 7. Additionally,
34 the Parties, upon their mutual written agreement to same, may establish the Committed Capacity at any
35 level that they mutually agree is appropriate and desirable under this Contract.

36 **8. Payment for Electricity Produced by the Facility**

37 8.1 Energy.

38 Commencing on the Commissioning Commencement Date, FPL agrees to pay the QS for Energy
39 produced by the Facility and delivered to the Delivery Point and the Energy bonus payment in accordance
40 with the rates and procedures set forth in Appendices 3 and 4. Calculation of payments of the Energy
41 performance bonus to QS shall be made in accordance with Appendix 4 for Energy delivered during the
42 Commissioning Period. FPL shall provide the QS electronically with information pertaining to the

1 Energy payment calculation and Energy Rate (including escalator) and the Energy performance bonus
2 payment calculation and rate as the QS may reasonably request.

3 8.2 Capacity.

4 Commencing on the end of the Commissioning Period, FPL agrees to pay the QS for the
5 Committed Capacity in accordance with the rates and procedures set forth in Appendices 3 and 4.

6 8.3 Payments.

7 The QS shall prepare an invoice for amounts due by FPL for Committed Capacity, Energy and
8 other products, services and items in the prior month by the fifth (5th) day of each month. FPL shall make
9 payments due to the QS monthly and no later than the twentieth (20th) Business Day following receipt of
10 the invoice. A statement of the Committed Capacity and kilowatt-hours of Energy sold by the QS and the
11 rate at which payments are being invoiced shall accompany the invoice to FPL.

12 8.4 Other Payments; Late Payments.

13 Any amounts due to either QS or FPL under this Contract, other than those specified in Sections
14 8.1 - 8.3, shall be paid within twenty (20) days following receipt by the other Party of an itemized invoice
15 from the Party to whom such amounts are due setting forth, in reasonable detail, the basis for such
16 payment. FPL will provide the QS with such information pertaining to rates, payments and delivery of
17 Energy, the Energy performance bonus and Capacity as the QS may reasonably request. FPL may comply
18 with the QS's reasonable requests for information by providing the QS access to relevant materials at
19 FPL's business offices during normal business hours. The QS shall pay all expenses reasonably incurred
20 by FPL in complying with requests for information made pursuant to this Section 8.4. If a Party fails to
21 pay to the other Party any amount payable under this Contract when due, then such Party shall also pay,
22 in addition to such unpaid amount, interest at the Default Rate on the amount that is not paid from the
23 payment due date to the date on which payment is made in full.

24 8.5 Statement Errors.

25 In the event that either Party becomes aware of any error in any invoice, bill, statement or
26 adjustment, such Party shall, immediately upon discovery of the error, notify in writing the other Party of
27 such error and shall rectify such error within thirty (30) days of such notification, and any overpayment or
28 underpayment shall be refunded or paid (as applicable) with interest at the Default Rate accruing from
29 and after the date such overpayment or underpayment was made until the refund or payment is made.
30 Notwithstanding any provision of this Contract to the contrary, in no event shall a correction or an
31 adjustment be made to previous invoices, billings or statements more than [REDACTED] from the
32 date that the Energy that was the subject thereof was delivered to FPL.

33 8.6 Billing Disputes.

34 In the event that either Party has a bona fide dispute with any invoice submitted hereunder, such
35 Party shall inform the other Party in writing of its grounds for disputing such invoice. Notwithstanding
36 such dispute, any undisputed amounts shall be paid in full in accordance with Section 8.3. For any
37 disputed invoiced amounts, the Party receiving the invoice shall be entitled to withhold the disputed
38 amount with an explanation of the basis for the dispute. The Parties agree to proceed in good faith to
39 promptly initiate efforts (through their respective Operating Representative in the first instance) to
40 attempt to resolve any such dispute. Upon resolution of the dispute, any overpayment or underpayment

1 shall be refunded or paid (as applicable) with interest at the Default Rate accruing from and after the date
2 such overpayment or underpayment was made until the date on which such refund is paid.

3 **9. Electricity Production and Plant Maintenance Schedule**

4 9.1 Generation Projection.

5 During the Term of this Contract, no later than sixty (60) days after the Commissioning
6 Commencement Date and prior to April 1 of each calendar year thereafter, the QS shall submit to FPL in
7 writing a detailed plan of: (i) the amount of Committed Capacity (only after the end of the
8 Commissioning Period) and Energy to be generated by the Facility and delivered to the Delivery Point for
9 each month of the following calendar year, and (ii) the time, duration and magnitude of any Scheduled
10 Maintenance Period(s) and any anticipated reductions in Committed Capacity (only after the end of the
11 Commissioning Period).

12 9.2 Scheduled Maintenance.

13 By May 1 of each calendar year, FPL shall notify the QS in writing whether the planned
14 Scheduled Maintenance Periods in the detailed plan submitted by the QS to FPL pursuant to Section 9.1
15 are acceptable. If FPL objects to any of the planned Scheduled Maintenance Periods, FPL shall advise the
16 QS of the time period closest to the planned period(s) for which FPL proposes that the planned outage(s)
17 be re-scheduled. The QS shall, to the extent not inconsistent with Prudent Industry Practices and
18 manufacturers' recommendations, schedule Scheduled Maintenance Periods only during periods
19 requested by FPL. Once the schedule for Scheduled Maintenance Periods has been established in
20 accordance with Section 9.1 and this Section 9.2, either Party may request the other Party to approve a
21 subsequent change in such schedule and such approval shall not to be unreasonably withheld or delayed.
22 Scheduled Maintenance Periods shall be limited to [REDACTED] days per calendar year unless the
23 manufacturers' recommendation of maintenance outage days for the technology and equipment used by
24 the Facility exceeds such [REDACTED] day period, provided, such number of days is considered
25 reasonable by industry standards and does not exceed [REDACTED] day intervals, one in the Spring
26 and one in the Fall, in any calendar year. For the avoidance of doubt, only [REDACTED] days of
27 Maintenance Outages shall be excluded from the calculation on the Annual Capacity Factor so as not to
28 reduce the Annual Capacity Factor. In no event shall Scheduled Maintenance Periods be scheduled
29 during the following periods: June 1 through and including October 31st and December 1 through and
30 including February 28 (or 29th as the case may be) unless required in observance of Prudent Industry
31 Practice and manufacturers' recommendations.

32 9.3 Additional Maintenance.

33 If the need arises for the QS to conduct maintenance on the Facility outside of Scheduled
34 Maintenance Periods, QS shall notify FPL of such maintenance, together with dates for carrying out such
35 maintenance and the estimated duration of the work to be carried out. The QS and FPL shall confer in
36 good faith to determine a reasonable schedule during which such additional maintenance outage(s) shall
37 take place. If agreement is not reached within five (5) days of initiating good faith discussions, the QS
38 shall prepare a schedule of such additional maintenance outage(s) based on Prudent Industry Practice and
39 manufacturers' recommendations. For the avoidance of doubt, any and all days of additional maintenance
40 outages in excess of [REDACTED] days requiring that the Facility output be reduced or curtailed shall
41 be included in the calculation of the Annual Capacity Factor so as to reduce the Annual Capacity Factor.

1 9.4 Forced Outage.

2 If the QS identifies the need to remove the Facility from operation due to a Forced Outage, the
3 QS shall provide FPL with notice as soon as the QS becomes aware of the Forced Outage. As soon as
4 possible following the commencement of the Forced Outage, the QS shall provide FPL with information
5 pertaining to the cause of the outage and the anticipated return to service date.

6 9.5 Must-Run.

7 The Facility shall be operated, subject to the provisions of Section 9.10, on a baseload, “must-
8 run” basis, except for Forced Outages, Scheduled Maintenance Periods, periods when performance is
9 suspended hereunder, events of Force Majeure and Emergency Conditions or as directed by the FPL
10 Transmission Provider or any other Transmission Provider for safety or reliability reasons.

11 9.6 Excess Capacity.

12 Notwithstanding anything contrary to the terms hereof: FPL shall have no obligation to accept
13 and pay for and the QS shall have no obligation to deliver and sell Capacity until after the end of the
14 Commissioning Period, and no such purchases and sales of Capacity shall be in excess of the Committed
15 Capacity unless the Parties mutually agree thereto in writing. Upon expiration of the Term or early
16 termination of this Contract, the QS shall have the right (without affecting any obligations of the QS
17 under this Contract which by the terms of this Contract survive or otherwise continue beyond the
18 expiration of the Term or any termination of this Contract) to offer, sell, trade, exchange and deliver all
19 Capacity and Energy RECs, Environmental Attributes, and other products or services generated by or
20 associated with the operation or ownership of the Facility to any Person.

21 9.7 Control.

22 At all times during the Term of this Contract after the Commissioning Commencement Date, the
23 QS shall operate and maintain the Facility: (i) in such a manner as to comply with its obligations
24 hereunder, in accordance with Prudent Industry Practices and Applicable Law, and (ii) in compliance with
25 the Interconnection Agreement with FPL Transmission Provider with respect to all system protective
26 equipment in service whenever the Facility is connected to, or is operated in parallel with, FPL
27 Transmission Provider’s Transmission System. The QS shall install at the Facility those system protection
28 and control devices necessary under the Interconnection Agreement to achieve safe and protected
29 operation of all energized equipment during normal testing, operation and repair. The QS shall have
30 qualified personnel or contractors test and calibrate all protective equipment at regular intervals in
31 accordance with Prudent Industry Practices and the Interconnection Agreement. A unit functional trip test
32 shall be performed after each overhaul of the Facility’s steam turbine generators or boilers and the results
33 shall be provided to FPL prior to returning the equipment to service. The specifics of the unit functional
34 trip test will be consistent with Prudent Industry Practices.

35 9.8 Reconnection of Facility.

36 If the Facility is separated from the FPL Transmission Provider’s Transmission System for any
37 reason, reconnection of the Facility into FPL Transmission Provider’s Transmission System shall be
38 governed by the Interconnection Agreement.

1 9.9 Personnel.

2 Commencing on the Commissioning Commencement Date, during the Term of this Contract the
3 QS shall employ or contract qualified personnel for managing, operating and maintaining the Facility.
4 The QS shall maintain operating personnel on duty at all times, twenty-four (24) hours a calendar day and
5 seven (7) calendar days a week.

6 9.10 FPL System Reliability.

7 FPL shall not be obligated to purchase, and may require curtailed or reduced deliveries of Energy
8 only to the extent allowed under FPSC Rule 25-17.086, any successor rule or under any curtailment plan
9 which FPL may have on file with the FPSC and as may be amended from time to time. FPL shall notify
10 the QS prior to the instance giving rise to those conditions, if practicable. If prior notice is not practicable,
11 FPL shall communicate such circumstance at the earliest opportunity and provide notice thereof to the QS
12 as soon as practicable after the fact.

13 9.11 Metering.

14 (a) The rights and obligations of the Parties in respect of the interconnection of the Facility
15 to the FPL Transmission Provider's Transmission System shall be as set forth in the
16 Interconnection Agreement.

17 (b) All electric metering associated with the Facility, including the Facility meter and any
18 other real-time meters, billing meters and back-up meters (collectively, the "Meters"),
19 shall be installed, operated, maintained and tested at the QS's expense in accordance with
20 Prudent Industry Practices and any applicable requirements and standards issued by
21 NAERC and the FPL Transmission Provider. Each Meter shall be tested at the QS's
22 expense once each Contract Year. The Meters shall be used for the registration, recording
23 and transmission of information regarding the production of Committed Capacity and
24 Energy by the Facility. The QS shall provide FPL with a copy of all metering and
25 calibration information and documents regarding the Meters promptly following receipt
26 thereof by the QS.

27 (c) Readings of the Meters at the Facility by the Transmission Provider in whose territory the
28 Facility is located (or an independent Person mutually acceptable to the Parties) shall be
29 conclusive as to the amount of Committed Capacity and Energy produced by the Facility;
30 provided, however, that the QS, upon written request of FPL and at FPL's expense (if
31 more frequently than annually), shall cause the Meters to be tested by the Transmission
32 Provider in whose territory the Facility is located, and if any Meter is out of service or is
33 determined to be registering inaccurately by more than one percent (1%), subject to
34 Section 9.11(e), if applicable, (i) the measurement of Energy produced by the Facility
35 shall be adjusted as far back as can reasonably be ascertained, but in no event shall such
36 period exceed one-half the period from the date that such inaccuracy was discovered to
37 the last annual calibration, in accordance with the filed tariff of the Transmission
38 Provider, and any adjustment shall be reflected in the next invoice provided by the QS to
39 FPL hereunder and (ii) the QS shall reimburse FPL for the cost of such test of the Meters.

40 (d) FPL shall have the right to inspect and test any of the Meters at the Facility at reasonable
41 times and upon reasonable notice from FPL to the QS. FPL shall have the right to have a
42 representative present during any testing or calibration of the Meters at the Facility by the
43 QS. The QS shall provide FPL with timely notice of any such testing or calibration.

1 (e) Either Party may, at its option and expense, install, operate and maintain one or more
2 check meters in accordance with Prudent Industry Practice. Check meters will not be
3 used for measurement of Committed Capacity and Energy except as provided in Section
4 9.11(f). Check meters will be subject to inspection and testing by the other Party at all
5 reasonable times.

6 (f) If the Meters fail to register, or the measurement made by Meters during a test varies by
7 more than one percent (1%) from the measurement made by the standard meter used in
8 the test, and if either Party had installed a check meter and such check meter is
9 registering accurately, an adjustment to prior billings will be made to accord with the
10 check meter (or the average of both Parties' check meters, if applicable). If no check
11 meters have been installed or any installed check meters are not registering accurately, or
12 the Parties cannot agree on the amount or duration of the inaccuracy, the adjustment will
13 be made for the amount of inaccuracy as measured by the test in accordance with Section
14 9.11(c). In no case shall an adjustment to previous billings be corrected more than one (1)
15 year from the date that the Committed Capacity and Energy was received by FPL.

16 10. Security

17 10.1 Type of Security.

18 The QS shall provide Performance Security and Payment Security at the times and in the amounts
19 and meeting the requirements of Appendix 5, A or Appendix 5, B, as applicable.

20 10.2 Issuer Downgrade.

21 Any Letter of Credit issued for the benefit of FPL under this Contract shall be from a Qualified
22 Issuer. FPL shall have the right to monitor the financial condition of the issuer of a Letter of Credit
23 provided as security by the QS. In the event the issuer of a Letter of Credit no longer qualifies as
24 Qualified Issuer, FPL may require, in its sole discretion, the QS replace the Letter of Credit with a Letter
25 of Credit issued by a Qualified Issuer. The replacement Letter of Credit must be issued by a Qualified
26 Issuer within thirty (30) days following written notification by FPL to the QS of the requirement to
27 replace.

28 10.3 Security Interest.

29 The QS, as the pledgor of a Letter of Credit delivered after the Effective Date as security, hereby
30 pledges to FPL, as the secured Party, as security for (a) attainment of Capacity Delivery Status on or
31 before the Required Commissioning Commencement Date and (b) after the Commissioning
32 Commencement Date, the Performance Security, and grants to FPL a first priority continuing security
33 interest in, lien on and right of set-off against all Letters of Credit issued for the benefit of FPL hereunder
34 at the times and in the amounts as set forth in Appendix 5. The QS shall execute and deliver any
35 certificate, instrument or other document reasonably requested by FPL to effect or perfect such lien.
36 Upon the transfer or return by FPL to the QS of any such Letter(s) of Credit, the security interest and lien
37 granted hereunder on that Letter(s) of Credit will be released immediately and, to the extent possible,
38 without any further action by either Party. FPL shall execute and deliver any certificate, instrument or
39 other document reasonably requested by the QS to effect or document such release.

1 10.4 Cash Collateral.

2 Cash Collateral may be provided by the QS in accordance with Appendix 5, A as performance
3 security for satisfaction by the QS of the QS Conditions Precedent to be satisfied by it prior to the
4 Effective Date. Cash Collateral shall be held by FPL and all interest accrued on Cash Collateral provided
5 by the QS shall be for the account of the QS. Cash Collateral, plus interest accrued thereon, shall be
6 delivered by FPL to the QS promptly upon delivery of a Letter of Credit meeting the requirements of
7 Appendix 5. Interest shall accrue at the Default Rate.

8 **11. Permits; Compliance with Law**

9 11.1 Permits.

10 Each Party acknowledges that during the Term of this Contract it will be required to obtain and
11 maintain certain Governmental Authorizations in connection with the performance of its obligations
12 hereunder. Each Party shall perform its obligations and operate and maintain its facilities related thereto
13 in accordance with applicable Governmental Authorizations and Applicable Laws.

14 11.2 Notice of Filings.

15 If the Parties are required to make any regulatory filings to the FERC, FPSC, or any other
16 Governmental Authority, the Party subject thereto shall to the extent that any such filing is reasonably
17 likely to materially impact the performance by the Parties of their obligations hereunder, provide prompt
18 notice to the other Party thereof and support any intervention or other participation of the other Party in
19 related proceedings as are reasonable. Each of the QS and FPL agrees to abide by any applicable
20 regulatory rulings or orders issued by such authorities, subject to its right to seek a re-hearing, appeal or
21 other reconsideration of such rulings or orders.

22 11.3 Good Faith Challenge.

23 Notwithstanding the foregoing, a Party shall not be deemed to be in breach of its obligations to
24 acquire or maintain any Governmental Authorizations or other consents or to otherwise have incurred an
25 Event of Default for a period of [REDACTED], if, and to the extent, that a Party is in
26 good faith using commercially reasonable efforts to acquire or maintain such Governmental
27 Authorizations or other consents or contesting the application, interpretation, order or other legal direction
28 that would mandate the obtaining of any such Governmental Authorizations or other consents or any
29 change to the requirements of existing Governmental Authorizations. After the [REDACTED]
30 [REDACTED] period, if the affected Party cannot acquire or maintain such Governmental Authorizations or other
31 consents, application, interpretation, order or other legal direction or other consents or any change to the
32 requirements of existing Governmental Authorizations, then the other Party may proceed in accordance
33 with Article 4 if such Governmental Authorization is required by a Condition Precedent or Article 14 if
34 the failure to have such Governmental Authorization is an Event of Default under Article 13.

35 11.4 Generator Operator.

36 The QS shall be the NAERC generator operator and owner for the Facility and as between the
37 Parties is solely and exclusively responsible for compliance with (i) any and all applicable NAERC
38 reliability standards, (ii) similar obligations with respect to the Federal Power Act or (iii) otherwise with
39 respect to the exclusive jurisdiction of the FERC or the FRCC, as such relate to the Facility. As between
40 the Parties, the QS shall be solely responsible, at its own cost and at all times during the Term, for

1 compliance with such standards and the payment of any fines or penalties associated with the violation of
2 such standards in respect of the Facility.

3 **12. Taxes**

4 12.1 Taxes.

5 QS shall pay or cause to be paid all taxes imposed by any Government Authority on or with
6 respect to the Facility arising prior to the Delivery Point. FPL shall pay or cause to be paid all taxes
7 imposed by any Government Authority on or with respect to the Energy or Capacity at and from the
8 Delivery Point. If either Party is required to collect or remit any Taxes that are the other Party's
9 responsibility hereunder, it shall give prompt notice thereof to the other Party and thereafter cooperate
10 with the other Party in connection with any challenge to such Tax. The other Party shall upon receipt of
11 notice of payment of the Tax promptly reimburse the Party which has paid such Taxes. The Parties shall
12 use all reasonable efforts to administer this Contract and implement the provisions hereof in a manner that
13 will minimize Taxes due and payable by the Parties.

14 12.2 Tax Reporting.

15 Each Party will be responsible for its own Tax reporting. Each Party shall provide the other
16 Party, upon written request, with copies of any documentation in its possession and control that may be
17 reasonably necessary in the ordinary course of any inter-governmental, state, local, municipal or other
18 political subdivision tax audit.

19 12.3 Exemptions.

20 A Party shall provide a certificate or exemption or other reasonably satisfactory evidence of
21 exemption, promptly upon becoming aware of such exemption, if either Party is exempt from Taxes, and
22 shall use commercially reasonable efforts to obtain, and cooperate with the other Party obtaining, any
23 exemption or reduction of Taxes.

24 **13. Default**

25 13.1 QS Defaults.

26 Each of the following shall constitute an Event of Default by the QS ("QS Event of Default"):

- 27 (a) The QS, without reasonable cause, notifies FPL of its intention to abandon all efforts to
28 satisfy the Conditions Precedent in Section 4.4 and fails to notify FPL of its intention to
29 resume such efforts within ten (10) days after such initial notice of abandonment;
- 30 (b) The QS materially changes or modifies the Facility from that described in Appendix 1
31 with respect to its type, location, technology, generating capability (outside the range of
32 the Minimum Committed Capacity and Maximum Committed Capacity) or fuel source
33 without prior written approval from FPL;
- 34 (c) The QS fails to maintain the Qualifying Facility Status of the Facility or fails to meet the
35 Renewable Energy Requirements existing as of the Execution Date in compliance with
36 the provisions of Section 2.1 as shown in the certified report required by Section 2.1(a) or
37 the certification required by Section 2.1(c) or by notice from FPL pursuant to Section

- 1 2.1(b), and such failure continues for thirty (30) days after delivery of such report,
2 certification or FPL notice;
- 3 (d) After the end of the Commissioning Period, the Facility fails, [REDACTED]
4 [REDACTED], to maintain an Annual Capacity Billing Factor of at least seventy percent (70%);
- 5 (e) The QS fails to post Performance Security, Payment Security and/or Cash Collateral in
6 compliance with Article 10 hereof and such failure continues for fifteen (15) days after
7 notice form FPL;
- 8 (f) Except to the extent excused by Transmission Provider instruction or FPL breach or
9 repudiation of its obligation to purchase hereunder, QS sells the Energy or Committed
10 Capacity from the Facility to a third party in breach of Section 5.1 and/or Section 5.3;
- 11 (g) The QS ceases the conduct of active business; or if proceedings under the federal
12 bankruptcy law or insolvency laws shall be instituted by or for or against the QS or if a
13 receiver shall be appointed for the QS or with respect to any of its assets or properties; or
14 if any part of the QS's assets shall be attached, levied upon, encumbered, pledged, seized
15 or taken under any judicial process by any Person other than pursuant to [REDACTED]
16 [REDACTED], and such proceedings shall not be vacated or fully stayed within sixty (60)
17 days thereof; or if the QS shall make an assignment for the benefit of creditors other than
18 the Financing Parties with respect to the assets, properties, rights and privileges relating
19 to the Facility, or admits in writing its inability to pay its debts as they become due;
- 20 (h) The QS fails to use commercially reasonable efforts to obtain or maintain Governmental
21 Authorizations and other consents, approvals or authorizations of other third Persons
22 required to initiate full scope construction of the Facility under the EPC Agreement and
23 thereafter operate the Facility or the Parties have failed to agree upon an extension of
24 time beyond the [REDACTED] provided in Section 11.3 for such
25 Governmental Authorizations to be obtained or maintained;
- 26 (i) The occurrence of an event of default by the QS under the Interconnection Agreement,
27 subject to applicable cure rights thereunder;
- 28 (j) QS fails to pay any undisputed amount due and owing by it to FPL within five (5) days
29 after notice from FPL;
- 30 (k) If at any time after the end of the Commissioning Period, and in accordance with Section
31 7.6, the QS following cessation of a Force Majeure event, fails to designate the
32 Committed Capacity between the Minimum Committed Capacity and the Maximum
33 Committed Capacity;
- 34 (l) If after the Commissioning Commencement Date, the inventory of Fuel at or near the
35 Facility is not sufficient to fuel reliable operation of the Facility for a period of [REDACTED]
36 [REDACTED];
- 37 (m) After the Effective Date, failure by the QS to cause the Facility to achieve Capacity
38 Delivery Status by the Required Commissioning Commencement Date;
- 39 (n) Failure by the QS to procure or maintain QS insurance in accordance with the provision
40 of Section 16;

1 Date, free from any claim or right of any nature whatsoever of the QS, including any
2 equity or right of redemption by the QS.

- 3 (b) QS Remedies. If FPL is the Defaulting Party, the QS shall have the right to, as its sole
4 and exclusive remedies therefor (i) withhold payments due to FPL under this Contract;
5 (ii) suspend performance under this Contract for no more than ninety (90) consecutive
6 days in respect of such Event of Default; (iii) designate an Early Termination Date on
7 which date all Performance Security and/or Payment Security provided by the QS to FPL
8 shall be cancelled and returned to the QS upon demand therefore; and (iv) calculate the
9 amount of the FPL Termination Payment payable by FPL to the QS, and then provide
10 notice to FPL of the FPL Termination Payment amount owed. The FPL Termination
11 Payment shall equal the sum of (x) any amount due and owing by FPL to the QS as of the
12 Early Termination Date and (y) for the period of time from the Early Termination Date to
13 the end of the Term, the difference, if positive, between the projected monthly Capacity
14 Payments and Energy Payments at Base Production under this Contract and equivalent
15 amounts under any Put Rights, COG Tariff, or Standard Offer Contract available to QS,
16 adjusted for any additional transmission charges, which amount shall be paid in
17 accordance with Section 19.9(d).

18 14.2 Specific Performance.

19 Each Party recognizes that any remedy at law may be inadequate because this Contract is unique
20 and/or because the actual damages of the Non-Defaulting Party may be difficult to reasonably ascertain.
21 Therefore, subject to Section 15.5 and to the extent permitted hereunder, the Parties agree that each Party
22 shall be entitled to pursue an action for specific performance or other equitable remedies, and the other
23 Party waives all of its rights to assert as a defense to such action that a remedy at law is adequate.

24 14.3 Accrued Liabilities.

25 Upon an Early Termination Date becoming effective, neither Party shall have any further liability
26 to the other Party arising under or related to this Contract, except for the Termination Payment, any
27 liabilities and obligations accruing prior to the Early Termination Date or any liabilities and obligations
28 which by their nature or the express terms of this Contract extend beyond the termination of this Contract.
29 Subject to Section 15.5, the liability of either Party for obligations arising prior to such Early Termination
30 Date or for damages, if any, resulting from breach of this Contract, shall not be affected by termination of
31 this Contract.

32 14.4 Termination Payment Dispute.

33 If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination
34 Payment amount, in whole or in part, the Defaulting Party shall, within fifteen (15) Business Days of
35 receipt of the Non-Defaulting Party's calculation of the Termination Payment amount, provide to the
36 Non-Defaulting Party a detailed written explanation of the basis for such dispute. Following delivery of
37 such a notice, any disputes relating to liability for the amount of the Termination Payment shall be
38 resolved in accordance with Article 19.7.

1 **15. Indemnification/Limits**

2 15.1 Responsibility.

3 FPL and the QS shall each be responsible for its own facilities. QS shall be responsible for
4 ensuring adequate safeguards for the QS's personnel and equipment, and for the protection of its
5 generating system at the Facility.

6 15.2 QS Indemnity.

7 The QS shall indemnify, hold harmless and defend FPL, on an after-tax basis, from and against
8 any and all liabilities, judgments, losses, damages, claims relating to injury to or death of any person or
9 damage to property (including the Facility), fines and penalties, costs and expenses arising out of or
10 resulting from the negligence on the part of the QS in performing its obligations pursuant to this Contract
11 or the QS's failure to abide by the provisions of this Contract, except in those instances where such loss is
12 due to the gross negligent action or willful inactions of FPL pursuant to FPL's rights under Sections
13 2.1(b), 7.2, 9.11(d) or 9.11(e) of this Contract.

14 15.3 FPL Indemnity.

15 To the maximum extent permissible by law, subject to express statutory exemptions or limitations
16 relating to investor-owned electric utilities in the State of Florida, FPL shall indemnify, hold harmless and
17 defend the QS, on an after-tax basis, from and against any and all liabilities, judgments, losses, damages,
18 claims relating to injury to or death of any person or damage to property (but excluding FPL
19 Transmission Provider's transmission system, for which any rights to indemnification shall be exclusively
20 as set forth in the Interconnection Agreement), fines and penalties, costs and expenses arising out of or
21 resulting from the negligence on the part of FPL while on the site of the Facility or on sites of Affiliates
22 of QS pursuant to FPL's rights under Sections 2.1(b), 7.2, 9.11(d), or 9.11(e) of this Contract, except in
23 those instances where such loss is due to the gross negligent action or willful inactions of the QS. For the
24 avoidance of doubt, FPL shall have no indemnity obligation to the QS under this Contract for any loss
25 arising out of or resulting from the negligence on the part of FPL Transmission Provider in its capacity as
26 a Transmission Provider or as a result of performing the obligations pursuant to the Interconnection
27 Agreement.

28 15.4 Settlement.

29 Payment by a Person indemnified hereunder ("Indemnified Party") will not be a condition
30 precedent to the obligations of the indemnifying party ("Indemnifying Party") under Section 15.2 or 15.3.
31 No Indemnified Party under Section 15.2 or 15.3 shall settle any claim for which it claims
32 indemnification hereunder without first allowing the Indemnifying Party the right to defend such a claim.
33 The Indemnifying Party shall have no obligations under Section 15.2 or 15.3 in the event of a breach of
34 the foregoing sentence by any Indemnified Party. Sections 15.2 or 15.3 shall survive expiration or
35 termination of this Contract.

36 15.5 Limitation on Consequential, Incidental and Indirect Damages; Exclusive Remedies.

37 TO THE FULLEST EXTENT PERMITTED BY LAW, NEITHER THE QS NOR FPL, NOR
38 THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, MEMBERS, PARENTS,
39 SUBSIDIARIES OR AFFILIATES, SUCCESSORS OR ASSIGNS, OR THEIR RESPECTIVE
40 OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, MEMBERS, PARENTS, SUBSIDIARIES OR
41 AFFILIATES, SUCCESSORS OR ASSIGNS, SHALL BE LIABLE TO THE OTHER PARTY OR

1 THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, MEMBERS, PARENTS,
2 SUBSIDIARIES OR AFFILIATES, SUCCESSORS OR ASSIGNS, FOR CLAIMS, SUITS, ACTIONS
3 OR CAUSES OF ACTION FOR INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, MULTIPLE OR
4 CONSEQUENTIAL DAMAGES CONNECTED WITH OR RESULTING FROM PERFORMANCE OR
5 NON-PERFORMANCE OF THIS CONTRACT, OR ANY ACTIONS UNDERTAKEN IN
6 CONNECTION WITH OR RELATED TO THIS CONTRACT, INCLUDING WITHOUT
7 LIMITATION, ANY SUCH DAMAGES WHICH ARE BASED UPON CAUSES OF ACTION FOR
8 BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE AND MISREPRESENTATION),
9 BREACH OF WARRANTY, STRICT LIABILITY, STATUTE, OPERATION OF LAW, UNDER ANY
10 INDEMNITY PROVISION OR ANY OTHER THEORY OF RECOVERY. IF A REMEDY OR
11 MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN IT SHALL BE THE SOLE AND
12 EXCLUSIVE REMEDY AND/OR MEASURE OF DAMAGES THEREFOR AND THE AFFECTED
13 PARTY WAIVES AND RELEASES ANY RIGHT OR INTEREST IN, TO OR UNDER ANY OTHER
14 REMEDY OR DAMAGES. TO THE MAXIMUM EXTENT PERMISSIBLE UNDER APPLICABLE
15 LAWS, ALL REMEDIES OR MEASURE OF DAMAGES AT LAW OR IN EQUITY OTHER THAN
16 THOSE EXPRESSLY PROVIDED FOR IN THIS CONTRACT ARE WAIVED; PROVIDED,
17 HOWEVER, THAT THIS SENTENCE SHALL NOT APPLY TO LIMIT THE LIABILITY OF A
18 PARTY WHOSE ACTIONS GIVING RISE TO SUCH LIABILITY CONSTITUTE GROSS
19 NEGLIGENCE OR WILLFUL MISCONDUCT (IN THE CASE OF FPL PURSUANT TO SECTIONS
20 2.1(b), 7.2, 9.11(d), or 9.11(e) OF THIS CONTRACT AND IN THE CASE OF QS PURSUANT TO
21 SECTION 15.4 OF THIS CONTRACT). THE PROVISIONS OF THIS SECTION SHALL APPLY
22 REGARDLESS OF FAULT AND SHALL SURVIVE TERMINATION, CANCELLATION,
23 SUSPENSION, COMPLETION OR EXPIRATION OF THIS CONTRACT. NOTHING CONTAINED
24 IN THIS CONTRACT SHALL BE DEEMED TO BE A WAIVER OF A PARTY'S RIGHT TO SEEK
25 SPECIFIC PERFORMANCE OR INJUNCTIVE RELIEF.

26 **16. Insurance**

27 16.1 QS Insurance.

28 The QS shall procure or cause to be procured on or before the date of commencement of full-
29 scope work for construction of the Facility and maintain thereafter throughout the entire Term of this
30 Contract, a policy or policies of liability insurance issued by an insurer acceptable to FPL on a standard
31 "Insurance Services Office" commercial general liability form (such policy or policies, collectively, the
32 "QS Insurance"). A certificate of insurance shall be delivered to FPL at least fifteen (15) calendar days
33 prior to the start of any interconnection work. At a minimum, the QS Insurance shall contain (a) an
34 endorsement providing coverage, including products liability/completed operations coverage for the Term
35 of this Contract, and (b) a broad form contractual liability endorsement covering liabilities (i) which
36 might arise under, or in the performance or nonperformance of, this Contract and the Interconnection
37 Agreement, or (ii) caused by operation of the Facility or any of the QS's equipment or by the QS's failure
38 to maintain the Facility or the QS's equipment in satisfactory and safe operating condition. Effective at
39 least fifteen (15) calendar days prior to the synchronization of the Facility with FPL's system, the QS
40 Insurance shall be amended to include coverage for interruption or curtailment of power supply in
41 accordance with industry standards. Without limiting the foregoing, the QS Insurance must be reasonably
42 acceptable to FPL. Any premium assessment or deductible shall be for the account of the QS and not
43 FPL.

44 16.2 Limits.

45 The QS Insurance shall have a minimum limit of [REDACTED] per occurrence,
46 combined single limit, for bodily injury (including death) or property damage.

1 16.3 Replacement Coverage.

2 In the event that such insurance becomes totally unavailable or procurement thereof becomes
3 commercially impracticable, such unavailability shall not constitute an Event of Default under Section
4 13.1(n) of this Contract, but FPL and the QS shall promptly enter into negotiations to develop substitute
5 protection substantially equivalent to that required by this Article 16 to the extent commercially
6 practicable.

7 16.4 Claims Made Insurance.

8 To the extent that the QS Insurance is on a “claims made” basis, the retroactive date of the
9 policy(ies) shall be the Effective Date of this Contract or such other date as may be agreed upon to protect
10 the interests of FPL and QS. Furthermore, to the extent the QS Insurance is on a “claims made” basis, the
11 QS’s duty to provide insurance coverage shall survive the termination of this Contract until the expiration
12 of the maximum statutory period of limitations in the State of Florida for actions based in contract or in
13 tort. To the extent the QS Insurance is on an “occurrence” basis, such insurance shall be maintained in
14 effect at all times by the QS through the Term of this Contract.

15 16.5 Cancellation.

16 The QS Insurance shall provide that it may not be cancelled or materially altered without at least
17 thirty (30) calendar days’ written notice to FPL. The QS shall provide FPL with a copy of any material
18 communication or notice related to the QS Insurance within ten (10) Business Days of the QS’s receipt or
19 issuance thereof.

20 16.6 Party Status.

21 The QS shall be designated as the named insured and FPL shall be designated as an additional
22 named insured under the QS Insurance. The QS Insurance shall be endorsed to be primary to any
23 coverage maintained by FPL.

24 **17. Force Majeure**

25 17.1 Force Majeure Defined.

26 Force Majeure is defined as an event, condition or circumstance that is not within the reasonable
27 control of, or the result of the negligence or willful misconduct of the affected party, and which, by the
28 exercise of due diligence, the affected party is unable to overcome, avoid, or cause to be avoided. Such
29 events, conditions or circumstances may include, but are not limited to, acts of God, war, riot or
30 insurrection, terrorism, blockades, embargoes, sabotage, epidemics, explosions, hurricanes, earthquakes,
31 volcanoes, tornados, tidal surges, floods, strikes, lockouts or other labor disputes (not caused by the
32 failure of the affected party to comply with the terms of a collective bargaining agreement), or actions or
33 restraints by NAERC, FRCC, court order or Governmental Authority relating to safety, emergencies or
34 system reliability not due to or caused by the Party claiming Force Majeure. Force Majeure shall not
35 include (i) the QS’s ability to sell or FPL’s ability to purchase capacity and energy to another market at a
36 more advantageous price; (ii) equipment breakdown or inability to use equipment caused by defects in
37 design, engineering, manufacturing, construction, operation or maintenance of the Facility; (iii) a failure
38 of performance of any other entity, including any transportation provider, contractor, vendor, warehouse
39 operator, customer or entity providing electric transmission service to the QS, except to the extent that
40 such failure was caused by an event that would otherwise qualify as a Force Majeure event; (iv) failure of
41 the QS to timely apply for or use diligence to obtain permits; (v) failure to obtain deliveries of Fuel except

1 to the extent such failure was caused by an event that would otherwise qualify as a Force Majeure event
2 and (vi) a specific event that would otherwise qualify as a Force Majeure but that was reasonably
3 avoidable at the time of entering into this Contract.

4 17.2 Excused from Performance.

5 Except for payment obligations associated with performance prior to the pendency of the Force
6 Majeure, and as otherwise provided in this Contract, each Party shall be excused from performance of its
7 obligations, Conditions Precedent or cure rights when its nonperformance was caused by an event of
8 Force Majeure, but only for the duration of the Force Majeure event and no longer. The suspension of
9 performance shall be of no greater scope and of no greater duration than the cure for the Force Majeure
10 requires. A Party claiming Force Majeure shall not be entitled to any relief therefor unless and until
11 conforming notice is provided pursuant to Section 17.3.

12 17.3 Notice of Force Majeure.

13 In the event of any delay or nonperformance resulting from an event of Force Majeure, the party
14 claiming Force Majeure shall notify the other Party in writing within two (2) Business Days of the
15 occurrence of the event of Force Majeure, of the nature, cause, date of commencement thereof and the
16 anticipated extent of such delay, and shall indicate whether any deadlines or date(s), imposed hereunder
17 may be affected thereby. The Party claiming Force Majeure shall notify the other Party of the cessation of
18 the event of Force Majeure or of the conclusion of the affected Party's cure for the event of Force
19 Majeure, in either case within two (2) Business Days thereof. All notices shall be provided in accordance
20 with Section 19.5.

21 17.4 Force Majeure Cure.

22 The Party claiming Force Majeure shall use its commercially reasonable efforts to cure the
23 cause(s) preventing its performance of this Contract; provided, however, the settlement of strikes,
24 lockouts and other labor disputes shall be entirely within the discretion of the affected Party, and such
25 Party shall not be required to settle such strikes, lockouts or other labor disputes by acceding to demands
26 which such Party deems to be unfavorable.

27 17.5 Partial Operation.

28 At any time after the end of the Commissioning Period an event of Force Majeure occurs that
29 affects the QS such that the Facility can only partially operate, then the QS shall temporarily set the
30 Committed Capacity at the maximum capability that the Facility can reasonably be expected to operate.
31 For the avoidance of doubt, in the event that an event of Force Majeure affecting the QS occurs that
32 prevents the Facility from operating, the Committed Capacity shall be set at zero during such period of
33 time.

34 17.6 Cessation.

35 Upon the cessation of the event of Force Majeure affecting the QS or the conclusion of the cure
36 for the event of Force Majeure, the QS shall, consistent with Prudent Industry Practice, use commercially
37 reasonable efforts to restore the generating capability of the Facility to not less than the Minimum
38 Committed Capacity. Notwithstanding any other provision of this Contract, upon such cessation or cure,
39 FPL shall have the right within thirty (30) days thereafter to require a Committed Capacity Test be
40 performed within sixty (60) days after a written request therefor to demonstrate the Facility's compliance

1 with the requirements of this Section 17.6. Any Committed Capacity Test required by FPL under this
2 Section 17.6 shall be additional to any Committed Capacity Test under Section 6.6.

3 17.7 Payment Reduction.

4 During the occurrence of an event of Force Majeure affecting the QS and resulting in a reduction
5 in Committed Capacity, all Monthly Capacity Payments shall reflect, pro rata, the reduction in Committed
6 Capacity.

7 17.8 Termination.

8 This Contract may be terminated by the QS or FPL following a Force Majeure, a Condemnation
9 Event or a Material Casualty Event occurring after the Capacity Commencement Date if QS has not
10 repaired or rebuilt the Facility to at least the Minimum Committed Capacity within [REDACTED] of the
11 occurrence of such Force Majeure, Condemnation Event or Material Casualty Event. Termination of this
12 Contract pursuant to this Section 17.8 shall not be considered a termination due to an Event of Default or
13 require the payment of the FPL Termination Payment by FPL or the Performance Security under
14 Appendix 5.A by QS; provided, however, QS shall pay to FPL the Payment Security amount under
15 Appendix 5.B. Following such termination, both Parties will be released from any further liability under
16 this Contract.

17 17.9 Facility Reactivation.

18 The Parties agree that the Interconnection Agreement shall govern the allocation and
19 responsibility for payment of the costs necessary to reactivate the Facility and/or the interconnection with
20 FPL Transmission Provider's Transmission System if the same is (are) rendered inoperable or interrupted.

21 **18. Representations, Warranties, and Covenants**

22 18.1 Representations by Each Party.

23 Each Party represents and warrants that as of the Execution Date:

24 (a) Organization, Standing and Qualification.

25 It is a corporation/limited liability company (as applicable) duly organized and validly existing in
26 good standing under the laws of the state of its organization and has all necessary corporate/limited
27 liability company (as applicable) power and authority to carry on its business as presently conducted, to
28 own or hold under lease its properties and to enter into and perform its obligations under this Contract and
29 all other related documents and agreements to which it is or shall be a party. It is duly qualified or
30 licensed to do business in the State of Florida and in all other jurisdictions wherein the nature of its
31 business and operations or the character of the properties owned or leased by it makes such qualification
32 or licensing necessary and where the failure to be so qualified or licensed would impair its ability to
33 perform its obligations under this Contract or would result in a material liability to or would have a
34 material adverse effect on the other Party.

35 (b) Due Authorization, No Approvals, No Defaults, etc.

36 Each of the execution, delivery and performance by it of this Contract has been duly authorized
37 by all necessary action on the part of it, does not require any approval, except as has been heretofore
38 obtained, of the (shareholders, partners, or others, as applicable) of the Party or any consent of or
39 approval from any trustee, lessor or holder of any indebtedness or other obligation of the Party, except for
40 such as have been duly obtained, and does not contravene or constitute a default under any law, the

1 (articles of incorporation, bylaws, or other as applicable) of the Party, or any agreement, judgment,
2 injunction, order, decree or other instrument binding upon the Party, or subject the Facility or any
3 component part thereof to any lien other than as contemplated or permitted by this Contract. Subject to
4 the Conditions Precedent herein, this Contract constitutes its legal, valid and binding obligation,
5 enforceable against it in accordance with the terms hereof, except as such enforceability may be limited
6 by applicable bankruptcy laws from time to time in effect that affect creditors' rights generally or by
7 general principles of equity (regardless of whether such enforcement is considered in equity or at law).

8 (c) Compliance with Laws.

9 The Party has knowledge of all laws and business practices that must be followed in performing
10 its obligations under this Contract. The Party is in compliance with all laws, except to the extent that
11 failure to comply therewith would not, in the aggregate, have a material adverse effect on the Party or the
12 other Party.

13 (d) Governmental Authorizations.

14 Except with respect to Governmental Authorizations which are not required for the execution and
15 delivery of this Contract or performance of its obligations as of the Execution Date, neither the execution
16 and delivery by the Party of this Contract, nor the consummation by the Party of any of the transactions
17 contemplated thereby, requires the consent or approval of, the giving of notice to, the registration with,
18 the recording or filing of any document with, or the taking of any other action in respect of Governmental
19 Authority, except in respect of (i) permits which have already been obtained and are in full force and
20 effect, (ii) permits that are not yet required (and with respect to which the Party has no actual knowledge
21 of facts or circumstances which make it reasonable to believe that the same will not be readily obtainable
22 in the ordinary course of business upon due application therefor) or (iii) the Conditions Precedents,
23 including for FPSC Approval, as set forth in Sections 4.2 and 4.4(a).

24 (e) No Suits, Proceedings.

25 Except as relate to Governmental Authorizations which have not been obtained as of the
26 Execution Date, and except as otherwise disclosed in SEC filings by FPL, there are no actions, suits,
27 proceedings or investigations pending or, to the knowledge of the Party, threatened against it at law or in
28 equity before any court, arbitration panel or tribunal or other Governmental Authority in the United States
29 or any other jurisdiction which individually or in the aggregate could result in any materially adverse
30 effect on the Party's business, properties, or assets or its condition, financial or otherwise, or in any
31 impairment of its ability to perform its obligations under this Contract. The Party has no actual knowledge
32 of a violation or default with respect to any law which could result in any such materially adverse effect
33 or impairment. The Party is not in breach of, in default under, or in violation of, any Applicable Law, or
34 the provisions of any authorization, or in breach of, in default under, or in violation of, or in conflict with
35 any provision of any promissory note, indenture or any evidence of indebtedness or security therefor,
36 lease, contract, or other agreement by which it or its properties is bound, except for any such breaches,
37 defaults, violations or conflicts which, individually or in the aggregate, could not reasonably be expected
38 to have a material adverse effect on the business or financial condition of the Party or its ability to
39 perform its obligations hereunder.

40 18.2 QS represents and warrants that as of the Execution Date:

41 (a) Site.

42 To its actual knowledge, the QS knows of no (i) existing violations of any environmental laws at
43 the Site, including those governing hazardous materials or (ii) pending, ongoing, or unresolved
44 administrative or enforcement investigations, compliance orders, claims, demands, actions, or other
45 litigation brought by governmental authorities or other third parties alleging violations of any

1 environmental law or permit which would materially and adversely affect the construction or operation of
2 the Facility at the Site as contemplated by this Contract.

3 (b) Ownership and Sale of Renewable Energy Attributes.

4 The QS retains any and all rights to own, register, trade, convey, assign and to sell any and all
5 Environmental Attributes associated with the electric generation of the Facility, including any and all
6 Renewable Energy Credits, provided that FPL shall have a right of first refusal with respect to any and all
7 bona fide offers to purchase any RECs [REDACTED] and after FPL has not
8 accepted an offer pursuant to this Section 18.2(b) the QS shall [REDACTED]
9 [REDACTED]. FPL agrees to exercise such right of first refusal, if at all, within [REDACTED] of
10 receiving written notification by the QS of a bona fide offer and to thereafter close the purchase and sale
11 of the RECs on or before the closing date set forth in such offer or, if no closing date is specified in the
12 offer, within [REDACTED] after exercise of the right, provided the QS shall notify FPL promptly of such
13 bona fide offer. The QS further retains all rights to any and all Tax Credits, rights and benefits associated
14 with the Facility, the use of biomass as fuel and/or with the Energy produced by the Facility. The QS
15 shall have no obligation [REDACTED]
16 [REDACTED] in order to produce RECs or increase the production of RECs.

17 (c) Sources of Fuel and Power.

18 The sole source(s) of fuel or power to be used by the Facility to produce Energy for sale to FPL
19 during the Term of this Contract shall be such sources as are defined in and provided for pursuant to the
20 Renewable Energy Requirements. Fossil fuels, to the extent used in the operation of the Facility, must be
21 limited to the minimum quantities necessary for start-up, shut-down and for operating stability at
22 minimum load. The Facility must be capable of generating the Committed Capacity without the use of
23 fossil fuels.

24 (d) Renewable Energy Requirements.

25 The Facility will be designed and constructed to meet the Renewable Energy Requirements in
26 effect as of the Execution Date.

27 (e) Technology and Generator Capabilities.

28 The technology and generator capabilities information set forth in Appendix 1 and 2 is accurate
29 and complete and is fit for the purpose of submission to the FPSC with the petition of FPL for approval of
30 this Contract, subject to redaction of Confidential Information and changes that are approved by FPL in
31 its reasonable discretion. The QS reserves the right to make changes to the technology and generator
32 capabilities due to normal use, operation and maintenance and changes made to address Force Majeure
33 events, Material Casualty Events, Condemnation Events, changes in law or other facts, changes, events,
34 circumstances or conditions beyond the reasonable control of the QS.

35 18.3 Project Viability.

36 The Parties acknowledge that prior to the Execution Date, the QS has provided Confidential
37 Information and documents requested by FPL relating to the Facility covered by this Contract. Such
38 Confidential Information and documentation was made available to FPL for information purposes and
39 solely to assist FPL in assessing the QS's financial and technical viability.

40 18.4 No Implied Warranties.

41 The Parties acknowledge and agree that except as expressly and specifically set forth in Sections
42 18.1 and 18.2 herein they make no other representations or warranties and they expressly disclaim any

1 other representation or warranty, express or implied, in respect of this Contract, including any
2 representation or warranty with respect to fitness for a particular purpose, merchantability, value,
3 usefulness or otherwise.

4 **19. General Provisions**

5 19.1 Permits.

6 Each Party hereby agrees to obtain and maintain any and all permits, certifications, licenses,
7 consents or approvals of any Governmental Authority which the Party is required to obtain as a
8 prerequisite to engaging in the activities specified in this Contract prior to the commencement of any such
9 activity.

10 19.2 Project Management.

11 (a) If requested by FPL within sixty (60) days of the Execution Date, the QS shall submit to
12 FPL its integrated project schedule for FPL's review within sixty (60) calendar days from
13 the receipt of such request, and a start-up and test schedule for the Facility at least sixty
14 (60) calendar days prior to start-up and testing of the Facility. These schedules shall
15 identify key licensing, permitting, construction and operating milestone dates and
16 activities. FPL shall provide comments, if any, to such documents within thirty (30) days
17 of receipt. If requested by FPL, the QS shall submit progress reports in a form
18 satisfactory to FPL every calendar quarter until one hundred twenty (120) days before the
19 projected Commissioning Commencement Date, and thereafter every calendar month,
20 and in addition shall notify FPL of any material changes in such schedules affecting the
21 commencement of commissioning of the Facility within ten (10) calendar days after such
22 changes are determined. FPL shall have the right during normal business hours upon
23 seven (7) days prior written notice to monitor the construction, start-up and testing of the
24 Facility, either on-Site or off-Site subject to applicable rules relating to safety, security,
25 confidentiality, indemnity and insurance. FPL's technical review and inspections of the
26 Facility and resulting requests to review documents and construction activities, if any,
27 shall not be construed as endorsing the design thereof or as any warranty as to the safety,
28 durability or reliability of the Facility. All such documents and information received by
29 FPL shall be Confidential Information.

30 (b) The QS shall provide FPL with the final designer's/maker's generator capability
31 curves, protective relay types, proposed protective relay settings, main one-line diagrams,
32 protective relay functional diagrams, and alternating current and direct current
33 elementary diagrams for review and inspection at FPL no later than one hundred eighty
34 (180) calendar days prior to the initial synchronization.

35 19.3 Assignment.

36 (a) Except as provided herein or as the result of a merger or acquisition where the surviving
37 entity is of equal or greater creditworthiness, a Party may not assign this Contract and the
38 obligations contained herein, without the other Party's prior written approval, which
39 approval may be withheld in the other Party's reasonable discretion. Notwithstanding any
40 provision of this Contract to the contrary, the QS may ([REDACTED]
41 [REDACTED] assign, pledge and
42 grant a security interest in and to its rights and interests in, to and under this Contract in
43 favor of any Financing Parties.

1 (b) In the event that the QS transfers, pledges, encumbers or collaterally assigns this Contract
2 and its rights, interests and remedies hereunder to the Financing Parties, the QS shall
3 provide written notice to FPL of such transfer, pledge, encumbrance or assignment and
4 include therein the address of the Financing Parties. In connection with any financing or
5 refinancing of the Facility and upon reasonable requests therefor, FPL shall (i) execute
6 one or more estoppel certificates in respect of this Contract in a form reasonably
7 acceptable to FPL and to the Financing Parties or investors, (ii) cooperate with the QS in
8 the negotiation and execution of any reasonable amendment, supplement or addition to
9 this Contract reasonably required by the Financing Parties and (iii) [REDACTED]
10 [REDACTED] upon request by the QS.

11 (c) The execution of any Financing Documents and/or the Financing Parties' enforcement of
12 rights and remedies as granted, conferred or reserved in or contemplated [REDACTED]
13 [REDACTED] shall not constitute or be deemed a breach of any of the terms and
14 conditions hereof, a QS Event of Default, or an assumption by the Financing Parties
15 personally of the obligations of the QS under this Contract.

16 19.4 Disclaimer.

17 In executing this Contract, FPL does not, nor should it be construed, to extend its credit or
18 financial support for the benefit of the QS or third parties lending money to or having other transactions
19 with the QS or any assignee of this Contract. Nothing contained in this Contract shall be construed to
20 create an association, trust, partnership, or joint venture between the Parties or to authorize a Party to
21 obligate or bind the other Party.

22 19.5 Notification.

23 All formal notices (excluding day-to-day communication relating to administration and
24 performance of this Contract) relating to this Contract shall be deemed duly given when delivered in
25 person, or sent by registered or certified mail, or sent by recognized overnight delivery service, or sent by
26 fax if followed immediately with a copy sent by registered or certified mail, to the individuals designated
27 below) if received during business hours on a Business Day for the receiving Party, and, if received after
28 business hours or on a day that is not a Business Day for the receiving Party, on the receiving Party's first
29 Business Day following the date of delivery. The Parties designate the following individuals to be
30 notified or to whom payment shall be sent until such time as either Party furnishes the other Party written
31 instructions to contact another individual:
32

For the QS:

U.S. EcoGen Okeechobee, LLC
1000 N. U.S. HWY 1, Suite 807
Jupiter, Florida 33477
Attn: William F. Quinn
Telephone: 561-744-7300
Facsimile: 561-744-7300

With a copy to:

Bryant Miller Olive
111 Riverside Avenue, Suite 200
Jacksonville, Florida 32202

Attn: Thomas B. Constantine, Esq.
Telephone: 904-384-1264
Facsimile: 904-388-2986

For FPL:

Florida Power & Light Company

700 Universe Boulevard
Juno Beach, Florida 33408
Attention: EMT Contracts Dept. [EMT/JB]
Contracts Manager/Coordinator
Telephone: 561-691-7886/7837
Facsimile: 561-625-7197

1 Contracts and related documents may be mailed to the address below or delivered during normal
2 business hours (8:00 a.m. to 4:45 p.m.) to the visitors' entrance at the address below:
3

4 700 Universe Boulevard
5 Juno Beach, Florida 33408
6 Attention: Contracts Manager
7 Energy Marketing & Trading

8 **19.6 Applicable Law.**

9 This Contract shall be construed in accordance with and governed by, and the rights of the Parties
10 shall be construed in accordance with, the laws of the State of Florida as to all matters, including matters
11 of validity, construction, effect, performance and remedies, without regard to conflict of law rules thereof.

12 **19.7 Disputes; Venue.**

13 (a) In the event that any dispute (including payment dispute), controversy or claim arising
14 out of or relating to this Contract or the breach, termination or validity hereof should arise
15 between the Parties (a "Dispute"), the Party wishing to declare a Dispute shall deliver to
16 the other Party a written notice identifying the disputed issue and its proposed resolution.

17 (b) Following delivery and receipt of a notice of Dispute, executives of both Parties shall
18 meet at a mutually acceptable time and place within ten (10) Business Days after receipt
19 of such notice and thereafter as often as they reasonably deem necessary, to exchange
20 relevant information and to attempt to resolve the Dispute ("Management
21 Reconciliation"). If the matter has not been resolved by Management Reconciliation
22 within thirty (30) days of the disputing Party's notice having been issued, or if the Parties
23 fail to meet within ten (10) Business Days as required above, either Party may commence
24 mediation or litigation pursuant to Section 19.7(d).

25 (c) All communication, offers and statements, whether oral or written, and documents and
26 other writings exchanged between the Parties in connection with the Management
27 Reconciliation shall be confidential and shall not be discoverable, admissible in evidence
28 or used or referred to in any subsequent binding adjudicatory process between the Parties;
29 provided, however, that evidence that is otherwise admissible or discoverable shall not be
30 rendered inadmissible or non-discoverable as a result of its use in such negotiations.

1 (d) If either Party elects to refer the dispute to mediation, it shall give notice of such election
2 to the other Party and the Parties will cooperate in selecting a qualified neutral mediator
3 and in scheduling the time and place of the mediation as soon as reasonably possible, but
4 in no event later than thirty (30) days after the notice referring the Dispute to mediation is
5 given. Any mediator shall have recognized expertise and not less than ten (10) years
6 experience in the subject matter of the Dispute and shall be neutral and independent and
7 have no prior connection with or financial or other interests in or against either Party.
8 Unless otherwise agreed, the mediation will be scheduled for a date not later than sixty
9 (60) days after the selection of the mediator. The Parties agree to participate in the
10 mediation in good faith and to share the costs of the mediation, including the mediator's
11 fee, equally, but such shared costs shall not include each Party's own attorneys' fees and
12 costs, which shall be borne solely by such Party. If the Dispute has not been resolved
13 pursuant to Management Reconciliation or through the mediation process within seventy-
14 five (75) days after the selection of the mediator, either Party may commence a lawsuit.

15 (e) The Parties hereby irrevocably submit to the exclusive jurisdiction of the United States
16 District Court for Palm Beach County, Florida or, in the event that jurisdiction for any
17 matter cannot be established in such United States District Court, in the state court for
18 Palm Beach County, Florida solely in respect of the interpretation and enforcement of the
19 provisions of this Contract and of the documents referred to in this Contract, and in
20 respect of the transactions contemplated hereby, and hereby waive, and agree not to
21 assert, as a defense in any action, suit or proceeding for the interpretation or enforcement
22 hereof or of any such document, that it is not subject thereto or that such action, suit or
23 proceeding may not be brought or is not maintainable in said courts or that the venue
24 thereof may not be appropriate or that this Contract or any such document may not be
25 enforced in or by such courts, and the Parties hereto irrevocably agree that all claims,
26 counterclaims and defenses with respect to such action or proceeding shall be heard and
27 determined in such court. The Parties hereby consent to and grant any such court
28 jurisdiction over the persons of such Parties solely for such purpose and over the subject
29 matter of such dispute and agree that mailing of process or other papers in connection
30 with any such action or proceeding in the manner provided in Section 19.5 hereof or in
31 such other manner as may be permitted by any Applicable Law shall be valid and
32 sufficient service thereof.

33 19.8 Further Assurances.

34 If, after the Execution Date, it should be necessary and proper to execute any additional
35 documents, to modify documents to be delivered hereunder or to take further action to effectuate the
36 intent and purpose of this Contract, each Party agrees to take such action and to execute and deliver any
37 such additional or modified documents upon the reasonable written request of the other Party.

38 19.9 Rate Recovery.

39 FPL and the QS shall use reasonable efforts to support this Contract and to cooperate mutually
40 and fully to obtain full recovery for FPL, from FPL's retail customers, of all payments made, due, or
41 owing to the QS under this Contract.

42 (a) Notwithstanding anything to the contrary in this Contract, if FPL, at any time during the
43 Term of this Contract, fails to obtain or is denied the authorization of the FPSC, or the
44 authorization of any other legislative, administrative, judicial or regulatory body which
45 now has, or in the future may have, jurisdiction over FPL's rates and charges, to recover

1 from its customers all of the payments required to be made to the QS under the terms of
2 this Contract or any subsequent amendment hereto, FPL may, at its sole option, adjust the
3 payments made under this Contract to the amount(s) which FPL is authorized to recover
4 from its customers. In the event that FPL so adjusts the payments to which the QS is
5 entitled under this Contract, then, the QS may, at its sole election, terminate this Contract
6 upon thirty (30) days' written notice to FPL. QS's sole and exclusive remedy against FPL
7 for termination of this Contract pursuant to this Section 19.9(a) shall be a return of any
8 Performance Security and Payment Security and receipt of any undisputed payments
9 recovered from FPL's retail customers prior to such termination. If such determination of
10 disallowance is ultimately reversed and such payments previously disallowed are found
11 to be recoverable, FPL shall pay all withheld payments, with interest at the rate which is
12 the lower of 10.5% per annum or as authorized by the FPSC and the QS shall have the
13 right, exercisable within ninety (90) days after any such reversal, to reinstate this
14 Contract if the Contract was terminated by the QS upon re-posting any Performance
15 Security and Payment Security. The QS acknowledges and agrees that any amounts
16 initially received by FPL from its retail customers, but for which recovery is subsequently
17 disallowed and charged back to FPL, may be offset or credited against subsequent
18 payments to be made by FPL to the QS under this Contract.

19 (b) If, at any time, FPL receives notice that the FPSC or any other legislative, administrative,
20 judicial or regulatory body seeks or will seek to prevent full recovery by FPL from its
21 customers of all payments required to be made under the terms of this Contract or any
22 subsequent amendment to this Contract, then FPL shall, within thirty (30) days of such
23 action, give written notice thereof to the QS. FPL shall use reasonable efforts to recover
24 from its retail customers any payments required to be made by FPL hereunder, and will
25 cooperate in any reasonable effort by the QS to intervene in any proceeding challenging,
26 or to otherwise be allowed to defend, the enforceability and validity of this Contract and
27 the right of FPL to recover from its retail customers all payments to be made by it
28 hereunder. Both FPL and the QS agree to use reasonable efforts to protect this Contract
29 and to ensure recovery by FPL from its retail customers the amount of all payments made
30 to the QS hereunder; such reasonable efforts include the duty of each party to appeal, so
31 long as there is a reasonable likelihood of success in such Party's informed opinion, to
32 any and all courts having jurisdiction, any FPSC or any other legislative, administrative,
33 judicial or regulatory body determination that prevents full recovery by FPL from its
34 customers of all payments required to be made under the terms of this Contract or any
35 subsequent amendment to this Contract.

36 (c) The Parties do not intend this Section 19.9 to grant any rights or remedies to any third
37 party(ies) or to any legislative, administrative, judicial or regulatory body; and this
38 Section 19.9 shall not operate to release any person, other than FPL as provided in
39 Section 19.9(b), from any claim or cause of action which the QS may have relating to, or
40 to preclude the QS from asserting, the validity or enforceability of any obligation
41 undertaken by FPL under this Contract.

42 (d) If, at any time, the QS provides notice pursuant to Section 14.1(b) of the amount of an
43 FPL Termination Payment to be made by FPL following an FPL Event of Default, then
44 FPL may elect by notice to the QS within thirty (30) days after such notice by the QS,
45 either to (i) immediately pay the present value of such FPL Termination Payment at a
46 discount rate based on FPL's weighted average cost of capital or (ii) pay such FPL
47 Termination Payment monthly over the remaining Term of the Contract as though such
48 Contract had not been terminated; provided, however, that if FPL does not make an

1 election timely, the FPL Termination Payment shall be due and owing immediately and
2 interest shall accrue thereon until paid in full.

3 19.10 Change in Environmental Law.

4 The Parties acknowledge that the enactment, adoption, promulgation, implementation, or issuance
5 of, or a new or changed interpretation of, any Applicable Law that specifically addresses environmental
6 or regulatory issues and that takes effect after the Execution Date (“Environmental Law Changes”) could
7 affect the cost of construction and/or operation of the Avoided Unit and agree that, if any such
8 Environmental Law Changes should affect the cost of construction and/or operation of the Avoided Unit,
9 the payments to the QS for Energy and the security to be provided by the QS hereunder shall be
10 recalculated and shall, subject to FPSC approval, be adjusted for the remaining Term based on the
11 recalculation of the full avoided costs of the Avoided Unit, including the additional costs to construct and
12 operate the Avoided Unit resulting from the Environmental Law Changes, if FPL had built and operated
13 the Avoided Unit; provided however that any increase in payments to the QS for Energy and the security
14 due to an increase in the cost of construction and/or operation of the Avoided Unit shall be subject to
15 FPSC approval of FPL’s right to recover such additional payments made to the QS from FPL’s
16 customers. FPL shall at the request of the QS use reasonable and diligent efforts to seek to recover from
17 its customers the amount of any increase in such costs, and the QS may intervene and shall cooperate
18 fully with FPL in any proceedings in which FPL seeks recovery of such additional payments from its
19 retail customers. Both FPL and the QS agree to use reasonable efforts to protect this Contract and to
20 ensure recovery by FPL from its retail customers the amount of all payments made to the QS hereunder,
21 including payments for the costs that Environmental Law Changes would have caused FPL to incur if
22 FPL had built the Avoided Unit. So long as there is a reasonable likelihood of success in such Party’s
23 informed opinion, the Parties’ reasonable efforts include the duty of both Parties to appeal, to any and all
24 courts having jurisdiction, any FPSC or any other legislative, administrative, judicial or regulatory body
25 determination that prevents full recovery by FPL from its customers of all payments, including any
26 increase in payments resulting from Environmental Law Changes, required to be made under the terms of
27 this Contract or any subsequent amendment to this Contract.

28 19.11 Severability.

29 If any part of this Contract, for any reason, is declared invalid, or is rendered unenforceable by a
30 public authority of appropriate jurisdiction, then such decision shall not affect the validity of the
31 remainder of the Contract, which remainder shall remain in force and effect as if this Contract had been
32 executed without the invalid or unenforceable portion and there shall be substituted for such invalid or
33 unenforceable portion a valid and enforceable provision that most closely approximates the intended
34 purpose and effect of the invalid or unenforceable portion; provided that if the material purpose and effect
35 of such portion cannot be determined and effectuated (such as Section 19.9 cost recovery from FPL’s
36 customers), this Contract shall be invalid.

37 19.12 Complete Agreement and Amendments.

38 All previous communications or agreements between the Parties, whether verbal or written, with
39 reference to the subject matter of this Contract are hereby abrogated. No amendment or modification to
40 this Contract shall be binding unless it shall be set forth in writing and duly executed by both Parties in
41 accordance with the requirements of this Contract and [REDACTED]. This Contract
42 constitutes the entire agreement between the Parties with respect to the subject matter hereof. The
43 headings of the articles, section and subsections of this Contract and any appendix or attachment hereto
44 are inserted for convenience only and shall not in any way affect the meaning or construction of any
45 provision of this Contract.

1 19.13 Successors and Assigns.

2 This Contract, as it may be amended from time to time in accordance with the requirements of
3 this Contract [REDACTED], shall be binding upon, and inure to the benefit of, the
4 Parties' respective successors-in-interest, permitted assigns and legal representatives.

5 19.14 Record Retention.

6 Each Party agrees to retain for a period of five (5) years all records relating to the performance of
7 its obligations hereunder, and to cause all Affiliates to retain for the same period all such records. This
8 obligation shall survive termination or expiration of this Contract.

9 19.15 No Waiver.

10 No waiver of any of the terms and conditions of this Contract shall be effective unless in writing
11 and signed by the Party against whom such waiver is sought to be enforced and [REDACTED]
12 [REDACTED]. Any waiver of the terms hereof shall be effective only in
13 the specific instance and for the specific purpose given. The failure of a Party to insist, in any instance, on
14 the strict performance of any of the terms and conditions hereof shall not be construed as a waiver of such
15 Party's right in the future to insist on such strict performance.

16 19.16 Set-Off.

17 Either Party may at any time, but shall be under no obligation to, set off any and all sums due
18 from the other Party against sums due to the other Party hereunder.

19 19.17 Assistance With ASC 810.

20 (a) Compliance Accounting rules set forth in Financial Accounting Standards Codification
21 ASC 810, Consolidation ("ASC 810") as well as future amendments and interpretations
22 of those rules, may require FPL to evaluate whether the QS must be consolidated, as a
23 variable interest entity (as defined in ASC 810), in the financial statements of FPL. The
24 QS agrees to fully cooperate with FPL and make available to FPL all financial data and
25 other information, as deemed necessary by FPL, to perform that evaluation on a timely
26 basis at inception of this Contract and periodically as required by ASC 810. If the result
27 of an evaluation under ASC 810 indicates that the QS must be consolidated in the
28 financial statements of FPL, the QS agrees to provide financial statements, together with
29 other required information, as determined by FPL, for inclusion in disclosures contained
30 in the footnotes to the financial statements and in FPL's required filings with the
31 Securities and Exchange Commission ("SEC"). To the extent permissible by law, FPL
32 shall use reasonable efforts to include such financial statements and information of the
33 QS in disclosures and filings by FPL in a manner which does not reveal the source
34 thereof or otherwise attribute them to QS. The QS shall provide this information to FPL
35 in a timeframe consistent with FPL's earnings release and SEC filing schedules, to be
36 determined at FPL's discretion. The QS also agrees to fully cooperate with FPL and
37 FPL's independent auditors in completing an assessment of the QS's internal controls as
38 required by the Sarbanes-Oxley Act of 2002 and in performing any audit procedures
39 necessary for the independent auditors to issue their opinion on the consolidated financial
40 statements of FPL.

1 (b) Any information provided by QS to FPL pursuant to this Section 19.17 shall be
2 considered Confidential Information and shall be maintained confidential and disclosed
3 only as required by GAAP, accounting requirements, SEC rules and any Applicable
4 Laws. The information will only be used for financial statement purposes, to the extent
5 reasonable shall be aggregated with other information or otherwise presented in a format
6 not attributed to QS, and shall not be otherwise shared with internal or external parties.

7 19.18 Third Parties.

8 Other than as specified in the assignment provisions contained in Section 19.3, this Contract is
9 intended solely for the benefit of the Parties, Financing Parties and indemnitees and nothing in this
10 Contract shall be construed as creating any duty to, standard of care with reference to, or any liability to,
11 or conferring any cause or right of action on any other Person not a Party to this Contract. The Parties
12 acknowledge that the Financing Parties are third-party beneficiaries of this Contract. No undertaking by
13 one Party to the other hereunder shall constitute the dedication of that Party's facilities and systems or any
14 portion thereof to the other Party or the public, nor affect the status of FPL as a public utility company or
15 QS as an independent Person.

16 19.19 Survival.

17 The rights and obligations that are intended to survive termination, expiration, cancellation or
18 suspension of this Contract are all of those rights and obligations that this Contract expressly provides
19 shall survive any such event and those that arise from FPL's or QS's covenants, agreements,
20 representation and warranties applicable to, or to be performed, at or during any time prior to or as a
21 result of the termination of this Contract.

22 19.20 Confidentiality.

23 (a) For purposes of this Contract, "Confidential Information" means any written data or
24 information (or an oral communication if the Party requesting confidentiality for such
25 oral communication promptly confirms such communication in writing) that is
26 privileged, confidential or proprietary, and that is marked in a conspicuous manner
27 indicating that such data or information is confidential (or, in the case of an oral
28 communication, is accompanied or promptly followed by a written designation of
29 confidentiality), except information that is described in Sections 19.17 and 19.20(b).
30 Except as otherwise set forth in this Contract, neither Party shall publish, disclose, or
31 otherwise divulge Confidential Information to a third person (other than the Party's
32 employees, Affiliates, actual or potential Financing Parties, counsel, accountants or
33 advisors who have a need to know such information and have agreed to keep such terms
34 confidential), at any time [REDACTED]
35 [REDACTED] without the other Party's prior written consent. Each Party
36 shall be entitled to all remedies available at law or in equity (including specific
37 performance and/or injunctive relief) to enforce, or seek relief in connection with, this
38 confidentiality obligation.

39 [REDACTED] The following shall not be considered Confidential Information, and receiving Party shall
40 not be limited in the use or disclosure of the following information: (i) information which
41 is or becomes part of the public domain through no act or omission of receiving Party; (ii)
42 information which demonstrably was known or was in the possession of receiving Party
43 without obligation to maintain confidentiality prior to the Execution Date of this
44 Contract; (iii) information which is subsequently rightly received by receiving Party from

1 a third party who is not bound to maintain such information as confidential; (iv)
2 information independently developed by the receiving Party without reference to the
3 Confidential Information received under this Contract; and/or, (v) information required to
4 be disclosed by a Party for its compliance obligations to a Governmental Authority, the
5 FPSC, the FERC, NAERC, SEC and/or pursuant to Applicable Law (provided that the
6 disclosing Party shall, to the extent permissible, redact confidential, proprietary, pricing
7 or other trade secret information of the other Party). Further, notwithstanding anything to
8 the contrary, either Party may disclose to the public and third parties, at any time and
9 from time-to-time, the following information in connection with the Parties' respective
10 renewable energy business operations and management, technical evaluation,
11 educational, public relations, and promotional programs: [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]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]
29 [REDACTED]
30 [REDACTED]
31 [REDACTED]

32 (d) Notwithstanding the confidentiality requirements set forth herein, a Party may, subject to
33 the limitations set forth herein, disclose Confidential Information to comply with any
34 applicable requirement of Applicable Law, or any exchange, control area or independent
35 system operator rule, in response to a court order or in connection with any court,
36 arbitration, administrative or regulatory proceeding. Such disclosure shall not terminate
37 the obligations of confidentiality unless the Confidential Information thereafter falls
38 within one of the exclusions of this Contract. To the extent the disclosure of Confidential
39 Information is requested or compelled as set forth above, the receiving Party agrees to
40 give disclosing Party reasonable notice of any discovery request or order, subpoena, or
41 other legal process requiring disclosure of any Confidential Information, to the extent
42 such notice is not prohibited by Applicable Law. Such notice by the receiving Party shall
43 give disclosing Party an opportunity, at disclosing Party's discretion and sole cost, to
44 seek a protective order or similar relief. If such protective order or other appropriate
45 remedy is not sought and obtained [REDACTED]
46 [REDACTED], receiving Party shall disclose only that portion of the Confidential Information
47 that is required or necessary in the opinion of receiving Party's legal counsel and redact
48 portions thereof containing, setting forth or constituting information or data that, in the
49 opinion of receiving Party's legal counsel is not required to be disclosed; provided,

1 however, the receiving Party shall use reasonable efforts to obtain assurances that
2 confidential treatment will be accorded to any Confidential Information so disclosed.

3 19.21 Expenses.

4 Except as expressly provided for herein, all expenses incurred by or on behalf of each Party,
5 including all fees and expenses of agents, representatives, attorneys and accountants employed by the
6 Parties in connection with this Contract, including the preparation of this Contract, consummation of the
7 transactions contemplated by this Contract, and disputes relating to this Contract, shall be borne solely by
8 the Party who shall have incurred such expenses, and the other Party shall have no liability in respect
9 thereof.

10 19.22 Public Announcements.

11 The Parties agree that they may, from time to time, issue press and media releases regarding the
12 Facility and that they shall cooperate with each other in connection with the issuance of such releases
13 including completed review of press and media releases proposed to be issued by the other Party by [redacted]
14 [redacted] after submission by such other Party. Each Party agrees that it shall not
15 issue any press or media release regarding the Facility without the prior consent of the other; provided,
16 however, that either [redacted] communicate the existence of this
17 Contract, the identity of the other Party, and basic characteristics of the Facility without the prior approval
18 of the other Party.

19 19.23 Counterparts.

20 This Contract and any amendment hereto may be executed in one or more counterparts, including
21 in facsimile and electronic formats (including portable document format (.pdf)), each of which shall be
22 deemed an original, but all of which shall constitute one and the same instrument.

23 [Remainder of Page Intentionally Blank - Signature Page(s) Follow]
24
25

IN WITNESS WHEREOF, the QS and FPL executed this Agreement for the Purchase of Capacity and Energy effective the date set forth in the first paragraph hereof.

WITNESS

Name

Name

FLORIDA POWER & LIGHT COMPANY

By:

Name: Sam Forrest

Its: Vice President

Date: December 14, 2012



WITNESS

Name

Name

U.S. ECOGEN OKEECHOBEE, LLC

By:

Name: William F. Quinn, P.E.

Its: President & CEO

Date: December 14, 2012

APPENDIX 1

TECHNOLOGY AND GENERATOR CAPABILITIES	
Location:	City: County: Okeechobee
Generator Type (Induction or Synchronous)	Synchronous
Type of Facility	Biomass as defined in Section 25-17.210 (2) F.A.C.
Delivery Term	Thirty (30) years after Commissioning Commencement Date, with Capacity payment commencing after the end of the Commissioning Period

AVOIDED UNIT	
Avoided Unit	Combined Cycle Unit
Avoided Unit Capacity	1,327 MW
Avoided Unit Heat Rate (average annual)	6,607 BTU/kWh
Avoided Unit In-Service Date	June 1, 2025
Avoided Unit Variable O&M (annual escalation: 2.5%)	0.0858 cents/kWh
Avoided Unit Life	30 years
Minimum Performance Standards – On Peak Availability Factor*	94%
Minimum Performance Standards – Off Peak Availability Factor	94%

APPENDIX 2
FACILITY AND SITE DESCRIPTIONS

FACILITY DESCRIPTION:

The U.S. EcoGen Okeechobee, LLC Biomass Electrical Generating Facility (“USEG Okeechobee Facility”) will utilize proven conventional direct-fired biomass boiler and steam turbine technology in a “bottom cycle” configuration [REDACTED]. Generally the USEG Okeechobee Facility can be broken down into several discrete components. Such components include the Boiler Island, the Power Island, Electrical Interconnection Facilities and the Administrative Areas.

A fuel supply area [REDACTED] will contain all of the equipment and systems required to weigh, unload, prepare, store, and convey the Biomass fuel from the receiving area to the feeder hoppers, which meter the Biomass fuel into the boiler. The boiler island receives the Biomass fuel from the fuel supply area and converts a portion of the chemical energy contained in the Biomass fuel to thermal energy in the form of superheated high pressure steam. This conversion process involves the combustion of the Biomass fuel in a water-tube boiler. The products of combustion leave the boiler as cooled flue gas which is scrubbed [REDACTED] before leaving the emission stack into the atmosphere. The solid residue or ash left over from the combustion process will be used as a farm soil conditioner.

The power island receives the superheated, high pressure steam from the boiler and converts a portion of the thermal energy contained in the steam to electrical energy within the condensing/extraction steam turbine generator. Additional equipment in the power island includes the condenser, pumps, piping and associated controls. The electrical energy generated in the steam turbine is increased in voltage to FPL’s transmission line voltage by the main power transformer located within the switchyard. The switchyard, switchgear, conductors, breakers, meters, controls and transformers comprise the equipment within the electrical interconnection facilities.

The operators and plant management of the USEG Okeechobee Facility are housed within the administrative area. This area includes the control room, laboratory, parts room, machine shop, administrative offices and guardhouse facilities.

The capacity of the USEG Okeechobee Facility hereunder is to be as follows:

Design Committed Capacity	60 MW
Maximum Committed Capacity	[REDACTED]
Minimum Committed Capacity	[REDACTED]

FACILITY SITE DESCRIPTION: The USEG Okeechobee Facility will be located in Okeechobee County, Florida [REDACTED]

FUEL SUPPLY FACILITIES: QS seeks to implement, on a phased approach, a vertically integrated “Closed Loop” biomass fuel production and transportation program [REDACTED]. The Closed Loop fuel supply program is envisioned to include cultivating clean woody biomass, primarily fast growing species of non-invasive Eucalyptus, purposely grown on lands that are to be owned or leased by the QS or by [REDACTED]

49 [REDACTED] for the Closed Loop supply of biomass fuel, on
50 a dedicated basis to the USEG Okeechobee Facility. QS also seeks to establish a state-of-the-art logistics
51 and fuel harvesting, transportation and inventory management infrastructure. The biomass fuel will likely
52 be harvested as round wood, transported via truck, rail or barge and stored at the USEG Okeechobee
53 Facility. The round wood will likely be chipped, placed under covered storage and delivered to the boiler
54 day bin, on a rotational basis, via a material handling system. Bottom ash from the combustion process is
55 planned to be returned to the growing fields and used as an organic soil conditioner.

**APPENDIX 3
MONTHLY CAPACITY PAYMENT CALCULATION**

1. Monthly Capacity Payments (MCP) for each Monthly Billing Period after the end of the Commissioning Period shall be computed according to the following:

A. In the event that the Annual Capacity Billing Factor (“ACBF”), as defined below, is less than 70%, then no Monthly Capacity Payment shall be due. That is:

$$\text{MCP} = 0$$

B. In the event that the ACBF is equal to or greater than 70% but less than 90%, then the Monthly Capacity Payment shall be calculated by using the following formula:

$$\text{MCP} = \text{BCP} \times [0.05 \times (\text{ACBF} - 70)] \times \text{CC}$$

C. In the event that the ACBF is equal to or greater than 90%, then the Monthly Capacity Payment shall be calculated by using the following formula:

$$\text{MCP} = \text{BCP} \times \text{CC}$$

Where:

MCP Monthly Capacity Payment in dollars.

BCP Base Capacity Payment in \$/KW/Monthly as specified in Appendix 4

CC Committed Capacity in KW.

ACBF Annual Capacity Billing Factor. This factor is calculated using the 12 months rolling average of the Monthly Capacity Factor. This 12 month rolling average shall be defined as the sum of the 12 consecutive Monthly Capacity Factors preceding the date of calculation, divided by 12. During the first 12 consecutive Monthly Billing Periods, commencing with the first Monthly Billing Period in which Capacity payments are to be made, the calculation of the Annual Capacity Billing Factor shall be performed as follows: (a) during the first Monthly Billing Period, the Annual Capacity Billing Factor shall be equal to the Monthly Capacity Factor; (b) thereafter, the calculation of the Annual Capacity Billing Factor shall be computed by dividing the sum of the Monthly Capacity Factors during the first year's Monthly Billing Periods in which Capacity payments are to be made by the number of Monthly Billing Periods which have elapsed. This calculation shall be performed at the end of each Monthly Billing Period until enough Monthly Billing Periods have elapsed to calculate a true 12-month rolling average Annual Capacity Billing Factor. Periods during which the Facility has temporarily set its Committed Capacity equal to 0 KW due to a Force Majeure event shall be excluded from the applicable capacity factor calculation.

MCF Monthly Capacity Factor. The quotient of the number of hours that the Facility was capable of delivering Energy (or the QS delivered replacement Energy) in the Monthly Billing Period divided by the number of hours in the Monthly

Billing Period.

**Monthly
Billing
Period**

The period beginning on the first calendar day of each calendar month, except that the initial Monthly Billing Period shall consist of the period beginning 12:01 a.m. on the day after the end of the Commissioning Period and ending with the last calendar day of such month.

APPENDIX 4
RATES

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4 A. Capacity Payment Rate. Notwithstanding the cost of any Avoided Unit for any
5 period during the Term, the Capacity Payment rate to be paid by FPL to QS in respect of the Committed
6 Capacity under this Contract during the first Contract Year immediately after the Commissioning Period
7 and each Contract Year through the end of the Term shall be [REDACTED].
8

9 B. Energy Rate. The Energy Rate shall be calculated as [REDACTED] times 1 plus
10 the ratio of the CPI-W Index for Urban Wage Earners and Clerical Workers in Miami, FL as published by
11 The Bureau of Labor Statistics (BLS) to that same index for [REDACTED] plus [REDACTED] times 1 plus
12 the ratio of gas prices published in Platts Inside FERC Gas Market Report, first of the month posting for
13 Florida Gas Transmission Zone 3, plus all charges that FGT may apply including all surcharges and
14 percentages that are in effect from time to time for service under Gulfstream Natural Gas to the same gas
15 price index in [REDACTED] plus the \$/MWh charge computed in accordance with Section 19.10 relating
16 to an Environmental Law Change.
17

18 C. Energy Performance Bonus Rate. The Energy performance bonus rate shall be
19 paid for Energy produced during the Commissioning Period and is based on the monthly production of
20 Energy at the Facility, which amount will include Energy that FPL does not take for reasons other than
21 the existence of an Emergency Condition. The amount of this bonus payment shall be calculated as the
22 product of (i) [REDACTED], (ii) the monthly production in MWh and (iii) [REDACTED]. The performance bonus
23 shall be capped at [REDACTED] per month, and shall never be less than [REDACTED].
24
25

APPENDIX 5
 QS's Performance Security and Payment Security

QS shall provide the following security in the amounts and by the dates specified herein. QS shall have the right to provide performance security and payments security in the form of (i) cash or (ii) an irrevocable stand-by Letter of Credit issued in favor of FPL by a bank acceptable to FPL in its reasonable discretion. If the QS elects to exercise the right to terminate this Contract in the event of a FPL Event of Default, the QS may demand return and cancellation of any Cash Collateral (as defined below) or Letter(s) of Credit provided as security to or for the benefit of FPL, and FPL shall immediately return or cause to be returned any such security upon demand by the QS.

A. Performance Security

QS shall provide the following Performance Security by the dates and in the amounts specified in the table below. QS shall have the right to elect to provide performance security in the form of (i) cash to be provided by the QS prior to Financial Closing ("Cash Collateral") in order to secure its obligations relating to the QS Conditions Precedent to be satisfied by it prior to the Effective Date and (ii) a Letter of Credit issued in favor of FPL to be provided after the Effective Date to secure its obligation to achieve Capacity Delivery Status.

Credit Class	\$/MW *	\$/MW **	\$/MW**
S&P Credit Rating	30 Days after FPSC Approval Date Until Financial Closing/Effective Date	Earlier of Financial Closing and the first day of the calendar month following thirty-four (34) months after the FPSC Approval Date – Year 5 After Capacity Delivery Date	Years 6 – Termination Date
A- and Above			
BBB+ to BBB			
BBB-			
Below BBB-			

*Based on the Design Committed Capacity

**Based on the Design Committed Capacity until the Commissioning Commencement Date, after which based on the actual Committed Capacity

B. Payment Security

The Parties acknowledge and agree as of the Execution Date and on the basis of the Required Commissioning Commencement Date and assumptions set forth in this Appendix 5 that the amounts to be paid for Committed Capacity and Energy by FPL to the QS are above the costs of capacity and energy of the Avoided Unit (the "Avoided Cost") in the early years of the Contract, and thereafter the costs of Committed Capacity and Energy from the Facility are below the Avoided Cost, and that over the thirty (30) year period from the Commissioning Commencement Date though the end of the Term of the Contract, the amounts to be paid by FPL to the QS under this Contract for Committed Capacity and Energy provides savings for the customers of FPL relative to the cost of capacity and energy of the Avoided Unit. The payment in the form of cash or Letter(s) of Credit to be provided by the QS under this

1 Appendix 5, B. ("Payment Security"), is intended to make the customers of FPL whole if payments by
2 FPL to the QS for Committed Capacity and Energy are in an amount greater than the Avoided Cost as of
3 the Early Termination Date if the Contract is terminated by FPL as a result of a QS Event of Default after
4 the Commissioning Commencement Date.
5

6 Commencing the calendar year prior to the year in which the Commissioning Period is scheduled
7 to start, by December 1 of each year and on the basis of a computation made in accordance with this
8 Appendix 5, B., for as long as the amount paid for Committed Capacity and Energy exceed the Avoided
9 Cost, FPL shall provide the QS with a statement of the amount of the required Payment Security for the
10 coming calendar year. The amount of the Payment Security to be provided by the QS under this Appendix
11 5, B., shall be calculated as follows:
12

13 1. Payment Security for the coming calendar year shall be the larger of zero and the sum of
14 the following two components:

15 a. [REDACTED] multiplied by the forecasted amount to be paid by FPL for Committed Capacity
16 and Energy hereunder above the Avoided Cost for the coming year; and
17

18 b. [REDACTED] multiplied by the sum of the current year's Payment Security less the forecasted
19 amount to be paid by FPL for Committed Capacity and Energy above Avoided Cost for the current year
20 plus the actual amount paid in the current year to the QS for Committed Capacity and Energy minus the
21 actual Avoided Cost for the current year.
22

23 2. The forecasted Avoided Cost for the coming calendar year shall be based upon annual fuel
24 cost forecasts filed by FPL with the FPSC in accordance with Applicable Laws and an assumed Capacity
25 Factor of ninety percent (90%). Prior to the Avoided Unit In-Service Date, the cost of capacity of the
26 Avoided Unit shall be zero, and after the Avoided Unit In Service Date it shall be the Avoided Costs
27 associated with the Avoided Unit.
28

29 3. FPL shall provide the QS with indicative information relating to fuel price, the
30 computation of the Avoided Cost for the coming year and the amount of required Payment Security no
31 later than September 15 of each year and thereafter provide the QS with the definitive fuel price and
32 amount of required Payment Security not later than November 15 of the same year. The QS shall provide
33 the Payment Security in the required amount no later than December 31 of each year in respect of the next
34 calendar year.
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APPENDIX 6

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APPENDIX 7

FORM OF LETTER OF CREDIT

[ISSUING BANK NAME]
IRREVOCABLE NONTRANSFERABLE STANDBY
LETTER OF CREDIT NO. { }

DATE: _____

BENEFICIARY:

[_____] [_____] [_____] [_____]

APPLICANT:

[_____] [_____] [_____] [_____]

INITIAL AMOUNT: USD \$ _____
DATE OF EXPIRY: On the Expiration Date (as hereinafter defined)
PLACE OF EXPIRY: At our Counters

We hereby issue in your favor our Irrevocable Nontransferable Standby Letter of Credit No.(_____) dated ____ (this "Letter of Credit") for the account of [] (the "Applicant"), in the aggregate stated amount of not to exceed _____ AND ____/100 US DOLLARS (US\$____) (as the same may be reduced from time to time as a result of draws made pursuant to the provisions of this Letter of Credit, the "Available Amount"), effective immediately and expiring at 5:00 p.m., New York, New York, time, on the Expiration Date (as hereinafter defined) at [_____].

This Letter of Credit shall be of no further force or effect upon the close of business on _____ (or, if such day is not a Business Day (as hereinafter defined), on the next preceding Business Day); provided, however, that this Letter of Credit will be automatically extended without amendment for successive one (1) year periods from the present or any future expiration date hereof, unless we provide you with written notice of our election not to renew this Letter of Credit at least forty-five (45) days prior to any such expiration date (the present or any future expiration date as aforesaid is referred to herein as the "Expiration Date"). For the purposes hereof, "Business Day" shall mean any day on which commercial banks are not authorized or required to close in Miami, Florida.

Subject to the terms and conditions herein, funds under this Letter of Credit are available to you by presentation in strict compliance on or prior to 5:00 p.m., New York, New York, time, on or prior to the Expiration Date at our counters of:

- (1) the original of this Letter of Credit and all amendments; and
- (2) your sight draft drawn on us; and
- (3) either:

(i) Beneficiary's Certificate issued in the form below attached hereto and which forms an integral part hereof, duly completed and purportedly bearing the original signature of an officer of the Beneficiary; or

(ii) Beneficiary's Certificate issued in the form below attached hereto and which forms an integral part hereof, duly completed and purportedly bearing the original signature of an officer of the Beneficiary.

Drafts drawn under this Letter of Credit must contain the clause: "Drawn under [Issuing Bank Name] Irrevocable Nontransferable Standby Letter of Credit No. { }, dated _____."

Multiple draws are permitted under this Letter of Credit; provided that the Available Amount of this Letter of Credit shall be permanently reduced by the amount of each such draw.

This Letter of Credit may not be transferred or any of the rights hereunder assigned. Any purported transfer or assignment shall be void and of no force or effect.

This Letter of Credit sets forth in full our undertaking and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any documents, instruments or agreements referred to herein, except only the annexes referred to herein; and any such reference shall not be deemed to incorporate by reference any document, instrument or agreement except for such annexes.

We engage with you that your drafts drawn under and in strict compliance with the terms of this Letter of Credit will be duly honored if presented to us on or before the Expiration Date.

This Letter of Credit shall be governed by the Uniform Customs and Practice for Documentary Credits, 1993 Revision, International Chamber of Commerce Publication No. 500 as in effect on the date of issuance thereof (the "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 13(b) and 17 of the UCP, in which case the terms of this Letter of Credit shall govern. As to matters not covered by the UCP, this Letter of Credit shall be governed by and construed in accordance with the laws of the State of New York, without regard to the principles of conflicts of laws thereunder.

[ISSUING BANK NAME]

By _____
Authorized Signature

Address: [_____]
[_____]
[_____]

TO [Issuing Bank Name]
IRREVOCABLE NONTRANSFERABLE STANDBY LETTER OF CREDIT NO. { }

[Issuing Bank Name]
[_____
[_____
[_____]

Date: _____, _____

Ladies and Gentlemen:

The undersigned _____, the duly elected and acting _____ of Florida Power & Light Company (the "Beneficiary"), hereby certifies to [Issuing Bank Name] (the "Bank") and [_____] (the "Applicant"), with reference to Irrevocable Nontransferable Standby Letter of Credit No. {_____, _____}, dated _____, _____ (the "Letter of Credit"), issued by the Bank in favor of the Beneficiary, as follows as of the date hereof:

1. The Beneficiary is a party to Agreement for Purchase of Capacity of Energy, by and between Beneficiary and Applicant (as amended from time to time, the "Agreement").
2. The Beneficiary is entitled to draw under the Letter of Credit an amount equal to \$_____ pursuant to the terms and conditions of the Contract, including without limitation as a result of any one of the following circumstances or events: (a) Applicant has failed to renew or replace the Letter of Credit at least thirty (30) calendar days prior to the stated expiration of the Letter of Credit, (b) within the applicable period of grace Applicant has failed to provide Beneficiary with a Letter of Credit or additional security as required pursuant to the provisions of the Contract, (c) an Event of Default by Applicant has occurred and is continuing or (d) Company otherwise has the right to draw upon any Letter of Credit or other security provided by Customer pursuant to the terms of the Contract.
3. Based upon the foregoing, the Beneficiary hereby makes demand under the Letter of Credit for payment of U.S. DOLLARS _____ AND _____/100ths (U.S.\$_____), which amount does not exceed the lesser of (i) the amount set forth in paragraph 2, above, and (ii) the Available Amount under the Letter of Credit as of the date hereof.
4. The undersigned has concurrently presented to you its sight draft drawn in the amount specified in Paragraph 3 above. The date of the sight draft is the date hereof, which is not later than the Expiration Date.
5. Funds paid pursuant to the provisions of the Letter of Credit shall be wire transferred to the Beneficiary in accordance with the following instructions:

Unless otherwise provided herein, capitalized terms which are used and not defined herein shall have the meaning given each such term in the Letter of Credit.

IN WITNESS WHEREOF, this Certificate has been duly executed and delivered on behalf of the Beneficiary by its duly elected and acting _____ as of this _____ day of _____, _____.

Beneficiary:

[_____]

By
Name:
Title:

TO [Issuing Bank Name]
IRREVOCABLE NONTRANSFERABLE STANDBY LETTER OF CREDIT NO. { }

[Issuing Bank Name]
[_____
[_____
[_____]

Date: _____, _____

Ladies and Gentlemen:

The undersigned _____, the duly elected and acting _____ of Florida Power & Light Company (the "Beneficiary"), hereby certifies to [Issuing Bank Name] (the "Bank"), and [_____] (the "Applicant"), with reference to Irrevocable Nontransferable Standby Letter of Credit No. {_____, dated _____, _____ (the "Letter of Credit"), issued by the Bank in favor of the Beneficiary, as follows as of the date hereof:

1. The Beneficiary is a party to that certain Agreement for Purchase and Sale of Capacity and Energy by and between Beneficiary and Applicant (as amended from time to time, the "Agreement").
2. The Bank has heretofore provided written notice to the Beneficiary of the Bank's intent not to renew the Letter of Credit prior to the present Expiration Date thereof and the Applicant has failed to provide the Beneficiary with a substitute letter of credit substantially in the same form as the Letter of Credit referred to in this paragraph.
or
3. The Beneficiary has provided at least thirty (30) calendar days' prior written notice to the Applicant of the Bank's intent not to renew the Letter of Credit prior to the present Expiration Date thereof and the Applicant has failed to provide the Beneficiary with a substitute letter of credit substantially in the same form as the Letter of Credit within the thirty (30) calendar day period referred to in this paragraph.
4. Based upon either 2 or 3, above, the Beneficiary hereby makes demand under the Letter of Credit for payment of U.S. DOLLARS _____ & ___/100ths (U.S. \$___), which amount does not exceed the lesser of (i) the amount Beneficiary is entitled to draw under the terms of the Contract and (ii) the Available Amount under the Letter of Credit as of the date hereof.
5. The undersigned has concurrently presented to you its sight draft drawn in the amount specified in Paragraph 4, above, which amount does not exceed the lesser of (a) the amount the Beneficiary is entitled to draw pursuant to the provisions of the Contract, and (b) the Available Amount as of the date hereof. The date of the sight draft is the date of this Certificate, which is not later than the Expiration Date.
6. Funds paid pursuant to the provisions of the Letter of Credit shall be wire transferred to the Beneficiary in accordance with the following instructions:

Unless otherwise provided herein, capitalized terms which are used and not defined herein shall have the meaning given each such term in the Letter of Credit.

IN WITNESS WHEREOF, this Certificate has been duly executed and delivered on behalf of the Beneficiary by its duly elected and acting _____ as of this ____ day of ____.

Beneficiary: [_____]

By
Name:
Title:

APPENDIX B

U.S. EcoGen Clay, LLC Contract

REDACTED

**AGREEMENT FOR THE PURCHASE OF
CAPACITY
AND ENERGY**

between

U.S. ECOGEN CLAY, LLC

and

FLORIDA POWER & LIGHT COMPANY


Dated: December 14, 2012

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1
2 **AGREEMENT FOR THE PURCHASE OF**
3 **CAPACITY AND ENERGY**
4

5 THIS CONTRACT is made and entered this ____ day of November, 2012 (the "Execution
6 Date"), by and between U.S. EcoGen Clay, LLC (hereinafter "Qualified Seller" or "QS"), a limited
7 liability company organized and existing under the laws of the State of Delaware and developer of a
8 Qualifying Facility, and Florida Power & Light Company in its capacity as a wholesale energy purchaser
9 and retail electric distributor (hereinafter "FPL"), a public utility corporation organized and existing under
10 the laws of the State of Florida. The QS and FPL are each a "Party" and shall be jointly identified herein
11 as the "Parties".
12

13 **WITNESSETH:**
14

15 **WHEREAS**, the QS desires to sell, and FPL desires to purchase, firm capacity and energy to be
16 generated at a facility (as described in Appendices 1 and 2, the "Facility") to be developed by the QS
17 consistent with the terms of this Contract, Section 366.91, Florida Statutes, and/or Florida Public Service
18 Commission ("FPSC") Rules 25-17.082 through 25-17.091, F.A.C. and FPSC Rules 25-17.200 through
19 25.17.310, F.A.C.;
20

21 **WHEREAS**, the QS will enter into an interconnection agreement (the "Interconnection
22 Agreement") with Florida Power & Light Company in its separate capacity as a transmission provider
23 ("FPL Transmission Provider");
24

25 **WHEREAS**, the Facility, when completed, will be a Qualifying Facility (as defined herein)
26 capable of delivering firm capacity and energy to FPL for the term of this Contract in a manner consistent
27 with the provisions of this Contract;
28

29 **WHEREAS**, Section 366.91(3), Florida Statutes, provides that the "[p]rudent and reasonable
30 costs associated with a renewable energy contract shall be recovered from the ratepayers of the
31 contracting utility, without differentiating among customer classes, through the appropriate cost-recovery
32 clause mechanism" administered by the FPSC; and
33

34 **WHEREAS**, each public utility in the State of Florida has an obligation to continuously offer a
35 purchase contract to producers of renewable energy for the benefit of the ratepayers, and as such, the
36 ratepayers bear the risks associated with the contract, not the shareholders of the public utility, provided
37 that the public utility has acted in a prudent and reasonable manner.
38

39 **NOW, THEREFORE**, for mutual consideration and intending to be bound hereby, the Parties
40 agree as follows:

41 **1. Defined Terms**

42 **1.1 Definitions.**

43 The following capitalized terms shall have meaning assigned to them unless the context clearly
44 requires otherwise:
45

46 "Affiliate" means with respect to any Person, any other Person that directly or indirectly, through
47 one or more intermediaries, controls, is controlled by, or is under common control with, such Person.
48

1 “Annual Capacity Billing Factor” or “ACBF” has the meaning set forth in Appendix 3.

2
3 “Annual Capacity Factor” means the sum of the twelve (12) consecutive Monthly Capacity
4 Factors, including the month to be calculated, divided by twelve (12).

5
6 “Applicable Law” means any and all applicable provisions of any constitution, statute, law,
7 ordinance, code, rule, regulation, decision, order, decree, judgment, release, license, condition, standard
8 and/or objective criteria applicable to this Contract or to any Party’s obligations, performance, or rights
9 under this Contract and/or contained in any Governmental Authorization applicable hereto.

10
11 “As-Available Avoided Energy Costs” means costs computed pursuant to FPSC Rule 25-
12 17.825(2) set forth in FPSC Order No. 12443, issued September 2, 1983, as it may subsequently be
13 amended from time to time, or any successor or substitute calculation, formula or methodology relating
14 thereto approved by the FPSC. FPL’s Northeast North operating area shall be the designated avoided cost
15 pricing area for purposes of this Contract.

16
17 “Avoided Unit” means the electrical generating unit described in Appendix 1.

18
19 “Avoided Unit In-Service Date” has the meaning set forth in Appendix 1.

20
21 “Base Production” means the quantity of Energy produced by the Facility operating at the design
22 Committed Capacity with a capacity factor of 90%.

23
24 “Biomass” means any fuel sources that meet the requirements of the definition of “Biomass” set
25 forth in Section 366.91(2)(a), Florida Statutes.

26
27 “Business Day” means any day except a day on which banks licensed to operate in the State of
28 Florida are authorized, directed or permitted to close, Saturday, Sunday or a weekday that is observed as a
29 public holiday in the State of Florida. Notwithstanding the foregoing, with respect to notices only, a
30 Business Day shall not include the Friday immediately following the U.S. Thanksgiving holiday.

31
32 “Capacity” means the amount of electric power in megawatts that the Facility is capable of
33 generating and delivering to FPL’s system.

34
35 “Capacity Delivery Status” means that (a) the Facility is in material compliance with all
36 applicable Governmental Authorizations and (b) the Facility has maintained an hourly MW output, as
37 metered at the Delivery Point, equal to or greater than the Minimum Committed Capacity over the
38 Committed Capacity Test Period.

39
40 “Capacity Payment” means the payment by FPL to QS hereunder for Committed Capacity as
41 calculated in accordance with and at the rate set forth in Appendices 3 and 4.

42
43 “Cash Collateral” has the meaning set forth in Appendix 5.

44
45 “COG Tariff” means the tariff schedule , including FPL’s tariff schedule, for purchase of as-
46 available energy from qualifying cogeneration and small power production facilities on file with the
47 FPSC at the Effective Date of this Contract and as may be amended and approved by the FPSC from time
48 to time.

49
50 “Commissioning Commencement Date” has the meaning set forth in Section 6.4.

1 “Commissioning Period” means the two (2) year period commencing on the Commissioning
2 Commencement Date.

3
4 “Committed Capacity” means the maximum Capacity in any one hour which QS contractually
5 commits to sell to FPL and FPL contractually commits to purchase from QS pursuant to the terms of this
6 Contract.

7
8 “Committed Capacity Test” has the meaning set forth in Section 6.2.

9
10 “Committed Capacity Test Period” has the meaning set forth in Section 7.2.

11
12 “Condemnation Event” means the actual or threatened exercise by any Governmental Authority
13 of the power of eminent domain, condemnation, or other right, power, or authority to acquire or use
14 property which results in the taking ownership of or control over all or any material portion of the Site
15 and/or the Facility.

16
17 “Conditions Precedent” means the FPL Conditions Precedent and the QS Conditions Precedent.

18
19 “Confidential Information” has the meaning set forth in Section 19.20(a).

20
21 
22
23
24

25 “Contract” means this “Agreement for the Purchase of Capacity and Energy” and the appendices
26 and attachments hereto, as it may be amended from time to time in accordance with the terms hereof.

27
28 “Contract Year” means the twelve (12) consecutive calendar months starting on the first day of
29 the calendar month following the Commissioning Commencement Date and each subsequent twelve (12)
30 consecutive calendar month period through the end of the Term; provided that the first Contract Year
31 shall include the days in the prior month in which the Commissioning Commencement Date occurred.

32
33 “Credit Rating” means with respect to any entity, on any date of determination, the respective
34 ratings then assigned to such entity’s unsecured, senior long-term debt or deposit obligations (not
35 supported by third party credit enhancement) by S&P, Moody’s or other specified rating agency or
36 agencies or if such entity does not have a rating for its unsecured, senior long-term debt or deposit
37 obligations, then the rating assigned to such entity as its “corporate credit rating” by S&P.

38
39 “Defaulting Party” has the meaning set forth in Section 14.1.

40
41 “Default Rate” means, for any date, the lesser of (a) FPL’s senior secured debt rate; and, (b) the
42 maximum rate permitted by applicable law.

43
44 “Delivery Point” means the point of interconnection between the Facility and FPL Transmission
45 Provider’s Transmission System, as specifically described in the Interconnection Agreement.

46
47 “Demonstration Period” has the meaning set forth in Section 7.1.

48
49 “Design Committed Capacity” means the design Capacity of the Facility as of the Execution
50 Date, as set forth in Appendix 2.

1 “Dispute” has the meaning set forth in Section 19.7(a).

2
3 “Drop Dead Date” means the later of (i) [REDACTED] and (ii) the first day of the calendar
4 month following [REDACTED] months after the FPSC Approval Date, as each of such dates shall be
5 extended for an event of Force Majeure.

6
7 “Early Termination Date” means in respect of an Event of Default hereunder, a day designated by
8 a Non-Defaulting Party (by providing written notice to the Defaulting Party), which day shall be within
9 ninety (90) days after the occurrence of an Event(s) of Default by the Defaulting Party, no earlier than the
10 day such notice is effective and be no later than twenty (20) days after the delivery of such notice to the
11 Defaulting Party, as the date that this Contract terminates early and all amounts owing between the Parties
12 are accelerated and this Contract is liquidated and terminated.

13
14 “Eastern Prevailing Time” or “EPT” means the time in effect in the Eastern Time Zone of the
15 United States of America, whether Eastern Standard Time or Eastern Daylight Savings Time.

16
17 “Effective Date” has the meaning set forth in Section 4.6.

18
19 “Electrical Interconnection Facilities” means the interconnection facilities that physically connect
20 the Facility with the Transmission System, as well as any required network upgrades thereto.

21
22 “Emergency Condition” means a condition or situation that presents an imminent physical threat
23 of danger to life, health or property, and/or could reasonably be expected in the opinion of the
24 Transmission Provider to cause a significant disruption to the Transmission System or otherwise be
25 required in accordance with the requirements of the FPSC, NAERC or other regulatory entity of
26 competent jurisdiction or any system condition not consistent with Prudent Industry Practices.

27
28 “Emission Reduction Credits” means any offset, allowance, or credit of any kind created or
29 administered under any current or future voluntary standard, statutory and/or regulatory regime,
30 associated with (a) the underlying Fuel used for the generation of electricity and pursuant to which the
31 generation of electricity using the Fuel is recognized as avoiding the emissions of pollutants to the air,
32 soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other
33 pollutants; and (b) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide,
34 hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs), ozone
35 depleting substances, ozone, and non-methane volatile organic compounds that have been or may be
36 determined by the United Nations Intergovernmental Panel on Climate Change, by law, or otherwise by
37 science or in the voluntary markets to contribute to the actual or potential threat of altering the Earth’s
38 climate by trapping heat in the atmosphere. Emission Reduction Credits shall exclude (i) any energy or
39 capacity of the Facility, or (ii) investment, production, or other Tax credits, grants, benefits, and/or
40 deductions associated with the use of the Fuel at the Facility or the construction, ownership, use, and/or
41 operation of the Facility and financial incentives, including credits, reductions, or allowances associated
42 with the Facility that are applicable to local, state or federal Tax obligations.

43
44 “Energy” means the electrical energy in megawatt-hours generated by the Facility and delivered
45 to FPL’s system at the interconnection voltage level.

46
47 “Energy Payment” means the payment by FPL to QS hereunder for the Energy produced at the
48 Facility as calculated in accordance with and at the rate set forth in Appendix 4.

49
50 “Energy Rate” means the charge for Energy delivered to FPL after the Commissioning
51 Commencement Date as set forth in Appendix 4.

1
2 “Environmental Attributes” means all attributes of an environmental or other nature, including
3 Emission Reduction Credits, that are created or otherwise arise from the Facility’s generation of Energy
4 using the Fuel, in contrast with the generation of electricity using nuclear or fossil fuels or other
5 traditional resources, and the displacement of conventional energy by the Energy generated by the
6 Facility. Such attributes include RECs, however defined under any voluntary standard or local, state or
7 federal law, regulation or ordinance. Environmental Attributes shall exclude (i) any energy, capacity,
8 ancillary services or other products or services generated by or attributable to or capable of being
9 generated by or attributed to operation of the Facility and not otherwise specifically included in this
10 definition of Environmental Attributes, or (ii) investment, production, or other Tax Credits, grants,
11 benefits, depreciation and/or deductions associated with the use of the Fuel at the Facility or the
12 construction, ownership, use, and/or operation of the Facility and financial incentives, including credits,
13 reductions, or allowances associated with the Facility that are applicable to local, state or federal Tax
14 obligations.

15
16 “Environmental Law Changes” has the meaning set forth in Section 19.10.

17
18 “EPC Agreement” means the turnkey Engineering, Procurement and Construction Agreement or
19 other agreements entered into between QS and a contractor or contractors selected by QS to manage,
20 perform and complete the design, engineering, procurement, testing, commissioning and construction of
21 the Facility.

22
23 “Event(s) of Default” means an FPL Event of Default or a QS Event of Default, as applicable.

24
25 “Execution Date” has meaning set forth in the first paragraph of this Contract.

26
27 “Facility” means QS’s baseload, must-run electric generating facility to be located in the State of
28 Florida, as further described in Appendices 1 and 2.

29
30 “Facility Contracts” means the EPC Agreement, the Interconnection Agreement, major Fuel
31 supply agreements, and any operation and maintenance agreement, to the extent applicable.

32
33 “FERC” means the Federal Energy Regulatory Commission.

34
35 “Financial Closing” means the fulfillment of each of the following conditions: (a) the execution
36 and delivery of the Financing Documents; and (b) all conditions to the availability and first disbursement
37 of funds under the Financing Documents are satisfied or waived.

38
39 “Financial Closing Date” means the date upon which Financial Closing is achieved.

40
41 “Financing Documents” means documentation with respect to any private equity investment in
42 QS, any loan agreements or credit agreements (including agreements for any subordinated debt), notes,
43 bonds, indentures, guarantees, mortgages, collateral agreements, intercreditor agreements, security
44 agreements, pledge agreements, letters of credit, credit support, credit enhancement and swap and other
45 hedging agreements, and all consents, certificates, opinions and other documents to be delivered at the
46 closing of any financing or re-financing and the availability of funds or disbursement thereof relating to
47 the financing or refinancing of the design, development, permitting, interconnection, construction, testing,
48 commissioning, operation, maintenance, repair, reconstruction and decommissioning of the Facility or
49 any guarantee by any Financing Party of the repayment of all or any portion of any such financing or
50 refinancing.
51

1 “Financing Party(ies)” means any Person that provides debt funding in connection with any
2 development, bridge, construction, permanent debt or tax-equity financing or re-financing for the Facility
3 and any Person issuing a Letter of Credit, and any assignee or transferee of such Person, and any trustee,
4 collateral agent, administrative agent or other similar entity acting on behalf of such a party, as identified
5 by notice to FPL. In the event that a Person ceases to be the collateral agent [REDACTED]
6 [REDACTED], the QS shall provide prompt notice thereof to FPL.
7

8 “Force Majeure” means an event, condition or circumstance described in the first paragraph of
9 Article 17.
10

11 “Forced Outage” means a reduction of, or cessation in the delivery of, or inability to deliver,
12 Energy that is not the result of (a) a Planned Outage, (b) a Force Majeure, or (c) an Emergency Condition.
13

14 “FPL” has the meaning set forth in the first paragraph of this Contract.
15

16 “FPL Conditions Precedent” has the meaning set forth in Section 4.2.
17

18 “FPL Event of Default” has the meaning set forth in Section 13.2.
19

20 “FPL Termination Payment” means the amount to be paid by FPL to the QS upon termination of
21 this Contract by the QS for an FPL Event of Default calculated as set forth in Section 14.1(b).
22

23 “FPL Transmission Provider” has the meaning set forth in the second recital of this Contract.
24

25 “FPSC” means the Florida Public Service Commission.
26

27 “FPSC Approval” means the FPSC has issued its final written order that is no longer subject to
28 re-hearing or appeal, where such final order does any of the following: (a) approves this Contract as
29 submitted and without any conditions and including provision for full recovery of all costs from FPL’s
30 retail customers, (b) holds that no FPSC approval of this Contract is required for FPL to fully recover its
31 costs hereunder from FPL’s retail customers, or (c) approves this Contract in part or subject to conditions,
32 provided that each of QS and FPL agrees, subject to its reasonable discretion, to accept those conditions
33 or such partial approval as sufficient.
34

35 “FPSC Approval Date” means the date of the FPSC Approval of this Contract.
36

37 “FRCC” means the Florida Reliability Coordinating Council.
38

39 “Fuel” means biomass, including any fuel sources that meet the requirements of the definition of
40 “Biomass” set forth in Section 366.91(2)(a), Florida Statutes
41

42 “GAAP” means accounting principles generally accepted in the United States of America.
43

44 “Governmental Authorization” means any authorization, consent, approval, license, ruling,
45 appeal, permit, waiver, exemption, variance, order, judgment, instruction, condition of approval,
46 direction, directive, decree, declaration for regulation by any Governmental Authority relating to the
47 construction, development, ownership, occupancy, start-up, testing, operation or maintenance of the
48 Facility or the execution, delivery or performance of this Contract.
49

50 “Governmental Authority” means any federal, state or local legislative, executive, judicial, quasi-
51 judicial or other public authority, agency, department, bureau, division, unit, court, tribunal, or other

1 public body, person or entity having jurisdiction over a Party, the Facility or this Contract, which shall
2 include, in appropriate context, the FERC, the FPSC, the NAERC, the Florida Reliability Coordinating
3 Council, or their respective successor organizations.

4
5 “Indemnified Party” has the meaning set forth in Section 15.4.

6
7 “Indemnifying Party” has the meaning set forth in Section 15.4.

8
9 “Interconnection Agreement” has the meaning set forth in the third paragraph of this Contract.

10
11 “Letter of Credit” or “LC” means a stand-by letter of credit from a Qualified Issuer the form of
12 which shall be substantially similar to the form in Appendix 7.

13
14 “Maintenance Outage” means a time period during which the Facility is shut down or its output
15 reduced for purposes of performing maintenance, servicing and repairs necessary for the reliable
16 operation of the Facility.

17
18 “Management Reconciliation” has the meaning set forth in Section 19.7(b).

19
20 “Material Casualty Event” means the occurrence of a casualty event (a) if prior to the
21 Commissioning Commencement Date, that is reasonably likely to extend achievement of the
22 Commissioning Commencement Date by more than one (1) year or (b) if after the Commissioning
23 Commencement Date, that shall have reduced the Capacity of the Facility below the Minimum
24 Committed Capacity and the period for full restoration or repair of that portion of the Facility damaged by
25 the casualty event is reasonably likely to exceed one (1) year.

26
27 “Maximum Committed Capacity” means the maximum amount of Capacity of the Facility that
28 FPL commits to purchase hereunder, as set out in Appendix 2.

29
30 “Meters” has the meaning set forth in Section 9.11(b).

31
32 “Minimum Committed Capacity” means the minimum amount of Capacity of the Facility that QS
33 must demonstrate to achieve Capacity Delivery Status during a Committed Capacity Test Period, as set
34 out in Appendix 2.

35
36 “Monthly Billing Period” means the period beginning on the first calendar day of each calendar
37 month, except that the initial Monthly Billing Period shall consist of the period beginning 12:01 a.m. on
38 the Commissioning Commencement Date and ending at 12:00 midnight on the last calendar day of such
39 month.

40
41 “Monthly Capacity Factor” or “MCF” has the meaning set forth in Appendix 3.

42
43 “Monthly Capacity Payment” or “MCP” means the monthly payment by FPL to QS for Capacity
44 calculated in accordance with Appendix 3.

45
46 “Moody’s” means Moody’s Investors Service, Inc., or its successor.

47
48 “MW” means one or more megawatts of capacity, as the context requires.

49
50 “MWh” means one or more megawatt-hours of electric energy, as the context requires.

1 “NAERC” means the North American Electric Reliability Corporation.

2
3 “Non-Defaulting Party” has the meaning set forth in Section 14.1.

4
5 “Operating Representative” means a representative of a Party who shall have authority to act for
6 such Party in all technical, real-time or routine matters relating to construction, testing, operation and
7 maintenance of the Facility and performance of this Contract, and to attempt to resolve disputes or
8 potential disputes, which representatives shall have no authority to amend, modify or waive any provision
9 of this Contract.

10
11 “Party” and “Parties” each has the meaning set forth in the first paragraph of this Contract.

12
13 “Payment Security” has the meaning set forth in Appendix 5.

14
15 “Performance Security” has the meaning set forth in Appendix 5.

16
17 “Person” means any individual, partnership, limited partnership, corporation, limited liability
18 company, limited liability partnership, association, joint stock company, trust, joint venture,
19 unincorporated organization, or Governmental Authority (or any department, agency, or political
20 subdivision thereof).

21
22 “Petition” has the meaning set forth in Section 4.3.

23
24 “Planned Outage” means a time period during which the Facility is shut down or its output is
25 reduced in order for pre-scheduled Maintenance Outage to be performed or such other period as otherwise
26 agreed by the Parties.

27
28 “Prudent Industry Practices” means the practices, methods, standards and acts that, at a particular
29 time, in the exercise of reasonable judgment in light of the facts known or that should reasonably have
30 been known at the time a decision was made, could have been expected to accomplish the required result
31 reliably, economically, safely, expeditiously and consistent with good business practices, which practices,
32 methods, standards and acts generally conform to operation and maintenance standards recommended by
33 equipment suppliers and manufacturers, the design limits, applicable Governmental Authorizations and
34 Applicable Law. Prudent Industry Practices are not intended to be limited to any particular set of
35 optimum practices, methods, standards or acts to the exclusion of all others, but rather is intended to
36 include practices, methods, standards or acts generally accepted in the United States, having due regard
37 for, among other things, manufacturers’ recommendations and warranties, contractual obligations,
38 Applicable Law and requirements or guidance of Governmental Authorities and NAERC.

39
40 “Put Right” means the valid and enforceable right, power and authority of the QS as the owner of
41 a Qualifying Facility and/or renewable energy source to deliver and sell to public utilities the capacity and
42 energy produced by the Facility and the obligation of such public utilities to receive and pay for such
43 capacity and energy under the terms of any applicable COG Tariff, Standard Offer Contract or other
44 contract, arrangement or transaction mandated by Applicable Law.

45
46 “Qualified Issuer” means a U.S. commercial bank or the U.S. branch of a foreign bank having a
47 credit rating of A- or higher by S&P or A3 or higher by Moody’s.

48
49 “Qualifying Facility” or “QF” means a generator of energy that by order of the FERC or self-
50 certification meets certain ownership, operating and efficiency criteria established by the FERC pursuant

1 to the Public Utility Regulatory Policies Act of 1978, as amended, and as further provided for under
2 applicable federal regulations.

3
4 “Qualifying Facility Status” means QS has submitted FERC Form No. 556 to FERC and has filed
5 with FERC an application for FERC certification of qualifying facility status pursuant to 18
6 C.F.R. §292.207(b)(1) that has been granted.

7
8 “QS” has the meaning set forth in the first paragraph of this Contract.

9
10 “QS Conditions Precedent” has the meaning set forth in Section 4.4.

11
12 “QS Event of Default” has the meaning set forth in Section 13.1.

13
14 “QS Insurance” has the meaning set forth in Section 16.1.

15
16 “QS Termination Payment” means the amount to be recovered by FPL by a draw on security
17 provided by the QS under Appendix 5 upon termination of this Contract on the Early Termination Date.

18
19 “Renewable Energy Credits” or “RECs” means renewable energy credits, green tags, green
20 tickets, renewable certificates, tradable renewable energy credits or any tradable certificate that is
21 produced by a renewable energy generator in addition to and in proportion to the production of electrical
22 energy.

23
24 “Renewable Energy Requirements” means the renewable energy requirements set forth in
25 Section 3.66.91(2)(a), Florida Statutes and FPSC Rules 25-17.210(1) and (2), F.A.C.

26
27 “Required Commissioning Commencement Date” means the later of (i) June 1, 2019 and (ii) the
28 first day of the calendar month following seventy-six (76) months after the FPSC Approval Date.

29
30 “S&P” means Standard & Poor’s Ratings Group (a division of The McGraw-Hill Companies,
31 Inc.), or its successor.

32
33 “Scheduled Maintenance Period” means any period of time established pursuant to Section 9.2
34 during which QS plans to subject the Facility to a scheduled complete or partial reduction in Capacity for
35 routine or periodic maintenance; provided, however, for purposes of calculating the Annual Capacity
36 Factor, that up to two (2) Scheduled Maintenance Periods, of a duration not to exceed a total of twenty-
37 eight (28) days in any calendar year, shall be excludable from the computation so as not to reduce the
38 Annual Capacity Factor.

39
40 “Site” means the property located in FPL’s service territory on which the Facility is to be
41 constructed and operated, as further described in Appendix 2.

42
43 “Standard Offer Contract” means the standard offer contract of a public utility, including FPL’s
44 standard offer contract, for purchase of capacity and energy from small power producers on file with the
45 FPSC at the Effective Date of this Contract and as amended and approved by the FPSC from time to time.

46
47 “Submission Date” means the date upon which the FPL submits this Contract to the FPSC for
48 FPSC Approval, which shall be within ten (10) days after the Execution Date.

49
50 “Tax” or “Taxes” means all taxes, assessments, charges, duties, fees, levies or other
51 governmental charges, including all federal, state, local, foreign or other income, profits, unitary,

1 business, franchise, capital stock, real property, personal property, intangible, withholding, FICA,
2 unemployment compensation, disability, transfer, sales, use, excise and other taxes, assessments, charges,
3 duties, fees, or levies of any kind whatsoever (whether or not requiring the filing of returns) and all
4 deficiency assessments, additions to tax, penalties and interest.

5
6 “Taxation Authority” means any revenue, customs, fiscal, statutory, federal, state, local
7 governmental or municipal authority having the power, authority and jurisdiction to impose any tax,
8 charge, impost, duty, levy or fee in the nature of taxation payable in the United States.

9
10 “Tax Credits” means any credit against local, state or federal Taxes, including but not limited to
11 such credits as investment tax credits, production tax credits or similar such tax credits, and all of which,
12 to the extent that they arise out of, result from or relate to tax credits associated with the Facility and
13 associated with the electricity produced by the Facility shall be retained by QS, regardless of whether QS
14 sells all or a portion of such electricity or consumes all or a portion of such electricity in one or more QS
15 operations or operations of Affiliates of QS.

16
17 “Term” has the meaning set forth in Section 3.

18
19 “Termination Payment” means an FPL Termination Payment or a QS Termination Payment, as
20 applicable.

21
22 “Transmission Provider” means the operator(s) of the Transmission System(s) or any successor
23 thereof or any other entity or entities authorized to transmit Energy from the Delivery Point.

24
25 “Transmission System” means the system of electric lines comprised wholly or substantially of
26 high voltage lines, associated system protection, system stabilization, voltage transformation, and
27 capacitance, reactance and other electric plant used for conveying electricity from any Delivery Point or
28 to ultimate consumers and shall include any interconnection owned by the Transmission Provider, but
29 shall in no event include any lines which the Transmission Provider has specified to be part of the
30 distribution system.

31 1.2 Instructions.

32 The headings of Articles and Sections in this Contract are provided for convenience of reference
33 only and will not affect the construction, meaning or interpretation of this Contract. All references to
34 “Articles,” “Sections,” or “Appendices” refer to the corresponding Articles, Sections or Appendices of or
35 to this Contract. All Appendices to this Contract are hereby incorporated by reference. All words used in
36 this Contract will be construed to be of such gender or number as the circumstances require. Unless
37 otherwise expressly provided, the words “include,” “includes” and “including” shall be interpreted to
38 mean “including without limitation.” Unless otherwise stated, any reference to a Person, whether or not a
39 Party, includes its permitted successors and assigns and, in the case of any Government Authority, any
40 Person succeeding to its functions and capacities. Other grammatical forms of defined words or phrases
41 have corresponding meanings. A reference to writing includes any mode of representing or reproducing
42 words, figures or symbols in a lasting and visible form. Unless otherwise provided, a reference to a
43 specific time of day for the performance of an obligation is a reference to the time in the place where that
44 obligation is to be performed. A reference to a document, law, code, contract or agreement, including this
45 Contract, includes a reference to that document, code, contract or agreement as novated, amended,
46 modified, revised, supplemented, replaced or restated from time to time in accordance with the relevant
47 provisions thereof. If any payment, act, matter or thing hereunder would occur on a day that is not a
48 Business Day, then such payment, act, matter or thing shall, unless otherwise expressly provided for
49 herein, occur on the next succeeding Business Day. The words “hereof,” “herein” and “hereunder” and

1 words of similar import shall refer to this Contract as a whole and not to any particular provision of this
2 Contract. The Parties shall act reasonably and in accordance with the principles of good faith and fair
3 dealing in the performance of this Contract and, unless expressly provided otherwise in this Contract, (a)
4 where this Contract requires the consent, approval, or similar action by a Party, such consent or approval
5 shall not be unreasonably withheld, conditioned or delayed, and (b) wherever this Contract gives a Party a
6 right to determine, require, specify or take similar action with respect to a matter, such determination,
7 requirement, specification or similar action shall be reasonable.

8 **2. QS Facility**

9 **2.1 Status of Facility.**

10 The QS intends to develop, finance, install, own and operate the Facility in accordance with the
11 terms and conditions of this Contract. The Facility is a must-run, baseload facility, subject to the
12 provisions of Section 9.10, having a design, location and generation capabilities described in Appendices
13 1 and 2. The QS will use commercially reasonable efforts to satisfy the QS Conditions Precedent relating
14 to permitting and financing of the Facility set forth in Section 4.4(b) on or before the applicable date
15 therefor and thereafter to construct the Facility and attain Capacity Delivery Status on or before the
16 Required Commissioning Commencement Date.

- 17 (a) Commencing after the Commissioning Commencement Date, QS shall, on or before
18 March 31 of each year during the Term of this Contract, deliver to FPL a report certified
19 by an officer of the QS: (i) stating the type and amount of each source of fuel or power
20 used by the QS to produce Energy during the prior calendar year; (ii) verifying that one
21 hundred percent (100%) of the Energy generated at the Facility and sold by the QS to
22 FPL during the prior calendar year complied with Sections 2.1(b) and 18.2(c) of this
23 Contract, and (iii) attesting that the inventory of Fuel at or near the Facility was at all
24 times during the prior calendar year sufficient to fuel reliable operation of the Facility for
25 a period of [REDACTED] days.
- 26 (b) FPL shall have the right during business hours after reasonable prior written request to
27 the QS (i) to inspect the Facility and to examine any books, records, or other documents
28 of the Facility that are necessary to verify that the Facility meets the Renewable Energy
29 Requirements as of the Execution Date and that the Facility continues to meet Qualifying
30 Facility Status and (ii) after the Drop Dead Date, to inspect land owned, leased or
31 operated by the QS or an Affiliate of QS for the cultivation, storage or processing of Fuel.
- 32 (c) Commencing after the Commissioning Commencement Date, the QS shall, on or before
33 March 31 of each year during the Term of this Contract, deliver to FPL a certificate
34 signed by an officer of the QS certifying that the Facility has continuously maintained its
35 Qualifying Facility Status.

36 **3. Term of Contract**

37 Except as otherwise provided herein in Section 5 with respect to the rights and obligations of the
38 Parties relating to the production, delivery, sale and purchase of Committed Capacity and Energy, and
39 subject to such conditions contained herein, including the conditions contained in Section 4, this Contract
40 shall become effective immediately upon its execution by the Parties and shall have the termination date
41 on the last day of the thirtieth (30th) Contract Year (the "Term"), unless terminated earlier in accordance
42 with the provisions hereof.

1 **4. Conditions Precedent; Minimum Specifications**

2 4.1 FPSC Approval.

3 The Parties acknowledge and agree that this Contract is subject to FPSC Approval.

4 4.2 FPL Conditions Precedent.

5 The following are conditions precedent to FPL's obligation to receive delivery of and purchase
6 Committed Capacity and Energy (other than test Energy) hereunder ("FPL Conditions Precedent"): (a)
7 FPSC Approval be obtained within [REDACTED] days after the Submission Date or such later
8 date as agreed upon by the Parties; and (b) if the FPSC's approval of this Contract is subject to changes in
9 the Contract or is subject to conditions, such changes or conditions are approved by FPL management in
10 its sole discretion.

11 4.3 FPSC Petition.

12 Within ten (10) Business Days after the Execution Date, FPL shall submit a copy of this Contract
13 and related documentation (with Confidential Information redacted) to the FPSC and shall file a petition
14 for FPSC Approval (the "Petition"). The QS agrees to cooperate with and assist FPL in obtaining FPSC
15 Approval as FPL may reasonably request. FPL shall promptly notify the QS of any significant
16 developments in obtaining FPSC Approval. The QS shall have the right to request and receive the final
17 draft of any proposed submission by FPL to the FPSC relating to the petition for FPSC Approval as soon
18 as practicable prior to submission and to confer with FPL for purposes including the redaction of
19 Confidential Information of the QS contained in any submission to the FPSC. As the primary purpose of
20 the Petition is for FPL to obtain FPSC Approval for cost recovery of the amounts payable under this
21 Contract, which QS supports, FPL shall pay all of the costs associated with such Petition filing. In the
22 event QS decides to participate in said Petition proceedings before the FPSC through representation by
23 legal counsel, QS will retain mutually acceptable competent legal counsel to facilitate a coordinated and
24 expeditious proceeding for attainment of such FPSC Approval, such acceptance not to be unreasonably
25 withheld or delayed.

26 4.4 QS Conditions Precedent.

27 The following are conditions precedent to the obligations of the QS ("QS Conditions Precedent")
28 to construct, interconnect, complete, test, commission and commence operation of the Facility and the
29 obligations and rights of the Parties in respect of the production, delivery, sale and purchase of
30 Committed Capacity and Energy from the Facility:

- 31 (a) By thirty (30) days after the FPSC Approval Date, if FPSC Approval does not impose
32 any changes or conditions on the Contract, the QS shall have provided the applicable
33 security required pursuant to Appendix 5; or, if FPSC Approval imposes any changes or
34 conditions on the Contract, then QS shall use commercially reasonable and diligent
35 efforts to secure its management's approval of such changes or conditions, provided that
36 the QS's decision is in the QS's sole discretion. If QS approves such changes and
37 conditions, then QS shall have provided the applicable security required under Appendix
38 5 within thirty (30) days following FPSC Approval;
- 39 (b) The following conditions shall have been satisfied or deemed waived by QS unless
40 written notice of non-satisfaction of the QS Conditions Precedent is given by QS to FPL,
41 subject to any extension of the date pursuant to Section 17.2:

- 1 (i) By the later of (A) February 1, 2015 and (B) the first day of the calendar month
2 following twenty-four (24) months after the FPSC Approval Date, the QS shall
3 have executed an agreement or option agreement for the ownership or lease of a
4 Site that is reasonably acceptable to the QS;
- 5 (ii) By the later of (A) August 1, 2016 and (B) the first day of the calendar month
6 following thirty (30) months after the FPSC Approval Date, the QS and FPL
7 shall have executed the Interconnection Agreement, which shall be in a form and
8 substance reasonably satisfactory to the QS;
- 9 (iii) By the later of (A) August 1, 2016 and (B) the first day of the calendar month
10 following thirty (30) months after the FPSC Approval Date, the QS shall have
11 obtained Governmental Authorizations and all other consents, approvals or
12 authorizations of other Persons necessary for the commencement of full-scope
13 construction of the Facility under the EPC Agreement, all of which shall be in a
14 form and substance reasonably satisfactory to the QS;
- 15 (iv) By the later of (A) December 1, 2016 and (B) the first day of the calendar month
16 following thirty-four (34) months after the FPSC Approval Date, the QS shall
17 have entered into Financing Documents for the construction of the Facility and
18 have achieved Financial Closing, in a form and substance and on terms and
19 conditions reasonably satisfactory to the QS;
- 20 (v) By the later of (A) August 1, 2016 and (B) the first day of the calendar month
21 following thirty (30) months after the FPSC Approval Date, the QS shall have
22 entered into the Facility Contracts, including one or more Fuel supply agreements
23 or arrangements for supply of Fuel for the first Contract Year after the
24 Commissioning Commencement Date, all of which shall be in a form and
25 substance reasonably satisfactory to the QS;
- 26 (vi) By the later of (A) December 1, 2016 and (B) the first day of the calendar month
27 following thirty-four (34) months after the FPSC Approval Date, the QS shall
28 have obtained insurance policies or coverage necessary in order to commence
29 full-scope construction of the Facility, in compliance with Section 16.1; and
- 30 (vii) By the later of (A) August 1, 2013 and (B) the first day of the calendar month
31 following six (6) months after the FPSC Approval Date the Facility shall have
32 achieved Qualifying Facility Status.

33 4.5 Satisfaction of Conditions Precedent.

34 The QS shall use commercially reasonable efforts to achieve the satisfaction of each of the QS
35 Conditions Precedent by each respective applicable date. An enlargement of the time for satisfaction of
36 QS Conditions Precedent or waiver of the QS Conditions Precedent set forth in Section 4.4(b) may be
37 requested by the QS in writing from FPL, which approval shall not be withheld if the QS reasonably
38 demonstrates to FPL that the non-satisfaction of a QS Condition Precedent by the specified date therefor
39 will not materially adversely affect the ability of the QS to achieve commencement of full scope
40 construction of the Facility under the EPC Agreement on or before [REDACTED] months prior to the
41 Required Commissioning Commencement Date. FPL shall use commercially reasonable efforts to satisfy
42 Conditions Precedent which are its responsibility and, at the QS's request, FPL will reasonably cooperate
43 with the QS as may be necessary in order to assist the QS in achieving the satisfaction of the QS
44 Conditions Precedent that are to be satisfied by QS.

1 4.6 Effective Date.

2 Promptly upon satisfaction (or written waiver) of each of the Conditions Precedent to be satisfied
3 or waived on or before its applicable date, the Party having satisfied the same shall deliver to the other
4 Party a certificate evidencing such satisfaction. Subject to there being no QS Event of Default or FPL
5 Event of Default which is continuing as of the date on which the last of such certificates is delivered, the
6 date of such last certificate (however, in no event later than the Drop Dead Date except as provided in
7 Section 4.5) shall constitute the effective date of this Contract with respect to the Parties' respective rights
8 and obligations relating to the production, delivery, purchase and sale of the Committed Capacity and
9 Energy (the "Effective Date"). Each Party shall designate its Operating Representative within ten (10)
10 days after the Effective Date and shall promptly send notice thereof to the other Party. A Party may
11 designate additional or different Operating Representative(s) upon notice to the other Party.

12 4.7 Termination for Non-Satisfaction or Waiver of Conditions Precedent.

- 13 (a) Failure of FPL Condition Precedent. If FPSC Approval is not obtained under Sections
14 4.2 and 4.3, including as a result of any approval in part or conditions to approval by the
15 FPSC not being accepted by both QS and FPL pursuant to Sections 4.2(b) and 4.4(a),
16 respectively, each in its sole discretion, within [REDACTED] days after the
17 Submission Date, or such longer period as the Parties may agree, then this Contract shall
18 terminate upon ten (10) days notice by either Party.
- 19 (b) Failure of QS Conditions Precedent. If all QS Conditions Precedent to be satisfied or
20 waived on or before their applicable date, are not satisfied on or before such applicable
21 dates, or such QS Conditions Precedent are not waived on written notice by QS to FPL,
22 this Contract shall terminate upon ten (10) days notice by either Party.

23 4.8 Effect of Termination for Non-Satisfaction of Conditions Precedent.

- 24 (a) Any expiration or termination of this Contract for failure to satisfy a Condition Precedent
25 to be satisfied or waived, shall not relieve either Party of any liability accrued or arising
26 from conduct or activities prior to the effective date of the expiration or termination, and
27 such expiration or termination shall not affect the continued operation or enforcement of
28 any provision of this Contract which by its express terms or by reasonable implication is
29 to survive any expiration or termination.
- 30 (b) Termination of this Contract pursuant to Section 4.7(a) shall not constitute an Event of
31 Default hereunder and neither Party shall have any further liability under this Contract as
32 a result of such termination.
- 33 (c) In the event that the QS Conditions Precedent set forth in Section 4.4(b) are not satisfied
34 by the QS or waived by QS prior to the applicable date therefor (which date shall be
35 extended day-for-day for any delay due to Force Majeure or an FPL Event of Default
36 pursuant to Section 13.2(a)) or such QS Condition Precedent is not met by any mutually
37 agreed upon extension of such date, FPL shall have the right to draw on the Performance
38 Security provided by QS under Appendix 5, which shall be FPL's sole and exclusive
39 remedy and compensation therefor, and terminate this Contract by notice to QS not later
40 than thirty (30) days after the Drop Dead Date, without further obligations, duties or
41 liability of either Party to the other relating to such termination.

1 **5. Sale of Energy and Capacity by the QS**

2 5.1 Purchase and Sale.

3 Commencing on the Commissioning Commencement Date and through the end of the Term,
4 consistent with the terms and conditions hereof, the QS shall sell and deliver to FPL at the Delivery Point
5 and FPL shall purchase and receive from the QS at the Delivery Point all of the Energy and any other
6 products or services (excluding Capacity (until the expiration of the Commissioning Period), RECs,
7 Environmental Attributes and any other products or services retained by the QS in this Contract)
8 associated with generation of Energy by the Facility. During the Commissioning Period, FPL shall also
9 pay the Energy performance bonus. Commencing on the first day after the end of the Commissioning
10 Period and through the end of the Term, consistent with the terms and conditions hereof, the QS shall sell
11 and deliver to FPL at the Delivery Point and FPL shall purchase and receive from the QS at the Delivery
12 Point all Committed Capacity and Energy. The billing and price methodology for Committed Capacity
13 and Energy sold hereunder and the Energy performance bonus is set forth in Appendices 3 and 4.

14 5.2 Operating Costs.

15 The QS shall not rely on interruptible standby service for the start up requirements (initial or
16 otherwise) of the Facility. The QS shall be responsible for all costs, charges and penalties, if any,
17 associated with the operation of the Facility, except as elsewhere provided in this Contract.

18 5.3 Delivery.

19 The QS shall be responsible for delivery of Committed Capacity and Energy to the Delivery Point
20 and, as between the Parties, shall be responsible for and shall indemnify, hold harmless and defend FPL
21 from and against all costs, liabilities, Taxes, losses, and charges of any kind imposed or assessed with
22 respect to the delivery of Committed Capacity and Energy to the Delivery Point. Except as otherwise
23 expressly provided in the Interconnection Agreement, FPL shall be responsible for providing or obtaining
24 transmission and distribution service from the Delivery Point and, as between the Parties, FPL shall be
25 responsible for and shall indemnify, hold harmless and defend the QS from and against all costs,
26 liabilities, Taxes, losses, and charges of any kind imposed or assessed at and after the delivery of
27 Committed Capacity and Energy at the Delivery Point.

28 **6. Committed Capacity/Commissioning Commencement Date**

29 6.1 Capacity.

30 The QS commits to sell the Committed Capacity and Energy to FPL at the Delivery Point, the
31 amount of which Committed Capacity shall be determined in accordance with this Section 6. Subject to
32 Section 6.3, and except as otherwise provided herein during the Commissioning Period, the Committed
33 Capacity is set at the Design Committed Capacity. The Commissioning Commencement Date shall be
34 attained no later than the Required Commissioning Commencement Date.

35 6.2 Committed Capacity Test.

36 Testing of the Capacity of the Facility (each such test, a "Committed Capacity Test") shall be
37 performed in accordance with the procedures set forth in Article 7. The Demonstration Period for the first
38 Committed Capacity Test to verify attainment of Capacity Delivery Status shall commence no earlier than
39 [REDACTED] prior to the commencement date for continuous deliveries of Energy from the Facility as
40 estimated in progress reports delivered by QS to FPL during construction of the Facility, or such earlier

1 dates as the Parties may agree upon in writing, and testing must be completed by 11:59 p.m. on the
2 Required Commissioning Commencement Date. The first Committed Capacity Test shall be deemed
3 successfully completed when the QS demonstrates that the Facility has attained Capacity Delivery Status.
4 Subject to Section 7.1, the QS may schedule and perform up to [REDACTED] Committed Capacity Tests
5 during each Demonstration Period to demonstrate attainment of Capacity Delivery Status. The QS may
6 schedule additional Demonstration Periods to satisfy the requirements hereunder with respect to the first
7 Committed Capacity Test; provided that such periods do not extend beyond the Required Commissioning
8 Commencement Date. The QS will coordinate with FPL the production and delivery of Energy during
9 initial testing, and prior to the Commissioning Commencement Date, FPL shall purchase and receive all
10 Energy produced during the initial testing at a price equal to [REDACTED] of the As-Available
11 Avoided Energy Cost.

12 6.3 Maximum Committed Capacity.

13 Notwithstanding anything to the contrary herein, the Committed Capacity shall not exceed the
14 Maximum Committed Capacity without the consent of FPL, which consent may be withheld by FPL in its
15 sole discretion.

16 6.4 Commissioning Commencement Date.

17 The "Commissioning Commencement Date" shall be defined as the first calendar day
18 immediately following the date of the Facility's attainment of Capacity Delivery Status, but no later than
19 the Required Commissioning Commencement Date. The Commissioning Period shall commence on the
20 Commissioning Commencement Date.

21 6.5 Capacity Payment.

22 The QS shall be entitled to receive Monthly Capacity Payments beginning on the first day
23 following the end of the Commissioning Period, provided, the Commissioning Commencement Date
24 occurs on or before the Required Commissioning Commencement Date (or such later date permitted by
25 FPL in its reasonable discretion).

26 6.6 Additional Testing.

27 After the end of the Commissioning Period, FPL shall have the right to require the QS, by notice
28 thereto, to validate the Committed Capacity of the Facility within sixty (60) days after such notice by
29 means of subsequent Committed Capacity Tests as follows: (a) at FPL's cost and expense once per
30 Contract Year without cause; (b) within sixty (60) days after any time the QS has restored normal
31 operation of the Facility after having been unable to comply with any material obligation under this
32 Contract for a period of ninety (90) days or more in the aggregate as a consequence of a single event of
33 Force Majeure; and (c) at any time the QS fails (for reasons other than a Force Majeure or breach, default
34 or non-performance by FPL) in three (3) consecutive months to achieve a Monthly Capacity Factor equal
35 to or greater than seventy percent (70%). The results of any such test shall be provided to FPL within
36 seven (7) days of the conclusion of such test. On and after the date of such requested Committed Capacity
37 Test, and until the completion of a subsequent Committed Capacity Test performed at the request of
38 either the QS or FPL, the Committed Capacity shall be deemed as the lower of the tested capacity or the
39 Maximum Committed Capacity.

40

1 **7. Testing Procedures**

2 7.1 Demonstration Period.

3 The Committed Capacity Test to demonstrate Capacity Delivery Status must be completed
4 successfully within a [REDACTED] period (the "Demonstration Period"), which period, including the
5 approximate start time of the Committed Capacity Test, shall be initially selected and scheduled by the
6 QS by means of a written notice to FPL delivered at least thirty (30) days prior to the start of such period,
7 and which may thereafter be changed by the QS upon three (3) days notice. The written notice shall
8 include detailed procedures reasonably acceptable to FPL for the conduct of Committed Capacity Tests.
9 The provisions of the foregoing sentences shall not apply to any Committed Capacity Test required by
10 FPL or performed by the QS under any other provisions of this Contract if such provision sets forth a
11 different procedure. FPL shall have the right to be present at the Site to monitor any Committed Capacity
12 Test required or permitted under this Contract. The QS shall have the right to commence, conduct and
13 complete any Committed Capacity Test if FPL's representative does not attend the test or departs from
14 the Site prior to the conclusion of the test, provided that required notice has been given.

15 7.2 Testing Period.

16 Committed Capacity Test results shall be based on a test period of [REDACTED]
17 [REDACTED] (the "Committed Capacity Test Period") at the highest sustained net KW rating at which the
18 Facility can operate without exceeding the design operating conditions, temperature, pressures, and other
19 parameters defined by the applicable manufacturer(s) for steady state operations at the Facility. The
20 Committed Capacity Test shall be conducted utilizing Fuel. The Committed Capacity Test Period shall
21 commence at the time designated by the QS pursuant to Section 7.1 or at such other time requested by
22 FPL pursuant to Section 6.6 or by the QS; provided, however, that the Committed Capacity Test Period
23 may commence earlier than such time in the event that FPL is notified of, and consents to, such earlier
24 time, such consent not to be unreasonably withheld, conditioned or delayed.

25 7.3 Unit Auxiliaries.

26 For the avoidance of doubt, normal station service use of unit auxiliaries, including cooling
27 towers, heat exchangers, and other equipment required by Applicable Law, shall be in service during the
28 Committed Capacity Test Period. FPL agrees to purchase and receive all net Energy produced during the
29 initial Committed Capacity Tests at a price equal to the As-Available Avoided Energy Cost.

30 7.4 Committed Capacity.

31 The Committed Capacity of the Facility shall be the average net capacity (generator output minus
32 auxiliary) measured over the Committed Capacity Test Period or such lesser amount as designated by the
33 QS, provided that such Capacity is not less than the Minimum Committed Capacity and subject to the
34 limitation that regardless of the outcome of a Committed Capacity Test it shall not exceed the Maximum
35 Committed Capacity unless the Parties agree otherwise. The Committed Capacity as of the end of the
36 Commissioning Period shall be the greater of (a) the Capacity established on the basis of the last
37 Committed Capacity Test conducted prior to the end of such period and (b) the Capacity which, over the
38 preceding twelve (12) month period, would result in an Annual Capacity Billing Factor of ninety percent
39 (90%).

1 7.5 Capacity Shortfall.

2 If at any time after the Commissioning Commencement Date the Capacity falls below the
3 Committed Capacity at the Commissioning Commencement Date, the QS shall have an initial period of
4 sixty (60) days to address the cause of the Facility's failure to generate at such Capacity, and on or before
5 the sixtieth (60th) day, the QS shall provide FPL with a reasonable cure plan describing the cause of the
6 deficiency and setting forth a plan and timetable for curing the deficiency. During this diagnostic and cure
7 period, the QS shall, at its sole expense, have the right to schedule and conduct (within commercially
8 reasonable scheduling limitations) such additional Committed Capacity Tests as it reasonably considers
9 necessary or appropriate or which the EPC Agreement contractor or any equipment vendor has the right
10 to perform or cause to be performed to demonstrate that the Capacity of the Facility equals or exceeds the
11 Minimum Committed Capacity.

12 7.6 Force Majeure.

13 After the end of the Commissioning Period, during a Force Majeure declared by the QS, the QS
14 may temporarily redesignate the Committed Capacity for up to [REDACTED];
15 provided, however, that no more than one such temporary redesignation may be made by the QS within
16 any [REDACTED] period as relates to such Force Majeure. Within one (1) month after any such
17 Force Majeure is cured, as set forth in notice by the QS to FPL, the QS shall, without penalty or other
18 condition, designate a new Committed Capacity; provided, however, that such new Committed Capacity
19 shall be equal to or greater than the Minimum Committed Capacity, but not greater than the Maximum
20 Committed Capacity.

21 7.7 Test Procedures.

22 Committed Capacity Tests shall be performed according to Prudent Industry Practices using
23 testing procedures appropriate for the equipment and technology of the Facility established pursuant to
24 Section 7.1.

25 7.8 Change to Committed Capacity.

26 After the end of the Commissioning Period, the QS may conduct a Committed Capacity Test at
27 any time after a Committed Capacity Test requested by FPL pursuant to Section 6.6 demonstrates a
28 decrease in the Committed Capacity. The QS may also on one other occasion per year only, increase or
29 decrease the Committed Capacity by no more than [REDACTED] of the then existing Committed
30 Capacity, provided that (i) in no case shall the Committed Capacity exceed the Maximum Committed
31 Capacity and (ii) in no case shall the Committed Capacity be lower than the Minimum Committed
32 Capacity, and provided further that the QS shall give FPL at least thirty (30) days notice of any such
33 increase or decrease in the Committed Capacity and shall conduct a Committed Capacity Test within
34 thirty (30) days after providing such notice. Any Committed Capacity Test conducted by the QS pursuant
35 to this Section 7.8 shall be performed in accordance with the requirements of this Article 7. Additionally,
36 the Parties, upon their mutual written agreement to same, may establish the Committed Capacity at any
37 level that they mutually agree is appropriate and desirable under this Contract.

38 **8. Payment for Electricity Produced by the Facility**

39 8.1 Energy.

40 Commencing on the Commissioning Commencement Date, FPL agrees to pay the QS for Energy
41 produced by the Facility and delivered to the Delivery Point and the Energy bonus payment in accordance

1 with the rates and procedures set forth in Appendices 3 and 4. Calculation of payments of the Energy
2 performance bonus to QS shall be made in accordance with Appendix 4 for Energy delivered during the
3 Commissioning Period. FPL shall provide the QS electronically with information pertaining to the
4 Energy payment calculation and Energy Rate (including escalator) and the Energy performance bonus
5 payment calculation and rate as the QS may reasonably request.

6 8.2 Capacity.

7 Commencing on the end of the Commissioning Period, FPL agrees to pay the QS for the
8 Committed Capacity in accordance with the rates and procedures set forth in Appendices 3 and 4.

9 8.3 Payments.

10 The QS shall prepare an invoice for amounts due by FPL for Committed Capacity, Energy and
11 other products, services and items in the prior month by the fifth (5th) day of each month. FPL shall make
12 payments due to the QS monthly and no later than the twentieth (20th) Business Day following receipt of
13 the invoice. A statement of the Committed Capacity and kilowatt-hours of Energy sold by the QS and the
14 rate at which payments are being invoiced shall accompany the invoice to FPL.

15 8.4 Other Payments; Late Payments.

16 Any amounts due to either QS or FPL under this Contract, other than those specified in Sections
17 8.1 - 8.3, shall be paid within twenty (20) days following receipt by the other Party of an itemized invoice
18 from the Party to whom such amounts are due setting forth, in reasonable detail, the basis for such
19 payment. FPL will provide the QS with such information pertaining to rates, payments and delivery of
20 Energy, the Energy performance bonus and Capacity as the QS may reasonably request. FPL may comply
21 with the QS's reasonable requests for information by providing the QS access to relevant materials at
22 FPL's business offices during normal business hours. The QS shall pay all expenses reasonably incurred
23 by FPL in complying with requests for information made pursuant to this Section 8.4. If a Party fails to
24 pay to the other Party any amount payable under this Contract when due, then such Party shall also pay,
25 in addition to such unpaid amount, interest at the Default Rate on the amount that is not paid from the
26 payment due date to the date on which payment is made in full.

27 8.5 Statement Errors.

28 In the event that either Party becomes aware of any error in any invoice, bill, statement or
29 adjustment, such Party shall, immediately upon discovery of the error, notify in writing the other Party of
30 such error and shall rectify such error within thirty (30) days of such notification, and any overpayment or
31 underpayment shall be refunded or paid (as applicable) with interest at the Default Rate accruing from
32 and after the date such overpayment or underpayment was made until the refund or payment is made.
33 Notwithstanding any provision of this Contract to the contrary, in no event shall a correction or an
34 adjustment be made to previous invoices, billings or statements more than [REDACTED] from the
35 date that the Energy that was the subject thereof was delivered to FPL.

36 8.6 Billing Disputes.

37 In the event that either Party has a bona fide dispute with any invoice submitted hereunder, such
38 Party shall inform the other Party in writing of its grounds for disputing such invoice. Notwithstanding
39 such dispute, any undisputed amounts shall be paid in full in accordance with Section 8.3. For any
40 disputed invoiced amounts, the Party receiving the invoice shall be entitled to withhold the disputed
41 amount with an explanation of the basis for the dispute. The Parties agree to proceed in good faith to

1 promptly initiate efforts (through their respective Operating Representative in the first instance) to
2 attempt to resolve any such dispute. Upon resolution of the dispute, any overpayment or underpayment
3 shall be refunded or paid (as applicable) with interest at the Default Rate accruing from and after the date
4 such overpayment or underpayment was made until the date on which such refund is paid.

5 **9. Electricity Production and Plant Maintenance Schedule**

6 **9.1 Generation Projection.**

7 During the Term of this Contract, no later than sixty (60) days after the Commissioning
8 Commencement Date and prior to April 1 of each calendar year thereafter, the QS shall submit to FPL in
9 writing a detailed plan of: (i) the amount of Committed Capacity (only after the end of the
10 Commissioning Period) and Energy to be generated by the Facility and delivered to the Delivery Point for
11 each month of the following calendar year, and (ii) the time, duration and magnitude of any Scheduled
12 Maintenance Period(s) and any anticipated reductions in Committed Capacity (only after the end of the
13 Commissioning Period).

14 **9.2 Scheduled Maintenance.**

15 By May 1 of each calendar year, FPL shall notify the QS in writing whether the planned
16 Scheduled Maintenance Periods in the detailed plan submitted by the QS to FPL pursuant to Section 9.1
17 are acceptable. If FPL objects to any of the planned Scheduled Maintenance Periods, FPL shall advise the
18 QS of the time period closest to the planned period(s) for which FPL proposes that the planned outage(s)
19 be re-scheduled. The QS shall, to the extent not inconsistent with Prudent Industry Practices and
20 manufacturers' recommendations, schedule Scheduled Maintenance Periods only during periods
21 requested by FPL. Once the schedule for Scheduled Maintenance Periods has been established in
22 accordance with Section 9.1 and this Section 9.2, either Party may request the other Party to approve a
23 subsequent change in such schedule and such approval shall not to be unreasonably withheld or delayed.
24 Scheduled Maintenance Periods shall be limited to [REDACTED] days per calendar year unless the
25 manufacturers' recommendation of maintenance outage days for the technology and equipment used by
26 the Facility exceeds such [REDACTED] day period, provided, such number of days is considered
27 reasonable by industry standards and does not exceed [REDACTED] day intervals, one in the Spring
28 and one in the Fall, in any calendar year. For the avoidance of doubt, only [REDACTED] days of
29 Maintenance Outages shall be excluded from the calculation on the Annual Capacity Factor so as not to
30 reduce the Annual Capacity Factor. In no event shall Scheduled Maintenance Periods be scheduled
31 during the following periods: June 1 through and including October 31st and December 1 through and
32 including February 28 (or 29th as the case may be) unless required in observance of Prudent Industry
33 Practice and manufacturers' recommendations.

34 **9.3 Additional Maintenance.**

35 If the need arises for the QS to conduct maintenance on the Facility outside of Scheduled
36 Maintenance Periods, QS shall notify FPL of such maintenance, together with dates for carrying out such
37 maintenance and the estimated duration of the work to be carried out. The QS and FPL shall confer in
38 good faith to determine a reasonable schedule during which such additional maintenance outage(s) shall
39 take place. If agreement is not reached within five (5) days of initiating good faith discussions, the QS
40 shall prepare a schedule of such additional maintenance outage(s) based on Prudent Industry Practice and
41 manufacturers' recommendations. For the avoidance of doubt, any and all days of additional maintenance
42 outages in excess of [REDACTED] days requiring that the Facility output be reduced or curtailed shall
43 be included in the calculation of the Annual Capacity Factor so as to reduce the Annual Capacity Factor.

1 9.4 Forced Outage.

2 If the QS identifies the need to remove the Facility from operation due to a Forced Outage, the
3 QS shall provide FPL with notice as soon as the QS becomes aware of the Forced Outage. As soon as
4 possible following the commencement of the Forced Outage, the QS shall provide FPL with information
5 pertaining to the cause of the outage and the anticipated return to service date.

6 9.5 Must-Run.

7 The Facility shall be operated, subject to the provisions of Section 9.10, on a baseload, “must-
8 run” basis, except for Forced Outages, Scheduled Maintenance Periods, periods when performance is
9 suspended hereunder, events of Force Majeure and Emergency Conditions or as directed by the FPL
10 Transmission Provider or any other Transmission Provider for safety or reliability reasons.

11 9.6 Excess Capacity.

12 Notwithstanding anything contrary to the terms hereof: FPL shall have no obligation to accept
13 and pay for and the QS shall have no obligation to deliver and sell Capacity until after the end of the
14 Commissioning Period, and no such purchases and sales of Capacity shall be in excess of the Committed
15 Capacity unless the Parties mutually agree thereto in writing. Upon expiration of the Term or early
16 termination of this Contract, the QS shall have the right (without affecting any obligations of the QS
17 under this Contract which by the terms of this Contract survive or otherwise continue beyond the
18 expiration of the Term or any termination of this Contract) to offer, sell, trade, exchange and deliver all
19 Capacity and Energy RECs, Environmental Attributes, and other products or services generated by or
20 associated with the operation or ownership of the Facility to any Person.

21 9.7 Control.

22 At all times during the Term of this Contract after the Commissioning Commencement Date, the
23 QS shall operate and maintain the Facility: (i) in such a manner as to comply with its obligations
24 hereunder, in accordance with Prudent Industry Practices and Applicable Law, and (ii) in compliance with
25 the Interconnection Agreement with FPL Transmission Provider with respect to all system protective
26 equipment in service whenever the Facility is connected to, or is operated in parallel with, FPL
27 Transmission Provider’s Transmission System. The QS shall install at the Facility those system protection
28 and control devices necessary under the Interconnection Agreement to achieve safe and protected
29 operation of all energized equipment during normal testing, operation and repair. The QS shall have
30 qualified personnel or contractors test and calibrate all protective equipment at regular intervals in
31 accordance with Prudent Industry Practices and the Interconnection Agreement. A unit functional trip test
32 shall be performed after each overhaul of the Facility’s steam turbine generators or boilers and the results
33 shall be provided to FPL prior to returning the equipment to service. The specifics of the unit functional
34 trip test will be consistent with Prudent Industry Practices.

35 9.8 Reconnection of Facility.

36 If the Facility is separated from the FPL Transmission Provider’s Transmission System for any
37 reason, reconnection of the Facility into FPL Transmission Provider’s Transmission System shall be
38 governed by the Interconnection Agreement.

1 9.9 Personnel.

2 Commencing on the Commissioning Commencement Date, during the Term of this Contract the
3 QS shall employ or contract qualified personnel for managing, operating and maintaining the Facility.
4 The QS shall maintain operating personnel on duty at all times, twenty-four (24) hours a calendar day and
5 seven (7) calendar days a week.

6 9.10 FPL System Reliability.

7 FPL shall not be obligated to purchase, and may require curtailed or reduced deliveries of Energy
8 only to the extent allowed under FPSC Rule 25-17.086, any successor rule or under any curtailment plan
9 which FPL may have on file with the FPSC and as may be amended from time to time. FPL shall notify
10 the QS prior to the instance giving rise to those conditions, if practicable. If prior notice is not practicable,
11 FPL shall communicate such circumstance at the earliest opportunity and provide notice thereof to the QS
12 as soon as practicable after the fact.

13 9.11 Metering.

- 14 (a) The rights and obligations of the Parties in respect of the interconnection of the Facility
15 to the FPL Transmission Provider's Transmission System shall be as set forth in the
16 Interconnection Agreement.
- 17 (b) All electric metering associated with the Facility, including the Facility meter and any
18 other real-time meters, billing meters and back-up meters (collectively, the "Meters"),
19 shall be installed, operated, maintained and tested at the QS's expense in accordance with
20 Prudent Industry Practices and any applicable requirements and standards issued by
21 NAERC and the FPL Transmission Provider. Each Meter shall be tested at the QS's
22 expense once each Contract Year. The Meters shall be used for the registration, recording
23 and transmission of information regarding the production of Committed Capacity and
24 Energy by the Facility. The QS shall provide FPL with a copy of all metering and
25 calibration information and documents regarding the Meters promptly following receipt
26 thereof by the QS.
- 27 (c) Readings of the Meters at the Facility by the Transmission Provider in whose territory the
28 Facility is located (or an independent Person mutually acceptable to the Parties) shall be
29 conclusive as to the amount of Committed Capacity and Energy produced by the Facility;
30 provided, however, that the QS, upon written request of FPL and at FPL's expense (if
31 more frequently than annually), shall cause the Meters to be tested by the Transmission
32 Provider in whose territory the Facility is located, and if any Meter is out of service or is
33 determined to be registering inaccurately by more than one percent (1%), subject to
34 Section 9.11(e), if applicable, (i) the measurement of Energy produced by the Facility
35 shall be adjusted as far back as can reasonably be ascertained, but in no event shall such
36 period exceed one-half the period from the date that such inaccuracy was discovered to
37 the last annual calibration, in accordance with the filed tariff of the Transmission
38 Provider, and any adjustment shall be reflected in the next invoice provided by the QS to
39 FPL hereunder and (ii) the QS shall reimburse FPL for the cost of such test of the Meters.
- 40 (d) FPL shall have the right to inspect and test any of the Meters at the Facility at reasonable
41 times and upon reasonable notice from FPL to the QS. FPL shall have the right to have a
42 representative present during any testing or calibration of the Meters at the Facility by the
43 QS. The QS shall provide FPL with timely notice of any such testing or calibration.

1 (e) Either Party may, at its option and expense, install, operate and maintain one or more
2 check meters in accordance with Prudent Industry Practice. Check meters will not be
3 used for measurement of Committed Capacity and Energy except as provided in Section
4 9.11(f). Check meters will be subject to inspection and testing by the other Party at all
5 reasonable times.

6 (f) If the Meters fail to register, or the measurement made by Meters during a test varies by
7 more than one percent (1%) from the measurement made by the standard meter used in
8 the test, and if either Party had installed a check meter and such check meter is
9 registering accurately, an adjustment to prior billings will be made to accord with the
10 check meter (or the average of both Parties' check meters, if applicable). If no check
11 meters have been installed or any installed check meters are not registering accurately, or
12 the Parties cannot agree on the amount or duration of the inaccuracy, the adjustment will
13 be made for the amount of inaccuracy as measured by the test in accordance with Section
14 9.11(c). In no case shall an adjustment to previous billings be corrected more than one (1)
15 year from the date that the Committed Capacity and Energy was received by FPL.

16 10. Security

17 10.1 Type of Security.

18 The QS shall provide Performance Security and Payment Security at the times and in the amounts
19 and meeting the requirements of Appendix 5, A or Appendix 5, B, as applicable.

20 10.2 Issuer Downgrade.

21 Any Letter of Credit issued for the benefit of FPL under this Contract shall be from a Qualified
22 Issuer. FPL shall have the right to monitor the financial condition of the issuer of a Letter of Credit
23 provided as security by the QS. In the event the issuer of a Letter of Credit no longer qualifies as
24 Qualified Issuer, FPL may require, in its sole discretion, the QS replace the Letter of Credit with a Letter
25 of Credit issued by a Qualified Issuer. The replacement Letter of Credit must be issued by a Qualified
26 Issuer within thirty (30) days following written notification by FPL to the QS of the requirement to
27 replace.

28 10.3 Security Interest.

29 The QS, as the pledgor of a Letter of Credit delivered after the Effective Date as security, hereby
30 pledges to FPL, as the secured Party, as security for (a) attainment of Capacity Delivery Status on or
31 before the Required Commissioning Commencement Date and (b) after the Commissioning
32 Commencement Date, the Performance Security, and grants to FPL a first priority continuing security
33 interest in, lien on and right of set-off against all Letters of Credit issued for the benefit of FPL hereunder
34 at the times and in the amounts as set forth in Appendix 5. The QS shall execute and deliver any
35 certificate, instrument or other document reasonably requested by FPL to effect or perfect such lien.
36 Upon the transfer or return by FPL to the QS of any such Letter(s) of Credit, the security interest and lien
37 granted hereunder on that Letter(s) of Credit will be released immediately and, to the extent possible,
38 without any further action by either Party. FPL shall execute and deliver any certificate, instrument or
39 other document reasonably requested by the QS to effect or document such release.

1 10.4 Cash Collateral.

2 Cash Collateral may be provided by the QS in accordance with Appendix 5, A as performance
3 security for satisfaction by the QS of the QS Conditions Precedent to be satisfied by it prior to the
4 Effective Date. Cash Collateral shall be held by FPL and all interest accrued on Cash Collateral provided
5 by the QS shall be for the account of the QS. Cash Collateral, plus interest accrued thereon, shall be
6 delivered by FPL to the QS promptly upon delivery of a Letter of Credit meeting the requirements of
7 Appendix 5. Interest shall accrue at the Default Rate.

8 **11. Permits; Compliance with Law**

9 11.1 Permits.

10 Each Party acknowledges that during the Term of this Contract it will be required to obtain and
11 maintain certain Governmental Authorizations in connection with the performance of its obligations
12 hereunder. Each Party shall perform its obligations and operate and maintain its facilities related thereto
13 in accordance with applicable Governmental Authorizations and Applicable Laws.

14 11.2 Notice of Filings.

15 If the Parties are required to make any regulatory filings to the FERC, FPSC, or any other
16 Governmental Authority, the Party subject thereto shall to the extent that any such filing is reasonably
17 likely to materially impact the performance by the Parties of their obligations hereunder, provide prompt
18 notice to the other Party thereof and support any intervention or other participation of the other Party in
19 related proceedings as are reasonable. Each of the QS and FPL agrees to abide by any applicable
20 regulatory rulings or orders issued by such authorities, subject to its right to seek a re-hearing, appeal or
21 other reconsideration of such rulings or orders.

22 11.3 Good Faith Challenge.

23 Notwithstanding the foregoing, a Party shall not be deemed to be in breach of its obligations to
24 acquire or maintain any Governmental Authorizations or other consents or to otherwise have incurred an
25 Event of Default for a period of [REDACTED], if, and to the extent, that a Party is in
26 good faith using commercially reasonable efforts to acquire or maintain such Governmental
27 Authorizations or other consents or contesting the application, interpretation, order or other legal direction
28 that would mandate the obtaining of any such Governmental Authorizations or other consents or any
29 change to the requirements of existing Governmental Authorizations. After the [REDACTED]
30 [REDACTED] period, if the affected Party cannot acquire or maintain such Governmental Authorizations or other
31 consents, application, interpretation, order or other legal direction or other consents or any change to the
32 requirements of existing Governmental Authorizations, then the other Party may proceed in accordance
33 with Article 4 if such Governmental Authorization is required by a Condition Precedent or Article 14 if
34 the failure to have such Governmental Authorization is an Event of Default under Article 13.

35 11.4 Generator Operator.

36 The QS shall be the NAERC generator operator and owner for the Facility and as between the
37 Parties is solely and exclusively responsible for compliance with (i) any and all applicable NAERC
38 reliability standards, (ii) similar obligations with respect to the Federal Power Act or (iii) otherwise with
39 respect to the exclusive jurisdiction of the FERC or the FRCC, as such relate to the Facility. As between
40 the Parties, the QS shall be solely responsible, at its own cost and at all times during the Term, for

1 compliance with such standards and the payment of any fines or penalties associated with the violation of
2 such standards in respect of the Facility.

3 **12. Taxes**

4 12.1 Taxes.

5 QS shall pay or cause to be paid all taxes imposed by any Government Authority on or with
6 respect to the Facility arising prior to the Delivery Point. FPL shall pay or cause to be paid all taxes
7 imposed by any Government Authority on or with respect to the Energy or Capacity at and from the
8 Delivery Point. If either Party is required to collect or remit any Taxes that are the other Party's
9 responsibility hereunder, it shall give prompt notice thereof to the other Party and thereafter cooperate
10 with the other Party in connection with any challenge to such Tax. The other Party shall upon receipt of
11 notice of payment of the Tax promptly reimburse the Party which has paid such Taxes. The Parties shall
12 use all reasonable efforts to administer this Contract and implement the provisions hereof in a manner that
13 will minimize Taxes due and payable by the Parties.

14 12.2 Tax Reporting.

15 Each Party will be responsible for its own Tax reporting. Each Party shall provide the other
16 Party, upon written request, with copies of any documentation in its possession and control that may be
17 reasonably necessary in the ordinary course of any inter-governmental, state, local, municipal or other
18 political subdivision tax audit.

19 12.3 Exemptions.

20 A Party shall provide a certificate or exemption or other reasonably satisfactory evidence of
21 exemption, promptly upon becoming aware of such exemption, if either Party is exempt from Taxes, and
22 shall use commercially reasonable efforts to obtain, and cooperate with the other Party obtaining, any
23 exemption or reduction of Taxes.

24 **13. Default**

25 13.1 QS Defaults.

26 Each of the following shall constitute an Event of Default by the QS ("QS Event of Default"):

- 27 (a) The QS, without reasonable cause, notifies FPL of its intention to abandon all efforts to
28 satisfy the Conditions Precedent in Section 4.4 and fails to notify FPL of its intention to
29 resume such efforts within ten (10) days after such initial notice of abandonment;
- 30 (b) The QS materially changes or modifies the Facility from that described in Appendix 1
31 with respect to its type, location, technology, generating capability (outside the range of
32 the Minimum Committed Capacity and Maximum Committed Capacity) or fuel source
33 without prior written approval from FPL;
- 34 (c) The QS fails to maintain the Qualifying Facility Status of the Facility or fails to meet the
35 Renewable Energy Requirements existing as of the Execution Date in compliance with
36 the provisions of Section 2.1 as shown in the certified report required by Section 2.1(a) or
37 the certification required by Section 2.1(c) or by notice from FPL pursuant to Section

- 1 2.1(b), and such failure continues for thirty (30) days after delivery of such report,
2 certification or FPL notice;
- 3 (d) After the end of the Commissioning Period, the Facility fails, [REDACTED]
4 [REDACTED], to maintain an Annual Capacity Billing Factor of at least seventy percent (70%);
- 5 (e) The QS fails to post Performance Security, Payment Security and/or Cash Collateral in
6 compliance with Article 10 hereof and such failure continues for fifteen (15) days after
7 notice from FPL;
- 8 (f) Except to the extent excused by Transmission Provider instruction or FPL breach or
9 repudiation of its obligation to purchase hereunder, QS sells the Energy or Committed
10 Capacity from the Facility to a third party in breach of Section 5.1 and/or Section 5.3;
- 11 (g) The QS ceases the conduct of active business; or if proceedings under the federal
12 bankruptcy law or insolvency laws shall be instituted by or for or against the QS or if a
13 receiver shall be appointed for the QS or with respect to any of its assets or properties; or
14 if any part of the QS's assets shall be attached, levied upon, encumbered, pledged, seized
15 or taken under any judicial process by any Person other than pursuant [REDACTED]
16 [REDACTED], and such proceedings shall not be vacated or fully stayed within sixty (60)
17 days thereof; or if the QS shall make an assignment for the benefit of creditors other than
18 the Financing Parties with respect to the assets, properties, rights and privileges relating
19 to the Facility, or admits in writing its inability to pay its debts as they become due;
- 20 (h) The QS fails to use commercially reasonable efforts to obtain or maintain Governmental
21 Authorizations and other consents, approvals or authorizations of other third Persons
22 required to initiate full scope construction of the Facility under the EPC Agreement and
23 thereafter operate the Facility or the Parties have failed to agree upon an extension of
24 time beyond the [REDACTED] provided in Section 11.3 for such
25 Governmental Authorizations to be obtained or maintained;
- 26 (i) The occurrence of an event of default by the QS under the Interconnection Agreement,
27 subject to applicable cure rights thereunder;
- 28 (j) QS fails to pay any undisputed amount due and owing by it to FPL within five (5) days
29 after notice from FPL;
- 30 (k) If at any time after the end of the Commissioning Period, and in accordance with Section
31 7.6, the QS following cessation of a Force Majeure event, fails to designate the
32 Committed Capacity between the Minimum Committed Capacity and the Maximum
33 Committed Capacity;
- 34 (l) If after the Commissioning Commencement Date, the inventory of Fuel at or near the
35 Facility is not sufficient to fuel reliable operation of the Facility for a period of [REDACTED]
36 [REDACTED];
- 37 (m) After the Effective Date, failure by the QS to cause the Facility to achieve Capacity
38 Delivery Status by the Required Commissioning Commencement Date;
- 39 (n) Failure by the QS to procure or maintain QS insurance in accordance with the provision
40 of Section 16;

1 Date, free from any claim or right of any nature whatsoever of the QS, including any
2 equity or right of redemption by the QS.

3 (b) QS Remedies. If FPL is the Defaulting Party, the QS shall have the right to, as its sole
4 and exclusive remedies therefor (i) withhold payments due to FPL under this Contract;
5 (ii) suspend performance under this Contract for no more than ninety (90) consecutive
6 days in respect of such Event of Default; (iii) designate an Early Termination Date on
7 which date all Performance Security and/or Payment Security provided by the QS to FPL
8 shall be cancelled and returned to the QS upon demand therefore; and (iv) calculate the
9 amount of the FPL Termination Payment payable by FPL to the QS, and then provide
10 notice to FPL of the FPL Termination Payment amount owed. The FPL Termination
11 Payment shall equal the sum of (x) any amount due and owing by FPL to the QS as of the
12 Early Termination Date and (y) for the period of time from the Early Termination Date to
13 the end of the Term, the difference, if positive, between the projected monthly Capacity
14 Payments and Energy Payments at Base Production under this Contract and equivalent
15 amounts under any Put Rights, COG Tariff, or Standard Offer Contract available to QS,
16 adjusted for any additional transmission charges, which amount shall be paid in
17 accordance with Section 19.9(d).

18 14.2 Specific Performance.

19 Each Party recognizes that any remedy at law may be inadequate because this Contract is unique
20 and/or because the actual damages of the Non-Defaulting Party may be difficult to reasonably ascertain.
21 Therefore, subject to Section 15.5 and to the extent permitted hereunder, the Parties agree that each Party
22 shall be entitled to pursue an action for specific performance or other equitable remedies, and the other
23 Party waives all of its rights to assert as a defense to such action that a remedy at law is adequate.

24 14.3 Accrued Liabilities.

25 Upon an Early Termination Date becoming effective, neither Party shall have any further liability
26 to the other Party arising under or related to this Contract, except for the Termination Payment, any
27 liabilities and obligations accruing prior to the Early Termination Date or any liabilities and obligations
28 which by their nature or the express terms of this Contract extend beyond the termination of this Contract.
29 Subject to Section 15.5, the liability of either Party for obligations arising prior to such Early Termination
30 Date or for damages, if any, resulting from breach of this Contract, shall not be affected by termination of
31 this Contract.

32 14.4 Termination Payment Dispute.

33 If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination
34 Payment amount, in whole or in part, the Defaulting Party shall, within fifteen (15) Business Days of
35 receipt of the Non-Defaulting Party's calculation of the Termination Payment amount, provide to the
36 Non-Defaulting Party a detailed written explanation of the basis for such dispute. Following delivery of
37 such a notice, any disputes relating to liability for the amount of the Termination Payment shall be
38 resolved in accordance with Article 19.7.

39 **15. Indemnification/Limits**

40 15.1 Responsibility.

41 FPL and the QS shall each be responsible for its own facilities. QS shall be responsible for

1 ensuring adequate safeguards for the QS's personnel and equipment, and for the protection of its
2 generating system at the Facility.

3 15.2 QS Indemnity.

4 The QS shall indemnify, hold harmless and defend FPL, on an after-tax basis, from and against
5 any and all liabilities, judgments, losses, damages, claims relating to injury to or death of any person or
6 damage to property (including the Facility), fines and penalties, costs and expenses arising out of or
7 resulting from the negligence on the part of the QS in performing its obligations pursuant to this Contract
8 or the QS's failure to abide by the provisions of this Contract, except in those instances where such loss is
9 due to the gross negligent action or willful inactions of FPL pursuant to FPL's rights under Sections
10 2.1(b), 7.2, 9.11(d) or 9.11(e) of this Contract.

11 15.3 FPL Indemnity.

12 To the maximum extent permissible by law, subject to express statutory exemptions or limitations
13 relating to investor-owned electric utilities in the State of Florida, FPL shall indemnify, hold harmless and
14 defend the QS, on an after-tax basis, from and against any and all liabilities, judgments, losses, damages,
15 claims relating to injury to or death of any person or damage to property (but excluding FPL
16 Transmission Provider's transmission system, for which any rights to indemnification shall be exclusively
17 as set forth in the Interconnection Agreement), fines and penalties, costs and expenses arising out of or
18 resulting from the negligence on the part of FPL while on the site of the Facility or on sites of Affiliates
19 of QS pursuant to FPL's rights under Sections 2.1(b), 7.2, 9.11(d), or 9.11(e) of this Contract, except in
20 those instances where such loss is due to the gross negligent action or willful inactions of the QS. For the
21 avoidance of doubt, FPL shall have no indemnity obligation to the QS under this Contract for any loss
22 arising out of or resulting from the negligence on the part of FPL Transmission Provider in its capacity as
23 a Transmission Provider or as a result of performing the obligations pursuant to the Interconnection
24 Agreement.

25 15.4 Settlement.

26 Payment by a Person indemnified hereunder ("Indemnified Party") will not be a condition
27 precedent to the obligations of the indemnifying party ("Indemnifying Party") under Section 15.2 or 15.3.
28 No Indemnified Party under Section 15.2 or 15.3 shall settle any claim for which it claims
29 indemnification hereunder without first allowing the Indemnifying Party the right to defend such a claim.
30 The Indemnifying Party shall have no obligations under Section 15.2 or 15.3 in the event of a breach of
31 the foregoing sentence by any Indemnified Party. Sections 15.2 or 15.3 shall survive expiration or
32 termination of this Contract.

33 15.5 Limitation on Consequential, Incidental and Indirect Damages; Exclusive Remedies.

34 TO THE FULLEST EXTENT PERMITTED BY LAW, NEITHER THE QS NOR FPL, NOR
35 THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, MEMBERS, PARENTS,
36 SUBSIDIARIES OR AFFILIATES, SUCCESSORS OR ASSIGNS, OR THEIR RESPECTIVE
37 OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, MEMBERS, PARENTS, SUBSIDIARIES OR
38 AFFILIATES, SUCCESSORS OR ASSIGNS, SHALL BE LIABLE TO THE OTHER PARTY OR
39 THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, MEMBERS, PARENTS,
40 SUBSIDIARIES OR AFFILIATES, SUCCESSORS OR ASSIGNS, FOR CLAIMS, SUITS, ACTIONS
41 OR CAUSES OF ACTION FOR INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, MULTIPLE OR
42 CONSEQUENTIAL DAMAGES CONNECTED WITH OR RESULTING FROM PERFORMANCE OR
43 NON-PERFORMANCE OF THIS CONTRACT, OR ANY ACTIONS UNDERTAKEN IN

1 CONNECTION WITH OR RELATED TO THIS CONTRACT, INCLUDING WITHOUT
2 LIMITATION, ANY SUCH DAMAGES WHICH ARE BASED UPON CAUSES OF ACTION FOR
3 BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE AND MISREPRESENTATION),
4 BREACH OF WARRANTY, STRICT LIABILITY, STATUTE, OPERATION OF LAW, UNDER ANY
5 INDEMNITY PROVISION OR ANY OTHER THEORY OF RECOVERY. IF A REMEDY OR
6 MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN IT SHALL BE THE SOLE AND
7 EXCLUSIVE REMEDY AND/OR MEASURE OF DAMAGES THEREFOR AND THE AFFECTED
8 PARTY WAIVES AND RELEASES ANY RIGHT OR INTEREST IN, TO OR UNDER ANY OTHER
9 REMEDY OR DAMAGES. TO THE MAXIMUM EXTENT PERMISSIBLE UNDER APPLICABLE
10 LAWS, ALL REMEDIES OR MEASURE OF DAMAGES AT LAW OR IN EQUITY OTHER THAN
11 THOSE EXPRESSLY PROVIDED FOR IN THIS CONTRACT ARE WAIVED; PROVIDED,
12 HOWEVER, THAT THIS SENTENCE SHALL NOT APPLY TO LIMIT THE LIABILITY OF A
13 PARTY WHOSE ACTIONS GIVING RISE TO SUCH LIABILITY CONSTITUTE GROSS
14 NEGLIGENCE OR WILLFUL MISCONDUCT (IN THE CASE OF FPL PURSUANT TO SECTIONS
15 2.1(b), 7.2, 9.11(d), or 9.11(e) OF THIS CONTRACT AND IN THE CASE OF QS PURSUANT TO
16 SECTION 15.4 OF THIS CONTRACT). THE PROVISIONS OF THIS SECTION SHALL APPLY
17 REGARDLESS OF FAULT AND SHALL SURVIVE TERMINATION, CANCELLATION,
18 SUSPENSION, COMPLETION OR EXPIRATION OF THIS CONTRACT. NOTHING CONTAINED
19 IN THIS CONTRACT SHALL BE DEEMED TO BE A WAIVER OF A PARTY'S RIGHT TO SEEK
20 SPECIFIC PERFORMANCE OR INJUNCTIVE RELIEF.

21 **16. Insurance**

22 16.1 QS Insurance.

23 The QS shall procure or cause to be procured on or before the date of commencement of full-
24 scope work for construction of the Facility and maintain thereafter throughout the entire Term of this
25 Contract, a policy or policies of liability insurance issued by an insurer acceptable to FPL on a standard
26 "Insurance Services Office" commercial general liability form (such policy or policies, collectively, the
27 "QS Insurance"). A certificate of insurance shall be delivered to FPL at least fifteen (15) calendar days
28 prior to the start of any interconnection work. At a minimum, the QS Insurance shall contain (a) an
29 endorsement providing coverage, including products liability/completed operations coverage for the Term
30 of this Contract, and (b) a broad form contractual liability endorsement covering liabilities (i) which
31 might arise under, or in the performance or nonperformance of, this Contract and the Interconnection
32 Agreement, or (ii) caused by operation of the Facility or any of the QS's equipment or by the QS's failure
33 to maintain the Facility or the QS's equipment in satisfactory and safe operating condition. Effective at
34 least fifteen (15) calendar days prior to the synchronization of the Facility with FPL's system, the QS
35 Insurance shall be amended to include coverage for interruption or curtailment of power supply in
36 accordance with industry standards. Without limiting the foregoing, the QS Insurance must be reasonably
37 acceptable to FPL. Any premium assessment or deductible shall be for the account of the QS and not
38 FPL.

39 16.2 Limits.

40 The QS Insurance shall have a minimum limit of [REDACTED] per occurrence,
41 combined single limit, for bodily injury (including death) or property damage.

42 16.3 Replacement Coverage.

43 In the event that such insurance becomes totally unavailable or procurement thereof becomes
44 commercially impracticable, such unavailability shall not constitute an Event of Default under Section

1 13.1(n) of this Contract, but FPL and the QS shall promptly enter into negotiations to develop substitute
2 protection substantially equivalent to that required by this Article 16 to the extent commercially
3 practicable.

4 16.4 Claims Made Insurance.

5 To the extent that the QS Insurance is on a "claims made" basis, the retroactive date of the
6 policy(ies) shall be the Effective Date of this Contract or such other date as may be agreed upon to protect
7 the interests of FPL and QS. Furthermore, to the extent the QS Insurance is on a "claims made" basis, the
8 QS's duty to provide insurance coverage shall survive the termination of this Contract until the expiration
9 of the maximum statutory period of limitations in the State of Florida for actions based in contract or in
10 tort. To the extent the QS Insurance is on an "occurrence" basis, such insurance shall be maintained in
11 effect at all times by the QS through the Term of this Contract.

12 16.5 Cancellation.

13 The QS Insurance shall provide that it may not be cancelled or materially altered without at least
14 thirty (30) calendar days' written notice to FPL. The QS shall provide FPL with a copy of any material
15 communication or notice related to the QS Insurance within ten (10) Business Days of the QS's receipt or
16 issuance thereof.

17 16.6 Party Status.

18 The QS shall be designated as the named insured and FPL shall be designated as an additional
19 named insured under the QS Insurance. The QS Insurance shall be endorsed to be primary to any
20 coverage maintained by FPL.

21 **17. Force Majeure**

22 17.1 Force Majeure Defined.

23 Force Majeure is defined as an event, condition or circumstance that is not within the reasonable
24 control of, or the result of the negligence or willful misconduct of the affected party, and which, by the
25 exercise of due diligence, the affected party is unable to overcome, avoid, or cause to be avoided. Such
26 events, conditions or circumstances may include, but are not limited to, acts of God, war, riot or
27 insurrection, terrorism, blockades, embargoes, sabotage, epidemics, explosions, hurricanes, earthquakes,
28 volcanoes, tornados, tidal surges, floods, strikes, lockouts or other labor disputes (not caused by the
29 failure of the affected party to comply with the terms of a collective bargaining agreement), or actions or
30 restraints by NAERC, FRCC, court order or Governmental Authority relating to safety, emergencies or
31 system reliability not due to or caused by the Party claiming Force Majeure. Force Majeure shall not
32 include (i) the QS's ability to sell or FPL's ability to purchase capacity and energy to another market at a
33 more advantageous price; (ii) equipment breakdown or inability to use equipment caused by defects in
34 design, engineering, manufacturing, construction, operation or maintenance of the Facility; (iii) a failure
35 of performance of any other entity, including any transportation provider, contractor, vendor, warehouse
36 operator, customer or entity providing electric transmission service to the QS, except to the extent that
37 such failure was caused by an event that would otherwise qualify as a Force Majeure event; (iv) failure of
38 the QS to timely apply for or use diligence to obtain permits; (v) failure to obtain deliveries of Fuel except
39 to the extent such failure was caused by an event that would otherwise qualify as a Force Majeure event
40 and (vi) a specific event that would otherwise qualify as a Force Majeure but that was reasonably
41 avoidable at the time of entering into this Contract.

1 17.2 Excused from Performance.

2 Except for payment obligations associated with performance prior to the pendency of the Force
3 Majeure, and as otherwise provided in this Contract, each Party shall be excused from performance of its
4 obligations, Conditions Precedent or cure rights when its nonperformance was caused by an event of
5 Force Majeure, but only for the duration of the Force Majeure event and no longer. The suspension of
6 performance shall be of no greater scope and of no greater duration than the cure for the Force Majeure
7 requires. A Party claiming Force Majeure shall not be entitled to any relief therefor unless and until
8 conforming notice is provided pursuant to Section 17.3.

9 17.3 Notice of Force Majeure.

10 In the event of any delay or nonperformance resulting from an event of Force Majeure, the party
11 claiming Force Majeure shall notify the other Party in writing within two (2) Business Days of the
12 occurrence of the event of Force Majeure, of the nature, cause, date of commencement thereof and the
13 anticipated extent of such delay, and shall indicate whether any deadlines or date(s), imposed hereunder
14 may be affected thereby. The Party claiming Force Majeure shall notify the other Party of the cessation of
15 the event of Force Majeure or of the conclusion of the affected Party's cure for the event of Force
16 Majeure, in either case within two (2) Business Days thereof. All notices shall be provided in accordance
17 with Section 19.5.

18 17.4 Force Majeure Cure.

19 The Party claiming Force Majeure shall use its commercially reasonable efforts to cure the
20 cause(s) preventing its performance of this Contract; provided, however, the settlement of strikes,
21 lockouts and other labor disputes shall be entirely within the discretion of the affected Party, and such
22 Party shall not be required to settle such strikes, lockouts or other labor disputes by acceding to demands
23 which such Party deems to be unfavorable.

24 17.5 Partial Operation.

25 At any time after the end of the Commissioning Period an event of Force Majeure occurs that
26 affects the QS such that the Facility can only partially operate, then the QS shall temporarily set the
27 Committed Capacity at the maximum capability that the Facility can reasonably be expected to operate.
28 For the avoidance of doubt, in the event that an event of Force Majeure affecting the QS occurs that
29 prevents the Facility from operating, the Committed Capacity shall be set at zero during such period of
30 time.

31 17.6 Cessation.

32 Upon the cessation of the event of Force Majeure affecting the QS or the conclusion of the cure
33 for the event of Force Majeure, the QS shall, consistent with Prudent Industry Practice, use commercially
34 reasonable efforts to restore the generating capability of the Facility to not less than the Minimum
35 Committed Capacity. Notwithstanding any other provision of this Contract, upon such cessation or cure,
36 FPL shall have the right within thirty (30) days thereafter to require a Committed Capacity Test be
37 performed within sixty (60) days after a written request therefor to demonstrate the Facility's compliance
38 with the requirements of this Section 17.6. Any Committed Capacity Test required by FPL under this
39 Section 17.6 shall be additional to any Committed Capacity Test under Section 6.6.

1 17.7 Payment Reduction.

2 During the occurrence of an event of Force Majeure affecting the QS and resulting in a reduction
3 in Committed Capacity, all Monthly Capacity Payments shall reflect, pro rata, the reduction in Committed
4 Capacity.

5 17.8 Termination.

6 This Contract may be terminated by the QS or FPL following a Force Majeure, a Condemnation
7 Event or a Material Casualty Event occurring after the Capacity Commencement Date if QS has not
8 repaired or rebuilt the Facility to at least the Minimum Committed Capacity within [REDACTED] of the
9 occurrence of such Force Majeure, Condemnation Event or Material Casualty Event. Termination of this
10 Contract pursuant to this Section 17.8 shall not be considered a termination due to an Event of Default or
11 require the payment of the FPL Termination Payment by FPL or the Performance Security under
12 Appendix 5.A by QS; provided, however, QS shall pay to FPL the Payment Security amount under
13 Appendix 5.B. Following such termination, both Parties will be released from any further liability under
14 this Contract.

15 17.9 Facility Reactivation.

16 The Parties agree that the Interconnection Agreement shall govern the allocation and
17 responsibility for payment of the costs necessary to reactivate the Facility and/or the interconnection with
18 FPL Transmission Provider's Transmission System if the same is (are) rendered inoperable or interrupted.

19 **18. Representations, Warranties, and Covenants**

20 18.1 Representations by Each Party.

21 Each Party represents and warrants that as of the Execution Date:

22 (a) Organization, Standing and Qualification.

23 It is a corporation/limited liability company (as applicable) duly organized and validly existing in
24 good standing under the laws of the state of its organization and has all necessary corporate/limited
25 liability company (as applicable) power and authority to carry on its business as presently conducted, to
26 own or hold under lease its properties and to enter into and perform its obligations under this Contract and
27 all other related documents and agreements to which it is or shall be a party. It is duly qualified or
28 licensed to do business in the State of Florida and in all other jurisdictions wherein the nature of its
29 business and operations or the character of the properties owned or leased by it makes such qualification
30 or licensing necessary and where the failure to be so qualified or licensed would impair its ability to
31 perform its obligations under this Contract or would result in a material liability to or would have a
32 material adverse effect on the other Party.

33 (b) Due Authorization, No Approvals, No Defaults, etc.

34 Each of the execution, delivery and performance by it of this Contract has been duly authorized
35 by all necessary action on the part of it, does not require any approval, except as has been heretofore
36 obtained, of the (shareholders, partners, or others, as applicable) of the Party or any consent of or
37 approval from any trustee, lessor or holder of any indebtedness or other obligation of the Party, except for
38 such as have been duly obtained, and does not contravene or constitute a default under any law, the
39 (articles of incorporation, bylaws, or other as applicable) of the Party, or any agreement, judgment,
40 injunction, order, decree or other instrument binding upon the Party, or subject the Facility or any
41 component part thereof to any lien other than as contemplated or permitted by this Contract. Subject to

1 the Conditions Precedent herein, this Contract constitutes its legal, valid and binding obligation,
2 enforceable against it in accordance with the terms hereof, except as such enforceability may be limited
3 by applicable bankruptcy laws from time to time in effect that affect creditors' rights generally or by
4 general principles of equity (regardless of whether such enforcement is considered in equity or at law).

5 (c) Compliance with Laws.

6 The Party has knowledge of all laws and business practices that must be followed in performing
7 its obligations under this Contract. The Party is in compliance with all laws, except to the extent that
8 failure to comply therewith would not, in the aggregate, have a material adverse effect on the Party or the
9 other Party.

10 (d) Governmental Authorizations.

11 Except with respect to Governmental Authorizations which are not required for the execution and
12 delivery of this Contract or performance of its obligations as of the Execution Date, neither the execution
13 and delivery by the Party of this Contract, nor the consummation by the Party of any of the transactions
14 contemplated thereby, requires the consent or approval of, the giving of notice to, the registration with,
15 the recording or filing of any document with, or the taking of any other action in respect of Governmental
16 Authority, except in respect of (i) permits which have already been obtained and are in full force and
17 effect, (ii) permits that are not yet required (and with respect to which the Party has no actual knowledge
18 of facts of circumstances which make it reasonable to believe that the same will not be readily obtainable
19 in the ordinary course of business upon due application therefor) or (iii) the Conditions Precedents,
20 including for FPSC Approval, as set forth in Sections 4.2 and 4.4(a).

21 (e) No Suits, Proceedings.

22 Except as relate to Governmental Authorizations which have not been obtained as of the
23 Execution Date, and except as otherwise disclosed in SEC filings by FPL, there are no actions, suits,
24 proceedings or investigations pending or, to the knowledge of the Party, threatened against it at law or in
25 equity before any court, arbitration panel or tribunal or other Governmental Authority in the United States
26 or any other jurisdiction which individually or in the aggregate could result in any materially adverse
27 effect on the Party's business, properties, or assets or its condition, financial or otherwise, or in any
28 impairment of its ability to perform its obligations under this Contract. The Party has no actual knowledge
29 of a violation or default with respect to any law which could result in any such materially adverse effect
30 or impairment. The Party is not in breach of, in default under, or in violation of, any Applicable Law, or
31 the provisions of any authorization, or in breach of, in default under, or in violation of, or in conflict with
32 any provision of any promissory note, indenture or any evidence of indebtedness or security therefor,
33 lease, contract, or other agreement by which it or its properties is bound, except for any such breaches,
34 defaults, violations or conflicts which, individually or in the aggregate, could not reasonably be expected
35 to have a material adverse effect on the business or financial condition of the Party or its ability to
36 perform its obligations hereunder.

37 18.2 QS represents and warrants that as of the Execution Date:

38 (a) Site.

39 To its actual knowledge, the QS knows of no (i) existing violations of any environmental laws
40 at the Site, including those governing hazardous materials or (ii) pending, ongoing, or unresolved
41 administrative or enforcement investigations, compliance orders, claims, demands, actions, or other
42 litigation brought by governmental authorities or other third parties alleging violations of any
43 environmental law or permit which would materially and adversely affect the construction or operation of
44 the Facility at the Site as contemplated by this Contract.

1 (b) Ownership and Sale of Renewable Energy Attributes.

2 The QS retains any and all rights to own, register, trade, convey, assign and to sell any and all
3 Environmental Attributes associated with the electric generation of the Facility, including any and all
4 Renewable Energy Credits, provided that FPL shall have a right of first refusal with respect to any and all
5 bona fide offers to purchase any RECs [REDACTED] and after FPL has not
6 accepted an offer pursuant to this Section 18.2(b) the QS shall [REDACTED]
7 [REDACTED]. FPL agrees to exercise such right of first refusal, if at all, [REDACTED] of
8 receiving written notification by the QS of a bona fide offer and to thereafter close the purchase and sale
9 of the RECs on or before the closing date set forth in such offer or, if no closing date is specified in the
10 offer, [REDACTED] after exercise of the right, provided the QS shall notify FPL promptly of such
11 bona fide offer. The QS further retains all rights to any and all Tax Credits, rights and benefits associated
12 with the Facility, the use of biomass as fuel and/or with the Energy produced by the Facility. The QS
13 shall have no obligation [REDACTED]
14 [REDACTED] in order to produce RECs or increase the production of RECs.

15 (c) Sources of Fuel and Power.

16 The sole source(s) of fuel or power to be used by the Facility to produce Energy for sale to FPL
17 during the Term of this Contract shall be such sources as are defined in and provided for pursuant to the
18 Renewable Energy Requirements. Fossil fuels, to the extent used in the operation of the Facility, must be
19 limited to the minimum quantities necessary for start-up, shut-down and for operating stability at
20 minimum load. The Facility must be capable of generating the Committed Capacity without the use of
21 fossil fuels.

22 (d) Renewable Energy Requirements.

23 The Facility will be designed and constructed to meet the Renewable Energy Requirements in
24 effect as of the Execution Date.

25 (e) Technology and Generator Capabilities.

26 The technology and generator capabilities information set forth in Appendix 1 and 2 is accurate
27 and complete and is fit for the purpose of submission to the FPSC with the petition of FPL for approval of
28 this Contract, subject to redaction of Confidential Information and changes that are approved by FPL in
29 its reasonable discretion. The QS reserves the right to make changes to the technology and generator
30 capabilities due to normal use, operation and maintenance and changes made to adder ss Force
31 Majeure events, Material Casualty Events, Condemnation Events, changes in law or other facts, changes,
32 events, circumstances or conditions beyond the reasonable control of the QS.

33 18.3 Project Viability.

34 The Parties acknowledge that prior to the Execution Date, the QS has provided Confidential
35 Information and documents requested by FPL relating to the Facility covered by this Contract. Such
36 Confidential Information and documentation was made available to FPL for information purposes and
37 solely to assist FPL in assessing the QS's financial and technical viability.

38 18.4 No Implied Warranties.

39 The Parties acknowledge and agree that except as expressly and specifically set forth in Sections
40 18.1 and 18.2 herein they make no other representations or warranties and they expressly disclaim any
41 other representation or warranty, express or implied, in respect of this Contract, including any
42 representation or warranty with respect to fitness for a particular purpose, merchantability, value,
43 usefulness or otherwise.

1 **19. General Provisions**

2 19.1 Permits.

3 Each Party hereby agrees to obtain and maintain any and all permits, certifications, licenses,
4 consents or approvals of any Governmental Authority which the Party is required to obtain as a
5 prerequisite to engaging in the activities specified in this Contract prior to the commencement of any such
6 activity.

7 19.2 Project Management.

8 (a) If requested by FPL within sixty (60) days of the Execution Date, the QS shall submit to
9 FPL its integrated project schedule for FPL's review within sixty (60) calendar days from
10 the receipt of such request, and a start-up and test schedule for the Facility at least sixty
11 (60) calendar days prior to start-up and testing of the Facility. These schedules shall
12 identify key licensing, permitting, construction and operating milestone dates and
13 activities. FPL shall provide comments, if any, to such documents within thirty (30) days
14 of receipt. If requested by FPL, the QS shall submit progress reports in a form
15 satisfactory to FPL every calendar quarter until one hundred twenty (120) days before the
16 projected Commissioning Commencement Date, and thereafter every calendar month,
17 and in addition shall notify FPL of any material changes in such schedules affecting the
18 commencement of commissioning of the Facility within ten (10) calendar days after such
19 changes are determined. FPL shall have the right during normal business hours upon
20 seven (7) days prior written notice to monitor the construction, start-up and testing of the
21 Facility, either on-Site or off-Site subject to applicable rules relating to safety, security,
22 confidentiality, indemnity and insurance. FPL's technical review and inspections of the
23 Facility and resulting requests to review documents and construction activities, if any,
24 shall not be construed as endorsing the design thereof or as any warranty as to the safety,
25 durability or reliability of the Facility. All such documents and information received by
26 FPL shall be Confidential Information.

27 (b) The QS shall provide FPL with the final designer's/maker's generator capability
28 curves, protective relay types, proposed protective relay settings, main one-line diagrams,
29 protective relay functional diagrams, and alternating current and direct current
30 elementary diagrams for review and inspection at FPL no later than one hundred eighty
31 (180) calendar days prior to the initial synchronization.

32 19.3 Assignment.

33 (a) Except as provided herein or as the result of a merger or acquisition where the surviving
34 entity is of equal or greater creditworthiness, a Party may not assign this Contract and the
35 obligations contained herein, without the other Party's prior written approval, which
36 approval may be withheld in the other Party's reasonable discretion. Notwithstanding any
37 provision of this Contract to the contrary, the QS may [REDACTED]
38 [REDACTED] assign, pledge and
39 grant a security interest in and to its rights and interests in, to and under this Contract in
40 favor of any Financing Parties.

41 (b) In the event that the QS transfers, pledges, encumbers or collaterally assigns this Contract
42 and its rights, interests and remedies hereunder to the Financing Parties, the QS shall
43 provide written notice to FPL of such transfer, pledge, encumbrance or assignment and

1 include therein the address of the Financing Parties. In connection with any financing or
2 refinancing of the Facility and upon reasonable requests therefor, FPL shall (i) execute
3 one or more estoppel certificates in respect of this Contract in a form reasonably
4 acceptable to FPL and to the Financing Parties or investors, (ii) cooperate with the QS in
5 the negotiation and execution of any reasonable amendment, supplement or addition to
6 this Contract reasonably required by the Financing Parties and (iii) [REDACTED]
7 [REDACTED] upon request by the QS.

- 8 (c) The execution of any Financing Documents and/or the Financing Parties' enforcement of
9 rights and remedies as granted, conferred or reserved in or contemplated [REDACTED]
10 [REDACTED] shall not constitute or be deemed a breach of any of the terms and
11 conditions hereof, a QS Event of Default, or an assumption by the Financing Parties
12 personally of the obligations of the QS under this Contract.

13 19.4 Disclaimer.

14 In executing this Contract, FPL does not, nor should it be construed, to extend its credit or
15 financial support for the benefit of the QS or third parties lending money to or having other transactions
16 with the QS or any assignee of this Contract. Nothing contained in this Contract shall be construed to
17 create an association, trust, partnership, or joint venture between the Parties or to authorize a Party to
18 obligate or bind the other Party.

19 19.5 Notification.

20 All formal notices (excluding day-to-day communication relating to administration and
21 performance of this Contract) relating to this Contract shall be deemed duly given when delivered in
22 person, or sent by registered or certified mail, or sent by recognized overnight delivery service, or sent by
23 fax if followed immediately with a copy sent by registered or certified mail, to the individuals designated
24 below) if received during business hours on a Business Day for the receiving Party, and, if received after
25 business hours or on a day that is not a Business Day for the receiving Party, on the receiving Party's first
26 Business Day following the date of delivery. The Parties designate the following individuals to be
27 notified or to whom payment shall be sent until such time as either Party furnishes the other Party written
28 instructions to contact another individual:
29

For the QS:

U.S. EcoGen Clay, LLC
1000 N. U.S. HWY 1, Suite 807
Jupiter, Florida 33477
Attn: William F. Quinn
Telephone: 561-744-7300
Facsimile: 561-744-7300

With a copy to:

Bryant Miller Olive
111 Riverside Avenue, Suite 200
Jacksonville, Florida 32202
Attn: Thomas B. Constantine, Esq.
Telephone: 904-384-1264
Facsimile: 904-388-2986

For FPL:

Florida Power & Light Company

700 Universe Boulevard
Juno Beach, Florida 33408
Attention: EMT Contracts Dept. [EMT/JB]
Contracts Manager/Coordinator
Telephone: 561-691-7886/7837
Facsimile: 561-625-7197

1 Contracts and related documents may be mailed to the address below or delivered during normal
2 business hours (8:00 a.m. to 4:45 p.m.) to the visitors' entrance at the address below:
3

4 700 Universe Boulevard
5 Juno Beach, Florida 33408
6 Attention: Contracts Manager
7 Energy Marketing & Trading

8 **19.6 Applicable Law.**

9 This Contract shall be construed in accordance with and governed by, and the rights of the Parties
10 shall be construed in accordance with, the laws of the State of Florida as to all matters, including matters
11 of validity, construction, effect, performance and remedies, without regard to conflict of law rules thereof.

12 **19.7 Disputes; Venue.**

13 (a) In the event that any dispute (including payment dispute), controversy or claim arising
14 out of or relating to this Contract or the breach, termination or validity hereof should arise
15 between the Parties (a "Dispute"), the Party wishing to declare a Dispute shall deliver to
16 the other Party a written notice identifying the disputed issue and its proposed resolution.

17 (b) Following delivery and receipt of a notice of Dispute, executives of both Parties shall
18 meet at a mutually acceptable time and place within ten (10) Business Days after receipt
19 of such notice and thereafter as often as they reasonably deem necessary, to exchange
20 relevant information and to attempt to resolve the Dispute ("Management
21 Reconciliation"). If the matter has not been resolved by Management Reconciliation
22 within thirty (30) days of the disputing Party's notice having been issued, or if the Parties
23 fail to meet within ten (10) Business Days as required above, either Party may commence
24 mediation or litigation pursuant to Section 19.7(d).

25 (c) All communication, offers and statements, whether oral or written, and documents and
26 other writings exchanged between the Parties in connection with the Management
27 Reconciliation shall be confidential and shall not be discoverable, admissible in evidence
28 or used or referred to in any subsequent binding adjudicatory process between the Parties;
29 provided, however, that evidence that is otherwise admissible or discoverable shall not be
30 rendered inadmissible or non-discoverable as a result of its use in such negotiations.

31 (d) If either Party elects to refer the dispute to mediation, it shall give notice of such election
32 to the other Party and the Parties will cooperate in selecting a qualified neutral mediator

1 and in scheduling the time and place of the mediation as soon as reasonably possible, but
2 in no event later than thirty (30) days after the notice referring the Dispute to mediation is
3 given. Any mediator shall have recognized expertise and not less than ten (10) years
4 experience in the subject matter of the Dispute and shall be neutral and independent and
5 have no prior connection with or financial or other interests in or against either Party.
6 Unless otherwise agreed, the mediation will be scheduled for a date not later than sixty
7 (60) days after the selection of the mediator. The Parties agree to participate in the
8 mediation in good faith and to share the costs of the mediation, including the mediator's
9 fee, equally, but such shared costs shall not include each Party's own attorneys' fees and
10 costs, which shall be borne solely by such Party. If the Dispute has not been resolved
11 pursuant to Management Reconciliation or through the mediation process within seventy-
12 five (75) days after the selection of the mediator, either Party may commence a lawsuit.

13 (e) The Parties hereby irrevocably submit to the exclusive jurisdiction of the United States
14 District Court for Palm Beach County, Florida or, in the event that jurisdiction for any
15 matter cannot be established in such United States District Court, in the state court for
16 Palm Beach County, Florida solely in respect of the interpretation and enforcement of the
17 provisions of this Contract and of the documents referred to in this Contract, and in
18 respect of the transactions contemplated hereby, and hereby waive, and agree not to
19 assert, as a defense in any action, suit or proceeding for the interpretation or enforcement
20 hereof or of any such document, that it is not subject thereto or that such action, suit or
21 proceeding may not be brought or is not maintainable in said courts or that the venue
22 thereof may not be appropriate or that this Contract or any such document may not be
23 enforced in or by such courts, and the Parties hereto irrevocably agree that all claims,
24 counterclaims and defenses with respect to such action or proceeding shall be heard and
25 determined in such court. The Parties hereby consent to and grant any such court
26 jurisdiction over the persons of such Parties solely for such purpose and over the subject
27 matter of such dispute and agree that mailing of process or other papers in connection
28 with any such action or proceeding in the manner provided in Section 19.5 hereof or in
29 such other manner as may be permitted by any Applicable Law shall be valid and
30 sufficient service thereof.

31 19.8 Further Assurances.

32 If, after the Execution Date, it should be necessary and proper to execute any additional
33 documents, to modify documents to be delivered hereunder or to take further action to effectuate the
34 intent and purpose of this Contract, each Party agrees to take such action and to execute and deliver any
35 such additional or modified documents upon the reasonable written request of the other Party.

36 19.9 Rate Recovery.

37 FPL and the QS shall use reasonable efforts to support this Contract and to cooperate mutually
38 and fully to obtain full recovery for FPL, from FPL's retail customers, of all payments made, due, or
39 owing to the QS under this Contract.

40 (a) Notwithstanding anything to the contrary in this Contract, if FPL, at any time during the
41 Term of this Contract, fails to obtain or is denied the authorization of the FPSC, or the
42 authorization of any other legislative, administrative, judicial or regulatory body which
43 now has, or in the future may have, jurisdiction over FPL's rates and charges, to recover
44 from its customers all of the payments required to be made to the QS under the terms of
45 this Contract or any subsequent amendment hereto, FPL may, at its sole option, adjust the

1 payments made under this Contract to the amount(s) which FPL is authorized to recover
2 from its customers. In the event that FPL so adjusts the payments to which the QS is
3 entitled under this Contract, then, the QS may, at its sole election, terminate this Contract
4 upon thirty (30) days' written notice to FPL. QS's sole and exclusive remedy against FPL
5 for termination of this Contract pursuant to this Section 19.9(a) shall be a return of any
6 Performance Security and Payment Security and receipt of any undisputed payments
7 recovered from FPL's retail customers prior to such termination. If such determination of
8 disallowance is ultimately reversed and such payments previously disallowed are found
9 to be recoverable, FPL shall pay all withheld payments, with interest at the rate which is
10 the lower of 10.5% per annum or as authorized by the FPSC and the QS shall have the
11 right, exercisable within ninety (90) days after any such reversal, to reinstate this
12 Contract if the Contract was terminated by the QS upon re-posting any Performance
13 Security and Payment Security. The QS acknowledges and agrees that any amounts
14 initially received by FPL from its retail customers, but for which recovery is subsequently
15 disallowed and charged back to FPL, may be offset or credited against subsequent
16 payments to be made by FPL to the QS under this Contract.

17 (b) If, at any time, FPL receives notice that the FPSC or any other legislative, administrative,
18 judicial or regulatory body seeks or will seek to prevent full recovery by FPL from its
19 customers of all payments required to be made under the terms of this Contract or any
20 subsequent amendment to this Contract, then FPL shall, within thirty (30) days of such
21 action, give written notice thereof to the QS. FPL shall use reasonable efforts to recover
22 from its retail customers any payments required to be made by FPL hereunder, and will
23 cooperate in any reasonable effort by the QS to intervene in any proceeding challenging,
24 or to otherwise be allowed to defend, the enforceability and validity of this Contract and
25 the right of FPL to recover from its retail customers all payments to be made by it
26 hereunder. Both FPL and the QS agree to use reasonable efforts to protect this Contract
27 and to ensure recovery by FPL from its retail customers the amount of all payments made
28 to the QS hereunder; such reasonable efforts include the duty of each party to appeal, so
29 long as there is a reasonable likelihood of success in such Party's informed opinion, to
30 any and all courts having jurisdiction, any FPSC or any other legislative, administrative,
31 judicial or regulatory body determination that prevents full recovery by FPL from its
32 customers of all payments required to be made under the terms of this Contract or any
33 subsequent amendment to this Contract.

34 (c) The Parties do not intend this Section 19.9 to grant any rights or remedies to any third
35 party(ies) or to any legislative, administrative, judicial or regulatory body; and this
36 Section 19.9 shall not operate to release any person, other than FPL as provided in
37 Section 19.9(b), from any claim or cause of action which the QS may have relating to, or
38 to preclude the QS from asserting, the validity or enforceability of any obligation
39 undertaken by FPL under this Contract.

40 (d) If, at any time, the QS provides notice pursuant to Section 14.1(b) of the amount of an
41 FPL Termination Payment to be made by FPL following an FPL Event of Default, then
42 FPL may elect by notice to the QS within thirty (30) days after such notice by the QS,
43 either to (i) immediately pay the present value of such FPL Termination Payment at a
44 discount rate based on FPL's weighted average cost of capital or (ii) pay such FPL
45 Termination Payment monthly over the remaining Term of the Contract as though such
46 Contract had not been terminated; provided, however, that if FPL does not make an
47 election timely, the FPL Termination Payment shall be due and owing immediately and
48 interest shall accrue thereon until paid in full.

1 19.10 Change in Environmental Law.

2 The Parties acknowledge that the enactment, adoption, promulgation, implementation, or issuance
3 of, or a new or changed interpretation of, any Applicable Law that specifically addresses environmental
4 or regulatory issues and that takes effect after the Execution Date (“Environmental Law Changes”) could
5 affect the cost of construction and/or operation of the Avoided Unit and agree that, if any such
6 Environmental Law Changes should affect the cost of construction and/or operation of the Avoided Unit,
7 the payments to the QS for Energy and the security to be provided by the QS hereunder shall be
8 recalculated and shall, subject to FPSC approval, be adjusted for the remaining Term based on the
9 recalculation of the full avoided costs of the Avoided Unit, including the additional costs to construct and
10 operate the Avoided Unit resulting from the Environmental Law Changes, if FPL had built and operated
11 the Avoided Unit; provided however that any increase in payments to the QS for Energy and the security
12 due to an increase in the cost of construction and/or operation of the Avoided Unit shall be subject to
13 FPSC approval of FPL’s right to recover such additional payments made to the QS from FPL’s
14 customers. FPL shall at the request of the QS use reasonable and diligent efforts to seek to recover from
15 its customers the amount of any increase in such costs, and the QS may intervene and shall cooperate
16 fully with FPL in any proceedings in which FPL seeks recovery of such additional payments from its
17 retail customers. Both FPL and the QS agree to use reasonable efforts to protect this Contract and to
18 ensure recovery by FPL from its retail customers the amount of all payments made to the QS hereunder,
19 including payments for the costs that Environmental Law Changes would have caused FPL to incur if
20 FPL had built the Avoided Unit. So long as there is a reasonable likelihood of success in such Party’s
21 informed opinion, the Parties’ reasonable efforts include the duty of both Parties to appeal, to any and all
22 courts having jurisdiction, any FPSC or any other legislative, administrative, judicial or regulatory body
23 determination that prevents full recovery by FPL from its customers of all payments, including any
24 increase in payments resulting from Environmental Law Changes, required to be made under the terms of
25 this Contract or any subsequent amendment to this Contract.

26 19.11 Severability.

27 If any part of this Contract, for any reason, is declared invalid, or is rendered unenforceable by a
28 public authority of appropriate jurisdiction, then such decision shall not affect the validity of the
29 remainder of the Contract, which remainder shall remain in force and effect as if this Contract had been
30 executed without the invalid or unenforceable portion and there shall be substituted for such invalid or
31 unenforceable portion a valid and enforceable provision that most closely approximates the intended
32 purpose and effect of the invalid or unenforceable portion; provided that if the material purpose and effect
33 of such portion cannot be determined and effectuated (such as Section 19.9 cost recovery from FPL’s
34 customers), this Contract shall be invalid.

35 19.12 Complete Agreement and Amendments.

36 All previous communications or agreements between the Parties, whether verbal or written, with
37 reference to the subject matter of this Contract are hereby abrogated. No amendment or modification to
38 this Contract shall be binding unless it shall be set forth in writing and duly executed by both Parties in
39 accordance with the requirements of this Contract [REDACTED] This Contract
40 constitutes the entire agreement between the Parties with respect to the subject matter hereof. The
41 headings of the articles, section and subsections of this Contract and any appendix or attachment hereto
42 are inserted for convenience only and shall not in any way affect the meaning or construction of any
43 provision of this Contract.

1 19.13 Successors and Assigns.

2 This Contract, as it may be amended from time to time in accordance with the requirements of
3 this Contract [REDACTED], shall be binding upon, and inure to the benefit of, the
4 Parties' respective successors-in-interest, permitted assigns and legal representatives.

5 19.14 Record Retention.

6 Each Party agrees to retain for a period of five (5) years all records relating to the performance of
7 its obligations hereunder, and to cause all Affiliates to retain for the same period all such records. This
8 obligation shall survive termination or expiration of this Contract.

9 19.15 No Waiver.

10 No waiver of any of the terms and conditions of this Contract shall be effective unless in writing
11 and signed by the Party against whom such waiver is sought to be enforced [REDACTED]
12 [REDACTED]. Any waiver of the terms hereof shall be effective only in
13 the specific instance and for the specific purpose given. The failure of a Party to insist, in any instance, on
14 the strict performance of any of the terms and conditions hereof shall not be construed as a waiver of such
15 Party's right in the future to insist on such strict performance.

16 19.16 Set-Off.

17 Either Party may at any time, but shall be under no obligation to, set off any and all sums due
18 from the other Party against sums due to the other Party hereunder.

19 19.17 Assistance With ASC 810.

- 20 (a) Compliance Accounting rules set forth in Financial Accounting Standards Codification
21 ASC 810, Consolidation ("ASC 810") as well as future amendments and interpretations
22 of those rules, may require FPL to evaluate whether the QS must be consolidated, as a
23 variable interest entity (as defined in ASC 810), in the financial statements of FPL. The
24 QS agrees to fully cooperate with FPL and make available to FPL all financial data and
25 other information, as deemed necessary by FPL, to perform that evaluation on a timely
26 basis at inception of this Contract and periodically as required by ASC 810. If the result
27 of an evaluation under ASC 810 indicates that the QS must be consolidated in the
28 financial statements of FPL, the QS agrees to provide financial statements, together with
29 other required information, as determined by FPL, for inclusion in disclosures contained
30 in the footnotes to the financial statements and in FPL's required filings with the
31 Securities and Exchange Commission ("SEC"). To the extent permissible by law, FPL
32 shall use reasonable efforts to include such financial statements and information of the
33 QS in disclosures and filings by FPL in a manner which does not reveal the source
34 thereof or otherwise attribute them to QS. The QS shall provide this information to FPL
35 in a timeframe consistent with FPL's earnings release and SEC filing schedules, to be
36 determined at FPL's discretion. The QS also agrees to fully cooperate with FPL and
37 FPL's independent auditors in completing an assessment of the QS's internal controls as
38 required by the Sarbanes-Oxley Act of 2002 and in performing any audit procedures
39 necessary for the independent auditors to issue their opinion on the consolidated financial
40 statements of FPL.

1 (b) Any information provided by QS to FPL pursuant to this Section 19.17 shall be
2 considered Confidential Information and shall be maintained confidential and disclosed
3 only as required by GAAP, accounting requirements, SEC rules and any Applicable
4 Laws. The information will only be used for financial statement purposes, to the extent
5 reasonable shall be aggregated with other information or otherwise presented in a format
6 not attributed to QS, and shall not be otherwise shared with internal or external parties.

7 19.18 Third Parties.

8 Other than as specified in the assignment provisions contained in Section 19.3, this Contract is
9 intended solely for the benefit of the Parties, Financing Parties and indemnitees and nothing in this
10 Contract shall be construed as creating any duty to, standard of care with reference to, or any liability to,
11 or conferring any cause or right of action on any other Person not a Party to this Contract. The Parties
12 acknowledge that the Financing Parties are third-party beneficiaries of this Contract. No undertaking by
13 one Party to the other hereunder shall constitute the dedication of that Party's facilities and systems or any
14 portion thereof to the other Party or the public, nor affect the status of FPL as a public utility company or
15 QS as an independent Person.

16 19.19 Survival.

17 The rights and obligations that are intended to survive termination, expiration, cancellation or
18 suspension of this Contract are all of those rights and obligations that this Contract expressly provides
19 shall survive any such event and those that arise from FPL's or QS's covenants, agreements,
20 representation and warranties applicable to, or to be performed, at or during any time prior to or as a
21 result of the termination of this Contract.

22 19.20 Confidentiality.

23 (a) For purposes of this Contract, "Confidential Information" means any written data or
24 information (or an oral communication if the Party requesting confidentiality for such
25 oral communication promptly confirms such communication in writing) that is
26 privileged, confidential or proprietary, and that is marked in a conspicuous manner
27 indicating that such data or information is confidential (or, in the case of an oral
28 communication, is accompanied or promptly followed by a written designation of
29 confidentiality), except information that is described in Sections 19.17 and 19.20(b).
30 Except as otherwise set forth in this Contract, neither Party shall publish, disclose, or
31 otherwise divulge Confidential Information to a third person (other than the Party's
32 employees, Affiliates, actual or potential Financing Parties, counsel, accountants or
33 advisors who have a need to know such information and have agreed to keep such terms
34 confidential), at any time [REDACTED]
35 [REDACTED], without the other Party's prior written consent. Each Party
36 shall be entitled to all remedies available at law or in equity (including specific
37 performance and/or injunctive relief) to enforce, or seek relief in connection with, this
38 confidentiality obligation.

39 [REDACTED] The following shall not be considered Confidential Information, and receiving Party shall
40 not be limited in the use or disclosure of the following information: (i) information which
41 is or becomes part of the public domain through no act or omission of receiving Party; (ii)
42 information which demonstrably was known or was in the possession of receiving Party
43 without obligation to maintain confidentiality prior to the Execution Date of this
44 Contract; (iii) information which is subsequently rightly received by receiving Party from

1 a third party who is not bound to maintain such information as confidential; (iv)
2 information independently developed by the receiving Party without reference to the
3 Confidential Information received under this Contract; and/or, (v) information required to
4 be disclosed by a Party for its compliance obligations to a Governmental Authority, the
5 FPSC, the FERC, NAERC, SEC and/or pursuant to Applicable Law (provided that the
6 disclosing Party shall, to the extent permissible, redact confidential, proprietary, pricing
7 or other trade secret information of the other Party). Further, notwithstanding anything to
8 the contrary, either Party may disclose to the public and third parties, at any time and
9 from time-to-time, the following information in connection with the Parties' respective
10 renewable energy business operations and management, technical evaluation,
11 educational, public relations, and promotional programs: [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]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]
29 [REDACTED]
30 [REDACTED]
31 [REDACTED]

- 32 (d) Notwithstanding the confidentiality requirements set forth herein, a Party may, subject to
33 the limitations set forth herein, disclose Confidential Information to comply with any
34 applicable requirement of Applicable Law, or any exchange, control area or independent
35 system operator rule, in response to a court order or in connection with any court,
36 arbitration, administrative or regulatory proceeding. Such disclosure shall not terminate
37 the obligations of confidentiality unless the Confidential Information thereafter falls
38 within one of the exclusions of this Contract. To the extent the disclosure of Confidential
39 Information is requested or compelled as set forth above, the receiving Party agrees to
40 give disclosing Party reasonable notice of any discovery request or order, subpoena, or
41 other legal process requiring disclosure of any Confidential Information, to the extent
42 such notice is not prohibited by Applicable Law. Such notice by the receiving Party shall
43 give disclosing Party an opportunity, at disclosing Party's discretion and sole cost, to
44 seek a protective order or similar relief. If such protective order or other appropriate
45 remedy is not sought and obtained [REDACTED]
46 [REDACTED], receiving Party shall disclose only that portion of the Confidential Information
47 that is required or necessary in the opinion of receiving Party's legal counsel and redact
48 portions thereof containing, setting forth or constituting information or data that, in the
49 opinion of receiving Party's legal counsel is not required to be disclosed; provided,

1 however, the receiving Party shall use reasonable efforts to obtain assurances that
2 confidential treatment will be accorded to any Confidential Information so disclosed.

3 19.21 Expenses.

4 Except as expressly provided for herein, all expenses incurred by or on behalf of each Party,
5 including all fees and expenses of agents, representatives, attorneys and accountants employed by the
6 Parties in connection with this Contract, including the preparation of this Contract, consummation of the
7 transactions contemplated by this Contract, and disputes relating to this Contract, shall be borne solely by
8 the Party who shall have incurred such expenses, and the other Party shall have no liability in respect
9 thereof.

10 19.22 Public Announcements.

11 The Parties agree that they may, from time to time, issue press and media releases regarding the
12 Facility and that they shall cooperate with each other in connection with the issuance of such releases
13 including completed review of press and media releases proposed to be issued by the other Party by [REDACTED]
14 [REDACTED] after submission by such other Party. Each Party agrees that it shall not
15 issue any press or media release regarding the Facility without the prior consent of the other; provided,
16 however, that either [REDACTED] communicate the existence of this
17 Contract, the identity of the other Party, and basic characteristics of the Facility without the prior approval
18 of the other Party.

19 19.23 Counterparts.

20 This Contract and any amendment hereto may be executed in one or more counterparts, including
21 in facsimile and electronic formats (including portable document format (.pdf)), each of which shall be
22 deemed an original, but all of which shall constitute one and the same instrument.
23

24 [Remainder of Page Intentionally Blank - Signature Page(s) Follow]
25

IN WITNESS WHEREOF, the QS and FPL executed this Agreement for the Purchase of Capacity and Energy effective the date set forth in the first paragraph hereof.

WITNESS

[Signature]
Name

[Signature]
Name

FLORIDA POWER & LIGHT COMPANY

By: [Signature]
Name: Sam Forrest
Its: Vice President
Date: December 14, 2012



WITNESS

[Signature]
Name

[Signature]
Name

U.S. ECOGEN CLAY, LLC

By: [Signature]
Name: William F. Quinn, P.E.
Its: President & CEO
Date: December 14, 2012

APPENDIX 1

TECHNOLOGY AND GENERATOR CAPABILITIES	
Location:	City: County: Clay
Generator Type (Induction or Synchronous)	Synchronous
Type of Facility	Biomass as defined in Section 25-17.210 (2) F.A.C.
Delivery Term	Thirty (30) years after Commissioning Commencement Date, with Capacity payment commencing after the end of the Commissioning Period

AVOIDED UNIT	
Avoided Unit	Combined Cycle Unit
Avoided Unit Capacity	1,327 MW
Avoided Unit Heat Rate (average annual)	6,607 BTU/kWh
Avoided Unit In-Service Date	June 1, 2025
Avoided Unit Variable O&M (annual escalation: 2.5%)	0.0858 cents/kWh
Avoided Unit Life	30 years
Minimum Performance Standards – On Peak Availability Factor*	94%
Minimum Performance Standards – Off Peak Availability Factor	94%

APPENDIX 2
FACILITY AND SITE DESCRIPTIONS

FACILITY DESCRIPTION:

The U.S. EcoGen Clay, LLC Biomass Electrical Generating Facility (“USEG Clay Facility”) will utilize proven conventional direct-fired biomass boiler and steam turbine technology in a “bottom cycle” configuration to [REDACTED]. Generally the USEG Clay Facility can be broken down into several discrete components. Such components include the Boiler Island, the Power Island, Electrical Interconnection Facilities and the Administrative Areas.

A fuel supply area [REDACTED] will contain all of the equipment and systems required to weigh, unload, prepare, store, and convey the Biomass fuel from the receiving area to the feeder hoppers, which meter the Biomass fuel into the boiler. The boiler island receives the Biomass fuel from the fuel supply area and converts a portion of the chemical energy contained in the Biomass fuel to thermal energy in the form of superheated high pressure steam. This conversion process involves the combustion of the Biomass fuel in a water-tube boiler. The products of combustion leave the boiler as cooled flue gas which is scrubbed [REDACTED] before leaving the emission stack into the atmosphere. The solid residue or ash left over from the combustion process will be used as a farm soil conditioner.

The power island receives the superheated, high pressure steam from the boiler and converts a portion of the thermal energy contained in the steam to electrical energy within the condensing/extraction steam turbine generator. Additional equipment in the power island includes the condenser, pumps, piping and associated controls. The electrical energy generated in the steam turbine is increased in voltage to FPL’s transmission line voltage by the main power transformer located within the switchyard. The switchyard, switchgear, conductors, breakers, meters, controls and transformers comprise the equipment within the electrical interconnection facilities.

The operators and plant management of the USEG Clay Facility are housed within the administrative area. This area includes the control room, laboratory, parts room, machine shop, administrative offices and guardhouse facilities.

The capacity of the USEG Clay Facility hereunder is to be as follows:

Design Committed Capacity	60 MW
Maximum Committed Capacity	[REDACTED]
Minimum Committed Capacity	[REDACTED]

FACILITY SITE DESCRIPTION: The USEG Clay Facility will be located in Clay County, Florida [REDACTED].

FUEL SUPPLY FACILITIES: QS seeks to implement, on a phased approach, a vertically integrated “Closed Loop” biomass fuel production and transportation program [REDACTED]. The Closed Loop fuel supply program is envisioned to include cultivating clean woody biomass, primarily fast growing species of non-invasive Eucalyptus, purposely grown on lands that are to be owned or leased by the QS or [REDACTED] for the Closed Loop supply of biomass fuel, on [REDACTED].

1 a dedicated basis to the USEG Clay Facility. QS also seeks to establish a state-of-the-art logistics and fuel
2 harvesting, transportation and inventory management infrastructure. The biomass fuel will likely be
3 harvested as round wood, transported via truck, rail or barge and stored at the USEG Clay Facility. The
4 round wood will likely be chipped, placed under covered storage and delivered to the boiler day bin, on a
5 rotational basis, via a material handling system. Bottom ash from the combustion process is planned to be
6 returned to the growing fields and used as an organic soil conditioner.

APPENDIX 3
MONTHLY CAPACITY PAYMENT CALCULATION

1. Monthly Capacity Payments (MCP) for each Monthly Billing Period after the end of the Commissioning Period shall be computed according to the following:

A. In the event that the Annual Capacity Billing Factor (“ACBF”), as defined below, is less than 70%, then no Monthly Capacity Payment shall be due. That is:

$$\text{MCP} = 0$$

B. In the event that the ACBF is equal to or greater than 70% but less than 90%, then the Monthly Capacity Payment shall be calculated by using the following formula:

$$\text{MCP} = \text{BCP} \times [0.05 \times (\text{ACBF} - 70)] \times \text{CC}$$

C. In the event that the ACBF is equal to or greater than 90%, then the Monthly Capacity Payment shall be calculated by using the following formula:

$$\text{MCP} = \text{BCP} \times \text{CC}$$

Where:

MCP Monthly Capacity Payment in dollars.

BCP Base Capacity Payment in \$/KW/Monthly as specified in Appendix 4

CC Committed Capacity in KW.

ACBF Annual Capacity Billing Factor. This factor is calculated using the 12 months rolling average of the Monthly Capacity Factor. This 12 month rolling average shall be defined as the sum of the 12 consecutive Monthly Capacity Factors preceding the date of calculation, divided by 12. During the first 12 consecutive Monthly Billing Periods, commencing with the first Monthly Billing Period in which Capacity payments are to be made, the calculation of the Annual Capacity Billing Factor shall be performed as follows: (a) during the first Monthly Billing Period, the Annual Capacity Billing Factor shall be equal to the Monthly Capacity Factor; (b) thereafter, the calculation of the Annual Capacity Billing Factor shall be computed by dividing the sum of the Monthly Capacity Factors during the first year's Monthly Billing Periods in which Capacity payments are to be made by the number of Monthly Billing Periods which have elapsed. This calculation shall be performed at the end of each Monthly Billing Period until enough Monthly Billing Periods have elapsed to calculate a true 12-month rolling average Annual Capacity Billing Factor. Periods during which the Facility has temporarily set its Committed Capacity equal to 0 KW due to a Force Majeure event shall be excluded from the applicable capacity factor calculation.

MCF Monthly Capacity Factor. The quotient of the number of hours that the Facility was capable of delivering Energy (or the QS delivered replacement Energy) in the Monthly Billing Period divided by the number of hours in the Monthly

Billing Period.

**Monthly
Billing
Period**

The period beginning on the first calendar day of each calendar month, except that the initial Monthly Billing Period shall consist of the period beginning 12:01 a.m. on the day after the end of the Commissioning Period and ending with the last calendar day of such month.

APPENDIX 4
RATES

1
2
3
4 A. Capacity Payment Rate. Notwithstanding the cost of any Avoided Unit for any
5 period during the Term, the Capacity Payment rate to be paid by FPL to QS in respect of the Committed
6 Capacity under this Contract during the first Contract Year immediately after the Commissioning Period
7 and each Contract Year through the end of the Term shall be [REDACTED].
8

9 B. Energy Rate. The Energy Rate shall be calculated as [REDACTED] times 1 plus
10 the ratio of the CPI-W Index for Urban Wage Earners and Clerical Workers in Miami, FL as published by
11 The Bureau of Labor Statistics (BLS) to that same index for [REDACTED] plus [REDACTED] times 1 plus
12 the ratio of gas prices published in Platts Inside FERC Gas Market Report, first of the month posting for
13 Florida Gas Transmission Zone 3, plus all charges that FGT may apply including all surcharges and
14 percentages that are in effect from time to time for service under Gulfstream Natural Gas to the same gas
15 price index in [REDACTED] plus the \$/MWh charge computed in accordance with Section 19.10 relating
16 to an Environmental Law Change.
17

18 C. Energy Performance Bonus Rate. The Energy performance bonus rate shall be
19 paid for Energy produced during the Commissioning Period and is based on the monthly production of
20 Energy at the Facility, which amount will include Energy that FPL does not take for reasons other than
21 the existence of an Emergency Condition. The amount of this bonus payment shall be calculated as the
22 product of (i) [REDACTED], (ii) the monthly production in MWh and (iii) [REDACTED]. The performance bonus
23 shall be capped at [REDACTED] per month, and shall never be less than [REDACTED].
24

APPENDIX 5
 QS's Performance Security and Payment Security

QS shall provide the following security in the amounts and by the dates specified herein. QS shall have the right to provide performance security and payments security in the form of (i) cash or (ii) an irrevocable stand-by Letter of Credit issued in favor of FPL by a bank acceptable to FPL in its reasonable discretion. If the QS elects to exercise the right to terminate this Contract in the event of a FPL Event of Default, the QS may demand return and cancellation of any Cash Collateral (as defined below) or Letter(s) of Credit provided as security to or for the benefit of FPL, and FPL shall immediately return or cause to be returned any such security upon demand by the QS.

A. Performance Security

QS shall provide the following Performance Security by the dates and in the amounts specified in the table below. QS shall have the right to elect to provide performance security in the form of (i) cash to be provided by the QS prior to Financial Closing ("Cash Collateral") in order to secure its obligations relating to the QS Conditions Precedent to be satisfied by it prior to the Effective Date and (ii) a Letter of Credit issued in favor of FPL to be provided after the Effective Date to secure its obligation to achieve Capacity Delivery Status.

Credit Class	\$/MW *	\$/MW **	\$/MW**
S&P Credit Rating	30 Days after FPSC Approval Date Until Financial Closing/Effective Date	Earlier of Financial Closing and the first day of the calendar month following thirty-four (34) months after the FPSC Approval Date – Year 5 After Capacity Delivery Date	Years 6 – Termination Date
A- and Above			
BBB+ to BBB			
BBB-			
Below BBB-			

*Based on the Design Committed Capacity

**Based on the Design Committed Capacity until the Commissioning Commencement Date, after which based on the actual Committed Capacity

B. Payment Security

The Parties acknowledge and agree as of the Execution Date and on the basis of the Required Commissioning Commencement Date and assumptions set forth in this Appendix 5 that the amounts to be paid for Committed Capacity and Energy by FPL to the QS are above the costs of capacity and energy of the Avoided Unit (the "Avoided Cost") in the early years of the Contract, and thereafter the costs of Committed Capacity and Energy from the Facility are below the Avoided Cost, and that over the thirty (30) year period from the Commissioning Commencement Date through the end of the Term of the Contract, the amounts to be paid by FPL to the QS under this Contract for Committed Capacity and Energy provides savings for the customers of FPL relative to the cost of capacity and energy of the Avoided Unit. The payment in the form of cash or Letter(s) of Credit to be provided by the QS under this

1 Appendix 5, B. ("Payment Security"), is intended to make the customers of FPL whole if payments by
2 FPL to the QS for Committed Capacity and Energy are in an amount greater than the Avoided Cost as of
3 the Early Termination Date if the Contract is terminated by FPL as a result of a QS Event of Default after
4 the Commissioning Commencement Date.
5

6 Commencing the calendar year prior to the year in which the Commissioning Period is scheduled
7 to start, by December 1 of each year and on the basis of a computation made in accordance with this
8 Appendix 5, B., for as long as the amount paid for Committed Capacity and Energy exceed the Avoided
9 Cost, FPL shall provide the QS with a statement of the amount of the required Payment Security for the
10 coming calendar year. The amount of the Payment Security to be provided by the QS under this Appendix
11 5, B., shall be calculated as follows:
12

13 1. Payment Security for the coming calendar year shall be the larger of zero and the sum of
14 the following two components:

15 a. ██████████ multiplied by the forecasted amount to be paid by FPL for Committed Capacity
16 and Energy hereunder above the Avoided Cost for the coming year; and
17

18 b. ██████████ multiplied by the sum of the current year's Payment Security less the forecasted
19 amount to be paid by FPL for Committed Capacity and Energy above Avoided Cost for the current year
20 plus the actual amount paid in the current year to the QS for Committed Capacity and Energy minus the
21 actual Avoided Cost for the current year.
22

23 2. The forecasted Avoided Cost for the coming calendar year shall be based upon annual fuel
24 cost forecasts filed by FPL with the FPSC in accordance with Applicable Laws and an assumed Capacity
25 Factor of ninety percent (90%). Prior to the Avoided Unit In-Service Date, the cost of capacity of the
26 Avoided Unit shall be zero, and after the Avoided Unit In Service Date it shall be the Avoided Costs
27 associated with the Avoided Unit
28

29 3. FPL shall provide the QS with indicative information relating to fuel price, the
30 computation of the Avoided Cost for the coming year and the amount of required Payment Security no
31 later than September 15 of each year and thereafter provide the QS with the definitive fuel price and
32 amount of required Payment Security not later than November 15 of the same year. The QS shall provide
33 the Payment Security in the required amount no later than December 31 of each year in respect of the next
34 calendar year.
35
36

APPENDIX 6

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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APPENDIX 7

FORM OF LETTER OF CREDIT

[ISSUING BANK NAME]
IRREVOCABLE NONTRANSFERABLE STANDBY
LETTER OF CREDIT NO. { }

DATE: _____

BENEFICIARY:

[_____
[_____
[_____
[_____]

APPLICANT:

[_____
[_____
[_____
[_____]

INITIAL AMOUNT: USD \$ _____
DATE OF EXPIRY: On the Expiration Date (as hereinafter defined)
PLACE OF EXPIRY: At our Counters

We hereby issue in your favor our Irrevocable Nontransferable Standby Letter of Credit No.(_____) dated ____ (this "Letter of Credit") for the account of [_____] (the "Applicant"), in the aggregate stated amount of not to exceed _____ AND _____/100 US DOLLARS (US\$_____) (as the same may be reduced from time to time as a result of draws made pursuant to the provisions of this Letter of Credit, the "Available Amount"), effective immediately and expiring at 5:00 p.m., New York, New York, time, on the Expiration Date (as hereinafter defined) at our counters at [_____].

This Letter of Credit shall be of no further force or effect upon the close of business on _____(or, if such day is not a Business Day (as hereinafter defined), on the next preceding Business Day); provided, however, that this Letter of Credit will be automatically extended without amendment for successive one (1) year periods from the present or any future expiration date hereof, unless we provide you with written notice of our election not to renew this Letter of Credit at least forty-five (45) days prior to any such expiration date (the present or any future expiration date as aforesaid is referred to herein as the "Expiration Date"). For the purposes hereof, "Business Day" shall mean any day on which commercial banks are not authorized or required to close in Miami, Florida.

Subject to the terms and conditions herein, funds under this Letter of Credit are available to you by presentation in strict compliance on or prior to 5:00 p.m., New York, New York, time, on or prior to the Expiration Date at our counters of:

- (1) the original of this Letter of Credit and all amendments; and
- (2) your sight draft drawn on us; and
- (3) either:
 - (i) Beneficiary's Certificate issued in the form below attached hereto and which

forms an integral part hereof, duly completed and purportedly bearing the original signature of an officer of the Beneficiary; or

(ii) Beneficiary's Certificate issued in the form below attached hereto and which forms an integral part hereof, duly completed and purportedly bearing the original signature of an officer of the Beneficiary.

Drafts drawn under this Letter of Credit must contain the clause: "Drawn under [Issuing Bank Name] Irrevocable Nontransferable Standby Letter of Credit No. { }, dated _____."

Multiple draws are permitted under this Letter of Credit; provided that the Available Amount of this Letter of Credit shall be permanently reduced by the amount of each such draw.

This Letter of Credit may not be transferred or any of the rights hereunder assigned. Any purported transfer or assignment shall be void and of no force or effect.

This Letter of Credit sets forth in full our undertaking and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any documents, instruments or agreements referred to herein, except only the annexes referred to herein; and any such reference shall not be deemed to incorporate by reference any document, instrument or agreement except for such annexes.

We engage with you that your drafts drawn under and in strict compliance with the terms of this Letter of Credit will be duly honored if presented to us on or before the Expiration Date.

This Letter of Credit shall be governed by the Uniform Customs and Practice for Documentary Credits, 1993 Revision, International Chamber of Commerce Publication No. 500 as in effect on the date of issuance thereof (the "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 13(b) and 17 of the UCP, in which case the terms of this Letter of Credit shall govern. As to matters not covered by the UCP, this Letter of Credit shall be governed by and construed in accordance with the laws of the State of New York, without regard to the principles of conflicts of laws thereunder.

[ISSUING BANK NAME]

By _____
Authorized Signature

Address: [_____] [_____] [_____]

TO [Issuing Bank Name]
IRREVOCABLE NONTRANSFERABLE STANDBY LETTER OF CREDIT NO. { }

[Issuing Bank Name]
[_____
[_____
[_____]

Date: _____, _____

Ladies and Gentlemen:

The undersigned _____, the duly elected and acting _____ of Florida Power & Light Company (the "Beneficiary"), hereby certifies to [Issuing Bank Name] (the "Bank") and [_____] (the "Applicant"), with reference to Irrevocable Nontransferable Standby Letter of Credit No. {_____, _____} (the "Letter of Credit"), issued by the Bank in favor of the Beneficiary, as follows as of the date hereof:

1. The Beneficiary is a party to Agreement for Purchase of Capacity of Energy, by and between Beneficiary and Applicant (as amended from time to time, the "Agreement").
2. The Beneficiary is entitled to draw under the Letter of Credit an amount equal to \$_____ pursuant to the terms and conditions of the Contract, including without limitation as a result of any one of the following circumstances or events: (a) Applicant has failed to renew or replace the Letter of Credit at least thirty (30) calendar days prior to the stated expiration of the Letter of Credit, (b) within the applicable period of grace Applicant has failed to provide Beneficiary with a Letter of Credit or additional security as required pursuant to the provisions of the Contract, (c) an Event of Default by Applicant has occurred and is continuing or (d) Company otherwise has the right to draw upon any Letter of Credit or other security provided by Customer pursuant to the terms of the Contract.
3. Based upon the foregoing, the Beneficiary hereby makes demand under the Letter of Credit for payment of U.S. DOLLARS ____AND ____/100ths (U.S.\$ _____), which amount does not exceed the lesser of (i) the amount set forth in paragraph 2, above, and (ii) the Available Amount under the Letter of Credit as of the date hereof.
4. The undersigned has concurrently presented to you its sight draft drawn in the amount specified in Paragraph 3 above. The date of the sight draft is the date hereof, which is not later than the Expiration Date.
5. Funds paid pursuant to the provisions of the Letter of Credit shall be wire transferred to the Beneficiary in accordance with the following instructions:

Unless otherwise provided herein, capitalized terms which are used and not defined herein shall have the meaning given each such term in the Letter of Credit.

IN WITNESS WHEREOF, this Certificate has been duly executed and delivered on behalf of the Beneficiary by its duly elected and acting _____ as of this _____ day of _____, _____.

Beneficiary: [_____]

By
Name:
Title:

TO [Issuing Bank Name]
IRREVOCABLE NONTRANSFERABLE STANDBY LETTER OF CREDIT NO. { }

[Issuing Bank Name]
[_____
[_____
[_____]

Date: _____, _____

Ladies and Gentlemen:

The undersigned _____, the duly elected and acting _____ of Florida Power & Light Company (the "Beneficiary"), hereby certifies to [Issuing Bank Name] (the "Bank"), and [_____] (the "Applicant"), with reference to Irrevocable Nontransferable Standby Letter of Credit No. {_____, dated _____, _____ (the "Letter of Credit"), issued by the Bank in favor of the Beneficiary, as follows as of the date hereof:

1. The Beneficiary is a party to that certain Agreement for Purchase and Sale of Capacity and Energy by and between Beneficiary and Applicant (as amended from time to time, the "Agreement").
2. The Bank has heretofore provided written notice to the Beneficiary of the Bank's intent not to renew the Letter of Credit prior to the present Expiration Date thereof and the Applicant has failed to provide the Beneficiary with a substitute letter of credit substantially in the same form as the Letter of Credit referred to in this paragraph.
or
3. The Beneficiary has provided at least thirty (30) calendar days' prior written notice to the Applicant of the Bank's intent not to renew the Letter of Credit prior to the present Expiration Date thereof and the Applicant has failed to provide the Beneficiary with a substitute letter of credit substantially in the same form as the Letter of Credit within the thirty (30) calendar day period referred to in this paragraph.
4. Based upon either 2 or 3, above, the Beneficiary hereby makes demand under the Letter of Credit for payment of U.S. DOLLARS _____ & ___/100ths (U.S. \$___), which amount does not exceed the lesser of (i) the amount Beneficiary is entitled to draw under the terms of the Contract and (ii) the Available Amount under the Letter of Credit as of the date hereof.
5. The undersigned has concurrently presented to you its sight draft drawn in the amount specified in Paragraph 4, above, which amount does not exceed the lesser of (a) the amount the Beneficiary is entitled to draw pursuant to the provisions of the Contract, and (b) the Available Amount as of the date hereof. The date of the sight draft is the date of this Certificate, which is not later than the Expiration Date.
6. Funds paid pursuant to the provisions of the Letter of Credit shall be wire transferred to the Beneficiary in accordance with the following instructions:

Unless otherwise provided herein, capitalized terms which are used and not defined herein shall have the meaning given each such term in the Letter of Credit.

IN WITNESS WHEREOF, this Certificate has been duly executed and delivered on behalf of the Beneficiary by its duly elected and acting _____ as of this ____ day of ____.

Beneficiary: [_____]

By
Name:
Title:

APPENDIX C

U.S. EcoGen Martin, LLC Contract

REDACTED

**AGREEMENT FOR THE PURCHASE OF
CAPACITY
AND ENERGY**

between

U.S. ECOGEN MARTIN, LLC

and

FLORIDA POWER & LIGHT COMPANY


Dated: December 18, 2012

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1
2 **AGREEMENT FOR THE PURCHASE OF**
3 **CAPACITY AND ENERGY**
4

5 THIS CONTRACT is made and entered this ____ day of November, 2012 (the “Execution
6 Date”), by and between U.S. EcoGen Martin, LLC (hereinafter “Qualified Seller” or “QS”), a limited
7 liability company organized and existing under the laws of the State of Delaware and developer of a
8 Qualifying Facility, and Florida Power & Light Company in its capacity as a wholesale energy purchaser
9 and retail electric distributor (hereinafter “FPL”), a public utility corporation organized and existing under
10 the laws of the State of Florida. The QS and FPL are each a “Party” and shall be jointly identified herein
11 as the “Parties”.

12
13 **WITNESSETH:**
14

15 **WHEREAS**, the QS desires to sell, and FPL desires to purchase, firm capacity and energy to be
16 generated at a facility (as described in Appendices 1 and 2, the “Facility”) to be developed by the QS
17 consistent with the terms of this Contract, Section 366.91, Florida Statutes, and/or Florida Public Service
18 Commission (“FPSC”) Rules 25-17.082 through 25-17.091, F.A.C. and FPSC Rules 25-17.200 through
19 25.17.310, F.A.C.;

20
21 **WHEREAS**, the QS will enter into an interconnection agreement (the “Interconnection
22 Agreement”) with Florida Power & Light Company in its separate capacity as a transmission provider
23 (“FPL Transmission Provider”);
24

25 **WHEREAS**, the Facility, when completed, will be a Qualifying Facility (as defined herein)
26 capable of delivering firm capacity and energy to FPL for the term of this Contract in a manner consistent
27 with the provisions of this Contract;
28

29 **WHEREAS**, Section 366.91(3), Florida Statutes, provides that the “[p]rudent and reasonable
30 costs associated with a renewable energy contract shall be recovered from the ratepayers of the
31 contracting utility, without differentiating among customer classes, through the appropriate cost-recovery
32 clause mechanism” administered by the FPSC; and
33

34 **WHEREAS**, each public utility in the State of Florida has an obligation to continuously offer a
35 purchase contract to producers of renewable energy for the benefit of the ratepayers, and as such, the
36 ratepayers bear the risks associated with the contract, not the shareholders of the public utility, provided
37 that the public utility has acted in a prudent and reasonable manner.
38

39 **NOW, THEREFORE**, for mutual consideration and intending to be bound hereby, the Parties
40 agree as follows:

41 **1. Defined Terms**

42 **1.1 Definitions.**

43 The following capitalized terms shall have meaning assigned to them unless the context clearly
44 requires otherwise:

45
46 **“Affiliate”** means with respect to any Person, any other Person that directly or indirectly, through
47 one or more intermediaries, controls, is controlled by, or is under common control with, such Person.
48

1 “Annual Capacity Billing Factor” or “ACBF” has the meaning set forth in Appendix 3.

2
3 “Annual Capacity Factor” means the sum of the twelve (12) consecutive Monthly Capacity
4 Factors, including the month to be calculated, divided by twelve (12).

5
6 “Applicable Law” means any and all applicable provisions of any constitution, statute, law,
7 ordinance, code, rule, regulation, decision, order, decree, judgment, release, license, condition, standard
8 and/or objective criteria applicable to this Contract or to any Party’s obligations, performance, or rights
9 under this Contract and/or contained in any Governmental Authorization applicable hereto.

10
11 “As-Available Avoided Energy Costs” means costs computed pursuant to FPSC Rule 25-
12 17.825(2) set forth in FPSC Order No. 12443, issued September 2, 1983, as it may subsequently be
13 amended from time to time, or any successor or substitute calculation, formula or methodology relating
14 thereto approved by the FPSC. FPL’s Northeast South operating area shall be the designated avoided cost
15 pricing area for purposes of this Contract.

16
17 “Avoided Unit” means the electrical generating unit described in Appendix 1.

18
19 “Avoided Unit In-Service Date” has the meaning set forth in Appendix 1.

20
21 “Base Production” means the quantity of Energy produced by the Facility operating at the design
22 Committed Capacity with a capacity factor of 90%.

23
24 “Biomass” means any fuel sources that meet the requirements of the definition of “Biomass” set
25 forth in Section 366.91(2)(a), Florida Statutes.

26
27 “Business Day” means any day except a day on which banks licensed to operate in the State of
28 Florida are authorized, directed or permitted to close, Saturday, Sunday or a weekday that is observed as a
29 public holiday in the State of Florida. Notwithstanding the foregoing, with respect to notices only, a
30 Business Day shall not include the Friday immediately following the U.S. Thanksgiving holiday.

31
32 “Capacity” means the amount of electric power in megawatts that the Facility is capable of
33 generating and delivering to FPL’s system.

34
35 “Capacity Delivery Status” means that (a) the Facility is in material compliance with all
36 applicable Governmental Authorizations and (b) the Facility has maintained an hourly MW output, as
37 metered at the Delivery Point, equal to or greater than the Minimum Committed Capacity over the
38 Committed Capacity Test Period.

39
40 “Capacity Payment” means the payment by FPL to QS hereunder for Committed Capacity as
41 calculated in accordance with and at the rate set forth in Appendices 3 and 4.

42
43 “Cash Collateral” has the meaning set forth in Appendix 5.

44
45 “COG Tariff” means the tariff schedule , including FPL’s tariff schedule, for purchase of as-
46 available energy from qualifying cogeneration and small power production facilities on file with the
47 FPSC at the Effective Date of this Contract and as may be amended and approved by the FPSC from time
48 to time.

49
50 “Commissioning Commencement Date” has the meaning set forth in Section 6.4.

1 “Commissioning Period” means the two (2) year period commencing on the Commissioning
2 Commencement Date.

3
4 “Committed Capacity” means the maximum Capacity in any one hour which QS contractually
5 commits to sell to FPL and FPL contractually commits to purchase from QS pursuant to the terms of this
6 Contract.

7
8 “Committed Capacity Test” has the meaning set forth in Section 6.2.

9
10 “Committed Capacity Test Period” has the meaning set forth in Section 7.2.

11
12 “Condemnation Event” means the actual or threatened exercise by any Governmental Authority
13 of the power of eminent domain, condemnation, or other right, power, or authority to acquire or use
14 property which results in the taking ownership of or control over all or any material portion of the Site
15 and/or the Facility.

16
17 “Conditions Precedent” means the FPL Conditions Precedent and the QS Conditions Precedent.

18
19 “Confidential Information” has the meaning set forth in Section 19.20(a).

20
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]

25 “Contract” means this “Agreement for the Purchase of Capacity and Energy” and the appendices
26 and attachments hereto, as it may be amended from time to time in accordance with the terms hereof.

27
28 “Contract Year” means the twelve (12) consecutive calendar months starting on the first day of
29 the calendar month following the Commissioning Commencement Date and each subsequent twelve (12)
30 consecutive calendar month period through the end of the Term; provided that the first Contract Year
31 shall include the days in the prior month in which the Commissioning Commencement Date occurred.

32
33 “Credit Rating” means with respect to any entity, on any date of determination, the respective
34 ratings then assigned to such entity’s unsecured, senior long-term debt or deposit obligations (not
35 supported by third party credit enhancement) by S&P, Moody’s or other specified rating agency or
36 agencies or if such entity does not have a rating for its unsecured, senior long-term debt or deposit
37 obligations, then the rating assigned to such entity as its “corporate credit rating” by S&P.

38
39 “Defaulting Party” has the meaning set forth in Section 14.1.

40
41 “Default Rate” means, for any date, the lesser of (a) FPL’s senior secured debt rate; and, (b) the
42 maximum rate permitted by applicable law.

43
44 “Delivery Point” means the point of interconnection between the Facility and FPL Transmission
45 Provider’s Transmission System, as specifically described in the Interconnection Agreement.

46
47 “Demonstration Period” has the meaning set forth in Section 7.1.

48
49 “Design Committed Capacity” means the design Capacity of the Facility as of the Execution
50 Date, as set forth in Appendix 2.

1 “Dispute” has the meaning set forth in Section 19.7(a).

2
3 “Drop Dead Date” means the later of [REDACTED] and (ii) the first day of the calendar
4 month following [REDACTED] months after the FPSC Approval Date, as each of such dates shall be
5 extended for an event of Force Majeure.

6
7 “Early Termination Date” means in respect of an Event of Default hereunder, a day designated by
8 a Non-Defaulting Party (by providing written notice to the Defaulting Party), which day shall be within
9 ninety (90) days after the occurrence of an Event(s) of Default by the Defaulting Party, no earlier than the
10 day such notice is effective and be no later than twenty (20) days after the delivery of such notice to the
11 Defaulting Party, as the date that this Contract terminates early and all amounts owing between the Parties
12 are accelerated and this Contract is liquidated and terminated.

13
14 “Eastern Prevailing Time” or “EPT” means the time in effect in the Eastern Time Zone of the
15 United States of America, whether Eastern Standard Time or Eastern Daylight Savings Time.

16
17 “Effective Date” has the meaning set forth in Section 4.6.

18
19 “Electrical Interconnection Facilities” means the interconnection facilities that physically connect
20 the Facility with the Transmission System, as well as any required network upgrades thereto.

21
22 “Emergency Condition” means a condition or situation that presents an imminent physical threat
23 of danger to life, health or property, and/or could reasonably be expected in the opinion of the
24 Transmission Provider to cause a significant disruption to the Transmission System or otherwise be
25 required in accordance with the requirements of the FPSC, NAERC or other regulatory entity of
26 competent jurisdiction or any system condition not consistent with Prudent Industry Practices.

27
28 “Emission Reduction Credits” means any offset, allowance, or credit of any kind created or
29 administered under any current or future voluntary standard, statutory and/or regulatory regime,
30 associated with (a) the underlying Fuel used for the generation of electricity and pursuant to which the
31 generation of electricity using the Fuel is recognized as avoiding the emissions of pollutants to the air,
32 soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other
33 pollutants; and (b) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide,
34 hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs), ozone
35 depleting substances, ozone, and non-methane volatile organic compounds that have been or may be
36 determined by the United Nations Intergovernmental Panel on Climate Change, by law, or otherwise by
37 science or in the voluntary markets to contribute to the actual or potential threat of altering the Earth’s
38 climate by trapping heat in the atmosphere. Emission Reduction Credits shall exclude (i) any energy or
39 capacity of the Facility, or (ii) investment, production, or other Tax credits, grants, benefits, and/or
40 deductions associated with the use of the Fuel at the Facility or the construction, ownership, use, and/or
41 operation of the Facility and financial incentives, including credits, reductions, or allowances associated
42 with the Facility that are applicable to local, state or federal Tax obligations.

43
44 “Energy” means the electrical energy in megawatt-hours generated by the Facility and delivered
45 to FPL’s system at the interconnection voltage level.

46
47 “Energy Payment” means the payment by FPL to QS hereunder for the Energy produced at the
48 Facility as calculated in accordance with and at the rate set forth in Appendix 4.

49
50 “Energy Rate” means the charge for Energy delivered to FPL after the Commissioning
51 Commencement Date as set forth in Appendix 4.

1
2 “Environmental Attributes” means all attributes of an environmental or other nature, including
3 Emission Reduction Credits, that are created or otherwise arise from the Facility’s generation of Energy
4 using the Fuel, in contrast with the generation of electricity using nuclear or fossil fuels or other
5 traditional resources, and the displacement of conventional energy by the Energy generated by the
6 Facility. Such attributes include RECs, however defined under any voluntary standard or local, state or
7 federal law, regulation or ordinance. Environmental Attributes shall exclude (i) any energy, capacity,
8 ancillary services or other products or services generated by or attributable to or capable of being
9 generated by or attributed to operation of the Facility and not otherwise specifically included in this
10 definition of Environmental Attributes, or (ii) investment, production, or other Tax Credits, grants,
11 benefits, depreciation and/or deductions associated with the use of the Fuel at the Facility or the
12 construction, ownership, use, and/or operation of the Facility and financial incentives, including credits,
13 reductions, or allowances associated with the Facility that are applicable to local, state or federal Tax
14 obligations.

15
16 “Environmental Law Changes” has the meaning set forth in Section 19.10.

17
18 “EPC Agreement” means the turnkey Engineering, Procurement and Construction Agreement or
19 other agreements entered into between QS and a contractor or contractors selected by QS to manage,
20 perform and complete the design, engineering, procurement, testing, commissioning and construction of
21 the Facility.

22
23 “Event(s) of Default” means an FPL Event of Default or a QS Event of Default, as applicable.

24
25 “Execution Date” has meaning set forth in the first paragraph of this Contract.

26
27 “Facility” means QS’s baseload, must-run electric generating facility to be located in the State of
28 Florida, as further described in Appendices 1 and 2.

29
30 “Facility Contracts” means the EPC Agreement, the Interconnection Agreement, major Fuel
31 supply agreements, and any operation and maintenance agreement, to the extent applicable.

32
33 “FERC” means the Federal Energy Regulatory Commission.

34
35 “Financial Closing” means the fulfillment of each of the following conditions: (a) the execution
36 and delivery of the Financing Documents; and (b) all conditions to the availability and first disbursement
37 of funds under the Financing Documents are satisfied or waived.

38
39 “Financial Closing Date” means the date upon which Financial Closing is achieved.

40
41 “Financing Documents” means documentation with respect to any private equity investment in
42 QS, any loan agreements or credit agreements (including agreements for any subordinated debt), notes,
43 bonds, indentures, guarantees, mortgages, collateral agreements, intercreditor agreements, security
44 agreements, pledge agreements, letters of credit, credit support, credit enhancement and swap and other
45 hedging agreements, and all consents, certificates, opinions and other documents to be delivered at the
46 closing of any financing or re-financing and the availability of funds or disbursement thereof relating to
47 the financing or refinancing of the design, development, permitting, interconnection, construction, testing,
48 commissioning, operation, maintenance, repair, reconstruction and decommissioning of the Facility or
49 any guarantee by any Financing Party of the repayment of all or any portion of any such financing or
50 refinancing.

1 “Financing Party(ies)” means any Person that provides debt funding in connection with any
2 development, bridge, construction, permanent debt or tax-equity financing or re-financing for the Facility
3 and any Person issuing a Letter of Credit, and any assignee or transferee of such Person, and any trustee,
4 collateral agent, administrative agent or other similar entity acting on behalf of such a party, as identified
5 by notice to FPL. In the event that a Person ceases to be the collateral agent [REDACTED]
6 [REDACTED], the QS shall provide prompt notice thereof to FPL.
7

8 “Force Majeure” means an event, condition or circumstance described in the first paragraph of
9 Article 17.
10

11 “Forced Outage” means a reduction of, or cessation in the delivery of, or inability to deliver,
12 Energy that is not the result of (a) a Planned Outage, (b) a Force Majeure, or (c) an Emergency Condition.
13

14 “FPL” has the meaning set forth in the first paragraph of this Contract.
15

16 “FPL Conditions Precedent” has the meaning set forth in Section 4.2.
17

18 “FPL Event of Default” has the meaning set forth in Section 13.2.
19

20 “FPL Termination Payment” means the amount to be paid by FPL to the QS upon termination of
21 this Contract by the QS for an FPL Event of Default calculated as set forth in Section 14.1(b).
22

23 “FPL Transmission Provider” has the meaning set forth in the second recital of this Contract.
24

25 “FPSC” means the Florida Public Service Commission.
26

27 “FPSC Approval” means the FPSC has issued its final written order that is no longer subject to
28 re-hearing or appeal, where such final order does any of the following: (a) approves this Contract as
29 submitted and without any conditions and including provision for full recovery of all costs from FPL’s
30 retail customers, (b) holds that no FPSC approval of this Contract is required for FPL to fully recover its
31 costs hereunder from FPL’s retail customers, or (c) approves this Contract in part or subject to conditions,
32 provided that each of QS and FPL agrees, subject to its reasonable discretion, to accept those conditions
33 or such partial approval as sufficient.
34

35 “FPSC Approval Date” means the date of the FPSC Approval of this Contract.
36

37 “FRCC” means the Florida Reliability Coordinating Council.
38

39 “Fuel” means biomass, including any fuel sources that meet the requirements of the definition of
40 “Biomass” set forth in Section 366.91(2)(a), Florida Statutes
41

42 “GAAP” means accounting principles generally accepted in the United States of America.
43

44 “Governmental Authorization” means any authorization, consent, approval, license, ruling,
45 appeal, permit, waiver, exemption, variance, order, judgment, instruction, condition of approval,
46 direction, directive, decree, declaration for regulation by any Governmental Authority relating to the
47 construction, development, ownership, occupancy, start-up, testing, operation or maintenance of the
48 Facility or the execution, delivery or performance of this Contract.
49

50 “Governmental Authority” means any federal, state or local legislative, executive, judicial, quasi-
51 judicial or other public authority, agency, department, bureau, division, unit, court, tribunal, or other

1 public body, person or entity having jurisdiction over a Party, the Facility or this Contract, which shall
2 include, in appropriate context, the FERC, the FPSC, the NAERC, the Florida Reliability Coordinating
3 Council, or their respective successor organizations.

4
5 “Indemnified Party” has the meaning set forth in Section 15.4.

6
7 “Indemnifying Party” has the meaning set forth in Section 15.4.

8
9 “Interconnection Agreement” has the meaning set forth in the third paragraph of this Contract.

10
11 “Letter of Credit” or “LC” means a stand-by letter of credit from a Qualified Issuer the form of
12 which shall be substantially similar to the form in Appendix 7.

13
14 “Maintenance Outage” means a time period during which the Facility is shut down or its output
15 reduced for purposes of performing maintenance, servicing and repairs necessary for the reliable
16 operation of the Facility.

17
18 “Management Reconciliation” has the meaning set forth in Section 19.7(b).

19
20 “Material Casualty Event” means the occurrence of a casualty event (a) if prior to the
21 Commissioning Commencement Date, that is reasonably likely to extend achievement of the
22 Commissioning Commencement Date by more than one (1) year or (b) if after the Commissioning
23 Commencement Date, that shall have reduced the Capacity of the Facility below the Minimum
24 Committed Capacity and the period for full restoration or repair of that portion of the Facility damaged by
25 the casualty event is reasonably likely to exceed one (1) year.

26
27 “Maximum Committed Capacity” means the maximum amount of Capacity of the Facility that
28 FPL commits to purchase hereunder, as set out in Appendix 2.

29
30 “Meters” has the meaning set forth in Section 9.11(b).

31
32 “Minimum Committed Capacity” means the minimum amount of Capacity of the Facility that QS
33 must demonstrate to achieve Capacity Delivery Status during a Committed Capacity Test Period, as set
34 out in Appendix 2.

35
36 “Monthly Billing Period” means the period beginning on the first calendar day of each calendar
37 month, except that the initial Monthly Billing Period shall consist of the period beginning 12:01 a.m. on
38 the Commissioning Commencement Date and ending at 12:00 midnight on the last calendar day of such
39 month.

40
41 “Monthly Capacity Factor” or “MCF” has the meaning set forth in Appendix 3.

42
43 “Monthly Capacity Payment” or “MCP” means the monthly payment by FPL to QS for Capacity
44 calculated in accordance with Appendix 3.

45
46 “Moody’s” means Moody’s Investors Service, Inc., or its successor.

47
48 “MW” means one or more megawatts of capacity, as the context requires.

49
50 “MWh” means one or more megawatt-hours of electric energy, as the context requires.

51

1 “NAERC” means the North American Electric Reliability Corporation.

2
3 “Non-Defaulting Party” has the meaning set forth in Section 14.1.

4
5 “Operating Representative” means a representative of a Party who shall have authority to act for
6 such Party in all technical, real-time or routine matters relating to construction, testing, operation and
7 maintenance of the Facility and performance of this Contract, and to attempt to resolve disputes or
8 potential disputes, which representatives shall have no authority to amend, modify or waive any provision
9 of this Contract.

10
11 “Party” and “Parties” each has the meaning set forth in the first paragraph of this Contract.

12
13 “Payment Security” has the meaning set forth in Appendix 5.

14
15 “Performance Security” has the meaning set forth in Appendix 5.

16
17 “Person” means any individual, partnership, limited partnership, corporation, limited liability
18 company, limited liability partnership, association, joint stock company, trust, joint venture,
19 unincorporated organization, or Governmental Authority (or any department, agency, or political
20 subdivision thereof).

21
22 “Petition” has the meaning set forth in Section 4.3.

23
24 “Planned Outage” means a time period during which the Facility is shut down or its output is
25 reduced in order for pre-scheduled Maintenance Outage to be performed or such other period as otherwise
26 agreed by the Parties.

27
28 “Prudent Industry Practices” means the practices, methods, standards and acts that, at a particular
29 time, in the exercise of reasonable judgment in light of the facts known or that should reasonably have
30 been known at the time a decision was made, could have been expected to accomplish the required result
31 reliably, economically, safely, expeditiously and consistent with good business practices, which practices,
32 methods, standards and acts generally conform to operation and maintenance standards recommended by
33 equipment suppliers and manufacturers, the design limits, applicable Governmental Authorizations and
34 Applicable Law. Prudent Industry Practices are not intended to be limited to any particular set of
35 optimum practices, methods, standards or acts to the exclusion of all others, but rather is intended to
36 include practices, methods, standards or acts generally accepted in the United States, having due regard
37 for, among other things, manufacturers’ recommendations and warranties, contractual obligations,
38 Applicable Law and requirements or guidance of Governmental Authorities and NAERC.

39
40 “Put Right” means the valid and enforceable right, power and authority of the QS as the owner of
41 a Qualifying Facility and/or renewable energy source to deliver and sell to public utilities the capacity and
42 energy produced by the Facility and the obligation of such public utilities to receive and pay for such
43 capacity and energy under the terms of any applicable COG Tariff, Standard Offer Contract or other
44 contract, arrangement or transaction mandated by Applicable Law.

45
46 “Qualified Issuer” means a U.S. commercial bank or the U.S. branch of a foreign bank having a
47 credit rating of A- or higher by S&P or A3 or higher by Moody’s.

48
49 “Qualifying Facility” or “QF” means a generator of energy that by order of the FERC or self-
50 certification meets certain ownership, operating and efficiency criteria established by the FERC pursuant

1 to the Public Utility Regulatory Policies Act of 1978, as amended, and as further provided for under
2 applicable federal regulations.

3
4 “Qualifying Facility Status” means QS has submitted FERC Form No. 556 to FERC and has filed
5 with FERC an application for FERC certification of qualifying facility status pursuant to 18
6 C.F.R. §292.207(b)(1) that has been granted.

7
8 “QS” has the meaning set forth in the first paragraph of this Contract.

9
10 “QS Conditions Precedent” has the meaning set forth in Section 4.4.

11
12 “QS Event of Default” has the meaning set forth in Section 13.1.

13
14 “QS Insurance” has the meaning set forth in Section 16.1.

15
16 “QS Termination Payment” means the amount to be recovered by FPL by a draw on security
17 provided by the QS under Appendix 5 upon termination of this Contract on the Early Termination Date.

18
19 “Renewable Energy Credits” or “RECs” means renewable energy credits, green tags, green
20 tickets, renewable certificates, tradable renewable energy credits or any tradable certificate that is
21 produced by a renewable energy generator in addition to and in proportion to the production of electrical
22 energy.

23
24 “Renewable Energy Requirements” means the renewable energy requirements set forth in
25 Section 3.66.91(2)(a), Florida Statutes and FPSC Rules 25-17.210(1) and (2), F.A.C.

26
27 “Required Commissioning Commencement Date” means the later of (i) June 1, 2019 and (ii) the
28 first day of the calendar month following seventy-six (76) months after the FPSC Approval Date.

29
30 “S&P” means Standard & Poor’s Ratings Group (a division of The McGraw-Hill Companies,
31 Inc.), or its successor.

32
33 “Scheduled Maintenance Period” means any period of time established pursuant to Section 9.2
34 during which QS plans to subject the Facility to a scheduled complete or partial reduction in Capacity for
35 routine or periodic maintenance; provided, however, for purposes of calculating the Annual Capacity
36 Factor, that up to two (2) Scheduled Maintenance Periods, of a duration not to exceed a total of twenty-
37 eight (28) days in any calendar year, shall be excludable from the computation so as not to reduce the
38 Annual Capacity Factor.

39
40 “Site” means the property located in FPL’s service territory on which the Facility is to be
41 constructed and operated, as further described in Appendix 2.

42
43 “Standard Offer Contract” means the standard offer contract of a public utility, including FPL’s
44 standard offer contract, for purchase of capacity and energy from small power producers on file with the
45 FPSC at the Effective Date of this Contract and as amended and approved by the FPSC from time to time.

46
47 “Submission Date” means the date upon which the FPL submits this Contract to the FPSC for
48 FPSC Approval, which shall be within ten (10) days after the Execution Date.

49
50 “Tax” or “Taxes” means all taxes, assessments, charges, duties, fees, levies or other
51 governmental charges, including all federal, state, local, foreign or other income, profits, unitary,

1 business, franchise, capital stock, real property, personal property, intangible, withholding, FICA,
2 unemployment compensation, disability, transfer, sales, use, excise and other taxes, assessments, charges,
3 duties, fees, or levies of any kind whatsoever (whether or not requiring the filing of returns) and all
4 deficiency assessments, additions to tax, penalties and interest.

5
6 “Taxation Authority” means any revenue, customs, fiscal, statutory, federal, state, local
7 governmental or municipal authority having the power, authority and jurisdiction to impose any tax,
8 charge, impost, duty, levy or fee in the nature of taxation payable in the United States.

9
10 “Tax Credits” means any credit against local, state or federal Taxes, including but not limited to
11 such credits as investment tax credits, production tax credits or similar such tax credits, and all of which,
12 to the extent that they arise out of, result from or relate to tax credits associated with the Facility and
13 associated with the electricity produced by the Facility shall be retained by QS, regardless of whether QS
14 sells all or a portion of such electricity or consumes all or a portion of such electricity in one or more QS
15 operations or operations of Affiliates of QS.

16
17 “Term” has the meaning set forth in Section 3.

18
19 “Termination Payment” means an FPL Termination Payment or a QS Termination Payment, as
20 applicable.

21
22 “Transmission Provider” means the operator(s) of the Transmission System(s) or any successor
23 thereof or any other entity or entities authorized to transmit Energy from the Delivery Point.

24
25 “Transmission System” means the system of electric lines comprised wholly or substantially of
26 high voltage lines, associated system protection, system stabilization, voltage transformation, and
27 capacitance, reactance and other electric plant used for conveying electricity from any Delivery Point or
28 to ultimate consumers and shall include any interconnection owned by the Transmission Provider, but
29 shall in no event include any lines which the Transmission Provider has specified to be part of the
30 distribution system.

31 1.2 Instructions.

32 The headings of Articles and Sections in this Contract are provided for convenience of reference
33 only and will not affect the construction, meaning or interpretation of this Contract. All references to
34 “Articles,” “Sections,” or “Appendices” refer to the corresponding Articles, Sections or Appendices of or
35 to this Contract. All Appendices to this Contract are hereby incorporated by reference. All words used in
36 this Contract will be construed to be of such gender or number as the circumstances require. Unless
37 otherwise expressly provided, the words “include,” “includes” and “including” shall be interpreted to
38 mean “including without limitation.” Unless otherwise stated, any reference to a Person, whether or not a
39 Party, includes its permitted successors and assigns and, in the case of any Government Authority, any
40 Person succeeding to its functions and capacities. Other grammatical forms of defined words or phrases
41 have corresponding meanings. A reference to writing includes any mode of representing or reproducing
42 words, figures or symbols in a lasting and visible form. Unless otherwise provided, a reference to a
43 specific time of day for the performance of an obligation is a reference to the time in the place where that
44 obligation is to be performed. A reference to a document, law, code, contract or agreement, including this
45 Contract, includes a reference to that document, code, contract or agreement as novated, amended,
46 modified, revised, supplemented, replaced or restated from time to time in accordance with the relevant
47 provisions thereof. If any payment, act, matter or thing hereunder would occur on a day that is not a
48 Business Day, then such payment, act, matter or thing shall, unless otherwise expressly provided for
49 herein, occur on the next succeeding Business Day. The words “hereof,” “herein” and “hereunder” and

1 words of similar import shall refer to this Contract as a whole and not to any particular provision of this
2 Contract. The Parties shall act reasonably and in accordance with the principles of good faith and fair
3 dealing in the performance of this Contract and, unless expressly provided otherwise in this Contract, (a)
4 where this Contract requires the consent, approval, or similar action by a Party, such consent or approval
5 shall not be unreasonably withheld, conditioned or delayed, and (b) wherever this Contract gives a Party a
6 right to determine, require, specify or take similar action with respect to a matter, such determination,
7 requirement, specification or similar action shall be reasonable.

8 2. QS Facility

9 2.1 Status of Facility.

10 The QS intends to develop, finance, install, own and operate the Facility in accordance with the
11 terms and conditions of this Contract. The Facility is a must-run, baseload facility, subject to the
12 provisions of Section 9.10, having a design, location and generation capabilities described in Appendices
13 1 and 2. The QS will use commercially reasonable efforts to satisfy the QS Conditions Precedent relating
14 to permitting and financing of the Facility set forth in Section 4.4(b) on or before the applicable date
15 therefor and thereafter to construct the Facility and attain Capacity Delivery Status on or before the
16 Required Commissioning Commencement Date.

- 17 (a) Commencing after the Commissioning Commencement Date, QS shall, on or before
18 March 31 of each year during the Term of this Contract, deliver to FPL a report certified
19 by an officer of the QS: (i) stating the type and amount of each source of fuel or power
20 used by the QS to produce Energy during the prior calendar year; (ii) verifying that one
21 hundred percent (100%) of the Energy generated at the Facility and sold by the QS to
22 FPL during the prior calendar year complied with Sections 2.1(b) and 18.2(c) of this
23 Contract, and (iii) attesting that the inventory of Fuel at or near the Facility was at all
24 times during the prior calendar year sufficient to fuel reliable operation of the Facility for
25 a period of [REDACTED] days.
- 26 (b) FPL shall have the right during business hours after reasonable prior written request to
27 the QS (i) to inspect the Facility and to examine any books, records, or other documents
28 of the Facility that are necessary to verify that the Facility meets the Renewable Energy
29 Requirements as of the Execution Date and that the Facility continues to meet Qualifying
30 Facility Status and (ii) after the Drop Dead Date, to inspect land owned, leased or
31 operated by the QS or an Affiliate of QS for the cultivation, storage or processing of Fuel.
- 32 (c) Commencing after the Commissioning Commencement Date, the QS shall, on or before
33 March 31 of each year during the Term of this Contract, deliver to FPL a certificate
34 signed by an officer of the QS certifying that the Facility has continuously maintained its
35 Qualifying Facility Status.

36 3. Term of Contract

37 Except as otherwise provided herein in Section 5 with respect to the rights and obligations of the
38 Parties relating to the production, delivery, sale and purchase of Committed Capacity and Energy, and
39 subject to such conditions contained herein, including the conditions contained in Section 4, this Contract
40 shall become effective immediately upon its execution by the Parties and shall have the termination date
41 on the last day of the thirtieth (30th) Contract Year (the "Term"), unless terminated earlier in accordance
42 with the provisions hereof.

1 **4. Conditions Precedent; Minimum Specifications**

2 4.1 FPSC Approval.

3 The Parties acknowledge and agree that this Contract is subject to FPSC Approval.

4 4.2 FPL Conditions Precedent.

5 The following are conditions precedent to FPL's obligation to receive delivery of and purchase
6 Committed Capacity and Energy (other than test Energy) hereunder ("FPL Conditions Precedent"): (a)
7 FPSC Approval be obtained within [REDACTED] days after the Submission Date or such later
8 date as agreed upon by the Parties; and (b) if the FPSC's approval of this Contract is subject to changes in
9 the Contract or is subject to conditions, such changes or conditions are approved by FPL management in
10 its sole discretion.

11 4.3 FPSC Petition.

12 Within ten (10) Business Days after the Execution Date, FPL shall submit a copy of this Contract
13 and related documentation (with Confidential Information redacted) to the FPSC and shall file a petition
14 for FPSC Approval (the "Petition"). The QS agrees to cooperate with and assist FPL in obtaining FPSC
15 Approval as FPL may reasonably request. FPL shall promptly notify the QS of any significant
16 developments in obtaining FPSC Approval. The QS shall have the right to request and receive the final
17 draft of any proposed submission by FPL to the FPSC relating to the petition for FPSC Approval as soon
18 as practicable prior to submission and to confer with FPL for purposes including the redaction of
19 Confidential Information of the QS contained in any submission to the FPSC. As the primary purpose of
20 the Petition is for FPL to obtain FPSC Approval for cost recovery of the amounts payable under this
21 Contract, which QS supports, FPL shall pay all of the costs associated with such Petition filing. In the
22 event QS decides to participate in said Petition proceedings before the FPSC through representation by
23 legal counsel, QS will retain mutually acceptable competent legal counsel to facilitate a coordinated and
24 expeditious proceeding for attainment of such FPSC Approval, such acceptance not to be unreasonably
25 withheld or delayed.

26 4.4 QS Conditions Precedent.

27 The following are conditions precedent to the obligations of the QS ("QS Conditions Precedent")
28 to construct, interconnect, complete, test, commission and commence operation of the Facility and the
29 obligations and rights of the Parties in respect of the production, delivery, sale and purchase of
30 Committed Capacity and Energy from the Facility:

- 31 (a) By thirty (30) days after the FPSC Approval Date, if FPSC Approval does not impose
32 any changes or conditions on the Contract, the QS shall have provided the applicable
33 security required pursuant to Appendix 5; or, if FPSC Approval imposes any changes or
34 conditions on the Contract, then QS shall use commercially reasonable and diligent
35 efforts to secure its management's approval of such changes or conditions, provided that
36 the QS's decision is in the QS's sole discretion. If QS approves such changes and
37 conditions, then QS shall have provided the applicable security required under Appendix
38 5 within thirty (30) days following FPSC Approval;
- 39 (b) The following conditions shall have been satisfied or deemed waived by QS unless
40 written notice of non-satisfaction of the QS Conditions Precedent is given by QS to FPL,
41 subject to any extension of the date pursuant to Section 17.2:

- 1 (i) By the later of (A) February 1, 2015 and (B) the first day of the calendar month
2 following twenty-four (24) months after the FPSC Approval Date, the QS shall
3 have executed an agreement or option agreement for the ownership or lease of a
4 Site that is reasonably acceptable to the QS;
- 5 (ii) By the later of (A) August 1, 2016 and (B) the first day of the calendar month
6 following thirty (30) months after the FPSC Approval Date, the QS and FPL
7 shall have executed the Interconnection Agreement, which shall be in a form and
8 substance reasonably satisfactory to the QS;
- 9 (iii) By the later of (A) August 1, 2016 and (B) the first day of the calendar month
10 following thirty (30) months after the FPSC Approval Date, the QS shall have
11 obtained Governmental Authorizations and all other consents, approvals or
12 authorizations of other Persons necessary for the commencement of full-scope
13 construction of the Facility under the EPC Agreement, all of which shall be in a
14 form and substance reasonably satisfactory to the QS;
- 15 (iv) By the later of (A) December 1, 2016 and (B) the first day of the calendar month
16 following thirty-four (34) months after the FPSC Approval Date, the QS shall
17 have entered into Financing Documents for the construction of the Facility and
18 have achieved Financial Closing, in a form and substance and on terms and
19 conditions reasonably satisfactory to the QS;
- 20 (v) By the later of (A) August 1, 2016 and (B) the first day of the calendar month
21 following thirty (30) months after the FPSC Approval Date, the QS shall have
22 entered into the Facility Contracts, including one or more Fuel supply agreements
23 or arrangements for supply of Fuel for the first Contract Year after the
24 Commissioning Commencement Date, all of which shall be in a form and
25 substance reasonably satisfactory to the QS;
- 26 (vi) By the later of (A) December 1, 2016 and (B) the first day of the calendar month
27 following thirty-four (34) months after the FPSC Approval Date, the QS shall
28 have obtained insurance policies or coverage necessary in order to commence
29 full-scope construction of the Facility, in compliance with Section 16.1; and
- 30 (vii) By the later of (A) August 1, 2013 and (B) the first day of the calendar month
31 following six (6) months after the FPSC Approval Date the Facility shall have
32 achieved Qualifying Facility Status.

33 4.5 Satisfaction of Conditions Precedent.

34 The QS shall use commercially reasonable efforts to achieve the satisfaction of each of the QS
35 Conditions Precedent by each respective applicable date. An enlargement of the time for satisfaction of
36 QS Conditions Precedent or waiver of the QS Conditions Precedent set forth in Section 4.4(b) may be
37 requested by the QS in writing from FPL, which approval shall not be withheld if the QS reasonably
38 demonstrates to FPL that the non-satisfaction of a QS Condition Precedent by the specified date therefor
39 will not materially adversely affect the ability of the QS to achieve commencement of full scope
40 construction of the Facility under the EPC Agreement on or before [REDACTED] months prior to the
41 Required Commissioning Commencement Date. FPL shall use commercially reasonable efforts to satisfy
42 Conditions Precedent which are its responsibility and, at the QS's request, FPL will reasonably cooperate
43 with the QS as may be necessary in order to assist the QS in achieving the satisfaction of the QS
44 Conditions Precedent that are to be satisfied by QS.

1 4.6 Effective Date.

2 Promptly upon satisfaction (or written waiver) of each of the Conditions Precedent to be satisfied
3 or waived on or before its applicable date, the Party having satisfied the same shall deliver to the other
4 Party a certificate evidencing such satisfaction. Subject to there being no QS Event of Default or FPL
5 Event of Default which is continuing as of the date on which the last of such certificates is delivered, the
6 date of such last certificate (however, in no event later than the Drop Dead Date except as provided in
7 Section 4.5) shall constitute the effective date of this Contract with respect to the Parties' respective rights
8 and obligations relating to the production, delivery, purchase and sale of the Committed Capacity and
9 Energy (the "Effective Date"). Each Party shall designate its Operating Representative within ten (10)
10 days after the Effective Date and shall promptly send notice thereof to the other Party. A Party may
11 designate additional or different Operating Representative(s) upon notice to the other Party.

12 4.7 Termination for Non-Satisfaction or Waiver of Conditions Precedent.

- 13 (a) Failure of FPL Condition Precedent. If FPSC Approval is not obtained under Sections
14 4.2 and 4.3, including as a result of any approval in part or conditions to approval by the
15 FPSC not being accepted by both QS and FPL pursuant to Sections 4.2(b) and 4.4(a),
16 respectively, each in its sole discretion, within [REDACTED] days after the
17 Submission Date, or such longer period as the Parties may agree, then this Contract shall
18 terminate upon ten (10) days notice by either Party.
- 19 (b) Failure of QS Conditions Precedent. If all QS Conditions Precedent to be satisfied or
20 waived on or before their applicable date, are not satisfied on or before such applicable
21 dates, or such QS Conditions Precedent are not waived on written notice by QS to FPL,
22 this Contract shall terminate upon ten (10) days notice by either Party.

23 4.8 Effect of Termination for Non-Satisfaction of Conditions Precedent.

- 24 (a) Any expiration or termination of this Contract for failure to satisfy a Condition Precedent
25 to be satisfied or waived, shall not relieve either Party of any liability accrued or arising
26 from conduct or activities prior to the effective date of the expiration or termination, and
27 such expiration or termination shall not affect the continued operation or enforcement of
28 any provision of this Contract which by its express terms or by reasonable implication is
29 to survive any expiration or termination.
- 30 (b) Termination of this Contract pursuant to Section 4.7(a) shall not constitute an Event of
31 Default hereunder and neither Party shall have any further liability under this Contract as
32 a result of such termination.
- 33 (c) In the event that the QS Conditions Precedent set forth in Section 4.4(b) are not satisfied
34 by the QS or waived by QS prior to the applicable date therefor (which date shall be
35 extended day-for-day for any delay due to Force Majeure or an FPL Event of Default
36 pursuant to Section 13.2(a)) or such QS Condition Precedent is not met by any mutually
37 agreed upon extension of such date, FPL shall have the right to draw on the Performance
38 Security provided by QS under Appendix 5, which shall be FPL's sole and exclusive
39 remedy and compensation therefor, and terminate this Contract by notice to QS not later
40 than thirty (30) days after the Drop Dead Date, without further obligations, duties or
41 liability of either Party to the other relating to such termination.

1 **5. Sale of Energy and Capacity by the QS**

2 5.1 Purchase and Sale.

3 Commencing on the Commissioning Commencement Date and through the end of the Term,
4 consistent with the terms and conditions hereof, the QS shall sell and deliver to FPL at the Delivery Point
5 and FPL shall purchase and receive from the QS at the Delivery Point all of the Energy and any other
6 products or services (excluding Capacity (until the expiration of the Commissioning Period), RECs,
7 Environmental Attributes and any other products or services retained by the QS in this Contract)
8 associated with generation of Energy by the Facility. During the Commissioning Period, FPL shall also
9 pay the Energy performance bonus. Commencing on the first day after the end of the Commissioning
10 Period and through the end of the Term, consistent with the terms and conditions hereof, the QS shall sell
11 and deliver to FPL at the Delivery Point and FPL shall purchase and receive from the QS at the Delivery
12 Point all Committed Capacity and Energy. The billing and price methodology for Committed Capacity
13 and Energy sold hereunder and the Energy performance bonus is set forth in Appendices 3 and 4.

14 5.2 Operating Costs.

15 The QS shall not rely on interruptible standby service for the start up requirements (initial or
16 otherwise) of the Facility. The QS shall be responsible for all costs, charges and penalties, if any,
17 associated with the operation of the Facility, except as elsewhere provided in this Contract.

18 5.3 Delivery.

19 The QS shall be responsible for delivery of Committed Capacity and Energy to the Delivery Point
20 and, as between the Parties, shall be responsible for and shall indemnify, hold harmless and defend FPL
21 from and against all costs, liabilities, Taxes, losses, and charges of any kind imposed or assessed with
22 respect to the delivery of Committed Capacity and Energy to the Delivery Point. Except as otherwise
23 expressly provided in the Interconnection Agreement, FPL shall be responsible for providing or obtaining
24 transmission and distribution service from the Delivery Point and, as between the Parties, FPL shall be
25 responsible for and shall indemnify, hold harmless and defend the QS from and against all costs,
26 liabilities, Taxes, losses, and charges of any kind imposed or assessed at and after the delivery of
27 Committed Capacity and Energy at the Delivery Point.

28 **6. Committed Capacity/Commissioning Commencement Date**

29 6.1 Capacity.

30 The QS commits to sell the Committed Capacity and Energy to FPL at the Delivery Point, the
31 amount of which Committed Capacity shall be determined in accordance with this Section 6. Subject to
32 Section 6.3, and except as otherwise provided herein during the Commissioning Period, the Committed
33 Capacity is set at the Design Committed Capacity. The Commissioning Commencement Date shall be
34 attained no later than the Required Commissioning Commencement Date.

35 6.2 Committed Capacity Test.

36 Testing of the Capacity of the Facility (each such test, a "Committed Capacity Test") shall be
37 performed in accordance with the procedures set forth in Article 7. The Demonstration Period for the first
38 Committed Capacity Test to verify attainment of Capacity Delivery Status shall commence no earlier than
39 [REDACTED] prior to the commencement date for continuous deliveries of Energy from the Facility as
40 estimated in progress reports delivered by QS to FPL during construction of the Facility, or such earlier

1 dates as the Parties may agree upon in writing, and testing must be completed by 11:59 p.m. on the
2 Required Commissioning Commencement Date. The first Committed Capacity Test shall be deemed
3 successfully completed when the QS demonstrates that the Facility has attained Capacity Delivery Status.
4 Subject to Section 7.1, the QS may schedule and perform up to [REDACTED] Committed Capacity Tests
5 during each Demonstration Period to demonstrate attainment of Capacity Delivery Status. The QS may
6 schedule additional Demonstration Periods to satisfy the requirements hereunder with respect to the first
7 Committed Capacity Test; provided that such periods do not extend beyond the Required Commissioning
8 Commencement Date. The QS will coordinate with FPL the production and delivery of Energy during
9 initial testing, and prior to the Commissioning Commencement Date, FPL shall purchase and receive all
10 Energy produced during the initial testing at a price equal to [REDACTED] of the As-Available
11 Avoided Energy Cost.

12 6.3 Maximum Committed Capacity.

13 Notwithstanding anything to the contrary herein, the Committed Capacity shall not exceed the
14 Maximum Committed Capacity without the consent of FPL, which consent may be withheld by FPL in its
15 sole discretion.

16 6.4 Commissioning Commencement Date.

17 The "Commissioning Commencement Date" shall be defined as the first calendar day
18 immediately following the date of the Facility's attainment of Capacity Delivery Status, but no later than
19 the Required Commissioning Commencement Date. The Commissioning Period shall commence on the
20 Commissioning Commencement Date.

21 6.5 Capacity Payment.

22 The QS shall be entitled to receive Monthly Capacity Payments beginning on the first day
23 following the end of the Commissioning Period, provided, the Commissioning Commencement Date
24 occurs on or before the Required Commissioning Commencement Date (or such later date permitted by
25 FPL in its reasonable discretion).

26 6.6 Additional Testing.

27 After the end of the Commissioning Period, FPL shall have the right to require the QS, by notice
28 thereto, to validate the Committed Capacity of the Facility within sixty (60) days after such notice by
29 means of subsequent Committed Capacity Tests as follows: (a) at FPL's cost and expense once per
30 Contract Year without cause; (b) within sixty (60) days after any time the QS has restored normal
31 operation of the Facility after having been unable to comply with any material obligation under this
32 Contract for a period of ninety (90) days or more in the aggregate as a consequence of a single event of
33 Force Majeure; and (c) at any time the QS fails (for reasons other than a Force Majeure or breach, default
34 or non-performance by FPL) in three (3) consecutive months to achieve a Monthly Capacity Factor equal
35 to or greater than seventy percent (70%). The results of any such test shall be provided to FPL within
36 seven (7) days of the conclusion of such test. On and after the date of such requested Committed Capacity
37 Test, and until the completion of a subsequent Committed Capacity Test performed at the request of
38 either the QS or FPL, the Committed Capacity shall be deemed as the lower of the tested capacity or the
39 Maximum Committed Capacity.
40

1 **7. Testing Procedures**

2 7.1 **Demonstration Period.**

3 The Committed Capacity Test to demonstrate Capacity Delivery Status must be completed
4 successfully within a [REDACTED] period (the “Demonstration Period”), which period, including the
5 approximate start time of the Committed Capacity Test, shall be initially selected and scheduled by the
6 QS by means of a written notice to FPL delivered at least thirty (30) days prior to the start of such period,
7 and which may thereafter be changed by the QS upon three (3) days notice. The written notice shall
8 include detailed procedures reasonably acceptable to FPL for the conduct of Committed Capacity Tests.
9 The provisions of the foregoing sentences shall not apply to any Committed Capacity Test required by
10 FPL or performed by the QS under any other provisions of this Contract if such provision sets forth a
11 different procedure. FPL shall have the right to be present at the Site to monitor any Committed Capacity
12 Test required or permitted under this Contract. The QS shall have the right to commence, conduct and
13 complete any Committed Capacity Test if FPL’s representative does not attend the test or departs from
14 the Site prior to the conclusion of the test, provided that required notice has been given.

15 7.2 **Testing Period.**

16 Committed Capacity Test results shall be based on a test period of [REDACTED]
17 [REDACTED] (the “Committed Capacity Test Period”) at the highest sustained net KW rating at which the
18 Facility can operate without exceeding the design operating conditions, temperature, pressures, and other
19 parameters defined by the applicable manufacturer(s) for steady state operations at the Facility. The
20 Committed Capacity Test shall be conducted utilizing Fuel. The Committed Capacity Test Period shall
21 commence at the time designated by the QS pursuant to Section 7.1 or at such other time requested by
22 FPL pursuant to Section 6.6 or by the QS; provided, however, that the Committed Capacity Test Period
23 may commence earlier than such time in the event that FPL is notified of, and consents to, such earlier
24 time, such consent not to be unreasonably withheld, conditioned or delayed.

25 7.3 **Unit Auxiliaries.**

26 For the avoidance of doubt, normal station service use of unit auxiliaries, including cooling
27 towers, heat exchangers, and other equipment required by Applicable Law, shall be in service during the
28 Committed Capacity Test Period. FPL agrees to purchase and receive all net Energy produced during the
29 initial Committed Capacity Tests at a price equal to the As-Available Avoided Energy Cost.

30 7.4 **Committed Capacity.**

31 The Committed Capacity of the Facility shall be the average net capacity (generator output minus
32 auxiliary) measured over the Committed Capacity Test Period or such lesser amount as designated by the
33 QS, provided that such Capacity is not less than the Minimum Committed Capacity and subject to the
34 limitation that regardless of the outcome of a Committed Capacity Test it shall not exceed the Maximum
35 Committed Capacity unless the Parties agree otherwise. The Committed Capacity as of the end of the
36 Commissioning Period shall be the greater of (a) the Capacity established on the basis of the last
37 Committed Capacity Test conducted prior to the end of such period and (b) the Capacity which, over the
38 preceding twelve (12) month period, would result in an Annual Capacity Billing Factor of ninety percent
39 (90%).

1 7.5 Capacity Shortfall.

2 If at any time after the Commissioning Commencement Date the Capacity falls below the
3 Committed Capacity at the Commissioning Commencement Date, the QS shall have an initial period of
4 sixty (60) days to address the cause of the Facility's failure to generate at such Capacity, and on or before
5 the sixtieth (60th) day, the QS shall provide FPL with a reasonable cure plan describing the cause of the
6 deficiency and setting forth a plan and timetable for curing the deficiency. During this diagnostic and cure
7 period, the QS shall, at its sole expense, have the right to schedule and conduct (within commercially
8 reasonable scheduling limitations) such additional Committed Capacity Tests as it reasonably considers
9 necessary or appropriate or which the EPC Agreement contractor or any equipment vendor has the right
10 to perform or cause to be performed to demonstrate that the Capacity of the Facility equals or exceeds the
11 Minimum Committed Capacity.

12 7.6 Force Majeure.

13 After the end of the Commissioning Period, during a Force Majeure declared by the QS, the QS
14 may temporarily redesignate the Committed Capacity for up to [REDACTED]
15 provided, however, that no more than one such temporary redesignation may be made by the QS within
16 any [REDACTED] period as relates to such Force Majeure. Within one (1) month after any such
17 Force Majeure is cured, as set forth in notice by the QS to FPL, the QS shall, without penalty or other
18 condition, designate a new Committed Capacity; provided, however, that such new Committed Capacity
19 shall be equal to or greater than the Minimum Committed Capacity, but not greater than the Maximum
20 Committed Capacity.

21 7.7 Test Procedures.

22 Committed Capacity Tests shall be performed according to Prudent Industry Practices using
23 testing procedures appropriate for the equipment and technology of the Facility established pursuant to
24 Section 7.1.

25 7.8 Change to Committed Capacity.

26 After the end of the Commissioning Period, the QS may conduct a Committed Capacity Test at
27 any time after a Committed Capacity Test requested by FPL pursuant to Section 6.6 demonstrates a
28 decrease in the Committed Capacity. The QS may also on one other occasion per year only, increase or
29 decrease the Committed Capacity by no more than [REDACTED] of the then existing Committed
30 Capacity, provided that (i) in no case shall the Committed Capacity exceed the Maximum Committed
31 Capacity and (ii) in no case shall the Committed Capacity be lower than the Minimum Committed
32 Capacity, and provided further that the QS shall give FPL at least thirty (30) days notice of any such
33 increase or decrease in the Committed Capacity and shall conduct a Committed Capacity Test within
34 thirty (30) days after providing such notice. Any Committed Capacity Test conducted by the QS pursuant
35 to this Section 7.8 shall be performed in accordance with the requirements of this Article 7. Additionally,
36 the Parties, upon their mutual written agreement to same, may establish the Committed Capacity at any
37 level that they mutually agree is appropriate and desirable under this Contract.

38 **8. Payment for Electricity Produced by the Facility**

39 8.1 Energy.

40 Commencing on the Commissioning Commencement Date, FPL agrees to pay the QS for Energy
41 produced by the Facility and delivered to the Delivery Point and the Energy bonus payment in accordance

1 with the rates and procedures set forth in Appendices 3 and 4. Calculation of payments of the Energy
2 performance bonus to QS shall be made in accordance with Appendix 4 for Energy delivered during the
3 Commissioning Period. FPL shall provide the QS electronically with information pertaining to the
4 Energy payment calculation and Energy Rate (including escalator) and the Energy performance bonus
5 payment calculation and rate as the QS may reasonably request.

6 8.2 Capacity.

7 Commencing on the end of the Commissioning Period, FPL agrees to pay the QS for the
8 Committed Capacity in accordance with the rates and procedures set forth in Appendices 3 and 4.

9 8.3 Payments.

10 The QS shall prepare an invoice for amounts due by FPL for Committed Capacity, Energy and
11 other products, services and items in the prior month by the fifth (5th) day of each month. FPL shall make
12 payments due to the QS monthly and no later than the twentieth (20th) Business Day following receipt of
13 the invoice. A statement of the Committed Capacity and kilowatt-hours of Energy sold by the QS and the
14 rate at which payments are being invoiced shall accompany the invoice to FPL.

15 8.4 Other Payments; Late Payments.

16 Any amounts due to either QS or FPL under this Contract, other than those specified in Sections
17 8.1 - 8.3, shall be paid within twenty (20) days following receipt by the other Party of an itemized invoice
18 from the Party to whom such amounts are due setting forth, in reasonable detail, the basis for such
19 payment. FPL will provide the QS with such information pertaining to rates, payments and delivery of
20 Energy, the Energy performance bonus and Capacity as the QS may reasonably request. FPL may comply
21 with the QS's reasonable requests for information by providing the QS access to relevant materials at
22 FPL's business offices during normal business hours. The QS shall pay all expenses reasonably incurred
23 by FPL in complying with requests for information made pursuant to this Section 8.4. If a Party fails to
24 pay to the other Party any amount payable under this Contract when due, then such Party shall also pay,
25 in addition to such unpaid amount, interest at the Default Rate on the amount that is not paid from the
26 payment due date to the date on which payment is made in full.

27 8.5 Statement Errors.

28 In the event that either Party becomes aware of any error in any invoice, bill, statement or
29 adjustment, such Party shall, immediately upon discovery of the error, notify in writing the other Party of
30 such error and shall rectify such error within thirty (30) days of such notification, and any overpayment or
31 underpayment shall be refunded or paid (as applicable) with interest at the Default Rate accruing from
32 and after the date such overpayment or underpayment was made until the refund or payment is made.
33 Notwithstanding any provision of this Contract to the contrary, in no event shall a correction or an
34 adjustment be made to previous invoices, billings or statements more than [REDACTED] from the
35 date that the Energy that was the subject thereof was delivered to FPL.

36 8.6 Billing Disputes.

37 In the event that either Party has a bona fide dispute with any invoice submitted hereunder, such
38 Party shall inform the other Party in writing of its grounds for disputing such invoice. Notwithstanding
39 such dispute, any undisputed amounts shall be paid in full in accordance with Section 8.3. For any
40 disputed invoiced amounts, the Party receiving the invoice shall be entitled to withhold the disputed
41 amount with an explanation of the basis for the dispute. The Parties agree to proceed in good faith to

1 promptly initiate efforts (through their respective Operating Representative in the first instance) to
2 attempt to resolve any such dispute. Upon resolution of the dispute, any overpayment or underpayment
3 shall be refunded or paid (as applicable) with interest at the Default Rate accruing from and after the date
4 such overpayment or underpayment was made until the date on which such refund is paid.

5 **9. Electricity Production and Plant Maintenance Schedule**

6 9.1 Generation Projection.

7 During the Term of this Contract, no later than sixty (60) days after the Commissioning
8 Commencement Date and prior to April 1 of each calendar year thereafter, the QS shall submit to FPL in
9 writing a detailed plan of: (i) the amount of Committed Capacity (only after the end of the
10 Commissioning Period) and Energy to be generated by the Facility and delivered to the Delivery Point for
11 each month of the following calendar year, and (ii) the time, duration and magnitude of any Scheduled
12 Maintenance Period(s) and any anticipated reductions in Committed Capacity (only after the end of the
13 Commissioning Period).

14 9.2 Scheduled Maintenance.

15 By May 1 of each calendar year, FPL shall notify the QS in writing whether the planned
16 Scheduled Maintenance Periods in the detailed plan submitted by the QS to FPL pursuant to Section 9.1
17 are acceptable. If FPL objects to any of the planned Scheduled Maintenance Periods, FPL shall advise the
18 QS of the time period closest to the planned period(s) for which FPL proposes that the planned outage(s)
19 be re-scheduled. The QS shall, to the extent not inconsistent with Prudent Industry Practices and
20 manufacturers' recommendations, schedule Scheduled Maintenance Periods only during periods
21 requested by FPL. Once the schedule for Scheduled Maintenance Periods has been established in
22 accordance with Section 9.1 and this Section 9.2, either Party may request the other Party to approve a
23 subsequent change in such schedule and such approval shall not to be unreasonably withheld or delayed.
24 Scheduled Maintenance Periods shall be limited to [REDACTED] days per calendar year unless the
25 manufacturers' recommendation of maintenance outage days for the technology and equipment used by
26 the Facility exceeds such [REDACTED] day period, provided, such number of days is considered
27 reasonable by industry standards and does not exceed [REDACTED] day intervals, one in the Spring
28 and one in the Fall, in any calendar year. For the avoidance of doubt, only [REDACTED] days of
29 Maintenance Outages shall be excluded from the calculation on the Annual Capacity Factor so as not to
30 reduce the Annual Capacity Factor. In no event shall Scheduled Maintenance Periods be scheduled
31 during the following periods: June 1 through and including October 31st and December 1 through and
32 including February 28 (or 29th as the case may be) unless required in observance of Prudent Industry
33 Practice and manufacturers' recommendations.

34 9.3 Additional Maintenance.

35 If the need arises for the QS to conduct maintenance on the Facility outside of Scheduled
36 Maintenance Periods, QS shall notify FPL of such maintenance, together with dates for carrying out such
37 maintenance and the estimated duration of the work to be carried out. The QS and FPL shall confer in
38 good faith to determine a reasonable schedule during which such additional maintenance outage(s) shall
39 take place. If agreement is not reached within five (5) days of initiating good faith discussions, the QS
40 shall prepare a schedule of such additional maintenance outage(s) based on Prudent Industry Practice and
41 manufacturers' recommendations. For the avoidance of doubt, any and all days of additional maintenance
42 outages in excess of [REDACTED] days requiring that the Facility output be reduced or curtailed shall
43 be included in the calculation of the Annual Capacity Factor so as to reduce the Annual Capacity Factor.

1 9.4 Forced Outage.

2 If the QS identifies the need to remove the Facility from operation due to a Forced Outage, the
3 QS shall provide FPL with notice as soon as the QS becomes aware of the Forced Outage. As soon as
4 possible following the commencement of the Forced Outage, the QS shall provide FPL with information
5 pertaining to the cause of the outage and the anticipated return to service date.

6 9.5 Must-Run.

7 The Facility shall be operated, subject to the provisions of Section 9.10, on a baseload, “must-
8 run” basis, except for Forced Outages, Scheduled Maintenance Periods, periods when performance is
9 suspended hereunder, events of Force Majeure and Emergency Conditions or as directed by the FPL
10 Transmission Provider or any other Transmission Provider for safety or reliability reasons.

11 9.6 Excess Capacity.

12 Notwithstanding anything contrary to the terms hereof: FPL shall have no obligation to accept
13 and pay for and the QS shall have no obligation to deliver and sell Capacity until after the end of the
14 Commissioning Period, and no such purchases and sales of Capacity shall be in excess of the Committed
15 Capacity unless the Parties mutually agree thereto in writing. Upon expiration of the Term or early
16 termination of this Contract, the QS shall have the right (without affecting any obligations of the QS
17 under this Contract which by the terms of this Contract survive or otherwise continue beyond the
18 expiration of the Term or any termination of this Contract) to offer, sell, trade, exchange and deliver all
19 Capacity and Energy RECs, Environmental Attributes, and other products or services generated by or
20 associated with the operation or ownership of the Facility to any Person.

21 9.7 Control.

22 At all times during the Term of this Contract after the Commissioning Commencement Date, the
23 QS shall operate and maintain the Facility: (i) in such a manner as to comply with its obligations
24 hereunder, in accordance with Prudent Industry Practices and Applicable Law, and (ii) in compliance with
25 the Interconnection Agreement with FPL Transmission Provider with respect to all system protective
26 equipment in service whenever the Facility is connected to, or is operated in parallel with, FPL
27 Transmission Provider’s Transmission System. The QS shall install at the Facility those system protection
28 and control devices necessary under the Interconnection Agreement to achieve safe and protected
29 operation of all energized equipment during normal testing, operation and repair. The QS shall have
30 qualified personnel or contractors test and calibrate all protective equipment at regular intervals in
31 accordance with Prudent Industry Practices and the Interconnection Agreement. A unit functional trip test
32 shall be performed after each overhaul of the Facility’s steam turbine generators or boilers and the results
33 shall be provided to FPL prior to returning the equipment to service. The specifics of the unit functional
34 trip test will be consistent with Prudent Industry Practices.

35 9.8 Reconnection of Facility.

36 If the Facility is separated from the FPL Transmission Provider’s Transmission System for any
37 reason, reconnection of the Facility into FPL Transmission Provider’s Transmission System shall be
38 governed by the Interconnection Agreement.

1 9.9 Personnel.

2 Commencing on the Commissioning Commencement Date, during the Term of this Contract the
3 QS shall employ or contract qualified personnel for managing, operating and maintaining the Facility.
4 The QS shall maintain operating personnel on duty at all times, twenty-four (24) hours a calendar day and
5 seven (7) calendar days a week.

6 9.10 FPL System Reliability.

7 FPL shall not be obligated to purchase, and may require curtailed or reduced deliveries of Energy
8 only to the extent allowed under FPSC Rule 25-17.086, any successor rule or under any curtailment plan
9 which FPL may have on file with the FPSC and as may be amended from time to time. FPL shall notify
10 the QS prior to the instance giving rise to those conditions, if practicable. If prior notice is not practicable,
11 FPL shall communicate such circumstance at the earliest opportunity and provide notice thereof to the QS
12 as soon as practicable after the fact.

13 9.11 Metering.

- 14 (a) The rights and obligations of the Parties in respect of the interconnection of the Facility
15 to the FPL Transmission Provider's Transmission System shall be as set forth in the
16 Interconnection Agreement.
- 17 (b) All electric metering associated with the Facility, including the Facility meter and any
18 other real-time meters, billing meters and back-up meters (collectively, the "Meters"),
19 shall be installed, operated, maintained and tested at the QS's expense in accordance with
20 Prudent Industry Practices and any applicable requirements and standards issued by
21 NAERC and the FPL Transmission Provider. Each Meter shall be tested at the QS's
22 expense once each Contract Year. The Meters shall be used for the registration, recording
23 and transmission of information regarding the production of Committed Capacity and
24 Energy by the Facility. The QS shall provide FPL with a copy of all metering and
25 calibration information and documents regarding the Meters promptly following receipt
26 thereof by the QS.
- 27 (c) Readings of the Meters at the Facility by the Transmission Provider in whose territory the
28 Facility is located (or an independent Person mutually acceptable to the Parties) shall be
29 conclusive as to the amount of Committed Capacity and Energy produced by the Facility;
30 provided, however, that the QS, upon written request of FPL and at FPL's expense (if
31 more frequently than annually), shall cause the Meters to be tested by the Transmission
32 Provider in whose territory the Facility is located, and if any Meter is out of service or is
33 determined to be registering inaccurately by more than one percent (1%), subject to
34 Section 9.11(e), if applicable, (i) the measurement of Energy produced by the Facility
35 shall be adjusted as far back as can reasonably be ascertained, but in no event shall such
36 period exceed one-half the period from the date that such inaccuracy was discovered to
37 the last annual calibration, in accordance with the filed tariff of the Transmission
38 Provider, and any adjustment shall be reflected in the next invoice provided by the QS to
39 FPL hereunder and (ii) the QS shall reimburse FPL for the cost of such test of the Meters.
- 40 (d) FPL shall have the right to inspect and test any of the Meters at the Facility at reasonable
41 times and upon reasonable notice from FPL to the QS. FPL shall have the right to have a
42 representative present during any testing or calibration of the Meters at the Facility by the
43 QS. The QS shall provide FPL with timely notice of any such testing or calibration.

1 (e) Either Party may, at its option and expense, install, operate and maintain one or more
2 check meters in accordance with Prudent Industry Practice. Check meters will not be
3 used for measurement of Committed Capacity and Energy except as provided in Section
4 9.11(f). Check meters will be subject to inspection and testing by the other Party at all
5 reasonable times.

6 (f) If the Meters fail to register, or the measurement made by Meters during a test varies by
7 more than one percent (1%) from the measurement made by the standard meter used in
8 the test, and if either Party had installed a check meter and such check meter is
9 registering accurately, an adjustment to prior billings will be made to accord with the
10 check meter (or the average of both Parties' check meters, if applicable). If no check
11 meters have been installed or any installed check meters are not registering accurately, or
12 the Parties cannot agree on the amount or duration of the inaccuracy, the adjustment will
13 be made for the amount of inaccuracy as measured by the test in accordance with Section
14 9.11(c). In no case shall an adjustment to previous billings be corrected more than one (1)
15 year from the date that the Committed Capacity and Energy was received by FPL.

16 10. Security

17 10.1 Type of Security.

18 The QS shall provide Performance Security and Payment Security at the times and in the amounts
19 and meeting the requirements of Appendix 5, A or Appendix 5, B, as applicable.

20 10.2 Issuer Downgrade.

21 Any Letter of Credit issued for the benefit of FPL under this Contract shall be from a Qualified
22 Issuer. FPL shall have the right to monitor the financial condition of the issuer of a Letter of Credit
23 provided as security by the QS. In the event the issuer of a Letter of Credit no longer qualifies as
24 Qualified Issuer, FPL may require, in its sole discretion, the QS replace the Letter of Credit with a Letter
25 of Credit issued by a Qualified Issuer. The replacement Letter of Credit must be issued by a Qualified
26 Issuer within thirty (30) days following written notification by FPL to the QS of the requirement to
27 replace.

28 10.3 Security Interest.

29 The QS, as the pledgor of a Letter of Credit delivered after the Effective Date as security, hereby
30 pledges to FPL, as the secured Party, as security for (a) attainment of Capacity Delivery Status on or
31 before the Required Commissioning Commencement Date and (b) after the Commissioning
32 Commencement Date, the Performance Security, and grants to FPL a first priority continuing security
33 interest in, lien on and right of set-off against all Letters of Credit issued for the benefit of FPL hereunder
34 at the times and in the amounts as set forth in Appendix 5. The QS shall execute and deliver any
35 certificate, instrument or other document reasonably requested by FPL to effect or perfect such lien.
36 Upon the transfer or return by FPL to the QS of any such Letter(s) of Credit, the security interest and lien
37 granted hereunder on that Letter(s) of Credit will be released immediately and, to the extent possible,
38 without any further action by either Party. FPL shall execute and deliver any certificate, instrument or
39 other document reasonably requested by the QS to effect or document such release.

1 10.4 Cash Collateral.

2 Cash Collateral may be provided by the QS in accordance with Appendix 5, A as performance
3 security for satisfaction by the QS of the QS Conditions Precedent to be satisfied by it prior to the
4 Effective Date. Cash Collateral shall be held by FPL and all interest accrued on Cash Collateral provided
5 by the QS shall be for the account of the QS. Cash Collateral, plus interest accrued thereon, shall be
6 delivered by FPL to the QS promptly upon delivery of a Letter of Credit meeting the requirements of
7 Appendix 5. Interest shall accrue at the Default Rate.

8 **11. Permits; Compliance with Law**

9 11.1 Permits.

10 Each Party acknowledges that during the Term of this Contract it will be required to obtain and
11 maintain certain Governmental Authorizations in connection with the performance of its obligations
12 hereunder. Each Party shall perform its obligations and operate and maintain its facilities related thereto
13 in accordance with applicable Governmental Authorizations and Applicable Laws.

14 11.2 Notice of Filings.

15 If the Parties are required to make any regulatory filings to the FERC, FPSC, or any other
16 Governmental Authority, the Party subject thereto shall to the extent that any such filing is reasonably
17 likely to materially impact the performance by the Parties of their obligations hereunder, provide prompt
18 notice to the other Party thereof and support any intervention or other participation of the other Party in
19 related proceedings as are reasonable. Each of the QS and FPL agrees to abide by any applicable
20 regulatory rulings or orders issued by such authorities, subject to its right to seek a re-hearing, appeal or
21 other reconsideration of such rulings or orders.

22 11.3 Good Faith Challenge.

23 Notwithstanding the foregoing, a Party shall not be deemed to be in breach of its obligations to
24 acquire or maintain any Governmental Authorizations or other consents or to otherwise have incurred an
25 Event of Default for a period of one [REDACTED], if, and to the extent, that a Party is in
26 good faith using commercially reasonable efforts to acquire or maintain such Governmental
27 Authorizations or other consents or contesting the application, interpretation, order or other legal direction
28 that would mandate the obtaining of any such Governmental Authorizations or other consents or any
29 change to the requirements of existing Governmental Authorizations. After the [REDACTED]
30 [REDACTED] period, if the affected Party cannot acquire or maintain such Governmental Authorizations or other
31 consents, application, interpretation, order or other legal direction or other consents or any change to the
32 requirements of existing Governmental Authorizations, then the other Party may proceed in accordance
33 with Article 4 if such Governmental Authorization is required by a Condition Precedent or Article 14 if
34 the failure to have such Governmental Authorization is an Event of Default under Article 13.

35 11.4 Generator Operator.

36 The QS shall be the NAERC generator operator and owner for the Facility and as between the
37 Parties is solely and exclusively responsible for compliance with (i) any and all applicable NAERC
38 reliability standards, (ii) similar obligations with respect to the Federal Power Act or (iii) otherwise with
39 respect to the exclusive jurisdiction of the FERC or the FRCC, as such relate to the Facility. As between
40 the Parties, the QS shall be solely responsible, at its own cost and at all times during the Term, for

1 compliance with such standards and the payment of any fines or penalties associated with the violation of
2 such standards in respect of the Facility.

3 **12. Taxes**

4 12.1 Taxes.

5 QS shall pay or cause to be paid all taxes imposed by any Government Authority on or with
6 respect to the Facility arising prior to the Delivery Point. FPL shall pay or cause to be paid all taxes
7 imposed by any Government Authority on or with respect to the Energy or Capacity at and from the
8 Delivery Point. If either Party is required to collect or remit any Taxes that are the other Party's
9 responsibility hereunder, it shall give prompt notice thereof to the other Party and thereafter cooperate
10 with the other Party in connection with any challenge to such Tax. The other Party shall upon receipt of
11 notice of payment of the Tax promptly reimburse the Party which has paid such Taxes. The Parties shall
12 use all reasonable efforts to administer this Contract and implement the provisions hereof in a manner that
13 will minimize Taxes due and payable by the Parties.

14 12.2 Tax Reporting.

15 Each Party will be responsible for its own Tax reporting. Each Party shall provide the other
16 Party, upon written request, with copies of any documentation in its possession and control that may be
17 reasonably necessary in the ordinary course of any inter-governmental, state, local, municipal or other
18 political subdivision tax audit.

19 12.3 Exemptions.

20 A Party shall provide a certificate or exemption or other reasonably satisfactory evidence of
21 exemption, promptly upon becoming aware of such exemption, if either Party is exempt from Taxes, and
22 shall use commercially reasonable efforts to obtain, and cooperate with the other Party obtaining, any
23 exemption or reduction of Taxes.

24 **13. Default**

25 13.1 QS Defaults.

26 Each of the following shall constitute an Event of Default by the QS ("QS Event of Default"):

- 27 (a) The QS, without reasonable cause, notifies FPL of its intention to abandon all efforts to
28 satisfy the Conditions Precedent in Section 4.4 and fails to notify FPL of its intention to
29 resume such efforts within ten (10) days after such initial notice of abandonment;
- 30 (b) The QS materially changes or modifies the Facility from that described in Appendix 1
31 with respect to its type, location, technology, generating capability (outside the range of
32 the Minimum Committed Capacity and Maximum Committed Capacity) or fuel source
33 without prior written approval from FPL;
- 34 (c) The QS fails to maintain the Qualifying Facility Status of the Facility or fails to meet the
35 Renewable Energy Requirements existing as of the Execution Date in compliance with
36 the provisions of Section 2.1 as shown in the certified report required by Section 2.1(a) or
37 the certification required by Section 2.1(c) or by notice from FPL pursuant to Section

- 1 2.1(b), and such failure continues for thirty (30) days after delivery of such report,
2 certification or FPL notice;
- 3 (d) After the end of the Commissioning Period, the Facility fails, [REDACTED]
4 [REDACTED], to maintain an Annual Capacity Billing Factor of at least seventy percent (70%);
- 5 (e) The QS fails to post Performance Security, Payment Security and/or Cash Collateral in
6 compliance with Article 10 hereof and such failure continues for fifteen (15) days after
7 notice from FPL;
- 8 (f) Except to the extent excused by Transmission Provider instruction or FPL breach or
9 repudiation of its obligation to purchase hereunder, QS sells the Energy or Committed
10 Capacity from the Facility to a third party in breach of Section 5.1 and/or Section 5.3;
- 11 (g) The QS ceases the conduct of active business; or if proceedings under the federal
12 bankruptcy law or insolvency laws shall be instituted by or for or against the QS or if a
13 receiver shall be appointed for the QS or with respect to any of its assets or properties; or
14 if any part of the QS's assets shall be attached, levied upon, encumbered, pledged, seized
15 or taken under any judicial process by any Person other than pursuant to [REDACTED]
16 [REDACTED], and such proceedings shall not be vacated or fully stayed within sixty (60)
17 days thereof; or if the QS shall make an assignment for the benefit of creditors other than
18 the Financing Parties with respect to the assets, properties, rights and privileges relating
19 to the Facility, or admits in writing its inability to pay its debts as they become due;
- 20 (h) The QS fails to use commercially reasonable efforts to obtain or maintain Governmental
21 Authorizations and other consents, approvals or authorizations of other third Persons
22 required to initiate full scope construction of the Facility under the EPC Agreement and
23 thereafter operate the Facility or the Parties have failed to agree upon an extension of
24 time beyond the [REDACTED] provided in Section 11.3 for such
25 Governmental Authorizations to be obtained or maintained;
- 26 (i) The occurrence of an event of default by the QS under the Interconnection Agreement,
27 subject to applicable cure rights thereunder;
- 28 (j) QS fails to pay any undisputed amount due and owing by it to FPL within five (5) days
29 after notice from FPL;
- 30 (k) If at any time after the end of the Commissioning Period, and in accordance with Section
31 7.6, the QS following cessation of a Force Majeure event, fails to designate the
32 Committed Capacity between the Minimum Committed Capacity and the Maximum
33 Committed Capacity;
- 34 (l) If after the Commissioning Commencement Date, the inventory of Fuel at or near the
35 Facility is not sufficient to fuel reliable operation of the Facility for a period of [REDACTED]
36 [REDACTED];
- 37 (m) After the Effective Date, failure by the QS to cause the Facility to achieve Capacity
38 Delivery Status by the Required Commissioning Commencement Date;
- 39 (n) Failure by the QS to procure or maintain QS insurance in accordance with the provision
40 of Section 16;

1 Date, free from any claim or right of any nature whatsoever of the QS, including any
2 equity or right of redemption by the QS.

3 (b) QS Remedies. If FPL is the Defaulting Party, the QS shall have the right to, as its sole
4 and exclusive remedies therefor (i) withhold payments due to FPL under this Contract;
5 (ii) suspend performance under this Contract for no more than ninety (90) consecutive
6 days in respect of such Event of Default; (iii) designate an Early Termination Date on
7 which date all Performance Security and/or Payment Security provided by the QS to FPL
8 shall be cancelled and returned to the QS upon demand therefore; and (iv) calculate the
9 amount of the FPL Termination Payment payable by FPL to the QS, and then provide
10 notice to FPL of the FPL Termination Payment amount owed. The FPL Termination
11 Payment shall equal the sum of (x) any amount due and owing by FPL to the QS as of the
12 Early Termination Date and (y) for the period of time from the Early Termination Date to
13 the end of the Term, the difference, if positive, between the projected monthly Capacity
14 Payments and Energy Payments at Base Production under this Contract and equivalent
15 amounts under any Put Rights, COG Tariff, or Standard Offer Contract available to QS,
16 adjusted for any additional transmission charges, which amount shall be paid in
17 accordance with Section 19.9(d).

18 14.2 Specific Performance.

19 Each Party recognizes that any remedy at law may be inadequate because this Contract is unique
20 and/or because the actual damages of the Non-Defaulting Party may be difficult to reasonably ascertain.
21 Therefore, subject to Section 15.5 and to the extent permitted hereunder, the Parties agree that each Party
22 shall be entitled to pursue an action for specific performance or other equitable remedies, and the other
23 Party waives all of its rights to assert as a defense to such action that a remedy at law is adequate.

24 14.3 Accrued Liabilities.

25 Upon an Early Termination Date becoming effective, neither Party shall have any further liability
26 to the other Party arising under or related to this Contract, except for the Termination Payment, any
27 liabilities and obligations accruing prior to the Early Termination Date or any liabilities and obligations
28 which by their nature or the express terms of this Contract extend beyond the termination of this Contract.
29 Subject to Section 15.5, the liability of either Party for obligations arising prior to such Early Termination
30 Date or for damages, if any, resulting from breach of this Contract, shall not be affected by termination of
31 this Contract.

32 14.4 Termination Payment Dispute.

33 If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination
34 Payment amount, in whole or in part, the Defaulting Party shall, within fifteen (15) Business Days of
35 receipt of the Non-Defaulting Party's calculation of the Termination Payment amount, provide to the
36 Non-Defaulting Party a detailed written explanation of the basis for such dispute. Following delivery of
37 such a notice, any disputes relating to liability for the amount of the Termination Payment shall be
38 resolved in accordance with Article 19.7.

39 15. Indemnification/Limits

40 15.1 Responsibility.

41 FPL and the QS shall each be responsible for its own facilities. QS shall be responsible for

1 ensuring adequate safeguards for the QS's personnel and equipment, and for the protection of its
2 generating system at the Facility.

3 15.2 QS Indemnity.

4 The QS shall indemnify, hold harmless and defend FPL, on an after-tax basis, from and against
5 any and all liabilities, judgments, losses, damages, claims relating to injury to or death of any person or
6 damage to property (including the Facility), fines and penalties, costs and expenses arising out of or
7 resulting from the negligence on the part of the QS in performing its obligations pursuant to this Contract
8 or the QS's failure to abide by the provisions of this Contract, except in those instances where such loss is
9 due to the gross negligent action or willful inactions of FPL pursuant to FPL's rights under Sections
10 2.1(b), 7.2, 9.11(d) or 9.11(e) of this Contract.

11 15.3 FPL Indemnity.

12 To the maximum extent permissible by law, subject to express statutory exemptions or limitations
13 relating to investor-owned electric utilities in the State of Florida, FPL shall indemnify, hold harmless and
14 defend the QS, on an after-tax basis, from and against any and all liabilities, judgments, losses, damages,
15 claims relating to injury to or death of any person or damage to property (but excluding FPL
16 Transmission Provider's transmission system, for which any rights to indemnification shall be exclusively
17 as set forth in the Interconnection Agreement), fines and penalties, costs and expenses arising out of or
18 resulting from the negligence on the part of FPL while on the site of the Facility or on sites of Affiliates
19 of QS pursuant to FPL's rights under Sections 2.1(b), 7.2, 9.11(d), or 9.11(e) of this Contract, except in
20 those instances where such loss is due to the gross negligent action or willful inactions of the QS. For the
21 avoidance of doubt, FPL shall have no indemnity obligation to the QS under this Contract for any loss
22 arising out of or resulting from the negligence on the part of FPL Transmission Provider in its capacity as
23 a Transmission Provider or as a result of performing the obligations pursuant to the Interconnection
24 Agreement.

25 15.4 Settlement.

26 Payment by a Person indemnified hereunder ("Indemnified Party") will not be a condition
27 precedent to the obligations of the indemnifying party ("Indemnifying Party") under Section 15.2 or 15.3.
28 No Indemnified Party under Section 15.2 or 15.3 shall settle any claim for which it claims
29 indemnification hereunder without first allowing the Indemnifying Party the right to defend such a claim.
30 The Indemnifying Party shall have no obligations under Section 15.2 or 15.3 in the event of a breach of
31 the foregoing sentence by any Indemnified Party. Sections 15.2 or 15.3 shall survive expiration or
32 termination of this Contract.

33 15.5 Limitation on Consequential, Incidental and Indirect Damages; Exclusive Remedies.

34 TO THE FULLEST EXTENT PERMITTED BY LAW, NEITHER THE QS NOR FPL, NOR
35 THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, MEMBERS, PARENTS,
36 SUBSIDIARIES OR AFFILIATES, SUCCESSORS OR ASSIGNS, OR THEIR RESPECTIVE
37 OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, MEMBERS, PARENTS, SUBSIDIARIES OR
38 AFFILIATES, SUCCESSORS OR ASSIGNS, SHALL BE LIABLE TO THE OTHER PARTY OR
39 THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, MEMBERS, PARENTS,
40 SUBSIDIARIES OR AFFILIATES, SUCCESSORS OR ASSIGNS, FOR CLAIMS, SUITS, ACTIONS
41 OR CAUSES OF ACTION FOR INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, MULTIPLE OR
42 CONSEQUENTIAL DAMAGES CONNECTED WITH OR RESULTING FROM PERFORMANCE OR
43 NON-PERFORMANCE OF THIS CONTRACT, OR ANY ACTIONS UNDERTAKEN IN

1 CONNECTION WITH OR RELATED TO THIS CONTRACT, INCLUDING WITHOUT
2 LIMITATION, ANY SUCH DAMAGES WHICH ARE BASED UPON CAUSES OF ACTION FOR
3 BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE AND MISREPRESENTATION),
4 BREACH OF WARRANTY, STRICT LIABILITY, STATUTE, OPERATION OF LAW, UNDER ANY
5 INDEMNITY PROVISION OR ANY OTHER THEORY OF RECOVERY. IF A REMEDY OR
6 MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN IT SHALL BE THE SOLE AND
7 EXCLUSIVE REMEDY AND/OR MEASURE OF DAMAGES THEREFOR AND THE AFFECTED
8 PARTY WAIVES AND RELEASES ANY RIGHT OR INTEREST IN, TO OR UNDER ANY OTHER
9 REMEDY OR DAMAGES. TO THE MAXIMUM EXTENT PERMISSIBLE UNDER APPLICABLE
10 LAWS, ALL REMEDIES OR MEASURE OF DAMAGES AT LAW OR IN EQUITY OTHER THAN
11 THOSE EXPRESSLY PROVIDED FOR IN THIS CONTRACT ARE WAIVED; PROVIDED,
12 HOWEVER, THAT THIS SENTENCE SHALL NOT APPLY TO LIMIT THE LIABILITY OF A
13 PARTY WHOSE ACTIONS GIVING RISE TO SUCH LIABILITY CONSTITUTE GROSS
14 NEGLIGENCE OR WILLFUL MISCONDUCT (IN THE CASE OF FPL PURSUANT TO SECTIONS
15 2.1(b), 7.2, 9.11(d), or 9.11(e) OF THIS CONTRACT AND IN THE CASE OF QS PURSUANT TO
16 SECTION 15.4 OF THIS CONTRACT). THE PROVISIONS OF THIS SECTION SHALL APPLY
17 REGARDLESS OF FAULT AND SHALL SURVIVE TERMINATION, CANCELLATION,
18 SUSPENSION, COMPLETION OR EXPIRATION OF THIS CONTRACT. NOTHING CONTAINED
19 IN THIS CONTRACT SHALL BE DEEMED TO BE A WAIVER OF A PARTY'S RIGHT TO SEEK
20 SPECIFIC PERFORMANCE OR INJUNCTIVE RELIEF.

21 **16. Insurance**

22 16.1 QS Insurance.

23 The QS shall procure or cause to be procured on or before the date of commencement of full-
24 scope work for construction of the Facility and maintain thereafter throughout the entire Term of this
25 Contract, a policy or policies of liability insurance issued by an insurer acceptable to FPL on a standard
26 "Insurance Services Office" commercial general liability form (such policy or policies, collectively, the
27 "QS Insurance"). A certificate of insurance shall be delivered to FPL at least fifteen (15) calendar days
28 prior to the start of any interconnection work. At a minimum, the QS Insurance shall contain (a) an
29 endorsement providing coverage, including products liability/completed operations coverage for the Term
30 of this Contract, and (b) a broad form contractual liability endorsement covering liabilities (i) which
31 might arise under, or in the performance or nonperformance of, this Contract and the Interconnection
32 Agreement, or (ii) caused by operation of the Facility or any of the QS's equipment or by the QS's failure
33 to maintain the Facility or the QS's equipment in satisfactory and safe operating condition. Effective at
34 least fifteen (15) calendar days prior to the synchronization of the Facility with FPL's system, the QS
35 Insurance shall be amended to include coverage for interruption or curtailment of power supply in
36 accordance with industry standards. Without limiting the foregoing, the QS Insurance must be reasonably
37 acceptable to FPL. Any premium assessment or deductible shall be for the account of the QS and not
38 FPL.

39 16.2 Limits.

40 The QS Insurance shall have a minimum limit of [REDACTED] per occurrence,
41 combined single limit, for bodily injury (including death) or property damage.

42 16.3 Replacement Coverage.

43 In the event that such insurance becomes totally unavailable or procurement thereof becomes
44 commercially impracticable, such unavailability shall not constitute an Event of Default under Section

1 13.1(n) of this Contract, but FPL and the QS shall promptly enter into negotiations to develop substitute
2 protection substantially equivalent to that required by this Article 16 to the extent commercially
3 practicable.

4 16.4 Claims Made Insurance.

5 To the extent that the QS Insurance is on a "claims made" basis, the retroactive date of the
6 policy(ies) shall be the Effective Date of this Contract or such other date as may be agreed upon to protect
7 the interests of FPL and QS. Furthermore, to the extent the QS Insurance is on a "claims made" basis, the
8 QS's duty to provide insurance coverage shall survive the termination of this Contract until the expiration
9 of the maximum statutory period of limitations in the State of Florida for actions based in contract or in
10 tort. To the extent the QS Insurance is on an "occurrence" basis, such insurance shall be maintained in
11 effect at all times by the QS through the Term of this Contract.

12 16.5 Cancellation.

13 The QS Insurance shall provide that it may not be cancelled or materially altered without at least
14 thirty (30) calendar days' written notice to FPL. The QS shall provide FPL with a copy of any material
15 communication or notice related to the QS Insurance within ten (10) Business Days of the QS's receipt or
16 issuance thereof.

17 16.6 Party Status.

18 The QS shall be designated as the named insured and FPL shall be designated as an additional
19 named insured under the QS Insurance. The QS Insurance shall be endorsed to be primary to any
20 coverage maintained by FPL.

21 **17. Force Majeure**

22 17.1 Force Majeure Defined.

23 Force Majeure is defined as an event, condition or circumstance that is not within the reasonable
24 control of, or the result of the negligence or willful misconduct of the affected party, and which, by the
25 exercise of due diligence, the affected party is unable to overcome, avoid, or cause to be avoided. Such
26 events, conditions or circumstances may include, but are not limited to, acts of God, war, riot or
27 insurrection, terrorism, blockades, embargoes, sabotage, epidemics, explosions, hurricanes, earthquakes,
28 volcanoes, tornados, tidal surges, floods, strikes, lockouts or other labor disputes (not caused by the
29 failure of the affected party to comply with the terms of a collective bargaining agreement), or actions or
30 restraints by NAERC, FRCC, court order or Governmental Authority relating to safety, emergencies or
31 system reliability not due to or caused by the Party claiming Force Majeure. Force Majeure shall not
32 include (i) the QS's ability to sell or FPL's ability to purchase capacity and energy to another market at a
33 more advantageous price; (ii) equipment breakdown or inability to use equipment caused by defects in
34 design, engineering, manufacturing, construction, operation or maintenance of the Facility; (iii) a failure
35 of performance of any other entity, including any transportation provider, contractor, vendor, warehouse
36 operator, customer or entity providing electric transmission service to the QS, except to the extent that
37 such failure was caused by an event that would otherwise qualify as a Force Majeure event; (iv) failure of
38 the QS to timely apply for or use diligence to obtain permits; (v) failure to obtain deliveries of Fuel except
39 to the extent such failure was caused by an event that would otherwise qualify as a Force Majeure event
40 and (vi) a specific event that would otherwise qualify as a Force Majeure but that was reasonably
41 avoidable at the time of entering into this Contract.

1 17.2 Excused from Performance.

2 Except for payment obligations associated with performance prior to the pendency of the Force
3 Majeure, and as otherwise provided in this Contract, each Party shall be excused from performance of its
4 obligations, Conditions Precedent or cure rights when its nonperformance was caused by an event of
5 Force Majeure, but only for the duration of the Force Majeure event and no longer. The suspension of
6 performance shall be of no greater scope and of no greater duration than the cure for the Force Majeure
7 requires. A Party claiming Force Majeure shall not be entitled to any relief therefor unless and until
8 conforming notice is provided pursuant to Section 17.3.

9 17.3 Notice of Force Majeure.

10 In the event of any delay or nonperformance resulting from an event of Force Majeure, the party
11 claiming Force Majeure shall notify the other Party in writing within two (2) Business Days of the
12 occurrence of the event of Force Majeure, of the nature, cause, date of commencement thereof and the
13 anticipated extent of such delay, and shall indicate whether any deadlines or date(s), imposed hereunder
14 may be affected thereby. The Party claiming Force Majeure shall notify the other Party of the cessation of
15 the event of Force Majeure or of the conclusion of the affected Party's cure for the event of Force
16 Majeure, in either case within two (2) Business Days thereof. All notices shall be provided in accordance
17 with Section 19.5.

18 17.4 Force Majeure Cure.

19 The Party claiming Force Majeure shall use its commercially reasonable efforts to cure the
20 cause(s) preventing its performance of this Contract; provided, however, the settlement of strikes,
21 lockouts and other labor disputes shall be entirely within the discretion of the affected Party, and such
22 Party shall not be required to settle such strikes, lockouts or other labor disputes by acceding to demands
23 which such Party deems to be unfavorable.

24 17.5 Partial Operation.

25 At any time after the end of the Commissioning Period an event of Force Majeure occurs that
26 affects the QS such that the Facility can only partially operate, then the QS shall temporarily set the
27 Committed Capacity at the maximum capability that the Facility can reasonably be expected to operate.
28 For the avoidance of doubt, in the event that an event of Force Majeure affecting the QS occurs that
29 prevents the Facility from operating, the Committed Capacity shall be set at zero during such period of
30 time.

31 17.6 Cessation.

32 Upon the cessation of the event of Force Majeure affecting the QS or the conclusion of the cure
33 for the event of Force Majeure, the QS shall, consistent with Prudent Industry Practice, use commercially
34 reasonable efforts to restore the generating capability of the Facility to not less than the Minimum
35 Committed Capacity. Notwithstanding any other provision of this Contract, upon such cessation or cure,
36 FPL shall have the right within thirty (30) days thereafter to require a Committed Capacity Test be
37 performed within sixty (60) days after a written request therefor to demonstrate the Facility's compliance
38 with the requirements of this Section 17.6. Any Committed Capacity Test required by FPL under this
39 Section 17.6 shall be additional to any Committed Capacity Test under Section 6.6.

1 17.7 Payment Reduction.

2 During the occurrence of an event of Force Majeure affecting the QS and resulting in a reduction
3 in Committed Capacity, all Monthly Capacity Payments shall reflect, pro rata, the reduction in Committed
4 Capacity.

5 17.8 Termination.

6 This Contract may be terminated by the QS or FPL following a Force Majeure, a Condemnation
7 Event or a Material Casualty Event occurring after the Capacity Commencement Date if QS has not
8 repaired or rebuilt the Facility to at least the Minimum Committed Capacity within [REDACTED] of the
9 occurrence of such Force Majeure, Condemnation Event or Material Casualty Event. Termination of this
10 Contract pursuant to this Section 17.8 shall not be considered a termination due to an Event of Default or
11 require the payment of the FPL Termination Payment by FPL or the Performance Security under
12 Appendix 5.A by QS; provided, however, QS shall pay to FPL the Payment Security amount under
13 Appendix 5.B. Following such termination, both Parties will be released from any further liability under
14 this Contract.

15 17.9 Facility Reactivation.

16 The Parties agree that the Interconnection Agreement shall govern the allocation and
17 responsibility for payment of the costs necessary to reactivate the Facility and/or the interconnection with
18 FPL Transmission Provider's Transmission System if the same is (are) rendered inoperable or interrupted.

19 **18. Representations, Warranties, and Covenants**

20 18.1 Representations by Each Party.

21 Each Party represents and warrants that as of the Execution Date:

22 (a) Organization, Standing and Qualification.

23 It is a corporation/limited liability company (as applicable) duly organized and validly existing in
24 good standing under the laws of the state of its organization and has all necessary corporate/limited
25 liability company (as applicable) power and authority to carry on its business as presently conducted, to
26 own or hold under lease its properties and to enter into and perform its obligations under this Contract and
27 all other related documents and agreements to which it is or shall be a party. It is duly qualified or
28 licensed to do business in the State of Florida and in all other jurisdictions wherein the nature of its
29 business and operations or the character of the properties owned or leased by it makes such qualification
30 or licensing necessary and where the failure to be so qualified or licensed would impair its ability to
31 perform its obligations under this Contract or would result in a material liability to or would have a
32 material adverse effect on the other Party.

33 (b) Due Authorization, No Approvals, No Defaults, etc.

34 Each of the execution, delivery and performance by it of this Contract has been duly authorized
35 by all necessary action on the part of it, does not require any approval, except as has been heretofore
36 obtained, of the (shareholders, partners, or others, as applicable) of the Party or any consent of or
37 approval from any trustee, lessor or holder of any indebtedness or other obligation of the Party, except for
38 such as have been duly obtained, and does not contravene or constitute a default under any law, the
39 (articles of incorporation, bylaws, or other as applicable) of the Party, or any agreement, judgment,
40 injunction, order, decree or other instrument binding upon the Party, or subject the Facility or any
41 component part thereof to any lien other than as contemplated or permitted by this Contract. Subject to

1 the Conditions Precedent herein, this Contract constitutes its legal, valid and binding obligation,
2 enforceable against it in accordance with the terms hereof, except as such enforceability may be limited
3 by applicable bankruptcy laws from time to time in effect that affect creditors' rights generally or by
4 general principles of equity (regardless of whether such enforcement is considered in equity or at law).

5 (c) Compliance with Laws.

6 The Party has knowledge of all laws and business practices that must be followed in performing
7 its obligations under this Contract. The Party is in compliance with all laws, except to the extent that
8 failure to comply therewith would not, in the aggregate, have a material adverse effect on the Party or the
9 other Party.

10 (d) Governmental Authorizations.

11 Except with respect to Governmental Authorizations which are not required for the execution and
12 delivery of this Contract or performance of its obligations as of the Execution Date, neither the execution
13 and delivery by the Party of this Contract, nor the consummation by the Party of any of the transactions
14 contemplated thereby, requires the consent or approval of, the giving of notice to, the registration with,
15 the recording or filing of any document with, or the taking of any other action in respect of Governmental
16 Authority, except in respect of (i) permits which have already been obtained and are in full force and
17 effect, (ii) permits that are not yet required (and with respect to which the Party has no actual knowledge
18 of facts of circumstances which make it reasonable to believe that the same will not be readily obtainable
19 in the ordinary course of business upon due application therefor) or (iii) the Conditions Precedents,
20 including for FPSC Approval, as set forth in Sections 4.2 and 4.4(a).

21 (e) No Suits, Proceedings.

22 Except as relate to Governmental Authorizations which have not been obtained as of the
23 Execution Date, and except as otherwise disclosed in SEC filings by FPL, there are no actions, suits,
24 proceedings or investigations pending or, to the knowledge of the Party, threatened against it at law or in
25 equity before any court, arbitration panel or tribunal or other Governmental Authority in the United States
26 or any other jurisdiction which individually or in the aggregate could result in any materially adverse
27 effect on the Party's business, properties, or assets or its condition, financial or otherwise, or in any
28 impairment of its ability to perform its obligations under this Contract. The Party has no actual knowledge
29 of a violation or default with respect to any law which could result in any such materially adverse effect
30 or impairment. The Party is not in breach of, in default under, or in violation of, any Applicable Law, or
31 the provisions of any authorization, or in breach of, in default under, or in violation of, or in conflict with
32 any provision of any promissory note, indenture or any evidence of indebtedness or security therefor,
33 lease, contract, or other agreement by which it or its properties is bound, except for any such breaches,
34 defaults, violations or conflicts which, individually or in the aggregate, could not reasonably be expected
35 to have a material adverse effect on the business or financial condition of the Party or its ability to
36 perform its obligations hereunder.

37 18.2 QS represents and warrants that as of the Execution Date:

38 (a) Site.

39 To its actual knowledge, the QS knows of no (i) existing violations of any environmental laws
40 at the Site, including those governing hazardous materials or (ii) pending, ongoing, or unresolved
41 administrative or enforcement investigations, compliance orders, claims, demands, actions, or other
42 litigation brought by governmental authorities or other third parties alleging violations of any
43 environmental law or permit which would materially and adversely affect the construction or operation of
44 the Facility at the Site as contemplated by this Contract.

1 (b) Ownership and Sale of Renewable Energy Attributes.

2 The QS retains any and all rights to own, register, trade, convey, assign and to sell any and all
3 Environmental Attributes associated with the electric generation of the Facility, including any and all
4 Renewable Energy Credits, provided that FPL shall have a right of first refusal with respect to any and all
5 bona fide offers to purchase any RECs [REDACTED] and after FPL has not
6 accepted an offer pursuant to this Section 18.2(b) the QS shall [REDACTED]
7 [REDACTED]. FPL agrees to exercise such right of first refusal, if at all, [REDACTED] of
8 receiving written notification by the QS of a bona fide offer and to thereafter close the purchase and sale
9 of the RECs on or before the closing date set forth in such offer or, if no closing date is specified in the
10 offer, [REDACTED] after exercise of the right, provided the QS shall notify FPL promptly of such
11 bona fide offer. The QS further retains all rights to any and all Tax Credits, rights and benefits associated
12 with the Facility, the use of biomass as fuel and/or with the Energy produced by the Facility. The QS
13 shall have no obligation [REDACTED]
14 [REDACTED] in order to produce RECs or increase the production of RECs.

15 (c) Sources of Fuel and Power.

16 The sole source(s) of fuel or power to be used by the Facility to produce Energy for sale to FPL
17 during the Term of this Contract shall be such sources as are defined in and provided for pursuant to the
18 Renewable Energy Requirements. Fossil fuels, to the extent used in the operation of the Facility, must be
19 limited to the minimum quantities necessary for start-up, shut-down and for operating stability at
20 minimum load. The Facility must be capable of generating the Committed Capacity without the use of
21 fossil fuels.

22 (d) Renewable Energy Requirements.

23 The Facility will be designed and constructed to meet the Renewable Energy Requirements in
24 effect as of the Execution Date.

25 (e) Technology and Generator Capabilities.

26 The technology and generator capabilities information set forth in Appendix 1 and 2 is accurate
27 and complete and is fit for the purpose of submission to the FPSC with the petition of FPL for approval of
28 this Contract, subject to redaction of Confidential Information and changes that are approved by FPL in
29 its reasonable discretion. The QS reserves the right to make changes to the technology and generator
30 capabilities due to normal use, operation and maintenance and changes made to address Force Majeure
31 events, Material Casualty Events, Condemnation Events, changes in law or other facts, changes, events,
32 circumstances or conditions beyond the reasonable control of the QS.

33 18.3 Project Viability.

34 The Parties acknowledge that prior to the Execution Date, the QS has provided Confidential
35 Information and documents requested by FPL relating to the Facility covered by this Contract. Such
36 Confidential Information and documentation was made available to FPL for information purposes and
37 solely to assist FPL in assessing the QS's financial and technical viability.

38 18.4 No Implied Warranties.

39 The Parties acknowledge and agree that except as expressly and specifically set forth in Sections
40 18.1 and 18.2 herein they make no other representations or warranties and they expressly disclaim any
41 other representation or warranty, express or implied, in respect of this Contract, including any
42 representation or warranty with respect to fitness for a particular purpose, merchantability, value,
43 usefulness or otherwise.

1 **19. General Provisions**

2 **19.1 Permits.**

3 Each Party hereby agrees to obtain and maintain any and all permits, certifications, licenses,
4 consents or approvals of any Governmental Authority which the Party is required to obtain as a
5 prerequisite to engaging in the activities specified in this Contract prior to the commencement of any such
6 activity.

7 **19.2 Project Management.**

8 (a) If requested by FPL within sixty (60) days of the Execution Date, the QS shall submit to
9 FPL its integrated project schedule for FPL's review within sixty (60) calendar days from
10 the receipt of such request, and a start-up and test schedule for the Facility at least sixty
11 (60) calendar days prior to start-up and testing of the Facility. These schedules shall
12 identify key licensing, permitting, construction and operating milestone dates and
13 activities. FPL shall provide comments, if any, to such documents within thirty (30) days
14 of receipt. If requested by FPL, the QS shall submit progress reports in a form
15 satisfactory to FPL every calendar quarter until one hundred twenty (120) days before the
16 projected Commissioning Commencement Date, and thereafter every calendar month,
17 and in addition shall notify FPL of any material changes in such schedules affecting the
18 commencement of commissioning of the Facility within ten (10) calendar days after such
19 changes are determined. FPL shall have the right during normal business hours upon
20 seven (7) days prior written notice to monitor the construction, start-up and testing of the
21 Facility, either on-Site or off-Site subject to applicable rules relating to safety, security,
22 confidentiality, indemnity and insurance. FPL's technical review and inspections of the
23 Facility and resulting requests to review documents and construction activities, if any,
24 shall not be construed as endorsing the design thereof or as any warranty as to the safety,
25 durability or reliability of the Facility. All such documents and information received by
26 FPL shall be Confidential Information.

27 (b) The QS shall provide FPL with the final designer's/manufacturer's generator capability
28 curves, protective relay types, proposed protective relay settings, main one-line diagrams,
29 protective relay functional diagrams, and alternating current and direct current
30 elementary diagrams for review and inspection at FPL no later than one hundred eighty
31 (180) calendar days prior to the initial synchronization.

32 **19.3 Assignment.**

33 (a) Except as provided herein or as the result of a merger or acquisition where the surviving
34 entity is of equal or greater creditworthiness, a Party may not assign this Contract and the
35 obligations contained herein, without the other Party's prior written approval, which
36 approval may be withheld in the other Party's reasonable discretion. Notwithstanding any
37 provision of this Contract to the contrary, the QS may ([REDACTED]
38 [REDACTED] assign, pledge and
39 grant a security interest in and to its rights and interests in, to and under this Contract in
40 favor of any Financing Parties.

41 (b) In the event that the QS transfers, pledges, encumbers or collaterally assigns this Contract
42 and its rights, interests and remedies hereunder to the Financing Parties, the QS shall
43 provide written notice to FPL of such transfer, pledge, encumbrance or assignment and

1 include therein the address of the Financing Parties. In connection with any financing or
2 refinancing of the Facility and upon reasonable requests therefor, FPL shall (i) execute
3 one or more estoppel certificates in respect of this Contract in a form reasonably
4 acceptable to FPL and to the Financing Parties or investors, (ii) cooperate with the QS in
5 the negotiation and execution of any reasonable amendment, supplement or addition to
6 this Contract reasonably required by the Financing Parties and (iii) [REDACTED]
7 [REDACTED] upon request by the QS.

8 (c) The execution of any Financing Documents and/or the Financing Parties' enforcement of
9 rights and remedies as granted, conferred or reserved in or contemplated [REDACTED]
10 [REDACTED] shall not constitute or be deemed a breach of any of the terms and
11 conditions hereof, a QS Event of Default, or an assumption by the Financing Parties
12 personally of the obligations of the QS under this Contract.

13 19.4 Disclaimer.

14 In executing this Contract, FPL does not, nor should it be construed, to extend its credit or
15 financial support for the benefit of the QS or third parties lending money to or having other transactions
16 with the QS or any assignee of this Contract. Nothing contained in this Contract shall be construed to
17 create an association, trust, partnership, or joint venture between the Parties or to authorize a Party to
18 obligate or bind the other Party.

19 19.5 Notification.

20 All formal notices (excluding day-to-day communication relating to administration and
21 performance of this Contract) relating to this Contract shall be deemed duly given when delivered in
22 person, or sent by registered or certified mail, or sent by recognized overnight delivery service, or sent by
23 fax if followed immediately with a copy sent by registered or certified mail, to the individuals designated
24 below) if received during business hours on a Business Day for the receiving Party, and, if received after
25 business hours or on a day that is not a Business Day for the receiving Party, on the receiving Party's first
26 Business Day following the date of delivery. The Parties designate the following individuals to be
27 notified or to whom payment shall be sent until such time as either Party furnishes the other Party written
28 instructions to contact another individual:
29

For the QS:

U.S. EcoGen Martin, LLC
1000 N. U.S. HWY 1, Suite 807
Jupiter, Florida 33477
Attn: William F. Quinn
Telephone: 561-744-7300
Facsimile: 561-744-7300

With a copy to:

Bryant Miller Olive
111 Riverside Avenue, Suite 200
Jacksonville, Florida 32202
Attn: Thomas B. Constantine, Esq.
Telephone: 904-384-1264
Facsimile: 904-388-2986

For FPL:

Florida Power & Light Company

700 Universe Boulevard
Juno Beach, Florida 33408
Attention: EMT Contracts Dept. [EMT/JB]
Contracts Manager/Coordinator
Telephone: 561-691-7886/7837
Facsimile: 561-625-7197

1 Contracts and related documents may be mailed to the address below or delivered during normal
2 business hours (8:00 a.m. to 4:45 p.m.) to the visitors' entrance at the address below:

3
4 700 Universe Boulevard
5 Juno Beach, Florida 33408
6 Attention: Contracts Manager
7 Energy Marketing & Trading

8 19.6 Applicable Law.

9 This Contract shall be construed in accordance with and governed by, and the rights of the Parties
10 shall be construed in accordance with, the laws of the State of Florida as to all matters, including matters
11 of validity, construction, effect, performance and remedies, without regard to conflict of law rules thereof.

12 19.7 Disputes; Venue.

- 13 (a) In the event that any dispute (including payment dispute), controversy or claim arising
14 out of or relating to this Contract or the breach, termination or validity hereof should arise
15 between the Parties (a "Dispute"), the Party wishing to declare a Dispute shall deliver to
16 the other Party a written notice identifying the disputed issue and its proposed resolution.
- 17 (b) Following delivery and receipt of a notice of Dispute, executives of both Parties shall
18 meet at a mutually acceptable time and place within ten (10) Business Days after receipt
19 of such notice and thereafter as often as they reasonably deem necessary, to exchange
20 relevant information and to attempt to resolve the Dispute ("Management
21 Reconciliation"). If the matter has not been resolved by Management Reconciliation
22 within thirty (30) days of the disputing Party's notice having been issued, or if the Parties
23 fail to meet within ten (10) Business Days as required above, either Party may commence
24 mediation or litigation pursuant to Section 19.7(d).
- 25 (c) All communication, offers and statements, whether oral or written, and documents and
26 other writings exchanged between the Parties in connection with the Management
27 Reconciliation shall be confidential and shall not be discoverable, admissible in evidence
28 or used or referred to in any subsequent binding adjudicatory process between the Parties;
29 provided, however, that evidence that is otherwise admissible or discoverable shall not be
30 rendered inadmissible or non-discoverable as a result of its use in such negotiations.
- 31 (d) If either Party elects to refer the dispute to mediation, it shall give notice of such election
32 to the other Party and the Parties will cooperate in selecting a qualified neutral mediator

1 and in scheduling the time and place of the mediation as soon as reasonably possible, but
2 in no event later than thirty (30) days after the notice referring the Dispute to mediation is
3 given. Any mediator shall have recognized expertise and not less than ten (10) years
4 experience in the subject matter of the Dispute and shall be neutral and independent and
5 have no prior connection with or financial or other interests in or against either Party.
6 Unless otherwise agreed, the mediation will be scheduled for a date not later than sixty
7 (60) days after the selection of the mediator. The Parties agree to participate in the
8 mediation in good faith and to share the costs of the mediation, including the mediator's
9 fee, equally, but such shared costs shall not include each Party's own attorneys' fees and
10 costs, which shall be borne solely by such Party. If the Dispute has not been resolved
11 pursuant to Management Reconciliation or through the mediation process within seventy-
12 five (75) days after the selection of the mediator, either Party may commence a lawsuit.

- 13 (e) The Parties hereby irrevocably submit to the exclusive jurisdiction of the United States
14 District Court for Palm Beach County, Florida or, in the event that jurisdiction for any
15 matter cannot be established in such United States District Court, in the state court for
16 Palm Beach County, Florida solely in respect of the interpretation and enforcement of the
17 provisions of this Contract and of the documents referred to in this Contract, and in
18 respect of the transactions contemplated hereby, and hereby waive, and agree not to
19 assert, as a defense in any action, suit or proceeding for the interpretation or enforcement
20 hereof or of any such document, that it is not subject thereto or that such action, suit or
21 proceeding may not be brought or is not maintainable in said courts or that the venue
22 thereof may not be appropriate or that this Contract or any such document may not be
23 enforced in or by such courts, and the Parties hereto irrevocably agree that all claims,
24 counterclaims and defenses with respect to such action or proceeding shall be heard and
25 determined in such court. The Parties hereby consent to and grant any such court
26 jurisdiction over the persons of such Parties solely for such purpose and over the subject
27 matter of such dispute and agree that mailing of process or other papers in connection
28 with any such action or proceeding in the manner provided in Section 19.5 hereof or in
29 such other manner as may be permitted by any Applicable Law shall be valid and
30 sufficient service thereof.

31 19.8 Further Assurances.

32 If, after the Execution Date, it should be necessary and proper to execute any additional
33 documents, to modify documents to be delivered hereunder or to take further action to effectuate the
34 intent and purpose of this Contract, each Party agrees to take such action and to execute and deliver any
35 such additional or modified documents upon the reasonable written request of the other Party.

36 19.9 Rate Recovery.

37 FPL and the QS shall use reasonable efforts to support this Contract and to cooperate mutually
38 and fully to obtain full recovery for FPL, from FPL's retail customers, of all payments made, due, or
39 owing to the QS under this Contract.

- 40 (a) Notwithstanding anything to the contrary in this Contract, if FPL, at any time during the
41 Term of this Contract, fails to obtain or is denied the authorization of the FPSC, or the
42 authorization of any other legislative, administrative, judicial or regulatory body which
43 now has, or in the future may have, jurisdiction over FPL's rates and charges, to recover
44 from its customers all of the payments required to be made to the QS under the terms of
45 this Contract or any subsequent amendment hereto, FPL may, at its sole option, adjust the

1 payments made under this Contract to the amount(s) which FPL is authorized to recover
2 from its customers. In the event that FPL so adjusts the payments to which the QS is
3 entitled under this Contract, then, the QS may, at its sole election, terminate this Contract
4 upon thirty (30) days' written notice to FPL. QS's sole and exclusive remedy against FPL
5 for termination of this Contract pursuant to this Section 19.9(a) shall be a return of any
6 Performance Security and Payment Security and receipt of any undisputed payments
7 recovered from FPL's retail customers prior to such termination. If such determination of
8 disallowance is ultimately reversed and such payments previously disallowed are found
9 to be recoverable, FPL shall pay all withheld payments, with interest at the rate which is
10 the lower of 10.5% per annum or as authorized by the FPSC and the QS shall have the
11 right, exercisable within ninety (90) days after any such reversal, to reinstate this
12 Contract if the Contract was terminated by the QS upon re-posting any Performance
13 Security and Payment Security. The QS acknowledges and agrees that any amounts
14 initially received by FPL from its retail customers, but for which recovery is subsequently
15 disallowed and charged back to FPL, may be offset or credited against subsequent
16 payments to be made by FPL to the QS under this Contract.

17 (b) If, at any time, FPL receives notice that the FPSC or any other legislative, administrative,
18 judicial or regulatory body seeks or will seek to prevent full recovery by FPL from its
19 customers of all payments required to be made under the terms of this Contract or any
20 subsequent amendment to this Contract, then FPL shall, within thirty (30) days of such
21 action, give written notice thereof to the QS. FPL shall use reasonable efforts to recover
22 from its retail customers any payments required to be made by FPL hereunder, and will
23 cooperate in any reasonable effort by the QS to intervene in any proceeding challenging,
24 or to otherwise be allowed to defend, the enforceability and validity of this Contract and
25 the right of FPL to recover from its retail customers all payments to be made by it
26 hereunder. Both FPL and the QS agree to use reasonable efforts to protect this Contract
27 and to ensure recovery by FPL from its retail customers the amount of all payments made
28 to the QS hereunder; such reasonable efforts include the duty of each party to appeal, so
29 long as there is a reasonable likelihood of success in such Party's informed opinion, to
30 any and all courts having jurisdiction, any FPSC or any other legislative, administrative,
31 judicial or regulatory body determination that prevents full recovery by FPL from its
32 customers of all payments required to be made under the terms of this Contract or any
33 subsequent amendment to this Contract.

34 (c) The Parties do not intend this Section 19.9 to grant any rights or remedies to any third
35 party(ies) or to any legislative, administrative, judicial or regulatory body; and this
36 Section 19.9 shall not operate to release any person, other than FPL as provided in
37 Section 19.9(b), from any claim or cause of action which the QS may have relating to, or
38 to preclude the QS from asserting, the validity or enforceability of any obligation
39 undertaken by FPL under this Contract.

40 (d) If, at any time, the QS provides notice pursuant to Section 14.1(b) of the amount of an
41 FPL Termination Payment to be made by FPL following an FPL Event of Default, then
42 FPL may elect by notice to the QS within thirty (30) days after such notice by the QS,
43 either to (i) immediately pay the present value of such FPL Termination Payment at a
44 discount rate based on FPL's weighted average cost of capital or (ii) pay such FPL
45 Termination Payment monthly over the remaining Term of the Contract as though such
46 Contract had not been terminated; provided, however, that if FPL does not make an
47 election timely, the FPL Termination Payment shall be due and owing immediately and
48 interest shall accrue thereon until paid in full.

1 19.10 Change in Environmental Law.

2 The Parties acknowledge that the enactment, adoption, promulgation, implementation, or issuance
3 of, or a new or changed interpretation of, any Applicable Law that specifically addresses environmental
4 or regulatory issues and that takes effect after the Execution Date (“Environmental Law Changes”) could
5 affect the cost of construction and/or operation of the Avoided Unit and agree that, if any such
6 Environmental Law Changes should affect the cost of construction and/or operation of the Avoided Unit,
7 the payments to the QS for Energy and the security to be provided by the QS hereunder shall be
8 recalculated and shall, subject to FPSC approval, be adjusted for the remaining Term based on the
9 recalculation of the full avoided costs of the Avoided Unit, including the additional costs to construct and
10 operate the Avoided Unit resulting from the Environmental Law Changes, if FPL had built and operated
11 the Avoided Unit; provided however that any increase in payments to the QS for Energy and the security
12 due to an increase in the cost of construction and/or operation of the Avoided Unit shall be subject to
13 FPSC approval of FPL’s right to recover such additional payments made to the QS from FPL’s
14 customers. FPL shall at the request of the QS use reasonable and diligent efforts to seek to recover from
15 its customers the amount of any increase in such costs, and the QS may intervene and shall cooperate
16 fully with FPL in any proceedings in which FPL seeks recovery of such additional payments from its
17 retail customers. Both FPL and the QS agree to use reasonable efforts to protect this Contract and to
18 ensure recovery by FPL from its retail customers the amount of all payments made to the QS hereunder,
19 including payments for the costs that Environmental Law Changes would have caused FPL to incur if
20 FPL had built the Avoided Unit. So long as there is a reasonable likelihood of success in such Party’s
21 informed opinion, the Parties’ reasonable efforts include the duty of both Parties to appeal, to any and all
22 courts having jurisdiction, any FPSC or any other legislative, administrative, judicial or regulatory body
23 determination that prevents full recovery by FPL from its customers of all payments, including any
24 increase in payments resulting from Environmental Law Changes, required to be made under the terms of
25 this Contract or any subsequent amendment to this Contract.

26 19.11 Severability.

27 If any part of this Contract, for any reason, is declared invalid, or is rendered unenforceable by a
28 public authority of appropriate jurisdiction, then such decision shall not affect the validity of the
29 remainder of the Contract, which remainder shall remain in force and effect as if this Contract had been
30 executed without the invalid or unenforceable portion and there shall be substituted for such invalid or
31 unenforceable portion a valid and enforceable provision that most closely approximates the intended
32 purpose and effect of the invalid or unenforceable portion; provided that if the material purpose and effect
33 of such portion cannot be determined and effectuated (such as Section 19.9 cost recovery from FPL’s
34 customers), this Contract shall be invalid.

35 19.12 Complete Agreement and Amendments.

36 All previous communications or agreements between the Parties, whether verbal or written, with
37 reference to the subject matter of this Contract are hereby abrogated. No amendment or modification to
38 this Contract shall be binding unless it shall be set forth in writing and duly executed by both Parties in
39 accordance with the requirements of this Contract and [REDACTED]. This Contract
40 constitutes the entire agreement between the Parties with respect to the subject matter hereof. The
41 headings of the articles, section and subsections of this Contract and any appendix or attachment hereto
42 are inserted for convenience only and shall not in any way affect the meaning or construction of any
43 provision of this Contract.

1 19.13 Successors and Assigns.

2 This Contract, as it may be amended from time to time in accordance with the requirements of
3 this Contract [REDACTED], shall be binding upon, and inure to the benefit of, the
4 Parties' respective successors-in-interest, permitted assigns and legal representatives.

5 19.14 Record Retention.

6 Each Party agrees to retain for a period of five (5) years all records relating to the performance of
7 its obligations hereunder, and to cause all Affiliates to retain for the same period all such records. This
8 obligation shall survive termination or expiration of this Contract.

9 19.15 No Waiver.

10 No waiver of any of the terms and conditions of this Contract shall be effective unless in writing
11 and signed by the Party against whom such waiver is sought to be enforced [REDACTED]
12 [REDACTED]. Any waiver of the terms hereof shall be effective only in
13 the specific instance and for the specific purpose given. The failure of a Party to insist, in any instance, on
14 the strict performance of any of the terms and conditions hereof shall not be construed as a waiver of such
15 Party's right in the future to insist on such strict performance.

16 19.16 Set-Off.

17 Either Party may at any time, but shall be under no obligation to, set off any and all sums due
18 from the other Party against sums due to the other Party hereunder.

19 19.17 Assistance With ASC 810.

- 20 (a) Compliance Accounting rules set forth in Financial Accounting Standards Codification
21 ASC 810, Consolidation ("ASC 810") as well as future amendments and interpretations
22 of those rules, may require FPL to evaluate whether the QS must be consolidated, as a
23 variable interest entity (as defined in ASC 810), in the financial statements of FPL. The
24 QS agrees to fully cooperate with FPL and make available to FPL all financial data and
25 other information, as deemed necessary by FPL, to perform that evaluation on a timely
26 basis at inception of this Contract and periodically as required by ASC 810. If the result
27 of an evaluation under ASC 810 indicates that the QS must be consolidated in the
28 financial statements of FPL, the QS agrees to provide financial statements, together with
29 other required information, as determined by FPL, for inclusion in disclosures contained
30 in the footnotes to the financial statements and in FPL's required filings with the
31 Securities and Exchange Commission ("SEC"). To the extent permissible by law, FPL
32 shall use reasonable efforts to include such financial statements and information of the
33 QS in disclosures and filings by FPL in a manner which does not reveal the source
34 thereof or otherwise attribute them to QS. The QS shall provide this information to FPL
35 in a timeframe consistent with FPL's earnings release and SEC filing schedules, to be
36 determined at FPL's discretion. The QS also agrees to fully cooperate with FPL and
37 FPL's independent auditors in completing an assessment of the QS's internal controls as
38 required by the Sarbanes-Oxley Act of 2002 and in performing any audit procedures
39 necessary for the independent auditors to issue their opinion on the consolidated financial
40 statements of FPL.

1 (b) Any information provided by QS to FPL pursuant to this Section 19.17 shall be
2 considered Confidential Information and shall be maintained confidential and disclosed
3 only as required by GAAP, accounting requirements, SEC rules and any Applicable
4 Laws. The information will only be used for financial statement purposes, to the extent
5 reasonable shall be aggregated with other information or otherwise presented in a format
6 not attributed to QS, and shall not be otherwise shared with internal or external parties.

7 19.18 Third Parties.

8 Other than as specified in the assignment provisions contained in Section 19.3, this Contract is
9 intended solely for the benefit of the Parties, Financing Parties and indemnitees and nothing in this
10 Contract shall be construed as creating any duty to, standard of care with reference to, or any liability to,
11 or conferring any cause or right of action on any other Person not a Party to this Contract. The Parties
12 acknowledge that the Financing Parties are third-party beneficiaries of this Contract. No undertaking by
13 one Party to the other hereunder shall constitute the dedication of that Party's facilities and systems or any
14 portion thereof to the other Party or the public, nor affect the status of FPL as a public utility company or
15 QS as an independent Person.

16 19.19 Survival.

17 The rights and obligations that are intended to survive termination, expiration, cancellation or
18 suspension of this Contract are all of those rights and obligations that this Contract expressly provides
19 shall survive any such event and those that arise from FPL's or QS's covenants, agreements,
20 representation and warranties applicable to, or to be performed, at or during any time prior to or as a
21 result of the termination of this Contract.

22 19.20 Confidentiality.

23 (a) For purposes of this Contract, "Confidential Information" means any written data or
24 information (or an oral communication if the Party requesting confidentiality for such
25 oral communication promptly confirms such communication in writing) that is
26 privileged, confidential or proprietary, and that is marked in a conspicuous manner
27 indicating that such data or information is confidential (or, in the case of an oral
28 communication, is accompanied or promptly followed by a written designation of
29 confidentiality), except information that is described in Sections 19.17 and 19.20(b).
30 Except as otherwise set forth in this Contract, neither Party shall publish, disclose, or
31 otherwise divulge Confidential Information to a third person (other than the Party's
32 employees, Affiliates, actual or potential Financing Parties, counsel, accountants or
33 advisors who have a need to know such information and have agreed to keep such terms
34 confidential), at any time [REDACTED]
35 [REDACTED], without the other Party's prior written consent. Each Party
36 shall be entitled to all remedies available at law or in equity (including specific
37 performance and/or injunctive relief) to enforce, or seek relief in connection with, this
38 confidentiality obligation.

39 [REDACTED] The following shall not be considered Confidential Information, and receiving Party shall
40 not be limited in the use or disclosure of the following information: (i) information which
41 is or becomes part of the public domain through no act or omission of receiving Party; (ii)
42 information which demonstrably was known or was in the possession of receiving Party
43 without obligation to maintain confidentiality prior to the Execution Date of this
44 Contract; (iii) information which is subsequently rightly received by receiving Party from

1 a third party who is not bound to maintain such information as confidential; (iv)
2 information independently developed by the receiving Party without reference to the
3 Confidential Information received under this Contract; and/or, (v) information required to
4 be disclosed by a Party for its compliance obligations to a Governmental Authority, the
5 FPSC, the FERC, NAERC, SEC and/or pursuant to Applicable Law (provided that the
6 disclosing Party shall, to the extent permissible, redact confidential, proprietary, pricing
7 or other trade secret information of the other Party). Further, notwithstanding anything to
8 the contrary, either Party may disclose to the public and third parties, at any time and
9 from time-to-time, the following information in connection with the Parties' respective
10 renewable energy business operations and management, technical evaluation,
11 educational, public relations, and promotional programs: [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]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]
29 [REDACTED]
30 [REDACTED]
31 [REDACTED]

32 (d) Notwithstanding the confidentiality requirements set forth herein, a Party may, subject to
33 the limitations set forth herein, disclose Confidential Information to comply with any
34 applicable requirement of Applicable Law, or any exchange, control area or independent
35 system operator rule, in response to a court order or in connection with any court,
36 arbitration, administrative or regulatory proceeding. Such disclosure shall not terminate
37 the obligations of confidentiality unless the Confidential Information thereafter falls
38 within one of the exclusions of this Contract. To the extent the disclosure of Confidential
39 Information is requested or compelled as set forth above, the receiving Party agrees to
40 give disclosing Party reasonable notice of any discovery request or order, subpoena, or
41 other legal process requiring disclosure of any Confidential Information, to the extent
42 such notice is not prohibited by Applicable Law. Such notice by the receiving Party shall
43 give disclosing Party an opportunity, at disclosing Party's discretion and sole cost, to
44 seek a protective order or similar relief. If such protective order or other appropriate
45 remedy is not sought and obtained within [REDACTED]
46 [REDACTED], receiving Party shall disclose only that portion of the Confidential Information
47 that is required or necessary in the opinion of receiving Party's legal counsel and redact
48 portions thereof containing, setting forth or constituting information or data that, in the
49 opinion of receiving Party's legal counsel is not required to be disclosed; provided,

IN WITNESS WHEREOF, the QS and FPL executed this Agreement for the Purchase of Capacity and Energy effective the date set forth in the first paragraph hereof.

WITNESS

[Signature]
Name

[Signature]
Name

FLORIDA POWER & LIGHT COMPANY

By: [Signature]
Name: Sam Forrest

Its: Vice President
Date: December 14, 2012



WITNESS

[Signature]
Name

[Signature]
Name

U.S. ECOGEN MARTIN, LLC

By: [Signature]
Name: William F. Quinn, P.E.

Its: President & CEO
Date: December 14, 2012

APPENDIX 1

TECHNOLOGY AND GENERATOR CAPABILITIES	
Location:	City: County: Martin
Generator Type (Induction or Synchronous)	Synchronous
Type of Facility	Biomass as defined in Section 25-17.210 (2) F.A.C.
Delivery Term	Thirty (30) years after Commissioning Commencement Date, with Capacity payment commencing after the end of the Commissioning Period

AVOIDED UNIT	
Avoided Unit	Combined Cycle Unit
Avoided Unit Capacity	1,327 MW
Avoided Unit Heat Rate (average annual)	6,607 BTU/kWh
Avoided Unit In-Service Date	June 1, 2025
Avoided Unit Variable O&M (annual escalation: 2.5%)	0.0858 cents/kWh
Avoided Unit Life	30 years
Minimum Performance Standards – On Peak Availability Factor*	94%
Minimum Performance Standards – Off Peak Availability Factor	94%

APPENDIX 2
FACILITY AND SITE DESCRIPTIONS

FACILITY DESCRIPTION:

The U.S. EcoGen Martin, LLC Biomass Electrical Generating Facility (“USEG Martin Facility”) will utilize proven conventional direct-fired biomass boiler and steam turbine technology in a “bottom cycle” configuration to [REDACTED]. Generally the USEG Martin Facility can be broken down into several discrete components. Such components include the Boiler Island, the Power Island, Electrical Interconnection Facilities and the Administrative Areas.

A fuel supply area [REDACTED] will contain all of the equipment and systems required to weigh, unload, prepare, store, and convey the Biomass fuel from the receiving area to the feeder hoppers, which meter the Biomass fuel into the boiler. The boiler island receives the Biomass fuel from the fuel supply area and converts a portion of the chemical energy contained in the Biomass fuel to thermal energy in the form of superheated high pressure steam. This conversion process involves the combustion of the Biomass fuel in a water-tube boiler. The products of combustion leave the boiler as cooled flue gas which is scrubbed [REDACTED] before leaving the emission stack into the atmosphere. The solid residue or ash left over from the combustion process will be used as a farm soil conditioner.

The power island receives the superheated, high pressure steam from the boiler and converts a portion of the thermal energy contained in the steam to electrical energy within the condensing/extraction steam turbine generator. Additional equipment in the power island includes the condenser, pumps, piping and associated controls. The electrical energy generated in the steam turbine is increased in voltage to FPL’s transmission line voltage by the main power transformer located within the switchyard. The switchyard, switchgear, conductors, breakers, meters, controls and transformers comprise the equipment within the electrical interconnection facilities.

The operators and plant management of the USEG Martin Facility are housed within the administrative area. This area includes the control room, laboratory, parts room, machine shop, administrative offices and guardhouse facilities.

The capacity of the USEG Martin Facility hereunder is to be as follows:

Design Committed Capacity	60 MW
Maximum Committed Capacity	[REDACTED]
Minimum Committed Capacity	[REDACTED]

FACILITY SITE DESCRIPTION: The USEG Martin Facility will be located in Martin County, Florida [REDACTED].

FUEL SUPPLY FACILITIES: QS seeks to implement, on a phased approach, a vertically integrated “Closed Loop” biomass fuel production and transportation program [REDACTED]. The Closed Loop fuel supply program is envisioned to include cultivating clean woody biomass, primarily fast growing species of non-invasive Eucalyptus, purposely grown on lands that are to be owned or leased by the QS [REDACTED].

1 [REDACTED] for the Closed Loop supply of biomass fuel, on
2 a dedicated basis to the USEG Martin Facility. QS also seeks to establish a state-of-the-art logistics and
3 fuel harvesting, transportation and inventory management infrastructure. The biomass fuel will likely be
4 harvested as round wood, transported via truck, rail or barge and stored at the USEG Martin Facility. The
5 round wood will likely be chipped, placed under covered storage and delivered to the boiler day bin, on a
6 rotational basis, via a material handling system. Bottom ash from the combustion process is planned to be
7 returned to the growing fields and used as an organic soil conditioner.

**APPENDIX 3
MONTHLY CAPACITY PAYMENT CALCULATION**

1. Monthly Capacity Payments (MCP) for each Monthly Billing Period after the end of the Commissioning Period shall be computed according to the following:

A. In the event that the Annual Capacity Billing Factor (“ACBF”), as defined below, is less than 70%, then no Monthly Capacity Payment shall be due. That is:

$$\text{MCP} = 0$$

B. In the event that the ACBF is equal to or greater than 70% but less than 90%, then the Monthly Capacity Payment shall be calculated by using the following formula:

$$\text{MCP} = \text{BCP} \times [0.05 \times (\text{ACBF} - 70)] \times \text{CC}$$

C. In the event that the ACBF is equal to or greater than 90%, then the Monthly Capacity Payment shall be calculated by using the following formula:

$$\text{MCP} = \text{BCP} \times \text{CC}$$

Where:

MCP Monthly Capacity Payment in dollars.

BCP Base Capacity Payment in \$/KW/Monthly as specified in Appendix 4

CC Committed Capacity in KW.

ACBF Annual Capacity Billing Factor. This factor is calculated using the 12 months rolling average of the Monthly Capacity Factor. This 12 month rolling average shall be defined as the sum of the 12 consecutive Monthly Capacity Factors preceding the date of calculation, divided by 12. During the first 12 consecutive Monthly Billing Periods, commencing with the first Monthly Billing Period in which Capacity payments are to be made, the calculation of the Annual Capacity Billing Factor shall be performed as follows: (a) during the first Monthly Billing Period, the Annual Capacity Billing Factor shall be equal to the Monthly Capacity Factor; (b) thereafter, the calculation of the Annual Capacity Billing Factor shall be computed by dividing the sum of the Monthly Capacity Factors during the first year's Monthly Billing Periods in which Capacity payments are to be made by the number of Monthly Billing Periods which have elapsed. This calculation shall be performed at the end of each Monthly Billing Period until enough Monthly Billing Periods have elapsed to calculate a true 12-month rolling average Annual Capacity Billing Factor. Periods during which the Facility has temporarily set its Committed Capacity equal to 0 KW due to a Force Majeure event shall be excluded from the applicable capacity factor calculation.

MCF Monthly Capacity Factor. The quotient of the number of hours that the Facility was capable of delivering Energy (or the QS delivered replacement Energy) in the Monthly Billing Period divided by the number of hours in the Monthly

Billing Period.

**Monthly
Billing
Period**

The period beginning on the first calendar day of each calendar month, except that the initial Monthly Billing Period shall consist of the period beginning 12:01 a.m. on the day after the end of the Commissioning Period and ending with the last calendar day of such month.

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APPENDIX 4
RATES

A. Capacity Payment Rate. Notwithstanding the cost of any Avoided Unit for any period during the Term, the Capacity Payment rate to be paid by FPL to QS in respect of the Committed Capacity under this Contract during the first Contract Year immediately after the Commissioning Period and each Contract Year through the end of the Term shall be [REDACTED]

B. Energy Rate. The Energy Rate shall be calculated as [REDACTED] times 1 plus the ratio of the CPI-W Index for Urban Wage Earners and Clerical Workers in Miami, FL as published by The Bureau of Labor Statistics (BLS) to that same index for [REDACTED] plus [REDACTED] times 1 plus the ratio of gas prices published in Platts Inside FERC Gas Market Report, first of the month posting for Florida Gas Transmission Zone 3, plus all charges that FGT may apply including all surcharges and percentages that are in effect from time to time for service under Gulfstream Natural Gas to the same gas price index in [REDACTED] plus the \$/MWh charge computed in accordance with Section 19.10 relating to an Environmental Law Change.

C. Energy Performance Bonus Rate. The Energy performance bonus rate shall be paid for Energy produced during the Commissioning Period and is based on the monthly production of Energy at the Facility, which amount will include Energy that FPL does not take for reasons other than the existence of an Emergency Condition. The amount of this bonus payment shall be calculated as the product of (i) [REDACTED], (ii) the monthly production in MWh and (iii) [REDACTED]. The performance bonus shall be capped at [REDACTED], and shall never be less than [REDACTED].

APPENDIX 5
 QS's Performance Security and Payment Security

QS shall provide the following security in the amounts and by the dates specified herein. QS shall have the right to provide performance security and payments security in the form of (i) cash or (ii) an irrevocable stand-by Letter of Credit issued in favor of FPL by a bank acceptable to FPL in its reasonable discretion. If the QS elects to exercise the right to terminate this Contract in the event of a FPL Event of Default, the QS may demand return and cancellation of any Cash Collateral (as defined below) or Letter(s) of Credit provided as security to or for the benefit of FPL, and FPL shall immediately return or cause to be returned any such security upon demand by the QS.

A. Performance Security

QS shall provide the following Performance Security by the dates and in the amounts specified in the table below. QS shall have the right to elect to provide performance security in the form of (i) cash to be provided by the QS prior to Financial Closing ("Cash Collateral") in order to secure its obligations relating to the QS Conditions Precedent to be satisfied by it prior to the Effective Date and (ii) a Letter of Credit issued in favor of FPL to be provided after the Effective Date to secure its obligation to achieve Capacity Delivery Status.

Credit Class	\$/MW *	\$/MW **	\$/MW**
S&P Credit Rating	30 Days after FPSC Approval Date Until Financial Closing/Effective Date	Earlier of Financial Closing and the first day of the calendar month following thirty-four (34) months after the FPSC Approval Date – Year 5 After Capacity Delivery Date	Years 6 – Termination Date
A- and Above			
BBB+ to BBB			
BBB-			
Below BBB-			

*Based on the Design Committed Capacity

**Based on the Design Committed Capacity until the Commissioning Commencement Date, after which based on the actual Committed Capacity

B. Payment Security

The Parties acknowledge and agree as of the Execution Date and on the basis of the Required Commissioning Commencement Date and assumptions set forth in this Appendix 5 that the amounts to be paid for Committed Capacity and Energy by FPL to the QS are above the costs of capacity and energy of the Avoided Unit (the "Avoided Cost") in the early years of the Contract, and thereafter the costs of Committed Capacity and Energy from the Facility are below the Avoided Cost, and that over the thirty (30) year period from the Commissioning Commencement Date though the end of the Term of the Contract, the amounts to be paid by FPL to the QS under this Contract for Committed Capacity and Energy provides savings for the customers of FPL relative to the cost of capacity and energy of the Avoided Unit. The payment in the form of cash or Letter(s) of Credit to be provided by the QS under this Appendix 5, B. ("Payment Security"), is intended to make the customers of FPL whole if payments by

1 FPL to the QS for Committed Capacity and Energy are in an amount greater than the Avoided Cost as of
2 the Early Termination Date if the Contract is terminated by FPL as a result of a QS Event of Default after
3 the Commissioning Commencement Date.

4
5 Commencing the calendar year prior to the year in which the Commissioning Period is scheduled
6 to start, by December 1 of each year and on the basis of a computation made in accordance with this
7 Appendix 5, B., for as long as the amount paid for Committed Capacity and Energy exceed the Avoided
8 Cost, FPL shall provide the QS with a statement of the amount of the required Payment Security for the
9 coming calendar year. The amount of the Payment Security to be provided by the QS under this Appendix
10 5, B., shall be calculated as follows:

11
12 1. Payment Security for the coming calendar year shall be the larger of zero and the sum of
13 the following two components:

14 a. [REDACTED] multiplied by the forecasted amount to be paid by FPL for Committed Capacity
15 and Energy hereunder above the Avoided Cost for the coming year; and

16
17 b. [REDACTED] multiplied by the sum of the current year's Payment Security less the forecasted
18 amount to be paid by FPL for Committed Capacity and Energy above Avoided Cost for the current year
19 plus the actual amount paid in the current year to the QS for Committed Capacity and Energy minus the
20 actual Avoided Cost for the current year.

21
22 2. The forecasted Avoided Cost for the coming calendar year shall be based upon annual fuel
23 cost forecasts filed by FPL with the FPSC in accordance with Applicable Laws and an assumed Capacity
24 Factor of ninety percent (90%). Prior to the Avoided Unit In-Service Date, the cost of capacity of the
25 Avoided Unit shall be zero, and after the Avoided Unit In Service Date it shall be the Avoided Costs
26 associated with the Avoided Unit.

27
28 3. FPL shall provide the QS with indicative information relating to fuel price, the
29 computation of the Avoided Cost for the coming year and the amount of required Payment Security no
30 later than September 15 of each year and thereafter provide the QS with the definitive fuel price and
31 amount of required Payment Security not later than November 15 of the same year. The QS shall provide
32 the Payment Security in the required amount no later than December 31 of each year in respect of the next
33 calendar year.

APPENDIX 6

[REDACTED]

[REDACTED]

[REDACTED]

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APPENDIX 7

FORM OF LETTER OF CREDIT

[ISSUING BANK NAME]
IRREVOCABLE NONTRANSFERABLE STANDBY
LETTER OF CREDIT NO. { }

DATE: _____

BENEFICIARY:

[_____] [_____] [_____] [_____]

APPLICANT:

[_____] [_____] [_____] [_____]

INITIAL AMOUNT: USD \$ _____
DATE OF EXPIRY: On the Expiration Date (as hereinafter defined)
PLACE OF EXPIRY: At our Counters

We hereby issue in your favor our Irrevocable Nontransferable Standby Letter of Credit No. (_____) dated _____ (this "Letter of Credit") for the account of [_____] (the "Applicant"), in the aggregate stated amount of not to exceed _____ AND _____/100 US DOLLARS (US\$ _____) (as the same may be reduced from time to time as a result of draws made pursuant to the provisions of this Letter of Credit, the "Available Amount"), effective immediately and expiring at 5:00 p.m., New York, New York, time, on the Expiration Date (as hereinafter defined) at our counters at [_____].

This Letter of Credit shall be of no further force or effect upon the close of business on _____ (or, if such day is not a Business Day (as hereinafter defined), on the next preceding Business Day); provided, however, that this Letter of Credit will be automatically extended without amendment for successive one (1) year periods from the present or any future expiration date hereof, unless we provide you with written notice of our election not to renew this Letter of Credit at least forty-five (45) days prior to any such expiration date (the present or any future expiration date as aforesaid is referred to herein as the "Expiration Date"). For the purposes hereof, "Business Day" shall mean any day on which commercial banks are not authorized or required to close in Miami, Florida.

Subject to the terms and conditions herein, funds under this Letter of Credit are available to you by presentation in strict compliance on or prior to 5:00 p.m., New York, New York, time, on or prior to the Expiration Date at our counters of:

- (1) the original of this Letter of Credit and all amendments; and
- (2) your sight draft drawn on us; and
- (3) either:
 - (i) Beneficiary's Certificate issued in the form below attached hereto and which

forms an integral part hereof, duly completed and purportedly bearing the original signature of an officer of the Beneficiary; or

(ii) Beneficiary's Certificate issued in the form below attached hereto and which forms an integral part hereof, duly completed and purportedly bearing the original signature of an officer of the Beneficiary.

Drafts drawn under this Letter of Credit must contain the clause: "Drawn under [Issuing Bank Name] Irrevocable Nontransferable Standby Letter of Credit No. { }, dated _____."

Multiple draws are permitted under this Letter of Credit; provided that the Available Amount of this Letter of Credit shall be permanently reduced by the amount of each such draw.

This Letter of Credit may not be transferred or any of the rights hereunder assigned. Any purported transfer or assignment shall be void and of no force or effect.

This Letter of Credit sets forth in full our undertaking and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any documents, instruments or agreements referred to herein, except only the annexes referred to herein; and any such reference shall not be deemed to incorporate by reference any document, instrument or agreement except for such annexes.

We engage with you that your drafts drawn under and in strict compliance with the terms of this Letter of Credit will be duly honored if presented to us on or before the Expiration Date.

This Letter of Credit shall be governed by the Uniform Customs and Practice for Documentary Credits, 1993 Revision, International Chamber of Commerce Publication No. 500 as in effect on the date of issuance thereof (the "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 13(b) and 17 of the UCP, in which case the terms of this Letter of Credit shall govern. As to matters not covered by the UCP, this Letter of Credit shall be governed by and construed in accordance with the laws of the State of New York, without regard to the principles of conflicts of laws thereunder.

[ISSUING BANK NAME]

By _____
Authorized Signature

Address: [_____] [_____] [_____]

TO [Issuing Bank Name]
IRREVOCABLE NONTRANSFERABLE STANDBY LETTER OF CREDIT NO. { }

[Issuing Bank Name]
[_____
[_____
[_____]

Date: _____, _____

Ladies and Gentlemen:

The undersigned _____, the duly elected and acting _____ of Florida Power & Light Company (the "Beneficiary"), hereby certifies to [Issuing Bank Name] (the "Bank") and [] (the "Applicant"), with reference to Irrevocable Nontransferable Standby Letter of Credit No. { }, dated _____, _____ (the "Letter of Credit"), issued by the Bank in favor of the Beneficiary, as follows as of the date hereof:

1. The Beneficiary is a party to Agreement for Purchase of Capacity of Energy, by and between Beneficiary and Applicant (as amended from time to time, the "Agreement").
2. The Beneficiary is entitled to draw under the Letter of Credit an amount equal to \$_____ pursuant to the terms and conditions of the Contract, including without limitation as a result of any one of the following circumstances or events: (a) Applicant has failed to renew or replace the Letter of Credit at least thirty (30) calendar days prior to the stated expiration of the Letter of Credit, (b) within the applicable period of grace Applicant has failed to provide Beneficiary with a Letter of Credit or additional security as required pursuant to the provisions of the Contract, (c) an Event of Default by Applicant has occurred and is continuing or (d) Company otherwise has the right to draw upon any Letter of Credit or other security provided by Customer pursuant to the terms of the Contract.
3. Based upon the foregoing, the Beneficiary hereby makes demand under the Letter of Credit for payment of U.S. DOLLARS _____ AND _____/100ths (U.S.\$_____), which amount does not exceed the lesser of (i) the amount set forth in paragraph 2, above, and (ii) the Available Amount under the Letter of Credit as of the date hereof.
4. The undersigned has concurrently presented to you its sight draft drawn in the amount specified in Paragraph 3 above. The date of the sight draft is the date hereof, which is not later than the Expiration Date.
5. Funds paid pursuant to the provisions of the Letter of Credit shall be wire transferred to the Beneficiary in accordance with the following instructions:

Unless otherwise provided herein, capitalized terms which are used and not defined herein shall have the meaning given each such term in the Letter of Credit.

IN WITNESS WHEREOF, this Certificate has been duly executed and delivered on behalf of the Beneficiary by its duly elected and acting _____ as of this _____ day of _____, _____.

Beneficiary: [_____]

By
Name:
Title:

TO [Issuing Bank Name]
IRREVOCABLE NONTRANSFERABLE STANDBY LETTER OF CREDIT NO. { }

[Issuing Bank Name]
[_____
[_____
[_____]

Date: _____, _____

Ladies and Gentlemen:

The undersigned _____, the duly elected and acting _____ of Florida Power & Light Company (the "Beneficiary"), hereby certifies to [Issuing Bank Name] (the "Bank"), and [_____] (the "Applicant"), with reference to Irrevocable Nontransferable Standby Letter of Credit No. {_____, dated _____, _____ (the "Letter of Credit"), issued by the Bank in favor of the Beneficiary, as follows as of the date hereof:

1. The Beneficiary is a party to that certain Agreement for Purchase and Sale of Capacity and Energy by and between Beneficiary and Applicant (as amended from time to time, the "Agreement").
2. The Bank has heretofore provided written notice to the Beneficiary of the Bank's intent not to renew the Letter of Credit prior to the present Expiration Date thereof and the Applicant has failed to provide the Beneficiary with a substitute letter of credit substantially in the same form as the Letter of Credit referred to in this paragraph.
or
3. The Beneficiary has provided at least thirty (30) calendar days' prior written notice to the Applicant of the Bank's intent not to renew the Letter of Credit prior to the present Expiration Date thereof and the Applicant has failed to provide the Beneficiary with a substitute letter of credit substantially in the same form as the Letter of Credit within the thirty (30) calendar day period referred to in this paragraph.
4. Based upon either 2 or 3, above, the Beneficiary hereby makes demand under the Letter of Credit for payment of U.S. DOLLARS _____ & ___/100ths (U.S. \$___), which amount does not exceed the lesser of (i) the amount Beneficiary is entitled to draw under the terms of the Contract and (ii) the Available Amount under the Letter of Credit as of the date hereof.
5. The undersigned has concurrently presented to you its sight draft drawn in the amount specified in Paragraph 4, above, which amount does not exceed the lesser of (a) the amount the Beneficiary is entitled to draw pursuant to the provisions of the Contract, and (b) the Available Amount as of the date hereof. The date of the sight draft is the date of this Certificate, which is not later than the Expiration Date.
6. Funds paid pursuant to the provisions of the Letter of Credit shall be wire transferred to the Beneficiary in accordance with the following instructions:

Unless otherwise provided herein, capitalized terms which are used and not defined herein shall have the meaning given each such term in the Letter of Credit.

IN WITNESS WHEREOF, this Certificate has been duly executed and delivered on behalf of the Beneficiary by its duly elected and acting _____ as of this ____ day of ____.

Beneficiary:

[_____]

By
Name:
Title:

APPENDIX D

Summary of Contracts

U.S. EcoGen Okeechobee Contract Summary

1. The name of the utility and the owner and operator of the qualifying facility
 - a. Utility: Florida Power & Light Company
 - b. Owner/Operator: U.S. EcoGen Okeechobee, LLC

2. The amount of committed capacity specified in the contract, the size of the facility, the type of facility, its location, and its interconnection and transmission requirements;
 - a. Committed capacity: 60 MW
 - b. Facility Size: 60 MW
 - c. Type of Facility: Closed Loop Biomass (Renewable)
 - d. Location: Okeechobee County, FL
 - e. Interconnection requirements: TBD
 - f. Transmission requirements: None – directly connected to FPL system

3. The amount of annual and on-peak and off-peak energy expected to be delivered to the utility;
 - a. Annual energy production: 436,752 MWh
 - b. On-peak production: 103,989 MWh
 - c. Off-peak production: 332,763 MWh

4. The type of unit being avoided, its size, and its in-service year;

During its term, the contract will offset a range of avoided units.
For environmental cost purposes, the avoided unit is a 2025 Combined Cycle Unit

5. The in-service date of the qualifying facility

The in-service date of the qualifying facility will be staged over time with the in-service dates of the other facilities of U.S. EcoGen Clay, LLC and U.S. EcoGen Martin, LLC, and will occur on or before the outside date of June 1, 2019

6. The date by which the delivery of firm capacity and energy is expected to commence.

On or before the outside date of June 1, 2021

U.S. EcoGen Clay Contract Summary

4. The name of the utility and the owner and operator of the qualifying facility
 - a. Utility: Florida Power & Light Company
 - b. Owner/Operator: U.S. EcoGen Clay, LLC

5. The amount of committed capacity specified in the contract, the size of the facility, the type of facility, its location, and its interconnection and transmission requirements;
 - a. Committed capacity: 60 MW
 - b. Facility Size: 60 MW
 - c. Type of Facility: Closed Loop Biomass (Renewable)
 - d. Location: Clay County, FL
 - e. Interconnection requirements: TBD
 - f. Transmission requirements: None – directly connected to FPL system

6. The amount of annual and on-peak and off-peak energy expected to be delivered to the utility;
 - a. Annual energy production: 436,752 MWh
 - b. On-peak production: 103,989 MWh
 - c. Off-peak production: 332,763 MWh

4. The type of unit being avoided, its size, and its in-service year;

During its term, the contract will offset a range of avoided units.
For environmental cost purposes, the avoided unit is a 2025 Combined Cycle Unit

5. The in-service date of the qualifying facility

The in-service date of the qualifying facility will be staged over time with the in-service dates of the other facilities of U.S. EcoGen Okeechobee, LLC and U.S. EcoGen Martin, LLC, and will occur on or before the outside date of June 1, 2019

6. The date by which the delivery of firm capacity and energy is expected to commence.

On or before the outside date of June 1, 2021

U.S. EcoGen Martin Contract Summary

7. The name of the utility and the owner and operator of the qualifying facility
 - a. Utility: Florida Power & Light Company
 - b. Owner/Operator: U.S. EcoGen Martin, LLC

8. The amount of committed capacity specified in the contract, the size of the facility, the type of facility, its location, and its interconnection and transmission requirements;
 - a. Committed capacity: 60 MW
 - b. Facility Size: 60 MW
 - c. Type of Facility: Closed Loop Biomass (Renewable)
 - d. Location: Martin County, FL
 - e. Interconnection requirements: TBD
 - f. Transmission requirements: None – directly connected to FPL system

9. The amount of annual and on-peak and off-peak energy expected to be delivered to the utility;
 - a. Annual energy production: 436,752 MWh
 - b. On-peak production: 103,989 MWh
 - c. Off-peak production: 332,763 MWh

4. The type of unit being avoided, its size, and its in-service year;

During its term, the contract will offset a range of avoided units.
For environmental cost purposes, the avoided unit is a 2025 Combined Cycle Unit

5. The in-service date of the qualifying facility

The in-service date of the qualifying facility will be staged over time with the in-service dates of the other facilities of U.S. EcoGen Clay, LLC and U.S. EcoGen Okeechobee, LLC, and will occur on or before the outside date of June 1, 2019

6. The date by which the delivery of firm capacity and energy is expected to commence.

On or before the outside date of June 1, 2021

APPENDIX E

**FPL System Cost Including U.S. EcoGen PPA
&
FPL System Cost Without U.S. EcoGen PPA**

FPL System Cost Including U.S. EcoGen PPA

Year	Annual Discount Factor 7.296%	Generation Capital FPL (Millions)	Transmission Capital FPL (Millions)	Generation Fixed O&M (Millions)	Capital Replacement Charges (Millions)	Firm Gas Transport Costs (Millions)	Pipeline Capital Costs (Millions)	U.S. EcoGen Capacity and Energy Costs (Millions)	Misc Unit Costs (Millions)	Total Fixed Costs (Millions)	System Net Fuel (Millions)	Start-up + VOM Costs (Millions)	Emission Costs (Millions)	Transmission Losses (Millions)	Total VOM/Fuel Costs (Millions)	Total Annual Costs (Millions)	NPV Total Annual Cost (Millions)	NPV Cumulative Total Costs (Millions)
2012	1.000	0	0	0	0	0	0	0	1	1	2,331	99	-7	0	2,423	2,424	2,424	2,424
2013	0.932	0	0	0	0	0	0	0	1	1	2,530	105	-13	0	2,622	2,624	2,445	4,869
2014	0.869	0	0	0	0	0	0	0	1	1	2,830	114	-14	0	2,930	2,931	2,546	7,415
2015	0.810	0	0	0	0	0	0	0	1	1	3,161	124	-11	0	3,274	3,275	2,652	10,067
2016	0.755	115	3	6	16	252	0	11	11	404	3,366	126	-9	0	3,483	3,887	2,933	13,000
2017	0.703	192	5	10	29	274	0	3	3	515	3,705	127	-9	0	3,823	4,338	3,051	16,051
2018	0.656	185	5	11	30	274	0	3	3	508	4,226	133	-9	0	4,350	4,858	3,185	19,236
2019	0.611	179	5	11	31	274	0	88	3	591	4,554	138	-9	0	4,683	5,273	3,222	22,459
2020	0.570	172	5	11	32	413	0	98	3	734	4,937	145	-10	0	5,072	5,806	3,307	25,766
2021	0.531	166	5	12	33	426	0	100	3	743	5,402	148	-9	0	5,541	6,284	3,336	29,101
2022	0.495	159	4	12	34	426	0	101	6	742	5,489	153	-10	0	5,632	6,374	3,154	32,255
2023	0.461	153	4	12	35	426	0	104	3	737	5,499	158	353	0	6,010	6,747	3,111	35,367
2024	0.430	147	4	12	36	426	0	105	3	734	5,825	166	413	0	6,404	7,138	3,068	38,435
2025	0.401	296	15	20	58	426	0	107	7	929	6,141	176	462	0	6,779	7,709	3,088	41,523
2026	0.373	473	22	30	87	426	0	109	3	1,150	6,519	189	536	0	7,244	8,394	3,134	44,657
2027	0.348	593	21	37	109	426	0	110	3	1,300	6,994	198	636	0	7,828	9,128	3,177	47,834
2028	0.324	712	21	45	132	426	0	112	4	1,451	7,248	206	724	0	8,178	9,630	3,124	50,957
2029	0.302	830	20	53	157	426	0	113	4	1,604	7,648	215	844	0	8,707	10,311	3,117	54,075
2030	0.282	949	19	62	183	426	0	115	8	1,762	8,160	227	997	0	9,384	11,146	3,141	57,216
2031	0.263	1,067	18	71	211	426	0	117	4	1,914	8,567	238	1,137	0	9,942	11,855	3,114	60,329
2032	0.245	1,376	18	89	266	426	0	119	4	2,297	9,193	248	1,339	0	10,780	13,077	3,201	63,531
2033	0.228	1,719	17	110	330	426	0	120	4	2,726	10,304	277	1,653	0	12,234	14,961	3,414	66,944
2034	0.213	1,891	16	124	374	426	0	122	4	2,957	10,879	303	1,897	0	13,079	16,037	3,410	70,355
2035	0.198	2,095	16	140	425	426	0	124	4	3,230	11,409	325	2,141	0	13,875	17,104	3,390	73,745
2036	0.185	2,480	15	165	503	426	0	126	4	3,720	12,452	365	2,539	0	15,356	19,076	3,524	77,269
2037	0.172	2,720	14	185	567	426	0	128	7	4,047	13,050	386	2,840	0	16,276	20,324	3,580	80,769
2038	0.160	2,806	14	198	611	426	0	130	5	4,189	13,701	406	3,191	0	17,298	21,487	3,449	84,217
2039	0.150	2,892	13	212	657	426	0	132	5	4,337	14,384	433	3,551	0	18,368	22,705	3,396	87,614
2040	0.139	2,979	12	227	705	426	0	135	8	4,492	14,953	456	3,899	0	19,308	23,800	3,318	90,932
2041	0.130	3,192	12	247	773	426	0	137	5	4,792	15,636	481	4,361	0	20,478	25,270	3,284	94,216
2042	0.121	3,363	11	267	839	426	0	139	5	5,052	16,367	505	4,866	0	21,738	26,790	3,245	97,461
2043	0.113	3,708	11	295	933	426	0	142	5	5,520	17,369	535	5,541	0	23,445	28,965	3,270	100,731
2044	0.105	3,966	11	322	1,020	426	0	144	5	5,893	18,214	562	6,212	0	24,988	30,881	3,249	103,980
2045	0.098	4,172	10	346	1,103	426	0	147	5	6,210	18,884	590	6,865	0	26,339	32,549	3,192	107,172
2046	0.091	4,309	10	370	1,185	426	0	149	6	6,454	19,602	616	7,613	0	27,831	34,285	3,134	110,306
2047	0.085	4,504	10	396	1,276	426	0	152	6	6,770	20,339	642	8,425	0	29,406	36,176	3,082	113,388
2048	0.079	4,672	9	422	1,366	426	0	155	0	7,050	21,110	675	9,312	0	31,097	38,148	3,029	116,417
2049	0.074	4,892	9	451	1,466	426	0	158	0	7,401	21,897	702	10,277	0	32,876	40,278	2,981	119,398
2050	0.069	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	119,398
[1] Total NPV =		\$9,732	\$103	\$712	\$2,192	\$3,862	\$0	\$904	\$50	\$17,555	\$87,108	\$2,699	\$12,036	\$0	\$101,843	\$119,398		U.S. EcoGen
[2] Total NPV =		\$9,805	\$103	\$717	\$2,207	\$3,862	\$0	\$0	\$53	\$16,747	\$87,960	\$2,706	\$12,151	\$0	\$102,818	\$119,565		W/O U.S. EcoGen
CPVRR of Contracts =		(\$73)	\$0	(\$5)	(\$15)	\$0	\$0	\$904	(\$3)	\$808	(\$853)	(\$6)	(\$116)		(\$975)	(\$167)		

FPL System Cost Without U.S. EcoGen PPA

Year	Annual Discount Factor 7.290%	Generation Capital FPL (Millions)	Transmission Capital FPL (Millions)	Generation Fixed O&M (Millions)	Capital Replacement Charges (Millions)	Firm Gas Transport Costs (Millions)	Pipeline Capital Costs (Millions)	Misc System Costs (Millions)	Misc Unit Costs (Millions)	Total Fixed Costs (Millions)	System Net Fuel (Millions)	Startup + VOM Costs (Millions)	Emission Costs (Millions)	Transmission Losses (Millions)	Total VOM/Fuel Costs (Millions)	Total Annual Costs (Millions)	NPV Total Annual Cost (Millions)	NPV Cumulative Total Costs (Millions)
2012	1.000	0	0	0	0	0	0	0	1	1	2,331	99	-7	0	2,423	2,424	2,424	2,424
2013	0.932	0	0	0	0	0	0	0	1	1	2,530	105	-13	0	2,622	2,624	2,445	4,869
2014	0.869	0	0	0	0	0	0	0	1	1	2,830	114	-14	0	2,930	2,931	2,546	7,415
2015	0.810	0	0	0	0	0	0	0	1	1	3,161	124	-11	0	3,274	3,275	2,652	10,067
2016	0.755	115	3	6	16	252	0	0	11	404	3,366	126	-9	0	3,483	3,887	2,933	13,000
2017	0.703	192	5	10	29	274	0	0	3	515	3,705	127	-9	0	3,823	4,338	3,051	16,051
2018	0.656	185	5	11	30	274	0	0	3	508	4,226	133	-9	0	4,350	4,858	3,185	19,236
2019	0.611	179	5	11	31	274	0	0	3	503	4,625	138	-9	0	4,754	5,256	3,212	22,448
2020	0.570	172	5	11	32	413	0	0	3	636	5,021	146	-9	0	5,158	5,793	3,300	25,748
2021	0.531	166	5	12	33	426	0	0	3	643	5,488	148	-9	0	5,627	6,270	3,329	29,076
2022	0.495	159	4	12	34	426	0	0	6	641	5,583	153	-10	0	5,726	6,367	3,150	32,227
2023	0.461	153	4	12	35	426	0	0	3	634	5,591	158	358	0	6,107	6,741	3,109	35,336
2024	0.430	147	4	12	36	426	0	0	3	629	5,920	167	419	0	6,506	7,135	3,067	38,403
2025	0.401	296	15	20	58	426	0	0	7	822	6,241	177	470	0	6,888	7,710	3,089	41,491
2026	0.373	473	22	30	87	426	0	0	3	1,041	6,621	188	544	0	7,333	8,394	3,134	44,626
2027	0.348	593	21	37	109	426	0	0	3	1,190	7,102	199	645	0	7,946	9,136	3,179	47,805
2028	0.324	712	21	45	132	426	0	0	4	1,339	7,357	206	735	0	8,298	9,637	3,126	50,931
2029	0.302	830	20	53	157	426	0	0	4	1,490	7,759	216	855	0	8,830	10,320	3,120	54,051
2030	0.282	949	19	62	183	426	0	0	19	1,658	8,273	228	1,011	0	9,512	11,170	3,148	57,199
2031	0.263	1,067	18	71	211	426	0	0	4	1,797	8,684	240	1,152	0	10,076	11,873	3,118	60,317
2032	0.245	1,376	18	89	266	426	0	0	4	2,178	9,314	250	1,356	0	10,920	13,098	3,206	63,524
2033	0.228	1,719	17	110	330	426	0	0	4	2,606	10,428	278	1,672	0	12,378	14,984	3,419	66,942
2034	0.213	1,991	16	129	388	426	0	0	4	2,955	10,979	304	1,913	0	13,196	16,151	3,435	70,377
2035	0.198	2,159	16	143	435	426	0	0	4	3,184	11,531	326	2,160	0	14,017	17,200	3,409	73,787
2036	0.185	2,469	15	165	503	426	0	0	4	3,583	12,585	367	2,562	0	15,514	19,097	3,528	77,315
2037	0.172	2,709	14	185	567	426	0	0	7	3,908	13,184	389	2,867	0	16,440	20,349	3,504	80,819
2038	0.160	2,795	14	198	611	426	0	0	5	4,048	13,836	408	3,222	0	17,466	21,514	3,453	84,271
2039	0.150	2,882	13	212	657	426	0	0	5	4,194	14,523	435	3,586	0	18,544	22,738	3,401	87,673
2040	0.139	3,090	12	232	722	426	0	0	8	4,490	15,069	456	3,929	0	19,454	23,944	3,338	91,011
2041	0.130	3,259	12	251	785	426	0	0	5	4,738	15,772	483	4,396	0	20,651	25,389	3,299	94,311
2042	0.121	3,341	11	267	839	426	0	0	5	4,890	16,514	507	4,912	0	21,933	26,823	3,249	97,559
2043	0.113	3,686	11	295	933	426	0	0	5	5,357	17,517	536	5,591	0	23,644	29,001	3,274	100,833
2044	0.105	4,080	11	327	1,039	426	0	0	5	5,888	18,343	564	6,253	0	25,160	31,048	3,267	104,100
2045	0.098	4,238	10	350	1,117	426	0	0	5	6,147	19,023	592	6,920	0	26,535	32,682	3,205	107,305
2046	0.091	4,274	10	370	1,185	426	0	0	6	6,270	19,759	617	7,677	0	28,053	34,323	3,137	110,443
2047	0.085	4,470	10	396	1,276	426	0	0	6	6,584	20,503	645	8,492	0	29,640	36,224	3,086	113,529
2048	0.079	4,791	9	429	1,387	426	0	0	0	7,043	21,240	673	9,371	0	31,284	38,327	3,043	116,572
2049	0.074	4,956	9	456	1,482	426	0	0	0	7,329	22,045	704	10,356	0	33,105	40,434	2,993	119,565
2050	0.069	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	119,565
Total NPV =		\$9,805	\$103	\$717	\$2,207	\$3,862	\$0	\$0	\$53	\$16,747	\$87,960	\$2,706	\$12,151	\$0	\$102,818	\$119,565		

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

FLORIDA POWER & LIGHT COMPANY

DIRECT TESTIMONY OF THOMAS L. HARTMAN

IN RE:

FLORIDA POWER & LIGHT COMPANY'S PETITION FOR APPROVAL

OF NEGOTIATED RENEWABLE ENERGY CONTRACTS WITH

U.S.ECOGEN OKEECHOBEE, LLC, U.S. ECOGEN CLAY, LLC, AND

U.S. ECOGEN MARTIN, LLC

DOCKET NO. _____

DECEMBER 18, 2012

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1 I. INTRODUCTION

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3 **Q. Please state your name and business address.**

4 A. My name is Thomas L. Hartman. My business address is 700 Universe
5 Boulevard, Juno Beach, Florida 33408.

6 **Q. By whom are you employed and what is your position?**

7 A. I am employed by Florida Power & Light Company (“FPL” or the
8 “Company”) as Director of Business Management in the Energy Marketing &
9 Trading Department.

10 **Q. Please describe your duties and responsibilities in that position.**

11 A. My current responsibilities include: providing analyses to determine whether
12 and on what terms to extend or replace expiring long term purchase power
13 Contracts; evaluating and negotiating amendments to existing long term
14 power purchase agreements; negotiating new power purchase agreements; and
15 assisting in the development of draft purchase power agreements for future
16 generation capacity purchases.

17 **Q. Please describe your educational background and professional
18 experience.**

19 A. I received a Bachelor of Science Degree in Mechanical Engineering and
20 Aerospace Sciences in 1974, and a Master’s Degree in Mechanical
21 Engineering in 1975 from Florida Technological University. I received a
22 Masters of Business Administration degree from Georgia State University in
23 1985. I have been employed by FPL since July 2003. From 1994 until

1 joining FPL, I was employed by FPL's unregulated affiliate, NextEra Energy
2 Resources and its predecessor companies. Throughout my employment at
3 NextEra, I held a number of positions in Business Management, where I had
4 responsibility for various unregulated power projects, including responsibility
5 for negotiating, administering, and modifying power purchase agreements.
6 Prior to joining NextEra, I was employed by a number of consulting firms,
7 providing management and technical consulting, which related to construction
8 and management of various types of renewable and non-renewable power
9 plants.

10 **Q. Are you sponsoring any exhibits in this docket?**

11 A. Yes. I am sponsoring Exhibit TLH-1, FPL System Cost Including and
12 Without U.S. EcoGen PPA, which is attached to my direct testimony.

13 **Q. What is the purpose of your testimony?**

14 A. FPL and U.S. EcoGen, LLC have negotiated certain Contracts for the
15 purchase and sale of firm capacity and energy from three renewable energy
16 facilities using biomass as fuel, all located in FPL's service territory
17 ("Facilities"). My testimony addresses why the Florida Public Service
18 Commission ("Commission") should approve the Contracts between FPL and
19 U.S. EcoGen Okeechobee, LLC, U.S. EcoGen Martin, LLC, and U.S. EcoGen
20 Clay, LLC (each a "Contract" and collectively the "U.S. EcoGen Contracts")
21 for cost recovery. The counterparties to the U.S. EcoGen Contracts will be
22 referred to herein collectively as U.S. EcoGen.

23

1 **Q. Please summarize your testimony.**

2 A. In accordance with established Commission preference, U.S. EcoGen, LLC
3 and FPL have negotiated purchase power agreements for the output of three
4 U.S. EcoGen biomass renewable generation Facilities which will benefit
5 FPL's customers. Copies of these Contracts are attached to the Petition as
6 Appendices A, B and C. The U.S. EcoGen Contracts satisfy the requirements
7 stated in Rule 25-17.0832, F.A.C., because they will provide capacity and
8 energy which will contribute to the deferral of FPL's capacity needs during
9 the term of the Contracts; the present worth of the payments to U.S. EcoGen
10 are less than the costs that would otherwise be incurred by FPL; and the
11 Contracts contain provisions which ensure repayment of any payments which
12 exceed avoided costs in the event that U.S. EcoGen fails to deliver.
13 Additionally, the Contracts increase fuel diversity and fuel supply reliability,
14 reduce reliance on fossil fuels in the production of electricity, and add
15 renewable generation on FPL's system.

16
17 In summary, FPL's customers will benefit from these Contracts. The
18 Commission should find the Contracts prudent and approve recovery of the
19 costs associated with these Contracts from FPL's customers.

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1 **II. FUEL DIVERSITY AND RELIABILITY**

2

3 **Q. What, if any, impact would construction of the Facilities and FPL’s**
4 **purchase of the output have on FPL’s fuel diversity?**

5 A. It would improve FPL’s fuel diversity because it would add 180 MW of base
6 load generating capacity using renewable fuel. With an estimated combined
7 annual output in excess of 1,310,256 MWh for the three Facilities, the output
8 of these Facilities is more than triple the total annual output of all other
9 current renewable firm capacity and energy purchases by FPL. They would
10 substantially increase the quantity of renewable generation in FPL’s portfolio,
11 thereby reducing FPL’s consumption of natural gas and other fossil fuels.

12 **Q. What, if any, impact would the construction of the Facilities and FPL’s**
13 **purchase of the output under the terms of the Contracts have on FPL’s**
14 **fuel supply reliability?**

15 A. The Facilities and FPL’s purchase of the energy output will increase FPL’s
16 fuel reliability. The Facilities will be growing their own biomass fuel locally,
17 not requiring interstate or international transportation. Additionally, the
18 Contracts require that the Facilities maintain on site a minimum fuel supply
19 for each plant. Finally, purchasing energy under these Contracts will reduce
20 FPL’s gas need, which improves overall fuel supply reliability.

1 **III. COST EFFECTIVENESS**

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Q. Are the construction of the Facilities and FPL’s purchase of the output under the terms of the Contracts a cost effective alternative for FPL?

A. Yes. The U.S. EcoGen Contracts result in an estimated \$167 million system cost savings (CPVRR) over the life of the U.S. EcoGen Contracts, including the impact of displacing higher cost generation in the earlier years and recognizing the capacity cost benefit of offsetting/deferring a portion of the capacity needs of the next avoided unit. The calculation of these cost savings is depicted in Exhibit TLH-1 attached to my testimony.

Additionally, and not reflected in these calculations, is the fact that the Facilities provide economic and environmental benefits to the local communities, most of whom are also FPL customers. According to U.S. EcoGen and based primarily on analysis by the Central Florida Development Council of Polk County, a single U. S. EcoGen facility in Florida is projected to provide an economic impact to the local community of \$11.3 million annually and lead directly and indirectly to the creation of 141 jobs.

1 IV. BENEFITS TO CUSTOMERS

2

3 **Q. Are there aspects to these Contracts which are particularly beneficial to**
4 **FPL's customers?**

5 A. Yes. Three aspects of these Contracts may be considered novel and are
6 particularly beneficial to FPL's customers; (1) the pricing structure; (2) the
7 security provisions; and (3) the commissioning period.

8 **Q. What is beneficial about the pricing structure?**

9 A. The pricing provisions include three components; a fixed capacity payment,
10 an energy payment tied to the consumer price index, and an energy payment
11 tied to the price of natural gas. These payment components should not be
12 considered individually, but taken as a whole for the provision of combined
13 capacity and energy over the life of the Contracts. The capacity payment
14 amount is fixed over the entire life of the Contracts. It provides a base
15 revenue stream to U.S. EcoGen which will not fluctuate and will assist U.S.
16 EcoGen in getting financing for the projects. The CPI-tied payment stream
17 will fluctuate from month-to-month with inflation, and is tied to the CPI index
18 as of a date certain. Similarly, the gas payment stream will fluctuate from
19 month-to-month, and is tied to a natural gas index that will automatically
20 reflect the price of natural gas. The combination of the three payments
21 streams over the life of the Contracts represents a considerable savings to
22 FPL's customers.

23

1 The combination of a fixed payment, a CPI-tied payment, and a natural gas-
2 tied payment results in payments streams for the Contracts which are less
3 volatile than either inflation or natural gas prices. This reduced overall price
4 volatility will mitigate fuel cost increases FPL would be incurring if it were
5 using its own generation rather than purchasing power.

6
7 In addition to the physical fuel diversity provided by the Facilities, this pricing
8 structure effectively results in reduced fuel price volatility for customers.
9 Instead of having to pay for fuel cost increases tied largely to the escalation
10 rate of natural gas, customers will pay a total cost for this power that is in part
11 fixed, in part tied to CPI, and in part tied to overall fuel costs. This pricing
12 structure mitigates FPL's customers' exposure to natural gas fuel price
13 volatility.

14 **Q. What is the benefit of the security provisions?**

15 A. During the early years of the Contracts, payments to U.S. EcoGen will exceed
16 avoided cost – the cost to provide energy and capacity to the customers from
17 FPL's own system. Section B of Appendix 5 to the Contracts specifies this
18 payment security. At the beginning of each year, the security amount is
19 calculated as the expected payments exceeding avoided cost for the coming
20 year, plus an interest-adjusted current year's payment security less the
21 previous year's forecast payment above avoided cost plus the actual payments
22 to U.S. EcoGen less the actual avoided cost. In essence, each year a
23 calculation is made of the customers' exposure for cumulative payments

1 above avoided cost, including the time value of money, and U.S. EcoGen is
2 required to post collateral adequate to cover this exposure. In this way, U.S.
3 EcoGen never has to post collateral higher than the actual exposure of the
4 customers, and, simultaneously, there is little possibility that the actual
5 collateral available to protect the customers is less than their exposure.

6 **Q. Would you discuss the Commissioning provisions?**

7 A. Yes. The Contracts protect FPL's customers by calling for a two-year
8 commissioning period. Firm capacity is needed on FPL's system to assure
9 that the customers always can rely upon electricity being available at all times
10 to meet the customers' needs. There are no operating closed loop biomass
11 power plants in the U.S. With a closed loop biomass facility, the growing and
12 harvesting of a sustainable biomass crop is an essential component of the
13 facility. Normally, plant commissioning only has to demonstrate the ability of
14 the power generation facility to meet the contractual capacity provisions.
15 With a closed loop biomass facility, not only must the power generation
16 facility itself meet the contractual requirement, so too must the biomass crop.
17 A two-year commissioning period allows U.S. EcoGen to demonstrate the
18 reliability of the integrated fuel growing program and powerplant to
19 consistently and reliably deliver against its capacity commitment. Only after
20 this demonstration will FPL rely upon U.S. EcoGen's capacity to meet the
21 capacity needed to serve the customers. During this commissioning period,
22 there will not be a capacity payment; however, there will be a performance
23 bonus payment potential. This performance bonus is calculated such that U.S.

1 EcoGen's revenue would be the same as if it had achieved the capacity
2 associated with the energy production.

3

4

V. COST RECOVERY

5

6 **Q. FPL is requesting authorization for FPL to recover the costs associated**
7 **with the Contracts. Please explain what FPL seeks.**

8 A. The Contracts require as a condition precedent two specific findings by the
9 Commission. The first required finding sought by FPL is that the Contracts
10 are reasonable, prudent, and in the best interests of FPL's customers
11 consistent with the requirements of Rule 25-17.0832, F.A.C. The second
12 required finding sought by FPL is that FPL be allowed to recover costs
13 incident to the contract through the Commission's established adjustment
14 clauses.

15

16 There are two types of costs associated with the contract: payments to U.S.
17 EcoGen for capacity and energy pursuant to the Contracts, and costs of
18 administering the contract. FPL seeks Commission approval for both types of
19 contract costs to be recovered from FPL's customers.

20 **Q. What factors does FPL ask the Commission to consider in reviewing the**
21 **proposed Contracts under Rule 25-17.0832?**

22 A Rule 25-17.0832 (3) specifies that the Commission shall consider four factors
23 in reviewing Contracts for the purpose of cost recovery: whether additional

1 firm capacity and energy is needed by the utility; whether the cumulative
2 present worth of the contractual payments is not greater than the costs the
3 utility would otherwise incur; whether the contract contains provisions
4 adequate to ensure repayment to the extent that contract payments exceed the
5 utilities costs; and whether the contract contains provisions to protect the
6 utility's customers should the qualifying facility fail to deliver energy and
7 capacity as specified in the contract.

8 **Q. The first specific requirement for the Commission to consider under Rule**
9 **25-17.0832(3)(a) is whether additional firm capacity and energy is needed**
10 **by the utility. Please discuss.**

11 A. FPL's current Ten-Year-Site-Plan indicates a requirement for a short-term
12 purchase of 250 MW of capacity in the summer of 2021. The Contracts will
13 fill 180 MW of this need. More significantly, however, the Contracts will
14 extend through 2049. Indisputably through that period of time, FPL will have
15 additional capacity needs, either through load growth or retirement of old
16 units. Thus, the Contracts can reasonably be expected to meet FPL's
17 customers' needs for capacity and energy during the terms of the Contracts.

18 **Q. The second specific requirement for the Commission to consider under**
19 **Rule 25-17.0832(3)(b) is whether the cumulative present worth of firm**
20 **capacity and energy under the Contracts is projected to be no greater**
21 **than the cumulative present worth of other capacity and energy related**
22 **costs that the contract is designed to avoid. How is this addressed?**

23

1 A. Exhibit TLH-1 to my testimony, which contains the same information as
2 Appendix E to the petition filed in this docket, compares the current present
3 value of the revenue requirement to FPL's customers with and without the
4 Contracts. This exhibit demonstrates that not only are the costs associated
5 with the Contracts "no greater than" FPL's avoided costs, but in fact, the
6 Contracts are projected to save the customers a combined total of \$167
7 million, CPVRR, over their terms.

8 **Q. The third specific requirement for the Commission to consider under**
9 **Rule 25-17.0832(3)(c) is whether the Contracts contain provisions to**
10 **ensure repayment of any payment that exceeds the value of deferring the**
11 **construction and operation of generation for any year. How is this**
12 **addressed?**

13 A. As earlier discussed, the Contracts contain a security provision which
14 measures on an annual basis the customers' exposure (including time value of
15 money) to past payments above avoided cost to U.S. EcoGen, as well as
16 anticipated exposure over the coming year. Each year U.S. EcoGen is required
17 to post security, in the form of a letter of credit, for the entire exposure. FPL
18 and U.S. EcoGen learned from the Commission's concerns in the U.S.
19 EcoGen Polk, LLC/ Progress Energy Florida, Inc. purchase power agreement
20 docket (Commission Docket No. 110090-EQ) and crafted a security provision
21 addressing the requirement that adequate security be provided for payments in
22 excess of avoided cost in a manner that not only assures that the customers'

1 exposure is adequately protected, but also that the renewable generator does
2 not have to post more security than is needed to protect the customers.

3 **Q. The fourth specific requirement for the Commission to consider under**
4 **Rule 25-17.0832(3)(d) is whether the Contracts contain provisions that**
5 **protect the utility's ratepayers in the event the facilities fail to deliver**
6 **firm capacity and energy in the amounts and times specified in the**
7 **contract. How is this addressed?**

8 A. Multiple provisions of the Contracts protect the customers in this instance.
9 First, as earlier discussed, the commissioning period is used to ameliorate the
10 technical risk associated with a closed loop biomass facility. Second, capacity
11 payments depend upon performance. Third, there are explicit default
12 provisions.

13 **Q. Would you discuss the capacity payment provisions?**

14 A. Yes. After the commissioning period, the base capacity payment is fixed
15 throughout the life of the Contracts. As long as the annual capacity billing
16 factor is equal to or greater than 90%, then the monthly capacity payment is
17 base capacity payment times the committed capacity. If the annual capacity
18 billing factor drops below 70%, then there is no capacity payment. As long as
19 the annual capacity billing factor is between 90% and 70%, then the capacity
20 payment is reduced by 5% for each 1% drop in annual capacity billing factor.
21 These payment provisions provide a strong inducement for U.S. EcoGen to
22 maintain a high capacity factor, and also assure that the customers do not pay
23 for capacity not reliably delivered.

1 **Q. Would you discuss the default provisions?**

2 A. Yes. The Contracts explicitly address default by either U.S. EcoGen or FPL.

3

4 Defaults by U.S. EcoGen include: abandonment of the project; material
5 changes in the project without approval; failure to maintain Qualifying
6 Facility status; failure to maintain an Annual Capacity Billing Factor above
7 70% for twelve months after the commissioning period; sales of capacity or
8 energy to a third party; failure to bring the facility back to capacity above the
9 minimum following an event of Force Majeure; failure to maintain required
10 fuel inventory; failure to maintain insurance; failure to achieve certain
11 scheduled dates; and failure to maintain the required security. In the case of
12 an U.S. EcoGen default, FPL may withhold payments and draw upon the
13 security provided by U.S. EcoGen, suspend performance of the contract,
14 and/or terminate the contract. If FPL terminates the contract, it shall have the
15 right to draw on the security as a termination payment.

16

17 Defaults by FPL include: failure to timely petition the FPSC; failure to pay
18 any undisputed amount after notice to FPL by U.S. EcoGen; and failure to
19 release security pursuant to the contract provisions, and after notice by U.S.
20 EcoGen. In the remote case of an FPL default, U.S. EcoGen shall be entitled
21 to withhold payments to FPL; suspend performance under the contract; or
22 terminate the contract. In the case of termination, U.S. EcoGen would be
23 entitled to a termination payment under the terms of the Contracts. A

1 termination payment is necessary to ensure the financeability of these
2 Contracts as lenders need certainty with respect to an anticipated revenue
3 stream. FPL's termination payment is measured by the shortfall in revenues
4 that U.S. EcoGen realizes when replacing these Contracts with similar
5 arrangements pursuant to its status as a Qualifying Facility. If U.S. EcoGen
6 terminates the contract due to an FPL default, it shall be entitled to payment of
7 the positive difference (if any) between the contractual payments and as-
8 available payments. At present, there would be no payment.

9
10 These default provisions protect the customers in two ways. Should U.S.
11 EcoGen default, the termination payments assure that the customers recover
12 any payments above avoided cost already incurred (including time value of
13 money) as well as the performance security to provide compensation for the
14 cost of arranging for new capacity. Thus, customers are in the same position
15 as if the Contracts had never occurred and are held harmless. Should FPL
16 default, payment of the difference between contract price and avoided costs
17 provides that the customers are assured payments to U.S. EcoGen would not
18 exceed the costs that would have been incurred had the default never
19 occurred.

20 **Q. Does this conclude your direct testimony?**

21 A. Yes.

22

23

EXHIBIT TLH-1

FPL System Cost Including U.S. EcoGen PPA

&

FPL System Cost Without U.S. EcoGen PPA

FPL System Cost Including U.S. EcoGen PPA

Year	Annual Discount Factor 7.200%	Generation Capital FPL (Millions)	Transmission Capital FPL (Millions)	Generation Fixed O&M (Millions)	Replacement Charges (Millions)	Firm Gas Transport Costs (Millions)	Pipeline Capital Costs (Millions)	U.S. EcoGen Capacity and Energy Costs (Millions)	Mile Unit Costs (Millions)	Total Fixed Costs (Millions)	System Net Fuel (Millions)	Startup + VOM Costs (Millions)	Emission Costs (Millions)	Transmission Losses (Millions)	Total VOM/Fuel Costs (Millions)	Total Annual Costs (Millions)	NPV Total Annual Cost (Millions)	NPV Cumulative Total Costs (Millions)
1 2012	1.000	0	0	0	0	0	0	0	1	1	2,331	99	-7	0	2,423	2,424	2,424	2,424
2 2013	0.932	0	0	0	0	0	0	0	1	1	2,530	105	-13	0	2,622	2,624	2,445	4,869
3 2014	0.869	0	0	0	0	0	0	0	1	1	2,830	114	-14	0	2,930	2,931	2,546	7,415
4 2015	0.810	0	0	0	0	0	0	0	1	1	3,161	124	-11	0	3,274	3,275	2,652	10,067
5 2016	0.755	115	3	6	16	252	0	0	11	404	3,366	126	-9	0	3,483	3,887	2,933	13,000
6 2017	0.703	192	5	10	29	274	0	0	3	515	3,705	127	-9	0	3,823	4,338	3,051	16,051
7 2018	0.656	185	5	11	30	274	0	0	3	508	4,226	133	-9	0	4,350	4,858	3,185	19,236
8 2019	0.611	179	5	11	31	274	0	88	3	591	4,554	138	-9	0	4,683	5,273	3,222	22,459
9 2020	0.570	172	5	11	32	413	0	98	3	734	4,937	145	-10	0	5,072	5,806	3,307	25,766
10 2021	0.531	166	5	12	33	426	0	100	3	743	5,402	148	-9	0	5,541	6,284	3,336	29,101
11 2022	0.495	159	4	12	34	426	0	101	6	742	5,489	153	-10	0	5,632	6,374	3,154	32,255
12 2023	0.461	153	4	12	35	426	0	104	3	737	5,499	158	353	0	6,010	6,747	3,111	35,367
13 2024	0.430	147	4	12	36	426	0	105	3	734	5,825	166	413	0	6,404	7,138	3,068	38,435
14 2025	0.401	296	15	20	58	426	0	107	7	929	6,141	176	462	0	6,779	7,709	3,088	41,523
15 2026	0.373	473	22	30	87	426	0	109	3	1,150	6,519	189	536	0	7,244	8,394	3,134	44,657
16 2027	0.348	593	21	37	109	426	0	110	3	1,300	6,994	198	636	0	7,828	9,128	3,177	47,834
17 2028	0.324	712	21	45	132	426	0	112	4	1,451	7,248	206	724	0	8,178	9,630	3,124	50,957
18 2029	0.302	830	20	53	157	426	0	113	4	1,604	7,648	215	844	0	8,707	10,311	3,117	54,075
19 2030	0.282	949	19	62	183	426	0	115	8	1,762	8,160	227	997	0	9,384	11,146	3,141	57,216
20 2031	0.263	1,067	18	71	211	426	0	117	4	1,914	8,567	238	1,137	0	9,942	11,855	3,114	60,329
21 2032	0.245	1,376	18	89	266	426	0	119	4	2,297	9,193	248	1,339	0	10,780	13,077	3,201	63,531
22 2033	0.228	1,719	17	110	330	426	0	120	4	2,726	10,304	277	1,653	0	12,234	14,961	3,414	66,944
23 2034	0.213	1,891	16	124	374	426	0	122	4	2,957	10,879	303	1,897	0	13,079	16,037	3,410	70,355
24 2035	0.198	2,095	16	140	425	426	0	124	4	3,230	11,409	325	2,141	0	13,875	17,104	3,390	73,745
25 2036	0.185	2,480	15	165	503	426	0	126	4	3,720	12,452	365	2,539	0	15,356	19,076	3,524	77,269
26 2037	0.172	2,720	14	185	567	426	0	128	7	4,047	13,050	386	2,840	0	16,276	20,324	3,500	80,769
27 2038	0.160	2,806	14	198	611	426	0	130	5	4,189	13,701	406	3,191	0	17,298	21,487	3,449	84,217
28 2039	0.150	2,892	13	212	657	426	0	132	5	4,337	14,384	433	3,551	0	18,368	22,705	3,396	87,614
29 2040	0.139	2,979	12	227	705	426	0	135	8	4,492	14,953	456	3,899	0	19,308	23,800	3,318	90,932
30 2041	0.130	3,192	12	247	773	426	0	137	5	4,792	15,636	481	4,361	0	20,478	25,270	3,284	94,216
31 2042	0.121	3,363	11	267	839	426	0	139	5	5,052	16,367	505	4,866	0	21,738	26,790	3,245	97,461
32 2043	0.113	3,708	11	295	933	426	0	142	5	5,520	17,369	535	5,541	0	23,445	28,965	3,270	100,731
33 2044	0.105	3,966	11	322	1,020	426	0	144	5	5,893	18,214	562	6,212	0	24,988	30,881	3,249	103,980
34 2045	0.098	4,172	10	346	1,103	426	0	147	5	6,210	18,884	590	6,865	0	26,339	32,549	3,192	107,172
35 2046	0.091	4,309	10	370	1,185	426	0	149	6	6,454	19,602	616	7,613	0	27,831	34,285	3,134	110,306
36 2047	0.085	4,504	10	396	1,276	426	0	152	6	6,770	20,339	642	8,425	0	29,406	36,176	3,082	113,388
37 2048	0.079	4,672	9	422	1,366	426	0	155	0	7,050	21,110	675	9,312	0	31,097	38,148	3,029	116,417
38 2049	0.074	4,892	9	451	1,466	426	0	158	0	7,401	21,897	702	10,277	0	32,876	40,278	2,981	119,398
39 2050	0.069	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	119,398
1 Total NPV =		\$9,732	\$103	\$712	\$2,192	\$3,862	\$0	\$904	\$50	\$17,555	\$87,108	\$2,699	\$12,036	\$0	\$101,843	\$119,398	U.S. EcoGen	
2 Total NPV =		\$9,805	\$103	\$717	\$2,207	\$3,862	\$0	\$0	\$53	\$16,747	\$87,960	\$2,706	\$12,151	\$0	\$102,818	\$119,565	W/O U.S. EcoGen	
CPVRR of Contracts =		(\$73)	\$0	(\$5)	(\$15)	\$0	\$0	\$904	(\$3)	\$808	(\$853)	(\$6)	(\$116)		(\$975)	(\$167)		

FPL System Cost Without U.S. EcoGen PPA

Year	Annual Discount Factor 7.290%	Generation Capital FPL (Millions)	Transmission Capital FPL (Millions)	Generation Fixed O&M (Millions)	Capital Replacement Charges (Millions)	Firm Gas Transport Costs (Millions)	Pipeline Capital Costs (Millions)	Misc System Costs (Millions)	Misc Unit Costs (Millions)	Total Fixed Costs (Millions)	System Net Fuel (Millions)	Startup + VOM Costs (Millions)	Emulsion Costs (Millions)	Transmission Losses (Millions)	Total VOM/Fuel Costs (Millions)	Total Annual Costs (Millions)	NPV Total Annual Cost (Millions)	NPV Cumulative Total Costs (Millions)	Year
2012	1.000	0	0	0	0	0	0	0	1	1	2,331	99	-7	0	2,423	2,424	2,424	2,424	2012
2013	0.932	0	0	0	0	0	0	0	1	1	2,530	105	-13	0	2,622	2,624	2,445	4,869	2013
2014	0.869	0	0	0	0	0	0	0	1	1	2,830	114	-14	0	2,930	2,931	2,546	7,415	2014
2015	0.810	0	0	0	0	0	0	0	1	1	3,161	124	-11	0	3,274	3,275	2,652	10,067	2015
2016	0.755	115	3	6	16	252	0	0	11	404	3,366	126	-9	0	3,483	3,887	2,933	13,000	2016
2017	0.703	192	5	10	29	274	0	0	3	515	3,705	127	-9	0	3,823	4,338	3,051	16,051	2017
2018	0.656	185	5	11	30	274	0	0	3	508	4,226	133	-9	0	4,350	4,858	3,185	19,236	2018
2019	0.611	179	5	11	31	274	0	0	3	503	4,625	138	-9	0	4,754	5,256	3,212	22,448	2019
2020	0.570	172	5	11	32	413	0	0	3	636	5,021	146	-9	0	5,158	5,793	3,300	25,748	2020
2021	0.531	166	5	12	33	426	0	0	3	643	5,488	148	-9	0	5,627	6,270	3,329	29,076	2021
2022	0.495	159	4	12	34	426	0	0	6	641	5,583	153	-10	0	5,726	6,367	3,150	32,227	2022
2023	0.461	153	4	12	35	426	0	0	3	634	5,591	158	358	0	6,107	6,741	3,109	35,336	2023
2024	0.430	147	4	12	36	426	0	0	3	629	5,920	167	419	0	6,506	7,135	3,067	38,403	2024
2025	0.401	296	15	20	58	426	0	0	7	822	6,241	177	470	0	6,888	7,710	3,089	41,491	2025
2026	0.373	473	22	30	87	426	0	0	3	1,041	6,621	188	544	0	7,353	8,394	3,134	44,626	2026
2027	0.348	593	21	37	109	426	0	0	3	1,190	7,102	199	645	0	7,946	9,136	3,179	47,805	2027
2028	0.324	712	21	45	132	426	0	0	4	1,339	7,357	206	735	0	8,298	9,637	3,126	50,931	2028
2029	0.302	830	20	53	157	426	0	0	4	1,490	7,759	216	855	0	8,830	10,320	3,120	54,051	2029
2030	0.282	949	19	62	183	426	0	0	19	1,658	8,273	228	1,011	0	9,512	11,170	3,148	57,199	2030
2031	0.263	1,067	18	71	211	426	0	0	4	1,797	8,684	240	1,152	0	10,076	11,873	3,118	60,317	2031
2032	0.245	1,376	18	89	266	426	0	0	4	2,178	9,314	250	1,356	0	10,920	13,098	3,206	63,524	2032
2033	0.228	1,719	17	110	330	426	0	0	4	2,606	10,428	278	1,672	0	12,378	14,984	3,419	66,942	2033
2034	0.213	1,991	16	129	388	426	0	0	4	2,955	10,979	304	1,913	0	13,196	16,151	3,435	70,377	2034
2035	0.198	2,159	16	143	435	426	0	0	4	3,184	11,531	326	2,160	0	14,017	17,200	3,409	73,787	2035
2036	0.185	2,469	15	165	503	426	0	0	4	3,583	12,585	367	2,562	0	15,514	19,097	3,528	77,315	2036
2037	0.172	2,709	14	185	567	426	0	0	7	3,908	13,184	389	2,867	0	16,440	20,349	3,504	80,819	2037
2038	0.160	2,795	14	198	611	426	0	0	5	4,048	13,836	408	3,222	0	17,466	21,514	3,453	84,271	2038
2039	0.150	2,882	13	212	657	426	0	0	5	4,194	14,523	435	3,586	0	18,544	22,738	3,401	87,673	2039
2040	0.139	3,090	12	232	722	426	0	0	8	4,490	15,069	456	3,929	0	19,434	23,944	3,338	91,011	2040
2041	0.130	3,259	12	251	785	426	0	0	5	4,738	15,772	483	4,396	0	20,651	25,389	3,299	94,311	2041
2042	0.121	3,341	11	267	839	426	0	0	5	4,890	16,514	507	4,912	0	21,933	26,823	3,249	97,559	2042
2043	0.113	3,686	11	295	933	426	0	0	5	5,357	17,517	536	5,591	0	23,644	29,001	3,274	100,833	2043
2044	0.105	4,080	11	327	1,039	426	0	0	5	5,888	18,343	564	6,253	0	25,160	31,048	3,267	104,100	2044
2045	0.098	4,238	10	350	1,117	426	0	0	5	6,147	19,023	592	6,920	0	26,535	32,682	3,205	107,305	2045
2046	0.091	4,274	10	370	1,185	426	0	0	6	6,270	19,759	617	7,677	0	28,053	34,323	3,137	110,443	2046
2047	0.085	4,470	10	396	1,276	426	0	0	6	6,584	20,503	645	8,492	0	29,640	36,224	3,086	113,529	2047
2048	0.079	4,791	9	429	1,387	426	0	0	0	7,043	21,240	673	9,371	0	31,284	38,327	3,043	116,572	2048
2049	0.074	4,956	9	456	1,482	426	0	0	0	7,329	22,045	704	10,356	0	33,105	40,434	2,993	119,565	2049
2050	0.069	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	119,565	2050
Total NPV =		\$9,805	\$103	\$717	\$2,207	\$3,862	\$0	\$0	\$53	\$16,747	\$87,960	\$2,706	\$12,151	\$0	\$102,818	\$119,565			