



Rhonda J. Alexander  
Manager  
Regulatory, Forecasting & Pricing

One Energy Place  
Pensacola, FL 32520-0780  
850 444 6743 tel  
850 444 6026 fax  
rjalexad@southernco.com

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October 20, 2017

Ms. Carlotta Stauffer, Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

RE: Undocketed

Dear Ms. Stauffer:

Attached for official filing is a petition of Gulf Power Company for approval of the Company's Waiver and Scheduling Agreement with Morgan Stanley Capital Group, Incorporated.

Sincerely,

A handwritten signature in blue ink that reads "Rhonda J. Alexander".

Rhonda J. Alexander  
Regulatory, Forecasting and Pricing Manager

md  
Attachments

cc: Gulf Power Company  
Jeffrey A. Stone, Esq.  
Beggs & Lane  
Russell Badders, Esq.

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In Re: Petition of Gulf Power Company for  
Approval of Waiver and Scheduling Agreement  
Between Gulf Power Company and Morgan Stanley  
Capital Group Inc.

Docket No. : \_\_\_\_\_

Date: October 20, 2017

\_\_\_\_\_ /

**PETITION FOR APPROVAL OF WAIVER AND SCHEDULING AGREEMENT**

GULF POWER COMPANY (“Gulf Power,” “Gulf,” or “Company”), by and through its undersigned attorneys and pursuant to sections 366.04 and 366.05, Florida Statutes, and Rules 28-106.201, 25-22.036, 25-17.0836, Florida Administrative Code (“F.A.C.”), hereby petitions the Florida Public Service Commission (“Commission”) for approval of the Waiver and Scheduling Agreement (the “Agreement”) between Gulf Power Company (“Gulf Power” or the “Company”) and Morgan Stanley Capital Group Inc. (“Morgan Stanley”), which was executed by Gulf Power and Morgan Stanley on October 13, 2017. A true and correct copy of the Agreement is attached hereto and incorporated as Exhibit “A.”

In further support of this Petition, the Company states as follows.

**PRELIMINARY INFORMATION**

1. Petitioner, Gulf Power, is an investor-owned utility subject to the jurisdiction of the Commission under Chapter 366, Florida Statutes. Gulf Power’s corporate offices are located at One Energy Place, Pensacola, Florida 32520.

2. The names, addresses and telephone numbers of Gulf Power's representatives to receive communications regarding this proceeding are:

Rhonda J. Alexander  
Gulf Power Company  
One Energy Place  
Pensacola, Florida  
32520-0780  
(850) 444-6743  
(850) 444-6026 (facsimile)  
[rjalexad@southernco.com](mailto:rjalexad@southernco.com)

Jeffrey A. Stone, Esq.  
General Counsel  
Gulf Power Company  
One Energy Place  
Pensacola, Florida  
32520-0100  
(850) 444-6550  
[jastone@southernco.com](mailto:jastone@southernco.com)

Russell A. Badders, Esq.  
[rab@beggslane.com](mailto:rab@beggslane.com)  
Steven R. Griffin, Esq.  
[src@beggslane.com](mailto:src@beggslane.com)  
Beggs & Lane, R.L.L.P.  
P.O. Box 12950  
Pensacola, Florida  
32591-2950  
(850) 432-2451  
(850) 469-3331 (facsimile)

3. The agency affected by this petition is the Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850.

4. This petition is not a petition addressing an agency decision which has already been made. Therefore, Gulf cannot state how it received notice of an agency action, facts that warrant reversal of an agency proposed action, or rules or statutes that require reversal or modification of any agency's proposed action. This is a petition seeking a proposed agency action, and the facts, rules and statutes that warrant such proposed action are set forth herein.

5. Gulf knows of no material facts in dispute regarding the relief requested herein. The ultimate issue to be decided by the Commission is whether to approve the Agreement.

#### **FACTUAL BACKGROUND**

6. The Waiver and Scheduling Agreement modifies certain energy delivery and scheduling requirements under an existing Energy Purchase Agreement ("EPA" or "Kingfisher I

EPA”) between Gulf Power and Morgan Stanley, which was approved by the Commission on May 13, 2015, in Docket No. 20150049-EI, via Order No. PSC-15-0197-PAA-EI.<sup>1</sup> In exchange for such modifications, the Waiver and Scheduling Agreement obligates Morgan Stanley to provide monetary savings to Gulf Power’s general body of customers in the form of a monthly credit to amounts paid by Gulf Power under the Kingfisher I EPA, thereby placing downward pressure on amounts collected through the Fuel and Purchased Power Cost Recovery Clause. Specifically, the Agreement will result in \$2,000,000 in savings per year beginning in January 2019 through December 31, 2035, for Gulf’s general body of customers.

7. By way of background, the EPA obligates Morgan Stanley to deliver a fixed number of megawatt hours (“MWh”) in each hour of each month each year throughout the 20-year term of the agreement. Morgan Stanley’s energy delivery commitment is shaped to match the projected hourly and monthly output of a 178 megawatt (“MW”) portion of the Kingfisher Wind Farm that was constructed in Kingfisher and Canadian counties, Oklahoma. On an annual basis, Morgan Stanley’s energy delivery commitment totals 674,437 MWh.

8. Gulf, in turn, is obligated to pay for energy delivered under the EPA at predetermined pricing as set forth in the EPA. Pricing is fixed for each calendar year of the contract term. Gulf Power is only required to pay for energy which is received on the Southern Companies Transmission System. Under the EPA, Morgan Stanley bears all risks and responsibilities, including congestion charges, locational marginal pricing, and transmission curtailments, associated with delivering energy to the Southern Companies Transmission System. With limited exceptions, failure to deliver hourly energy in amounts specified in the EPA will result in Morgan Stanley paying cover costs to Gulf Power, or if Morgan Stanley fails

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<sup>1</sup> A true and correct copy of the Kingfisher I EPA is attached hereto and incorporated as Exhibit “B.” Confidential portions of the Kingfisher I EPA have been redacted and are being submitted to the Commission Clerk pursuant to a Request for Confidential Classification that has been sent via overnight mail.

to pay such cover costs or the failure to deliver energy exceeds certain limits, Gulf Power has the right to declare the contract in default, and Morgan Stanley then must pay a termination payment.

9. Morgan Stanley's energy delivery commitment under the EPA is separated into two "Tiers" – Tier 1 Hourly Energy and Tier 2 Hourly Energy. Tier 1 Hourly Energy is defined as electric energy in an amount equal to the lesser of: (i) forty (40) MWh, or (ii) the total amount of energy that is required to be delivered in a given hour. Tier 2 Hourly Energy is defined as electric energy in an amount that is equal to the difference, if any, between the total amount of energy that must be delivered in a given hour and Tier 1 Hourly Energy. With some exceptions, Morgan Stanley must deliver Tier 1 Hourly Energy using a dedicated transmission pathway (defined under the EPA as "Tier 1 Seller Transmission Service") which originates in the Midcontinent Independent System Operator ("MISO") balancing authority area and terminates at the Southern Company/Entergy Interface. Tier 2 Hourly Energy, on the other hand, may be delivered from any resource available to Morgan Stanley and to any delivery point on the Southern Company Transmission System, provided that such resource and/or delivery point meets certain defined contractual availability and delivery criteria.

10. Following execution of the Kingfisher I EPA, Gulf Power executed a second Energy Purchase Agreement with Morgan Stanley (the "Kingfisher II EPA"), which was approved by the Commission on November 3, 2016 in Docket No. 20160158-EI via Order No. PSC-16-0507-PAA-EI. The Kingfisher II EPA is very similar to the Kingfisher I EPA with one primary exception. All energy delivered under the Kingfisher II EPA follows the "Tier 2" model. There is no obligation to deliver energy using a dedicated transmission pathway or "Tier 1" equivalent under the Kingfisher II EPA.

11. To date, Morgan Stanley has performed reliably under both energy purchase agreements, and Gulf Power has no reason to believe Morgan Stanley will not continue to do so in the future. However, the parties' experience under both contracts has demonstrated that the Tier 1 Hourly Energy commitment in the Kingfisher I EPA is not necessary for reliability, scheduling or other purposes. Moreover, reserving Tier 1 Seller Transmission Service comes at a cost to Morgan Stanley, which, in turn, contributes to the cost of the contract to Gulf's customers.

12. Morgan Stanley has informed Gulf Power that it must make a decision on or before January 1, 2018, either to exercise its "rollover" rights and reserve the Tier 1 Seller Transmission Service for an additional five-year period or to allow the reservation to lapse. In the latter case, Morgan Stanley will have no assurance that the pathway will be available in the future.

### **THE WAIVER AND SCHEDULING AGREEMENT**

13. The Waiver and Scheduling Agreement enables Morgan Stanley to relinquish the Tier 1 Seller Transmission Service reservation in exchange for passing monetary savings back to Gulf Power's general body of customers in the form of a monthly credit to amounts paid by Gulf Power under the Kingfisher I EPA, thereby placing downward pressure on amounts collected from customers through the Fuel and Purchased Power Cost Recovery Clause. Specifically, the Agreement will result in \$2,000,000 in savings per year beginning in January 2019 through December 31, 2035, for Gulf's general body of customers.

14. Pursuant to the Agreement, Gulf Power is waiving Morgan Stanley's obligation to deliver Tier 1 Hourly Energy beginning on January 1, 2019. From that point forward, all Tier 1 Hourly Energy will be scheduled and delivered as Tier 2 Hourly Energy. Thus, the energy

deliveries under the Kingfisher I EPA will operate in the same manner as the Kingfisher II EPA. Other aspects of the Kingfisher I EPA remain unchanged.

15. Importantly, the total amounts of energy to be delivered under the Kingfisher I EPA (defined in the EPA as “Total Hourly Energy”) are not changed or reduced as a result of the Agreement. Similarly, the contract pricing remains unchanged, and the parties do not anticipate any impacts on Morgan Stanley’s ability to reliably meet its energy delivery commitments. Morgan Stanley continues to bear all risks and responsibilities associated with transmitting energy to the Southern Companies Transmission System, and the parties’ experience with the Kingfisher II EPA has demonstrated that a “Tier 2” delivery model works effectively and efficiently.

#### **COMPLIANCE WITH RULE 25-17.0836, F.A.C.**

16. Gulf Power does not view the Waiver and Scheduling Agreement as a “material change” to the EPA. The core provisions of the EPA, including total energy delivery amounts, pricing, reliability, security, and risk allocation remain unchanged. The Agreement does not impact the in-service date of a facility, nor does it modify “location, prime mover technology type, fuel type, performance requirements, contracted megawatt output, timing of capacity payments, or amount of capacity payments.” Similarly, the Agreement does not negatively impact the cost-effectiveness of the EPA.

17. The existing EPA would continue to be viable in the absence of the Agreement. As noted previously, Morgan Stanley has performed reliably under the existing EPA and is expected to continue to do so in the absence of the Agreement. The Agreement simply capitalizes on a limited opportunity to: (i) eliminate an unnecessary delivery mechanism in the EPA; (ii) convert all energy deliveries under the Kingfisher I EPA to a time-tested delivery

protocol previously approved by the Commission under the sibling Kingfisher II EPA; and (iii) reduce costs for the benefit of Gulf Power's general body of customers.

18. Section C(2) of the Waiver and Scheduling Agreement provides Gulf and Morgan Stanley with a right to terminate the Waiver and Scheduling Agreement in the event that a final order is not rendered on or before December 30, 2017.<sup>2</sup> This timeframe is dictated by Morgan Stanley's January 1, 2018, deadline to exercise its rollover rights for the Tier 1 Seller Transmission Service.

WHEREFORE, Gulf Power Company respectfully petitions the Commission to approve the Waiver and Scheduling Agreement for the reasons set forth in this Petition.

Respectfully submitted this 20<sup>th</sup> day of October, 2017.



**JEFFREY A. STONE**  
**General Counsel**  
Florida Bar No. 325953  
jastone@southernco.com  
**Gulf Power Company**  
One Energy Place  
Pensacola, FL 32520-0100  
(850) 444-6550

**RUSSELL A. BADDERS**  
Florida Bar No. 007455  
rab@beggslane.com  
**STEVEN R. GRIFFIN**  
Florida Bar No. 0627569  
srg@beggslane.com  
**Beggs & Lane**  
P. O. Box 12950  
Pensacola FL 32591-2950  
(850) 432-2451  
**Attorneys for Gulf Power**

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<sup>2</sup> Termination of the Waiver and Scheduling Agreement will not impact the existing Energy Purchase Agreement.



# Exhibit “A”

Waiver and Scheduling Agreement  
between  
Morgan Stanley Capital Group Inc.  
and  
Gulf Power Company

Dated as of October 13, 2017

## WAIVER AND SCHEDULING AGREEMENT

This Waiver And Scheduling Agreement (this “Agreement”) is made and entered into effective as of October 13, 2017 (the “Agreement Effective Date”), by and between **GULF POWER COMPANY**, a Florida corporation (“GPC”) and **MORGAN STANLEY CAPITAL GROUP INC.**, a Delaware corporation (“MSCG”). GPC and MSCG are sometimes hereinafter individually referred to as a “Party” or collectively as the “Parties.” Capitalized terms used in this Agreement but not defined therein have the meaning given in the Gulf I PPA (as defined below).

### RECITALS

WHEREAS, GPC and MSCG are parties to that certain Energy Purchase Agreement dated as of December 18, 2014 (together with the appendices and exhibits thereto, all as amended from time to time, the “Gulf I PPA”);

WHEREAS, under the Gulf I PPA, MSCG, as Seller, sells to GPC, as Buyer, certain quantities of firm energy;

WHEREAS, under the Gulf I PPA GPC has the right to receive a certain fixed quantity of energy as “Tier 1 Hourly Energy”, with the remainder of the energy to be delivered as “Tier 2 Hourly Energy,” on the terms and conditions described in the Gulf I PPA;

WHEREAS, the Parties now have greater experience with the administration of the Gulf I PPA and the scheduling of the quantities of energy delivered thereunder, and desire to take certain steps to build upon such experience;

NOW, THEREFORE, for and in consideration of the mutual agreements set forth herein, together with other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, GPC and MSCG agree as follows, intending to be presently bound hereby:

**A. Waiver of Right to Tier 1 Energy and Structuring of Scheduling Practices.**

1. Through and including December 31, 2018, MSCGI will continue to supply Tier 1 Hourly Energy under the Gulf I PPA. GPC hereby waives MSCG’s obligation to deliver Tier 1 Hourly Energy under the Gulf I PPA from January 1, 2019 through the remainder of the Service Term.

2. The total volume of “Delivered Energy” that MSCG is obligated to deliver, and that GPC is obligated to purchase, is unchanged, provided that beginning on January 1, 2019 all Delivered Energy will be Tier 2 Hourly Energy, with no part of Delivered Energy consisting of Tier 1 Hourly Energy. All Delivered Energy will be Scheduled by MSCG as Tier 2 Hourly Energy under Section 6.2 of the Gulf I PPA.

3. Beginning on January 1, 2019, the quantity of "Tier 1 Hourly Energy" will be treated as "zero."
4. Beginning on January 1, 2019, the quantity of "Tier 2 Hourly Energy" will be treated as equal to the quantity of Total Hourly Energy.
5. Beginning on January 1, 2019, no part of the Delivered Energy will be required to be delivered on Tier 1 Seller Transmission Service and MSCG will no longer be required to procure or maintain Tier 1 Seller Transmission Service throughout the remainder of the Service Term.
6. For the avoidance of doubt, having been rendered moot by the waiver in Section (A)(1) above, after January 1, 2019 the delivery requirement in Section 6.1.2(f) of the Gulf I PPA and the associated Event of Default in Section 12.1.7 of the Gulf I PPA will no longer apply.
7. MSCG waives, effective as of January 1, 2019, the requirement in Section 7.2.2 of the Gulf I PPA that GPC cause the Gulf I PPA to be designated as a Network Resource.

**B. Consideration for Waiver.**

1. In consideration of entering into this Agreement, MSCG agrees to pay GPC a fixed payment of two million dollars (\$2,000,000) a year divided into equal Monthly installments, with the first Monthly installment beginning in January, 2019 (due in the February 2019 Monthly billing cycle) and continuing each Month thereafter through the remainder of the Service Term of the Gulf I PPA. Each such Monthly installment shall be invoiced and paid pursuant to the procedures of Section 10.1 of the Gulf I PPA, and shall be netted with other amounts due under the Gulf I PPA in accordance with the payment netting provisions of Section 10.3 of the Gulf I PPA.
2. For the avoidance of doubt, the waivers and other provisions of this Agreement shall have no effect upon the amount of the Monthly Energy Payment paid by GPC under the Gulf I PPA.

**C. General Provisions.**

1. Subject to Section C(2) below, the agreements contained in Sections (A) and (B) of this Agreement shall be binding upon the Agreement Effective Date, and all of the other terms and conditions of the Gulf I PPA shall be unaffected thereby and remain in full force and effect as written. In the event of a conflict between the terms and conditions of the Gulf I PPA and this Agreement, the terms and conditions of this Agreement shall control.
2. As soon as practical after the Agreement Effective Date, GPC shall present this Agreement to Florida Public Service Commission ("Commission") staff with jurisdiction over the review of power purchase agreements. On or before December 30, 2017, GPC will provide MSCG with either (a) a letter from an officer of GPC certifying that this Agreement was presented to Commission staff and that such staff were of the view that no approval of this Agreement was required by the Commission, or (b) a final order of the Commission approving

this Agreement in its entirety without qualifications or conditions. If GPC does not present either of the documents in the preceding sentence by close of business on December 30, 2017 (unless such deadline is extended by mutual agreement of the Parties), then this Agreement shall immediately terminate with no further obligations between the Parties.

3. THE TERMS AND CONDITIONS OF THIS AGREEMENT SHALL BE GOVERNED BY, CONTROLLED, CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS AND DECISIONS OF THE STATE OF FLORIDA APPLICABLE TO AGREEMENTS TO BE MADE AND TO BE PERFORMED IN FLORIDA WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. THE PARTIES WAIVE, TO THE FULLEST EXTENT ALLOWED UNDER APPLICABLE LAW, THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY DISPUTE ARISING HEREUNDER OR IN CONNECTION HEREWITH, AND INSTEAD DESIRE THAT ANY SUCH DISPUTE BE RESOLVED IN ACCORDANCE WITH THE DISPUTE RESOLUTION PROCEDURES OF ARTICLE 16 OF THE GULF I PPA, WHICH ARTICLE IS HEREBY INCORPORATED BY REFERENCE, *MUTATIS MUTANDIS*, FOR SUCH PURPOSE.

4. EACH PARTY UNDERSTANDS AND AGREES THAT ARBITRATION UNDER ARTICLE 16 OF THE GULF I PPA, AS INCORPORATED INTO THIS AGREEMENT, IS MANDATORY AND WAIVES ANY RIGHT TO SEEK JUDICIAL RELIEF OR COURT PROCEEDINGS TO DETERMINE THE MATTERS UNDER ARTICLE 16 OTHER THAN THE RIGHT TO SEEK JUDICIAL RELIEF TO COMPEL ARBITRATION IN ACCORDANCE WITH THIS AGREEMENT.

5. This Agreement constitutes the entire understanding of the Parties with respect to the subject matter of this Agreement. No amendment, modification, or alteration of any term of this Agreement shall be binding on either Party unless it is in writing, dated subsequent to the date of this Agreement and fully executed by the Parties.

6. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission or by other electronic means shall constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties transmitted by facsimile or by other electronic means shall be deemed to be their original signatures for all purposes.

7. Each Party represents and warrants that the person who signs below on behalf of such Party has received all requisite authorizations required to execute this Agreement on behalf of such Party and to bind such Party to this Agreement.

8. This Agreement extends to and is binding upon the Parties and their respective successors and permitted assigns.

**\*\*\* Signature Page follows \*\*\***

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by their respective authorized representatives on the dates set forth below, but this Agreement shall be effective as of the Agreement Effective Date set forth above.

**Morgan Stanley Capital Group Inc.**

**Gulf Power Company**

By: \_\_\_\_\_

By: Michael Burroughs

Name: \_\_\_\_\_

Name: Michael L Burroughs

Title: \_\_\_\_\_

Title: Vice President

Date: \_\_\_\_\_

Date: 10/13/17

Attest: Tracy G Clark  
Tracy G. Clark, Assistant Secretary

**Execution Version**

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by their respective authorized representatives on the dates set forth below, but this Agreement shall be effective as of the Agreement Effective Date set forth above.

**Morgan Stanley Capital Group Inc.**

**Gulf Power Company**

By: Parker Corbin

By: \_\_\_\_\_

Name: Parker Corbin  
Vice President

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: October 13, 2017

Date: \_\_\_\_\_

# Exhibit “B”

Energy Purchase Agreement

between

Morgan Stanley Capital Group Inc.

and

Gulf Power Company

Dated as of December 18, 2014

**ENERGY PURCHASE AGREEMENT**

**between**

**MORGAN STANLEY CAPITAL GROUP INC.**

**and**

**GULF POWER COMPANY**

**Dated as of December 18, 2014**



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**ENERGY PURCHASE AGREEMENT**

This Energy Purchase Agreement (“Agreement”) is entered into this 18th day of December, 2014 (“Effective Date”) by and between **MORGAN STANLEY CAPITAL GROUP INC.**, a corporation organized and existing under the laws of the state of Delaware (together with its permitted successors and assigns, “Seller”), and **GULF POWER COMPANY**, a corporation organized and existing under the laws of the state of Florida (together with its permitted successors and assigns, “Gulf Power” or “Buyer”). Seller and Buyer may be hereinafter referred to individually as a “Party” and collectively as the “Parties.”

**W I T N E S S E T H:**

**WHEREAS**, Seller desires to sell, and Buyer desires to purchase, certain quantities of long-term firm energy supply, subject to the terms and conditions of this Agreement;

**WHEREAS**, in connection with such sale and purchase, the Parties also desire for Seller to provide to Buyer certain Environmental Attributes (as defined herein); and

**WHEREAS**, the Parties desire to set forth the terms and conditions upon which the sale of electric energy and the provision of Environmental Attributes shall be conducted between the Parties.

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

**ARTICLE 1**  
**DEFINITIONS AND INTERPRETATION**

1.1 **Definitions.** All capitalized terms used herein and not otherwise defined, whether singular or plural, shall have the respective meanings set forth below.

“**AAA**” has the meaning set forth in Section 16.2.2.1.

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

“**After-Tax Basis**” means, with respect to a given payment required to be made to any Person, the amount of such payment (“Base Payment”) supplemented by a further payment (“Additional Payment”) to that Person so that the sum of the Base Payment plus the Additional Payment shall, after deduction of the amount of all income taxes required to be paid by such Person in respect of the receipt or accrual of the Base Payment and the Additional Payment (taking into account the net present value of any reduction in such income taxes resulting from tax benefits realized by the recipient as a result of the payment or the event giving rise to the payment), be equal to the amount required to be received. Such calculations shall be made on the basis of the highest generally applicable federal, state and local income tax rates applicable to the Person for whom the calculation is being made for all relevant periods, and shall take into account the deductibility of state and local income taxes for federal income tax purposes.

“**Aggrieved Party**” has the meaning set forth in Section 16.1.

“**Agreement**” has the meaning set forth in the first paragraph of this Agreement.

“**Alternate Delivery Notice**” has the meaning set forth in Section 6.1.2(a).

“**Alternate Network Service**” has the meaning set forth in Section 6.1.2(b).

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

“**Applicable Program**” means, with respect to any REC, the applicable domestic, international or foreign renewable portfolio standard, renewable energy, emissions reduction or reporting rights program, arrangement, standards or organization, adopted by the applicable Governmental Authority or other certifying body or organization (including Green-e) with respect to which exists a market, registry, reporting program or other standards for the respective

Environmental Attributes (in any case, whether voluntary or mandatory). Applicable Programs do not include laws providing for PTCs.

“ASC” means the FASB Accounting Standards Codification.

[REDACTED]

[REDACTED]

“**Below Investment Grade Rating**” means, with respect to any Person, that: (i) such Person (or its senior unsecured long-term debt, not supported by third party credit enhancements, as applicable) has an issuer rating or senior unsecured rating below Baa3 (or future equivalent) by Moody’s; (ii) such Person (or its senior unsecured long-term debt, not supported by third party credit enhancements, as applicable) has an issuer credit rating or senior unsecured rating below BBB– (or future equivalent) by S&P; (iii) such Person (or its senior unsecured long-term debt, not supported by third party credit enhancements, as applicable) has an issuer rating or senior unsecured rating below BBB– (or future equivalent) by Fitch; or (iv) neither such Person nor its senior unsecured long-term debt not supported by third party credit enhancements, as applicable, is rated by at least two of Moody’s, S&P and Fitch.

“**Billing Dispute Notice**” has the meaning set forth in Section 10.2.2.

“**Business Day**” means any Day excluding Saturday, Sunday, NERC-defined holidays and excluding any Day on which banking institutions in Pensacola, Florida or New York City, New York are closed because of a federal holiday.

“**Buyer**” has the meaning set forth in the first paragraph of this Agreement.

“**Buyer Curtailed Energy**” has the meaning set forth in Section 7.3.

“**Buyer Curtailment Event**” means: (i) any occurrence, nonoccurrence or set of circumstances that is beyond the reasonable control of Buyer that is not caused by Buyer’s



negligence, lack of due diligence, or failure to follow Prudent Industry Practices (including acts of God) that causes Buyer to be unable to receive energy under this Agreement at the applicable Point of Delivery or deliver such energy to Buyer’s load; or (ii) a condition or situation whereby the Southern Transmission Service requested and obtained by Buyer under this Agreement is in any way curtailed, interrupted, or rendered unavailable (as determined by the applicable transmission provider or transmission operator) consistent with the Southern OATT, including Section 33 thereof or the Transmission Loading Relief procedures of NERC referenced in Attachment P to the Southern OATT (including any successor provisions or procedures thereto), such that: (a) Buyer is not able to use the curtailed, interrupted, or unavailable portion of such Southern Transmission Service to receive a quantity of energy at the Point of Delivery; or (b) Buyer is not able to use the curtailed, interrupted, or unavailable portion of such Southern Transmission Service to deliver a quantity of energy from the Point of Delivery to Buyer’s load.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

“**Buyer Security Amount**” has the meaning set forth in **Appendix G**.

“**Buyer System Incremental Cost**” means, for a given Hour, the incremental cost, measured in dollars per MWh, for Buyer and its Affiliates to supply the next MWh of energy,

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

**"Calendar Quarter"** means any of the following three (3) Month periods of each calendar year: January through March, April through June, July through September, and October through December.

**"Cash Security"** means cash security, free and clear of any adverse lien or interest.

**"Central Prevailing Time"** or **"CPT"** means the local time at any point in Birmingham, Alabama.

**"Change In Law"** means the adoption, enactment, promulgation or issuance of, change in, or a new or changed interpretation of, any Legal Requirement at any time, including the adoption of or change in Legal Requirements regulating or imposing Taxes on discharges, emissions, effluents or disposals from any Generation Facilities.

**"Claim"** means any demand, claim, action, suit, investigation, proceeding (whether at law or in equity) or arbitration.

**"COD Capacity"** means the aggregate nameplate generating capacity of the Designated Units comprising the Facility as of the Commercial Operation Date.

“**Commercial Operation Date**” means the Day on which Full Commercial Operation is first achieved or the Day that Buyer determines to be the Commercial Operation Date pursuant to Section 3.3.4(b).

“**Confidential Information**” means business, legal, financial, or technical information rightfully in the possession of either Party provided to the other Party in connection with this Agreement, including all data, reports, interpretations, plans, information regarding customers or suppliers, contract terms and conditions, forecasts and records, whether in written, oral or electronic form, which includes information furnished or disclosed to the other Party in connection with discussions leading up to execution of this Agreement and the terms and conditions of this Agreement (excluding those portions of this Agreement that are made publicly available pursuant to Buyer’s filing of this Agreement at the FPSC). A Party supplying such information shall be referred to as the “Disclosing Party”, and a Party receiving such information from the Disclosing Party shall be referred to as the “Receiving Party”. Confidential Information does not include information that: (i) is or becomes publicly available other than as a result of a violation of this Agreement; (ii) was, at the time of the disclosure, already in the Receiving Party’s possession; (iii) is disclosed to the Receiving Party by a third party who, to the Receiving Party’s knowledge, is not prohibited from disclosing the information pursuant to any agreement with the Disclosing Party; or (iv) the Receiving Party develops or derives without the aid, application or use of the privileged or proprietary information.

“**Consolidation Determination**” has the meaning set forth in Section 11.7.3.

“**Consolidation Notice**” has the meaning set forth in Section 11.7.3.

“**Contracted Facility Attributes**” means all Environmental Attributes that the Designated Units of the Facility are capable of producing when they generate energy from time

to time during the Service Term and that can be transferred, assigned or otherwise provided from one Person to another Person (including any such Environmental Attributes that become transferable, assignable, or which can otherwise be provided, to Buyer at any time during the Service Term), including by transfers and assignments that can be effectuated through Tracking Systems, conveyance of certificates or attestations, assignments, operations of renewable energy market processes, or other instruments that convey such Environmental Attributes; provided that the Parties shall use all commercially reasonable efforts in order to maximize the types of Environmental Attributes that can be transferred or assigned to Buyer throughout the Service Term. As of the Effective Date, Contracted Facility Attributes include RECs (including Green-e RECs that satisfy Green-e certification standards in effect as of the Effective Date).

“**Costs**” has the meaning set forth in Section 12.2.2.

“**Cover Costs**” means [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

“**Day**” means a calendar day, commencing at one (1) minute prior to 12:01 a.m. CPT of such calendar day and ending at one (1) minute after 11:59 p.m. CPT of such calendar day.

“**Defaulting Party**” has the meaning set forth in Section 12.1.

“**Delivered Energy**” means, for any Hour, the total amount of Tier 1 Hourly Energy and Tier 2 Hourly Energy (expressed in MWh) that is delivered by Seller to Buyer at the Point of Delivery pursuant to this Agreement; provided, however, that Delivered Energy shall not include any Buyer Curtailed Energy for the applicable Hour; provided, further, that Delivered Energy for any Hour shall not exceed the Total Hourly Energy for such Hour.

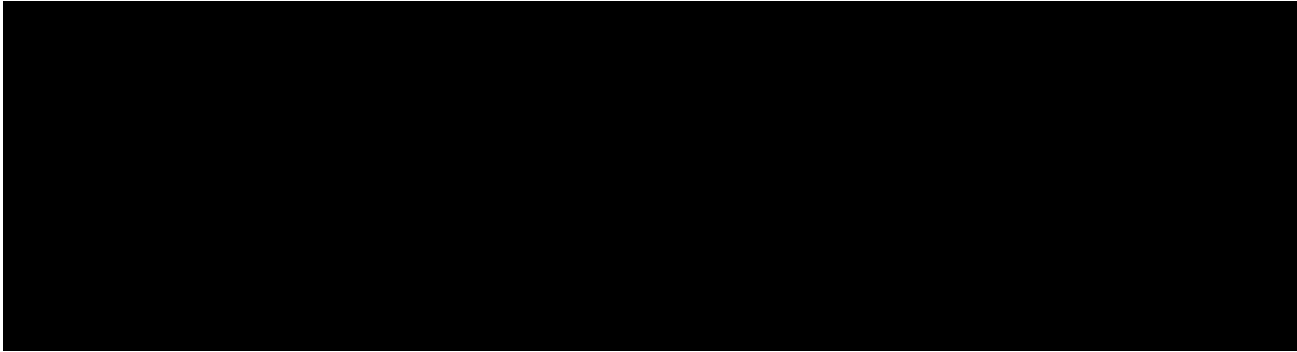
“**Delivery Period**” means, with respect to a given Day, Period One of such Day or Period Two of such Day.

“**Delivery Month**” has the meaning set forth in Section 8.1.


“**Demand**” has the meaning set forth in Section 16.2.2.1.

“**Designated Units**” means [REDACTED]

[REDACTED]



“**Disallowance Order**” has the meaning set forth in Section 2.3.



“**Early Termination Date**” has the meaning set forth in Section 12.2.1.

“**Effective Date**” has the meaning set forth in the first paragraph of this Agreement.

“**Eligible Guaranty**” means a continuing guaranty in substantially the form of **Appendix D-1** (in the case of a guaranty provided as Performance Security by Buyer) or **Appendix D-2** (in the case of a guaranty provided as Performance Security by Seller), or otherwise acceptable to the Party to whom such guaranty is provided as Performance Security under this Agreement, which is properly completed and executed and in full force and effect and with respect to which the Guarantor has not given any notice of termination, cancellation or revocation, issued by a Person: (i) who is a direct or indirect parent of the Party providing such guaranty as Performance Security under this Agreement, unless otherwise agreed by the other Party in its sole discretion; (ii) with respect to whom there does not exist a Material Adverse Financial Condition at any time such guaranty is intended to constitute Performance Security; and (iii) has a Net Worth of at least five hundred million dollars (\$500,000,000) for the entire period during which such guaranty is intended to constitute Performance Security.

“**Eligible Letter of Credit**” means a letter of credit in substantially the form of **Appendix C** hereto, or otherwise acceptable to the Party to whom such letter of credit is

provided as Performance Security under this Agreement, in an available undrawn amount of not less than the Required Buyer Post Amount (in the case of a letter of credit provided as Performance Security required to be provided by Buyer) or the Required Seller Post Amount (in the case of a letter of credit provided as Performance Security required to be provided by Seller), which is in full force and effect and is not within ninety (90) Days of terminating or expiring, issued by a major U.S. commercial bank or a U.S. branch office of a major foreign bank who has and maintains assets of at least \$25 billion and at all times having a senior unsecured rating of at least “A2” (or future equivalent) by Moody’s and at least “A” (or future equivalent) by S&P.

“**Energy Price**” means the applicable price (in \$ per MWh) to be paid by Buyer to Seller for Delivered Energy under this Agreement for a given Hour, as set forth in Table B-1 of **Appendix B**.

“**Entergy**” means Entergy Services, Inc., and any successor thereto, including (as to transmission system operations), MISO.

“**Environmental Attributes**” means, with respect to a given Wind Generation Facility (including the Facility), any and all fuel-related, emissions-related, air quality-related or other environmental-related aspects, claims, characteristics, benefits, credits, reductions, offsets, savings, allowances, efficiencies, certificates, tags, attributes, or similar products or rights (including all of those relating to greenhouse gases and all green certificates, green tags, renewable certificates and renewable energy credits) (“Attributes”), howsoever entitled or denominated and whether known or unknown, whether existing as of the Effective Date or in the future, and whether or not such Attributes have been certified or verified under any Renewable Standards or otherwise, that: (i) arise or result from the generation of electric energy by such Wind Generation Facility; (ii) arise or result from the use of a renewable or other particular type

of fuel by such Wind Generation Facility to generate electric energy; (iii) arise or result from the avoidance or reduction of the emission of any gas, chemical or other substance or pollutant to the air, soil or water that is attributable to the generation of electric energy by such Wind Generation Facility or the use of a particular fuel by such Wind Generation Facility to generate electric energy; (iv) arise or result from any Legal Requirement pertaining to fuel used by such Wind Generation Facility; (v) arise or result from the avoidance of water use that is associated with the generation of electric, thermal or other energy by a Wind Generation Facility; or (vi) arise as a result of the displacement of electric energy produced by other conventional generation facilities. Environmental Attributes include any such Attributes that could qualify or do qualify for application toward compliance with any local, state, federal or international renewable energy portfolio standard, green pricing program, renewable energy program, carbon reduction or greenhouse gas reduction initiative, electricity savings program, licensing requirement, verification or certification procedure, federal contract, or other environmental program, incentive mandate or objective, in each case whether voluntary or mandatory, and whether created by a Legal Requirement, or by any Governmental Authority, partnership, coalition, advisory committee, or independent certification board, group or scientific panel. Environmental Attributes include the exclusive right to report such Attributes to any Governmental Authority or other Person, and all Renewable Energy Certificates associated with the electric output of the applicable Wind Generation Facility (including Green-e RECs). Environmental Attributes do not include: (a) any state or federal PTCs associated with the Facility; (b) any ITCs and any other tax credits associated with the Facility; (c) any electric generation capacity product or electric ancillary services products such as spinning electric reserves, operating electric reserves,



balancing electric energy, regulation of electric service, reactive power and voltage control; or (d) any easement or other real property rights.

“**Environmental Attributes Costs**” means,

[REDACTED]

[REDACTED]

[REDACTED]

“**Equity**” means common or preferred stock or membership units in Seller’s capital structure that represents a residual claim or interest in Seller’s assets after all of Seller’s liabilities are paid.

[REDACTED]

“**Equivalent Facility**” means a Wind Generation Facility other than the then-existing Facility that: (i) is not owned by an Affiliate of Buyer; and (ii) will produce Environmental Attributes to be provided to Buyer under this Agreement that: (a) are of the same character as those Environmental Attributes that would be sourced from the then-existing Facility when such Facility produces energy; [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

“**Event of Default**” has the meaning set forth in Section 12.1.

“**Facility**” means the Designated Units of the Kingfisher Plant, which are planned to be comprised of the Planned Designated Units and all auxiliary equipment and facilities installed at the Site that are necessary or used for the production, control, and monitoring of electric energy by such Designated Units, and all facilities required for the delivery of such energy to the transmission system to which such Designated Units are interconnected; provided, however, that the Facility may be modified pursuant to Section 3.3.4 or Section 3.4; provided further, Seller

shall cause Facility Owner to install and maintain (at Seller’s and Facility Owner’s cost and expense) such meters and equipment as are necessary in order to measure the electrical output of the Designated Units that is delivered to the point of interconnection with the applicable transmission system separately from the electrical output from any other wind turbine generators or generation facilities that do not constitute Designated Units under this Agreement.

“**Facility Owner**” means Kingfisher Wind, LLC, a Delaware limited liability company, or such other applicable owner of the Facility if the Facility is modified pursuant to Section 3.3.4 or Section 3.4.

“**FASB**” means Financial Accounting Standards Board, including any successor(s) in function.

“**FERC**” means the Federal Energy Regulatory Commission or any Governmental Authority succeeding to the powers and functions thereof.

“**Final Required Commercial Operation Date**”

[REDACTED]

[REDACTED]

“**Final Required COD Termination Notice**” has the meaning set forth in Section 3.3.4(a).

“**Financial Closing Date**” means the first date on which both: (i) all of the conditions to the closing of the transactions described in the Construction Loan Financing Agreement which is anticipated to be entered into by and among the Facility Owner, the agent or agents a party thereto, and the lenders who are a party thereto on such date have been satisfied or waived by the applicable parties thereto; and (ii) the initial funds under such agreement have been distributed.

“**Fitch**” means Fitch Ratings Ltd. or its successor. If Fitch ceases to exist or publish ratings, Fitch shall mean a nationally recognized rating agency mutually agreed upon by the Parties, which agreement will not be unreasonably withheld, conditioned or delayed.

“**Force Majeure**” means causes or events beyond the reasonable control of, and without the fault or negligence of Facility Owner, which by the exercise of due diligence could not have reasonably been avoided by Facility Owner, including acts of God; sudden actions of the elements such as floods, earthquakes, hurricanes, or tornadoes; high winds of sufficient strength or duration to materially damage a facility; lightning; fire; ice storms; sabotage; vandalism beyond that which could reasonably be prevented by Facility Owner; terrorism; war; riots; explosion; blockades; insurrection; employment strike against a party other than Seller, Facility Owner, or an Affiliate thereof; actions or inactions by any Governmental Authority or interconnecting utility taken after the Effective Date (including the adoption or change in any rule or regulation or environmental constraints lawfully imposed by such Governmental Authority or interconnecting utility) but only if such actions or failures to act prevent or delay performance and are not the result of Facility Owner’s negligence or failure to exercise due diligence; and inability, despite due diligence, to obtain or maintain any licenses, permits, or approvals required by any Governmental Authority. The term Force Majeure does not include: (i) any acts or omissions of any party other than Facility Owner, including Seller or any vendor, materialman, customer, or supplier of Facility Owner, unless such acts or omissions are caused by an event that would otherwise constitute Force Majeure if experienced directly by Facility Owner; (ii) any full or partial curtailment in the electric output of the Facility that is caused by or arises from a mechanical or equipment breakdown or other mishap or events or conditions attributable to normal wear and tear or flaws, unless caused by an event that would otherwise

constitute Force Majeure if experienced directly by Facility Owner; (iii) a site-specific strike, walkout, lockout or other labor dispute at the Facility; (iv) changes in economic or market conditions that affect the cost or availability of equipment, materials, supplies or services, or that affect demand or price for any of Seller or Facility Owner’s products (including the energy and Environmental Attributes sold hereunder); or (v) actions by any Governmental Authority which only alter economic or market conditions.

**“FPSC Approval Target Date”** has the meaning set forth in Section 2.2.1.

**“FPSC”** means the Florida Public Service Commission, its staff, or any Governmental Authority succeeding to the powers and functions thereof.

**“Freedom of Information Act”** means 5 U.S.C. § 552 et seq. or any successor to such statute.

**“Full Commercial Operation”** means the fulfillment, to Buyer’s reasonable satisfaction, of all of the following criteria:

(i) Seller and Facility Owner shall have demonstrated that the construction and installation of [REDACTED]

[REDACTED] and that such Designated Units are capable of reliably producing electric energy and reliably delivering such electric energy to the electric transmission system to which the Facility is interconnected;

(ii) Seller has delivered to Buyer a notice identifying each of the completed Designated Units;

(iii) the electrical interconnection facilities required to interconnect the Facility to the applicable transmission system are completed, and the Facility Owner has

complied with all requirements, and has received all authorizations and consents necessary, to deliver all of the electrical energy produced by the Facility to such transmission system;

(iv) Seller and Facility Owner shall have delivered to Buyer a certificate from a licensed engineer, reasonably acceptable to Buyer and who is not an Affiliate of Seller, stating that the Facility has been designed, engineered, constructed and tested in accordance with Prudent Industry Practices; and

(v) Seller shall have delivered to Buyer a certificate from a responsible officer of Seller certifying that Seller is in compliance with all of the provisions of this Agreement as of the Day that all of the foregoing criteria in (i) through (iv) are satisfied.

“**Gains**” has the meaning set forth in Section 12.2.2.

“**Generation Facility(ies)**” means the electric generation facility(ies) (including the Facility) from which energy or Environmental Attributes are provided by Seller under this Agreement.

“**Governmental Authority**” means any federal, state, local, territorial, county or municipal government authority and any branch, department, commission, board, court, bureau, agency, instrumentality, judicial or administrative body thereof, excluding the Parties but including NERC and SERC.

“**Green-e**” means the Green-e certification and verification program for renewable energy, greenhouse gas emission reductions and other Environmental Attributes that is administered by the Center for Resource Solutions, and any successor(s) thereto.

“**Green-e National Standard**” means the Green-e National Standard as determined, published, codified and otherwise promulgated by Green-e and that defines eligibility criteria for

Green-e certified renewable energy products, including Renewable Energy Certificates, utility green pricing programs, and competitive market electricity products, as such standard(s) may be modified from time to time.

“**Green-e REC**” means a certifiable Green-e Renewable Energy Certificate that represents all of the Environmental Attributes associated with one megawatt-hour (“MWh”) of energy generated by the applicable Wind Generation Facility that, for and during the applicable reporting year(s), qualifies as Green-e eligible renewable energy generation and that satisfies all of the requirements of the Green-e National Standard when generated.

“**GTC Tariff**” means the currently effective “Transmission Service Tariff of Georgia Transmission Corporation (An Electric Membership Corporation)”, as filed with and maintained in accordance with the requirements of the Rural Utilities Services, as well as any successor tariff or arrangement.

“**Guarantor**” means an entity that guarantees a Party’s obligations under this Agreement, including through an Eligible Guaranty.

“**Hour**” means one (1) of the twenty-four (24) clock-hours of a Day.

“**Hourly**” has a meaning correlative to that of Hour.

“**Indebtedness**” of any Person means all of the following without duplication: (a) obligations of such Person for borrowed money evidenced by bonds, debentures, notes, loan agreements or other similar instruments; (b) purchase money indebtedness of such Person constituting an obligation to pay the deferred purchase price of property or services, other than trade payables incurred in the ordinary course of business; (c) lease obligations of such Person which are capitalized on the balance sheet of such Person in accordance with generally accepted accounting principles; (d) liabilities of a second Person secured by any lien on any property of

such first Person, whether or not such liabilities have been assumed by such first Person; (e) liabilities of such Person with respect to letters of credit or applications or reimbursement agreements therefor; (f) the net obligations of such Person under any swap or hedging agreement, calculated by reference to the amount that would be due upon the termination of such swap or hedging agreement; or (g) indebtedness of such Person owing under direct or indirect guarantees of indebtedness of any other Person or constituting obligations to purchase or acquire or to otherwise protect or insure a creditor against loss in respect of indebtedness of any other Person excluding endorsements of negotiable instruments for deposit or collection in the ordinary course of business.

“**Installed Nameplate Capacity**” means, with respect to a given Wind Generation Facility at a given time, the total nameplate generating capacity of the fully functioning wind turbines that comprise such facility and that: (i) have been installed and interconnected with the applicable electric transmission system through interconnection facilities that are capable of delivering energy associated with the full amount of such total nameplate generating capacity to such transmission system; and (ii) are capable of delivering energy into such transmission system through such interconnection facilities.

“**Interest Rate**” means the prime rate of interest as published from time to time in the Wall Street Journal or comparable successor publication.

“**ITC**” means the investment tax credit under Section 46 of the Internal Revenue Code as in effect from time to time during the Term or any successor or other provision providing for a federal tax credit determined by reference to the cost of or investment in the Facility (or any part or component thereof) and any correlative state tax credit determined by reference to the cost of or investment in the Facility (or any part or component thereof) for which the Facility is eligible.



“**Kingfisher Plant**” means the wind farm known as the Kingfisher Wind Farm that is intended to have an Installed Nameplate Capacity of two hundred ninety eight (298) MW, currently under construction by the Facility Owner, and which shall be located in Kingfisher and Canadian Counties, Oklahoma at the Site, the location of which is further depicted in the diagram of the Site set forth in **Appendix E** to this Agreement.

“**kW**” means kilowatts.

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

“**Level TLR-5**” means a TLR of a level that is classified as TLR-5a or TLR-5b, as determined pursuant to NERC guidelines and standards (including NERC Standard IRO-006-East-1) and any successor(s) thereto.

“**Losses**” has the meaning set forth in Section 12.2.2.

“**Material Adverse Change**” means, with respect to a Person, any event, occurrence or circumstance whereby the maturity of any Indebtedness of such Person which in the aggregate exceeds an amount equal to \$50,000,000.00 or three percent (3%) of the equity in such Person that is owned by the shareholders of such Person, whichever is less, is accelerated by the holder or holders thereof as a result of a default thereunder.

“**Material Adverse Financial Condition**” means, with respect to a Person, any circumstance, event or condition whereby: (i) such Person has or commences to have a Below Investment Grade Rating; or (ii) there exists or commences to exist a Material Adverse Change with respect to such Person.

“**Minimum Investment Grade Condition**” means, with respect to any Person, any circumstance, event or condition whereby: (i) a Material Adverse Financial Condition does not exist with respect to such Person; and (ii) (a) such Person (or its senior unsecured long-term debt, not supported by third party credit enhancements, as applicable) has an issuer rating or senior unsecured rating of Baa3 (or future equivalent) by Moody’s; (b) such Person (or its senior unsecured long-term debt, not supported by third party credit enhancements, as applicable) has an issuer credit rating or senior unsecured rating of BBB– (or future equivalent) by S&P; or (c) such Person (or its senior unsecured long-term debt, not supported by third party credit enhancements, as applicable) has an issuer rating or senior unsecured rating of BBB– (or future equivalent) by Fitch.

“**MISO**” means the Midcontinent Independent System Operator.

“**Month**” means a calendar Month, commencing at the beginning of the first Day of such calendar Month.

“**Monthly**” has a meaning correlative to that of Month.

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“**Monthly Energy Payment**” means the Monthly amount to be paid by Buyer to Seller as calculated in accordance with **Appendix B**.

“**Moody’s**” means Moody’s Investors Service, Inc. or its successor. If Moody’s ceases to exist or publish ratings, Moody’s shall mean a nationally recognized rating agency mutually agreed upon by the Parties, which agreement will not be unreasonably withheld, conditioned or delayed.

“**MSDPI**” means Morgan Stanley Derivatives Products Inc.

“**MW**” means megawatts.

“**MWh**” means megawatt-hours.

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

“**Net Worth**” means, with respect to any Person, the dollar value calculated by subtracting total liabilities from total assets (excluding goodwill and other intangible assets described in ASC 350 (formerly FASB Statement 142)) of such Person as such terms are determined in accordance with generally accepted accounting principles, as such may be modified from time to time.

“**Network Resource**” has the meaning set forth in the Southern OATT, including any successor term; provided that as used in subpart (ii) of the definition of “OPC Network Resource”, the term “Network Resource” has the meaning set forth in the GTC Tariff.

“**Non-Defaulting Party**” has the meaning set forth in Section 12.1.

“**Noticed Party**” has the meaning set forth in 16.1.

“**OPC Network Resource**” means any OPC Unit that is, at the applicable time hereunder, either: (i) a Network Resource under the Southern OATT for the purpose of serving electric load through network transmission service on the Southern Companies Transmission System; or (ii) in the event that at such applicable time hereunder the interconnection for such OPC Unit is subject to the GTC Tariff, a Network Resource under the GTC Tariff for the purpose of serving electric load through network transmission service.

“**OPC Network Resource Undelivered Energy**” has the meaning set forth in Section 12.1.13.

“**OPC Units**” means any electric generation facilities that, at the time of applicable energy deliveries during the Service Term, (i) are fully or partially owned (directly or indirectly)

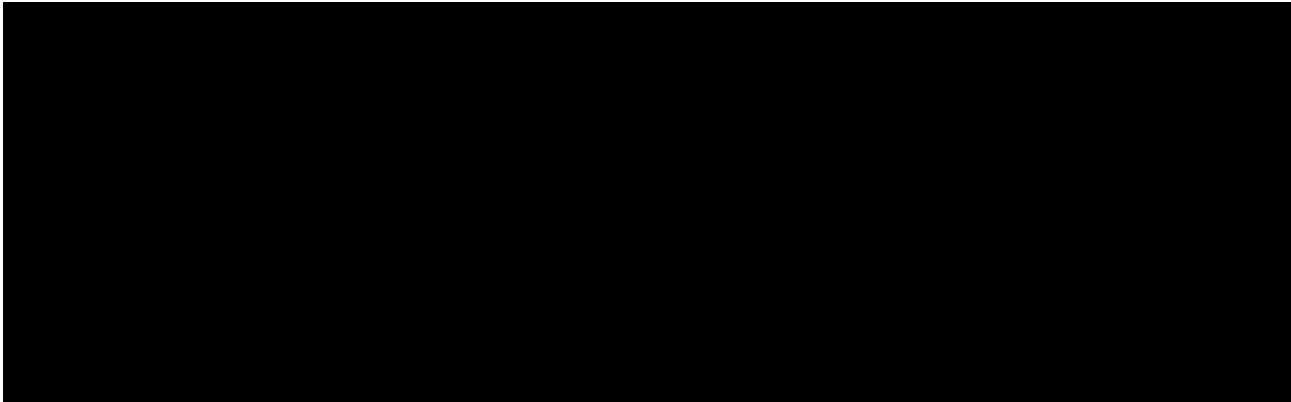
by Oglethorpe Power Corporation, Smarr Electric Membership Corporation, or either of their members, successors or assigns; and (ii) are directly interconnected with the Georgia Integrated Transmission System.

“**Operating Committee**” means the group comprised of the Operating Representatives.


“**Operating Procedures**” means those procedures developed by the Parties pursuant to Section 4.2.

“**Operating Representatives**” means those individuals appointed by each of the Parties to form and maintain the Operating Procedures.

“**Other Kingfisher Environmental Attributes**” means Environmental Attributes produced by generating units at the Kingfisher Plant other than the Designated Units that: (a) are of the same character as Contracted Facility Attributes that would be sourced from the Facility;



“**Partial Commercial Operation**” means the fulfillment, to Buyer’s reasonable satisfaction, of all of the following criteria (provided, however, that even if Partial Commercial Operation is achieved, the Commercial Operation Date under this Agreement shall only occur on a Day determined by Buyer pursuant to Section 3.3.4(b)):

- (i) Seller and Facility Owner shall have demonstrated that the construction and installation of 

█ have been completed at the Facility and that such completed Designated Units are capable of reliably producing electric energy and reliably delivering such electric energy to the electric transmission system to which the Facility is interconnected;

(ii) Seller has delivered to Buyer a notice identifying each of the completed Designated Units;

(iii) the electrical interconnection facilities required to interconnect the Facility to the applicable transmission system are completed, and the Facility Owner has complied with all requirements, and has received all authorizations and consents necessary, to deliver all of the electrical energy produced by the Facility to such transmission system;

(iv) Seller and Facility Owner shall have delivered to Buyer a certificate from a licensed engineer, reasonably acceptable to Buyer and who is not an Affiliate of Seller, stating that the Facility has been designed, engineered, constructed and tested in accordance with Prudent Industry Practices; and

(v) Seller shall have delivered to Buyer a certificate from a responsible officer of Seller certifying that Seller is in compliance with all of the provisions of this Agreement as of the Day that all of the foregoing criteria in (i) through (iv) are satisfied.

“**Party**” or “**Parties**” means either Buyer or Seller or both.

“**Performance Security**” means Cash Security, an Eligible Letter of Credit or an Eligible Guaranty; provided, however, at least fifty percent (50%) of any Performance Security required to be provided by Seller or Buyer under this Agreement must be in the form of either an Eligible Letter of Credit or Cash Security whenever Seller or Buyer (as applicable) is providing an Eligible Guaranty and: (i) the applicable Guarantor (or its senior unsecured long-term debt, not

supported by third party credit enhancements, as applicable) has an issuer rating or senior unsecured rating below Baa2 (or future equivalent) by Moody's; (ii) the applicable Guarantor (or its senior unsecured long-term debt, not supported by third party credit enhancements, as applicable) has an issuer credit rating or senior unsecured rating below BBB (or future equivalent) by S&P; or (iii) the applicable Guarantor (or its senior unsecured long-term debt, not supported by third party credit enhancements, as applicable) has an issuer rating or senior unsecured rating below BBB (or future equivalent) by Fitch.

**“Period One”** means, during any given Day, the consecutive period of time that is comprised of the sixteen (16) Hours that occur during the period from 0600 CPT until 2200 CPT.

**“Period Two”** means, during any given Day, the periods of time that are comprised of all Hours that do not occur during Period One of such Day.

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

**“PJM”** means the PJM Interconnection L.L.C. balancing authority area.

**“Planned Designated Units”** means the eighty nine (89) Vestas model V100 wind turbine units, each with a nameplate generating capacity of two (2) MW, that are planned to be constructed and installed at the Facility.

**“Point of Delivery”** means each point on the Southern Companies Transmission System (including a transmission interface(s) between the Southern Companies Transmission System and another transmission system) at which energy under this Agreement shall be delivered by Seller to Buyer, as each such point is determined pursuant to Section 6.1 and Section 6.2.

“**Prudent Industry Practices**” means, at a particular time, any of the practices, methods, standards and acts engaged in or approved by a significant portion of the electric industry (as the same pertain to the applicable context of this Agreement) prior to such time, or any of the practices, methods, standards and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired results consistent with good and acceptable engineering and business practices, reliability, safety, economy and expedition. Prudent Industry Practices is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be a spectrum of possible practices, methods or acts expected to accomplish the desired results, having due regard for, among other things, manufacturers’ warranties, any applicable inspection authorities, and the requirements of Governmental Authorities of competent jurisdiction and the requirements of this Agreement.

“**PTCs**” means production tax credits under Section 45 of the Internal Revenue Code as in effect from time to time during the Term or any successor or other provision providing for a federal tax credit determined by reference to renewable electric energy produced from wind resources and any correlative state tax credit determined by reference to renewable electric energy produced from wind resources for which the Facility is eligible.

“**REC**” or “**Renewable Energy Certificate**” means a certificate, credit, allowance, green tag or other transferable indicia of the rights in and to all Environmental Attributes that arise or result from a generation facility’s use of a renewable or sustainable fuel source (including wind) to generate electricity, howsoever entitled, as defined by the Applicable Program. A REC is separate from the energy produced and may be separately transferred or conveyed.

“**Receiving Party**” has the meaning set forth in the definition of “Confidential Information” in this Section 1.1.

“**Redesignation Notice**” has the meaning set forth in Section 3.6.

“**Renewable Standards**” means any renewable electricity standard, renewable portfolio standard or similar requirements that may be applicable to Buyer or any of its Affiliates or to which Buyer or any of its Affiliates may be subject.

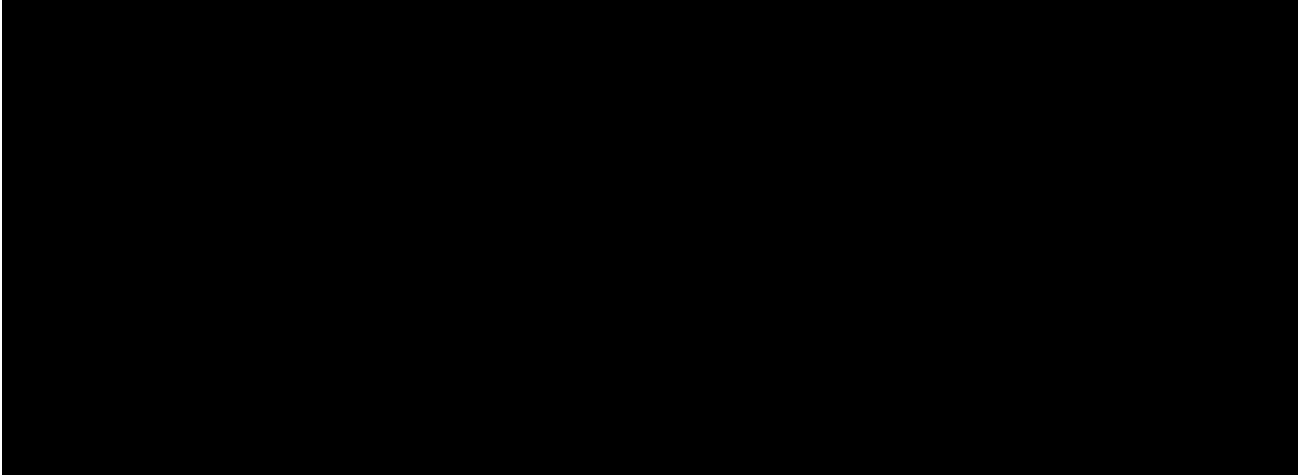
“**Replacement Environmental Attributes**” means, for each Day after the Required Commercial Operation Date that the Facility has not achieved Commercial Operation, a quantity of Environmental Attributes that is equal to the quantity of Environmental Attributes that would have been required to be provided by Seller to Buyer under this Agreement [REDACTED]

[REDACTED]

“**Replacement Price**” means, [REDACTED]


[REDACTED]





“**Representatives**” means, when used with respect to a Person, collectively or individually (as the context might indicate), such Person, its Affiliates and permitted successors and assigns, and the directors, officers, representatives, agents, and employees of each of them.

“**Required Buyer Post Amount**” means: (i) for any period during which there exists a Minimum Investment Grade Condition with respect to Buyer, an amount that is equal to fifty percent (50%) of the Buyer Security Amount for the calendar year in which such period occurs; and (ii) for any period during which there is a Material Adverse Financial Condition with respect to Buyer, an amount that is equal to one hundred percent (100%) of the Buyer Security Amount for the calendar year in which such period occurs.

“**Required Commercial Operation Date**” means , as such date may be extended pursuant to Section 3.3.7.

“**Required Seller Post Amount**” means: (i) for any period during which there exists a Minimum Investment Grade Condition with respect to Seller, an amount that is equal to fifty percent (50%) of the Seller Security Amount for the calendar year in which such period occurs; and (ii) for any period during which there exists a Material Adverse Financial Condition with

respect to Seller, an amount that is equal to one hundred percent (100%) of the Seller Security Amount for the calendar year in which such period occurs.

“**Required Transmission Service**” means 



“**Rules**” has the meaning set forth in Section 16.2.2.1.

“**Sales Price**” means, for a given Hour in which there is an unexcused failure by Buyer to receive energy it is required to receive under this Agreement, (i) the price for which Seller, acting in a commercially reasonable manner, resells at the Point of Delivery any such energy not received by Buyer, minus documented administrative costs, if any, reasonably incurred by Seller to resell such energy at the Point of Delivery (in each case stated in terms of \$/MWh for such resold energy), or (ii) if Seller determines in its sole discretion not to resell such energy, the market price for which Seller would have been able to resell such energy at the Point of Delivery, as reasonably determined by Seller; provided, however, that Seller shall not be required to enter into any transaction or agreement to resell energy in order to determine the Sales Price.

“**S&P**” means Standard & Poor’s Financial Services LLC, or its successor. If S&P ceases to exist or publish ratings, S&P shall mean a nationally recognized rating agency mutually

agreed upon by the Parties, which agreement will not be unreasonably withheld, conditioned or delayed.

“**Security Posting Condition**” means, with respect to any Person, an occurrence, non-occurrence, circumstance or event whereby there exists or commences to exist, with respect to such Person, a Material Adverse Financial Condition or a Minimum Investment Grade Condition.

“**Seller**” has the meaning set forth in the first paragraph of this Agreement.

[REDACTED]

[REDACTED]

“**Seller Security Amount**” has the meaning set forth in **Appendix G**.

“**SERC**” means the SERC Reliability Corporation, including any successor thereto and subdivisions thereof.

“**Service Commencement Date**” means either: (i) the later of: (a) January 1, 2016, or (b) the Day occurring immediately after the Commercial Operation Date; or (ii) the Day determined by Buyer to be the Service Commencement Date under Section 3.3.4(a)(4).

“**Service Term**” has the meaning set forth in Section 3.1.

“**Site**” has the meaning set forth in **Appendix E**.

“**Southern Companies Transmission System**” means the integrated transmission systems of the electric utility operating companies of The Southern Company that own or operate transmission systems (which, as of the Effective Date include Alabama Power Company, Georgia Power Company, Gulf Power Company and Mississippi Power Company), as such systems may be modified or expanded from time-to-time, as well as any successor transmission system(s).

“**Southern/Entergy Interface**” means the transmission interface between the Southern Companies Transmission System and the Entergy transmission system, which as of the Effective Date is operated by MISO as “MISO South” (including any successor(s) transmission systems).

“**Southern OATT**” means the Open Access Transmission Tariff of the electric utility operating companies of The Southern Company that own or operate transmission systems (which, as of the Effective Date include Alabama Power Company, Georgia Power Company, Gulf Power Company and Mississippi Power Company), as filed with and maintained in accordance with the requirements of FERC, as well as any successor tariff or arrangement.

“**Southern Transmission Service**” means 



“**SPP**” means the Southwest Power Pool balancing authority area.

“**Taxes**” means any or all ad valorem, property, occupational, severance, emissions, generation, first use, conservation, energy, transmission, utility, gross receipts, privilege, sales,

use, excise and other taxes, fees, assessments, licenses, taxes based on net income or net worth and any other charges imposed by a Governmental Authority, together with any interest and penalties thereon.

“**Term**” has the meaning set forth in Section 3.1.

“**Termination Payment**” means the amount calculated to be the “Termination Payment” as set forth in Section 12.2.2.

“**Tier 1 Firm Transmission Curtailment**” means [REDACTED]

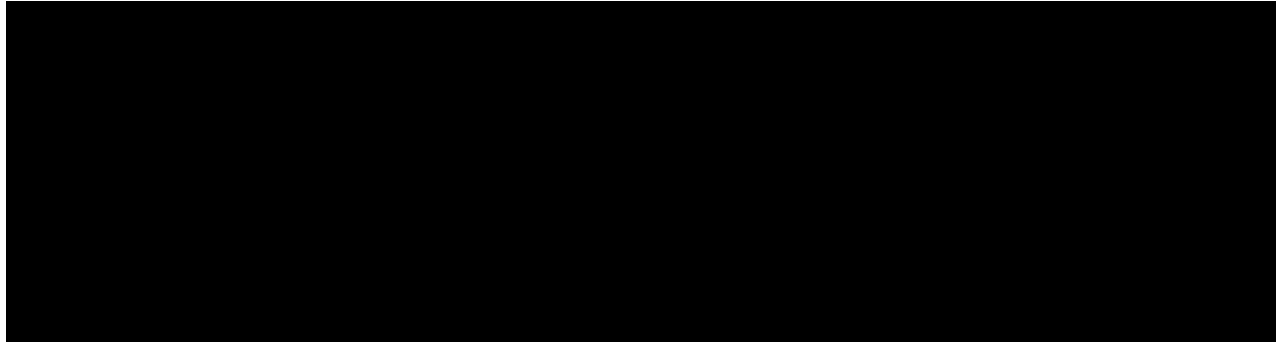
[REDACTED]

“**Tier 1 Hourly Energy**” means, [REDACTED]

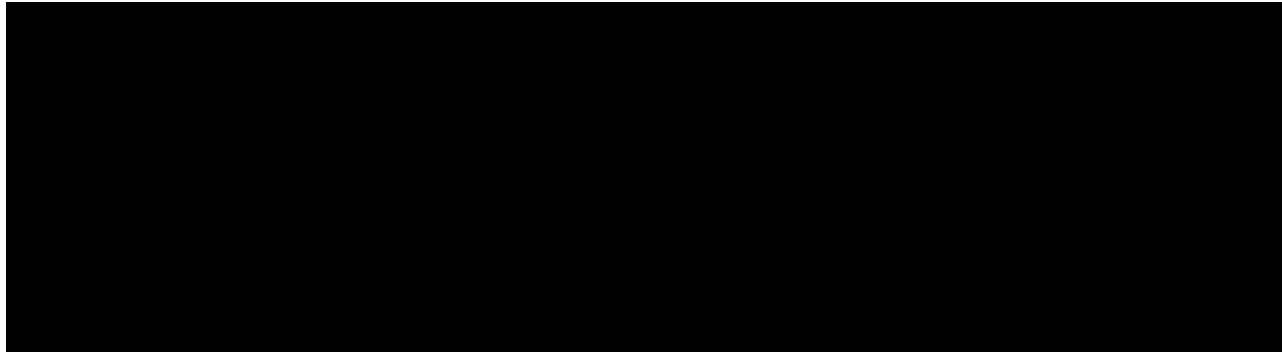
[REDACTED]

“**Tier 1 Seller Transmission Service**” means [REDACTED]

[REDACTED]

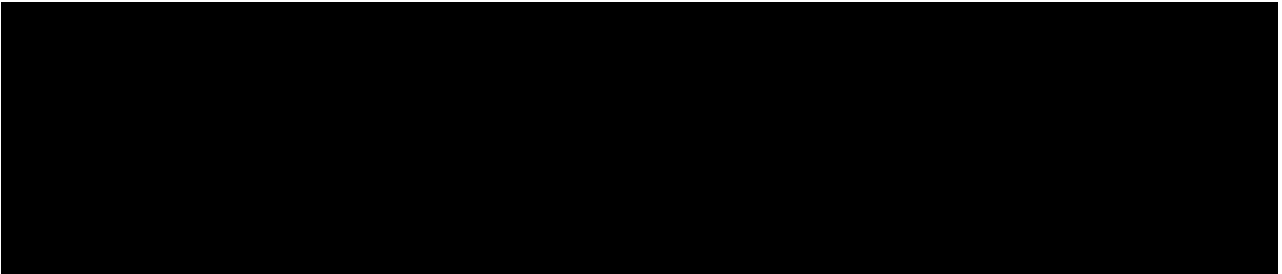


“Tier 1 TSA” means [redacted]



“Tier 2 Energy Network Service” has the meaning set forth in Section 6.2.3(b).

“Tier 2 Hourly Energy” means, [redacted]



“TLR” means transmission loading relief procedures, consistent with the guidelines and procedures of NERC regarding the same.

“Total Hourly Energy” means, for a given Hour of a given Month, the quantity of “Total Hourly Energy” for such Hour as set forth in **Appendix A**, based on the Month in which such Hour occurs; provided, however, that Total Hourly Energy may be modified pursuant to Section 3.3 and Section 3.4. For example, as determined under **Appendix A**, (i) the Total

Hourly Energy for each Hour ending 0100 during each Month of January is [REDACTED]  
[REDACTED] (ii) the Total Hourly Energy for each Hour ending 1800 during each Month of March is [REDACTED] and (iii) the Total Hourly Energy for each Hour ending 2200 during each Month of October is [REDACTED]

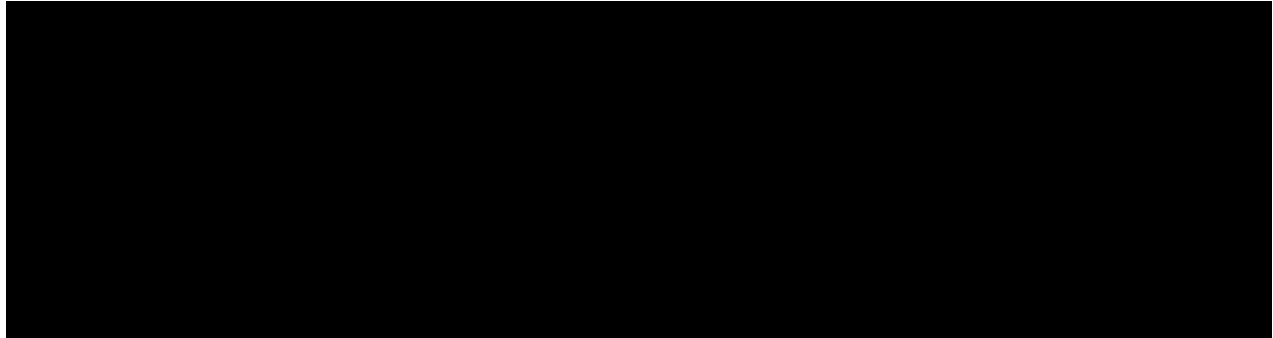
“**Tracking System**” means a generation information system, generation attribute tracking system or other system that records generation from renewable energy facilities in any particular geographical region utilized to account for the creation, tracking, transfer and/or retirement of Environmental Attributes (including RECs). If no Tracking System exists for a particular Environmental Attribute identified by the Buyer pursuant to Article 8, the Parties shall meet and mutually agree on a spreadsheet or other system of accounts to act as the Tracking System for the particular Environmental Attribute.

“**Transmitting Utility**” means, for any Hour, any utility, regional transmission organization or other Person(s) (including their respective balancing authority area operators) that is required to transmit energy over distribution or transmission lines in order for the energy provided under this Agreement to be delivered from a generation resource from which Delivered Energy is to be provided under this Agreement to the Point of Delivery.

“**Transmitting Utility System(s)**” means the electric distribution system and transmission system of a Transmitting Utility, as such system may be modified or expanded from time to time, as well as any successor system(s).

“**Undelivered Energy**” means, [REDACTED]

[REDACTED]



“**Variable Interest Entity**” or “**VIE**” has the meaning as set forth in ASC 810 (formerly FASB Interpretation No. 46(R)), or any successor definition thereto.

“**VIE Cure**” has the meaning set forth in Section 11.7.3.2.

“**VIE Cure Period**” has the meaning set forth in Section 11.7.3.2.

“**Wind Generation Facility**” means an electric generating facility comprised of wind turbines that generates electrical energy utilizing wind energy as its exclusive fuel source.

1.2 Interpretation. In this Agreement, unless the context requires otherwise, the singular shall include the plural and any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “hereof,” “herein,” “hereto” and “hereunder” and words of similar import when used in this Agreement shall, unless otherwise expressly specified, refer to this Agreement as a whole and not to any particular provision of this Agreement. Whenever the term “including” is used herein in connection with a listing of items included within a prior reference, such listing shall be interpreted to be illustrative only, and shall not be interpreted as a limitation on or exclusive listing of the items included within the prior reference. Any reference in this Agreement to “Section,” “Article,” or “Appendix,” shall be references to this Agreement unless otherwise stated, and all such Appendices shall be incorporated in this Agreement by reference. In the event that any index or publication referenced in this Agreement ceases to be published, each such reference shall be deemed a reference to the applicable successor or



alternate index or publication (or other discernible information) that reflects the same information reflected by the index or publication no longer published. Unless specified otherwise, a reference to a given agreement or instrument, and all schedules, exhibits, appendices and attachments thereto, shall be a reference to that agreement or instrument as modified, amended, supplemented and restated, and in effect from time to time. Unless otherwise stated, any reference in this Agreement to any entity shall include its permitted successors and assigns, and in the case of any Governmental Authority, any entity succeeding to its functions and capacities.

**ARTICLE 2**  
**APPROVAL OF FLORIDA PUBLIC SERVICE COMMISSION**

2.1 FPSC Approval. Buyer shall use its reasonable efforts to obtain FPSC approval of cost recovery under this Agreement and in furtherance thereof, shall file a petition for approval as soon as reasonably practicable after the execution of the Agreement, but in no event later than sixty (60) Days after the Effective Date, and shall diligently pursue such FPSC approval, including by using all reasonable efforts to promptly respond to any FPSC staff inquiry and promptly furnish or cause to be furnished any information or documents requested by the FPSC. Seller agrees to assist and support Buyer, in a timely manner and to the extent reasonably requested by Buyer, in obtaining FPSC approval. Not less than ten (10) Business Days prior to filing the petition with the FPSC, Buyer shall provide Seller with an advance draft copy of the petition and shall consider Seller's suggestions and comments with respect to such petition; provided, however, that Buyer shall retain sole control over and responsibility for the contents of the petition. Throughout the approval process, Buyer shall provide Seller with timely updates as to the progress of the petition, and will inform Seller of any material

interaction between Buyer or its agents and the FPSC or its staff considering the petition for approval.

2.2 FPSC Approval.

2.2.1 If, after two hundred forty (240) Days from the filing date by Buyer of a petition with the FPSC for approval of this Agreement (“FPSC Approval Target Date”), the FPSC has not issued a final non-appealable order either granting or denying the relief requested in Buyer’s petition, then either Party may terminate this Agreement without liability or obligation upon written notice to the other Party, provided that such notice is delivered to such other Party no later than thirty (30) Days after the FPSC Approval Target Date. If a Party fails to exercise the aforementioned termination right within such thirty (30) Day period, then such Party shall be deemed to have waived such termination right. Notwithstanding the foregoing, if at any time prior to the FPSC Approval Target Date, the FPSC issues a final, non-appealable order denying the relief requested in Buyer’s petition, or granting Buyer’s petition with any qualifications or conditions, either Party shall have the right to terminate this Agreement without liability or obligation by delivering written notice to the other Party within fifteen (15) Days of the passage of the timeframe for filing a notice of appeal pursuant to Rule 9.110, Florida Rules of Appellate Procedure. If a Party fails to exercise the aforementioned termination right within such fifteen (15) Day period, then such Party shall be deemed to have waived such termination right. [REDACTED]

[REDACTED]

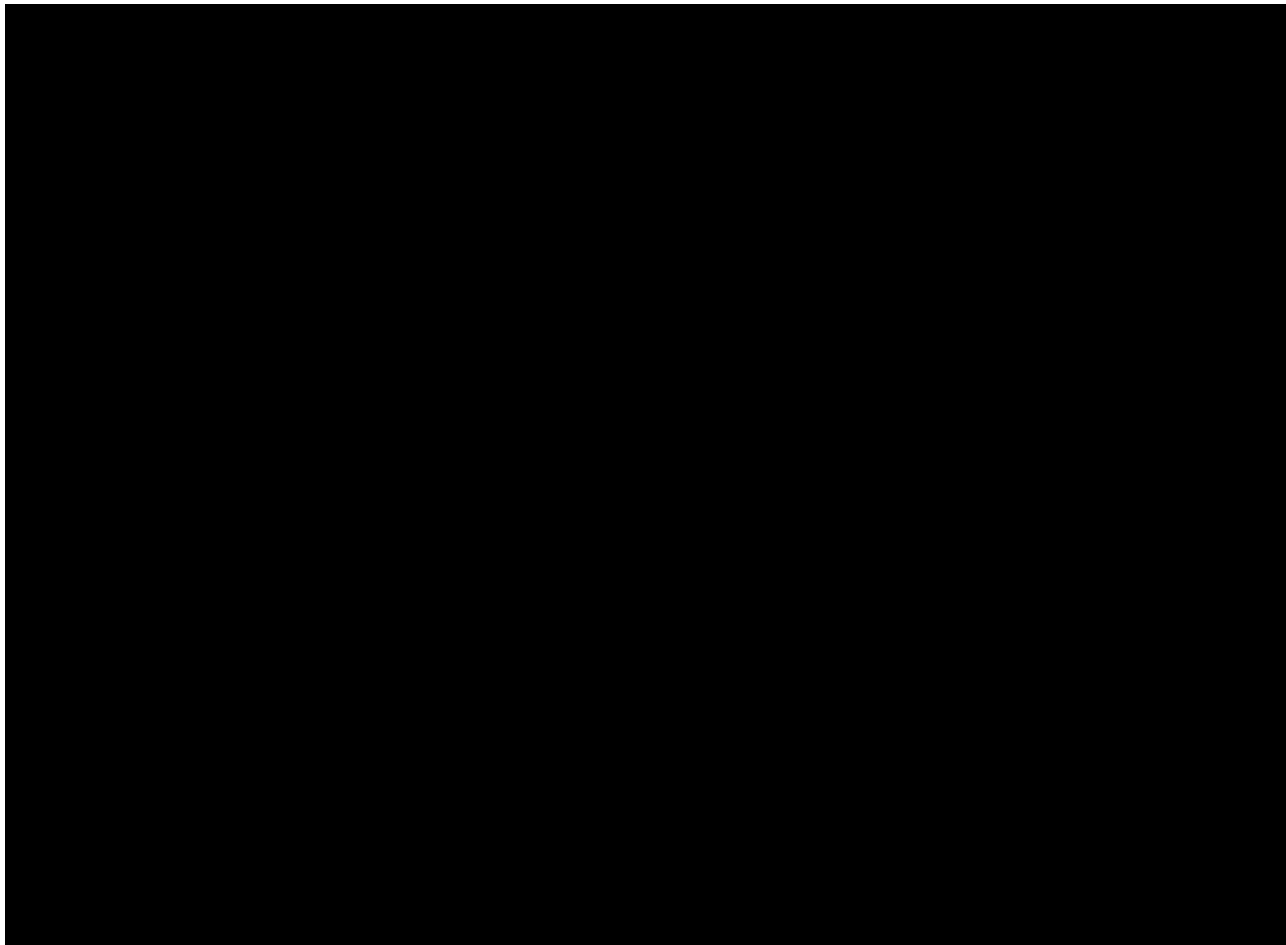
[REDACTED] Once a final, non-appealable order approving this Agreement has been

issued and is deemed accepted by the Parties, the Parties agree they will not seek to amend, oppose, protest or contest such FPSC order and will undertake reasonable efforts to support the order if any entity seeks to amend, oppose, protest or contest such FPSC order.

2.2.2 Notwithstanding any other provision of this Agreement, in no event shall Buyer have any obligation to receive or purchase energy under this Agreement unless and until: (i) the FPSC approves cost recovery under this Agreement as requested pursuant to Buyer's petition under Section 2.1 through the issuance of a final, non-appealable order without qualifications or conditions; or (ii) both Parties fail to exercise their right to terminate this Agreement pursuant to Section 2.2.1 and, as a result, both Parties are deemed to have waived their right to terminate this Agreement pursuant to Section 2.2.1.

2.3 Subsequent Action of the Florida Public Service Commission. If, at any time after having approved this Agreement, the FPSC issues an order with respect to this Agreement that prohibits Buyer from recovering from its customers some or all of the payments required to be made by Buyer to Seller under this Agreement ("Disallowance Order"), then, to the extent such Disallowance Order is appealable (whether to the FPSC on reconsideration or rehearing, to another administrative or executive body, or to a court of competent jurisdiction) and has any reasonable likelihood of resulting in a reversal of such Disallowance Order, Buyer shall timely appeal the FPSC's decision. Not less than fifteen (15) Business Days prior to filing its appellate brief, Buyer shall provide Seller with an advance draft copy of the appellate brief and shall consider Seller's suggestions and comments with respect to such filing, provided, however, that Buyer shall retain sole control over and responsibility for the contents of the appeal. Throughout the appeal process, Buyer shall provide Seller with timely updates as to the progress of the appeal, and will inform Seller of any material interaction between Buyer or its agents and the FPSC or its

staff considering the appeal. In the event that such Disallowance Order is not appealable, or Buyer has determined that there is no reasonable likelihood of success of an appeal of such Disallowance Order, or all further appeals of such Disallowance Order have been denied (“Final Disallowance”), then this Agreement, unless it has previously terminated or expired [REDACTED] [REDACTED] will automatically terminate without further liability or obligation to either Party (except for any liabilities or obligations accruing prior to or at termination or which expressly survive termination), effective upon the first Business Day of the Month following such Final Disallowance. In connection with the foregoing, Buyer and Seller agree to support and defend this Agreement and their respective rights to cost recovery and payment, against any challenge thereto by any Person. [REDACTED]





**ARTICLE 3**  
**TERM; COMMERCIAL OPERATION; DECREASE IN FACILITY CAPACITY**  
**DURING TERM**

3.1 Term.

3.1.1 This Agreement shall become effective as of the Effective Date. Subject to early termination of this Agreement as provided in the other sections of this Agreement, the term of this Agreement shall begin on the Effective Date and shall continue through and until December 31, 2035 (such period of time is referred to as the “Term”). As used herein, the term “Service Term” shall mean the period commencing on the Service Commencement Date and ending at the end of the Day on which the Term ends, subject to earlier termination as provided herein.

3.1.2 In the event that the Financial Closing Date does not occur on or before [REDACTED] Seller shall have the right to terminate this Agreement by providing notice to Buyer by no later than [REDACTED]. If, for any reason, Seller does not give Buyer notice of termination pursuant to this Section 3.1.2 on or before [REDACTED], then and in such event the termination right under this Section 3.1.2 shall be deemed waived and shall lapse and be and remain void and of no further force and effect. Seller hereby covenants that it shall use commercially reasonable efforts to cause the relevant agreements to be entered into and to subsequently achieve the Financial Closing Date on or before [REDACTED], and Seller shall promptly notify Buyer when the Financial Closing Date has occurred. In the event that Seller timely terminates this Agreement pursuant to this Section 3.1.2, neither Party shall have any further liability or obligation

under this Agreement, except for obligations and liabilities that survive termination as provided in this Agreement or which accrue prior to or at termination.

3.2 Survival.

3.2.1 All provisions of this Agreement that expressly or by implication come into or continue in force and effect following the expiration or termination of this Agreement shall remain in effect and be enforceable following such expiration or termination, including all provisions of this Agreement that must survive in order to give force and effect to the rights and obligations of the Parties under this Agreement.

3.2.2 Notwithstanding anything to the contrary, the terms of Section 17.17 shall survive for a period of two (2) years after the termination or expiration of this Agreement.

3.3 Commercial Operation.

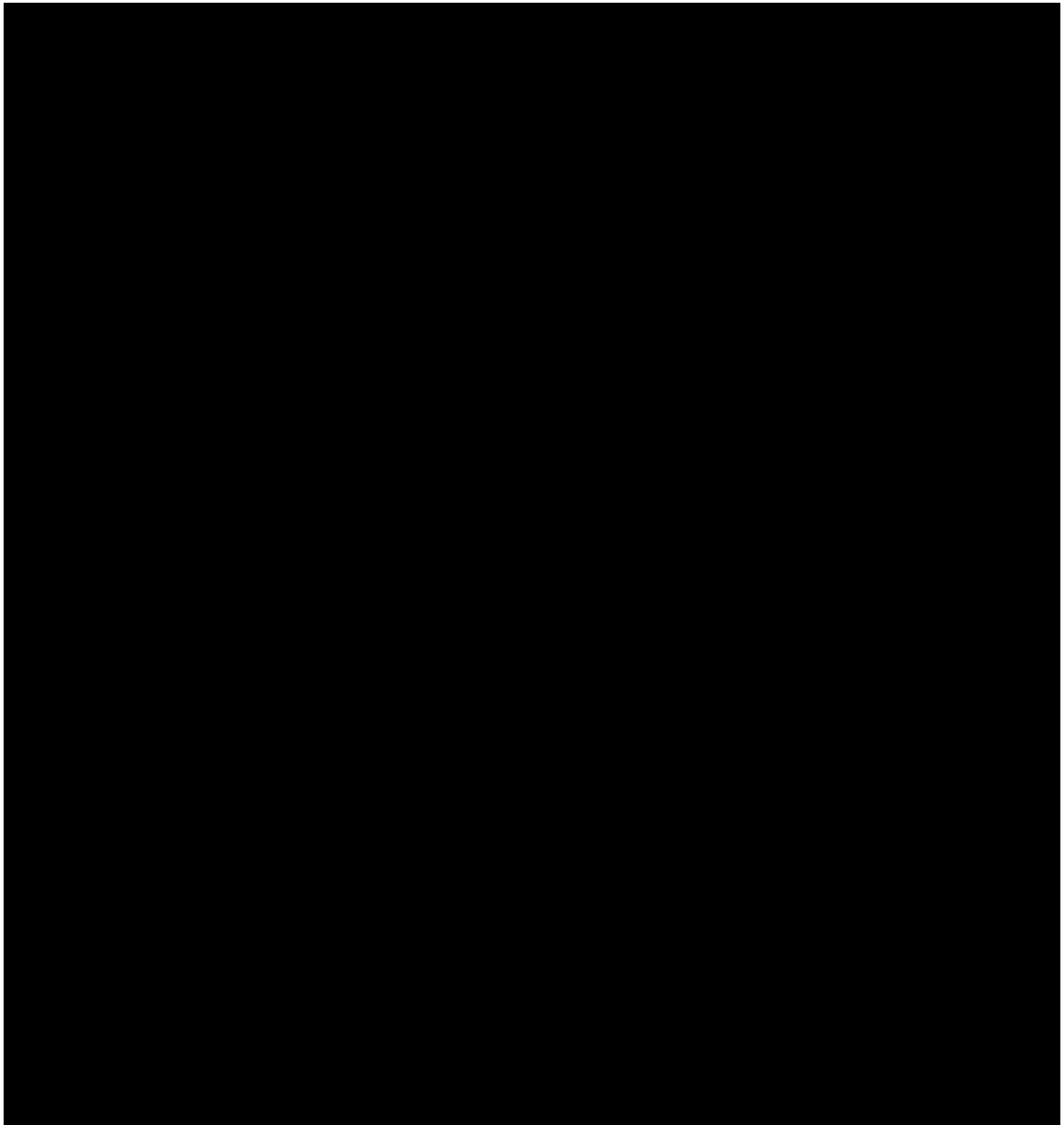
3.3.1 Within thirty (30) Days after the end of each Calendar Quarter prior to the Commercial Operation Date, Seller shall deliver a written report to Buyer describing the progress of design, development and construction of the Facility, including a description of all events of material significance. In the event that Seller believes that Full Commercial Operation of the Facility has been achieved, and Seller has delivered to Buyer all notices and certificates set forth in the definition of "Full Commercial Operation," Seller may give notice to Buyer that Seller has determined that Full Commercial Operation has been achieved. Buyer shall respond in writing within five (5) Business Days of the receipt of such notice either: (i) confirming that Full Commercial Operation has been achieved (in which event the effective date of Buyer's response shall be the date on which Full Commercial Operation is first achieved for purposes of this Agreement); or (ii) providing Seller a detailed description of any alleged deficiencies that in Buyer's view prevents Full

Commercial Operation from being achieved (or prevents Buyer from determining whether Full Commercial Operation has been achieved)

3.3.2 Buyer may request that Seller arrange to provide Buyer’s Representatives access to the Facility and to property owned, leased or controlled by Facility Owner during normal business hours in order to observe the construction of the Facility. Seller shall use commercially reasonable efforts to obtain such access for Buyer’s Representatives, provided that Seller’s agreement with the Facility Owner shall provide that Buyer’s Representatives shall be able to have such reasonable access, subject to (a) Buyer and Buyer’s Representatives executing and delivering such customary disclaimers and acknowledgments as Facility Owner may require, and (b) such restrictions as the terms of Facility Owner’s insurance provider may impose. Any such review and inspection should it occur, shall not be construed as any endorsement by Buyer of the design or construction of the Facility or as any warranty by Buyer of the safety, durability or reliability thereof. Buyer’s Representatives shall comply with the reasonable rules and procedures of Facility Owner when accessing property owned or controlled by Facility Owner under this Section 3.3.

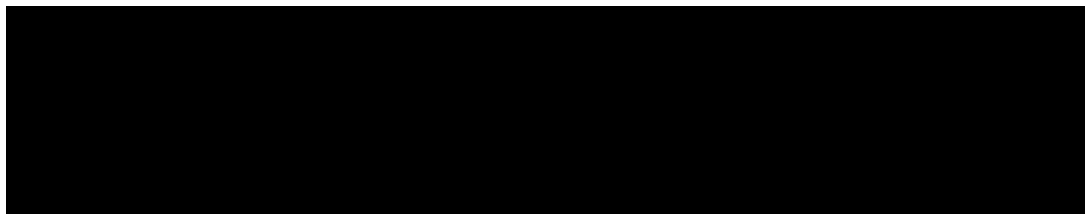
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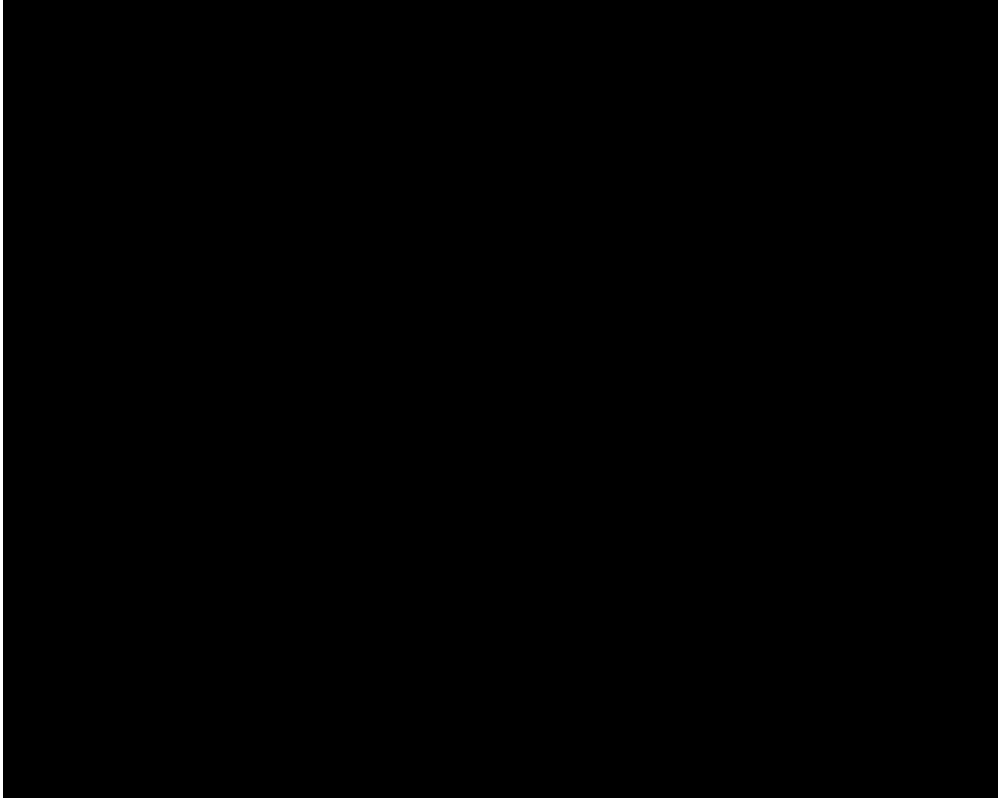
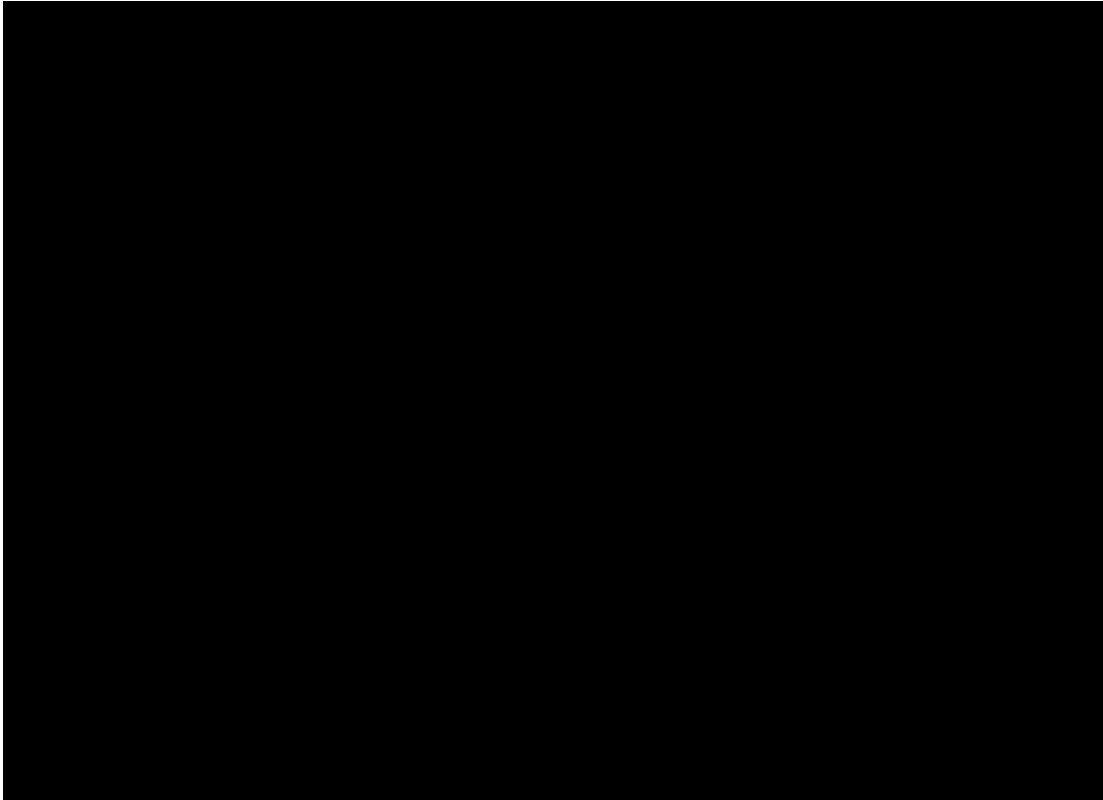


3.3.4 If Full Commercial Operation is not achieved by the Final Required Commercial Operation Date, then the following shall apply:

(a) 







■ [REDACTED]

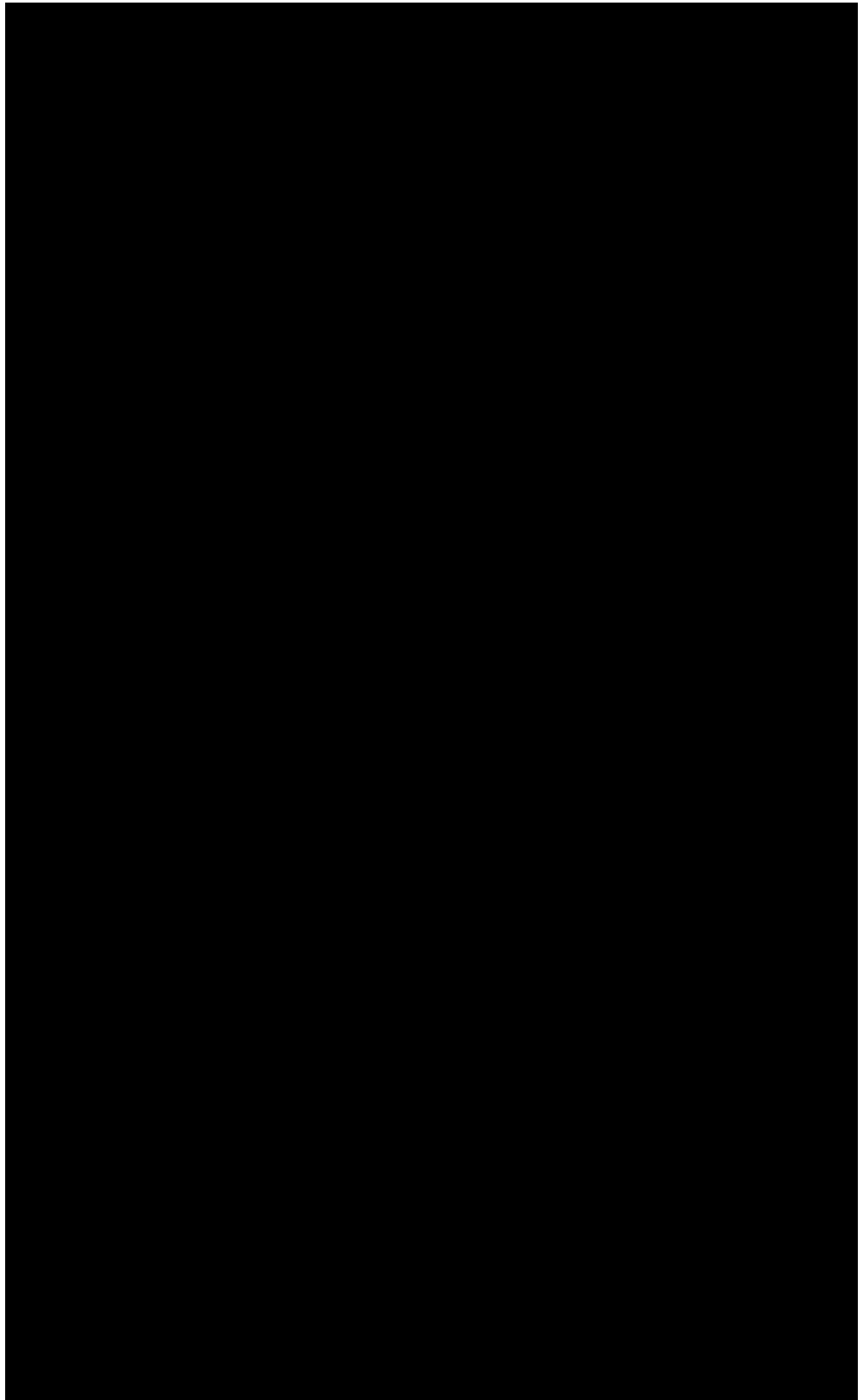
[REDACTED]

■ [REDACTED]

[REDACTED]

■ [REDACTED]

[REDACTED]



[REDACTED]

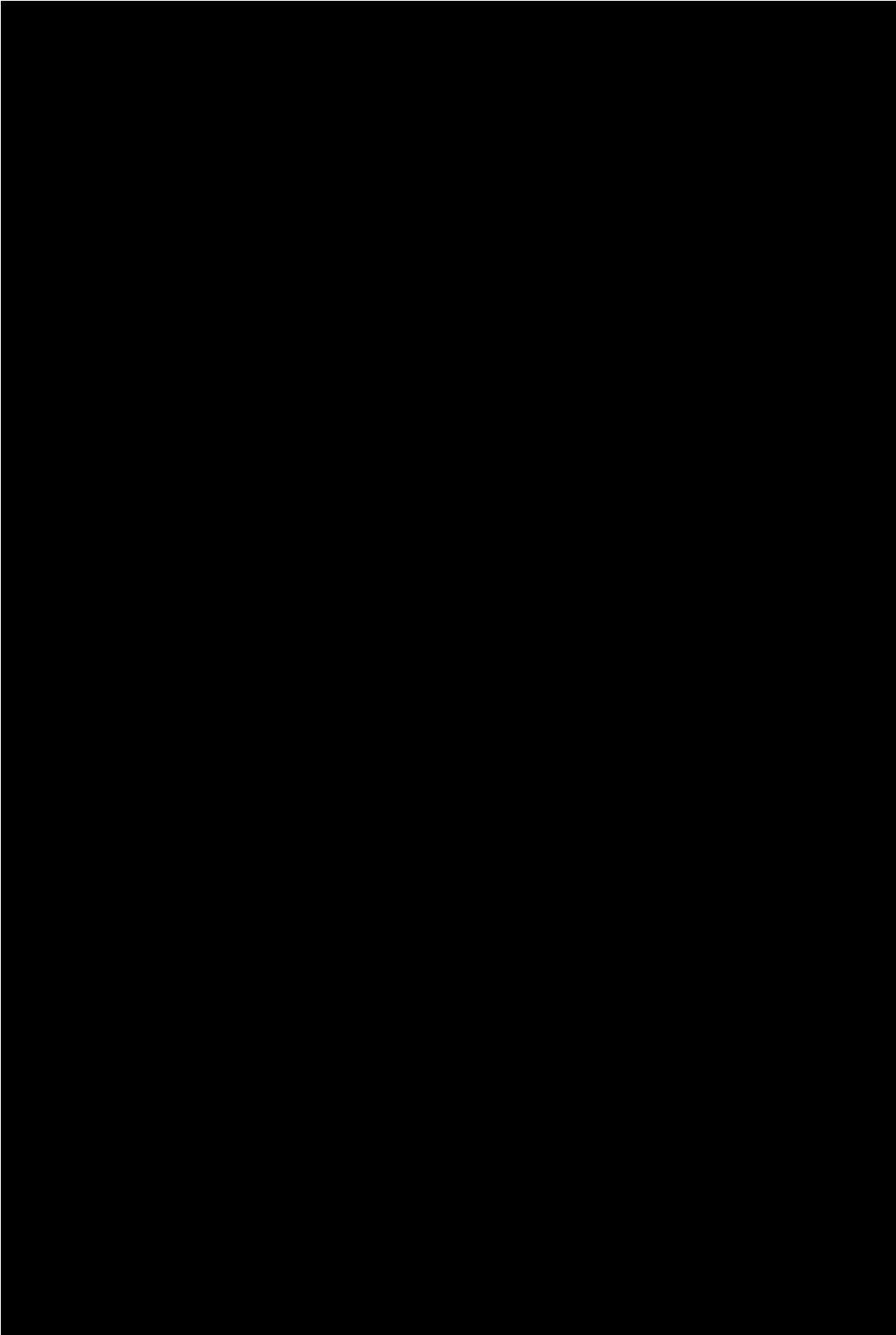
[REDACTED]

[REDACTED]

[REDACTED]

(b) If Partial Commercial Operation has been achieved by the Final Required Commercial Operation Date and Buyer does not send Seller a Final Required COD Termination Notice pursuant to subpart (a) above (including the circumstance where Buyer does not have the right to send Seller a Final Required COD Termination Notice pursuant to subpart (a) above), then: (i) the Commercial Operation Date shall be deemed to be achieved under this Agreement on a Day determined by Buyer by notice to Seller, which Day shall be no later than thirty (30) Days after the Final Required Commercial Operation Date; and (ii) [REDACTED]

[REDACTED]



(c) In the event that Seller believes that Partial Commercial Operation of the Facility has been achieved with respect to a number of Designated Units, and Seller has delivered to Buyer all notices and certificates set forth in the definition of “Partial Commercial Operation,” Seller may give notice to Buyer that Seller has determined that Partial Commercial Operation has been achieved for such number of Designated Units. Buyer shall respond in writing within five (5) Business Days of the receipt of such notice either: (i) confirming that Partial Commercial Operation has been achieved for the applicable number of Designated Units (in which event the effective date of Buyer’s response shall be date on which Partial Commercial Operation for such number of Designated Units is first achieved for purposes of this Agreement); or (ii) providing Seller a detailed description of any alleged deficiencies that in Buyer’s view prevents Partial Commercial Operation from being achieved for all or some of the applicable Designated Units (or prevents Buyer from determining whether Partial Commercial Operation has been achieved for all or some of such Designated Units).

3.3.5 If Seller notifies Buyer under Section 3.3.3 that the Commercial Operation Date will not be achieved, or if this Agreement terminates under Section 3.3.4, this Agreement shall immediately terminate and Seller shall, within three (3) Business Days, pay to Buyer liquidated damages in an amount (if positive) equal to: [REDACTED]

[REDACTED]

[REDACTED] Upon such termination, neither Party shall have any further liability or obligation under this Agreement, except for obligations and liabilities that survive termination as

provided in this Agreement or which accrue prior to or at termination (including Seller's obligation to pay liquidated damages under this Section 3.3.5).

3.3.6 The Parties acknowledge and agree that in the event this Agreement terminates pursuant to Section 3.3.5, or if Full Commercial Operation is not achieved, all or a portion of the amount of the damages arising therefrom are not susceptible to an accurate determination. The Parties further acknowledge and agree that the liquidated damages set forth above in this Section 3.3 are not intended as a penalty and represent a fair and reasonable approximation of all or a portion of the damages Buyer may incur in each particular case.

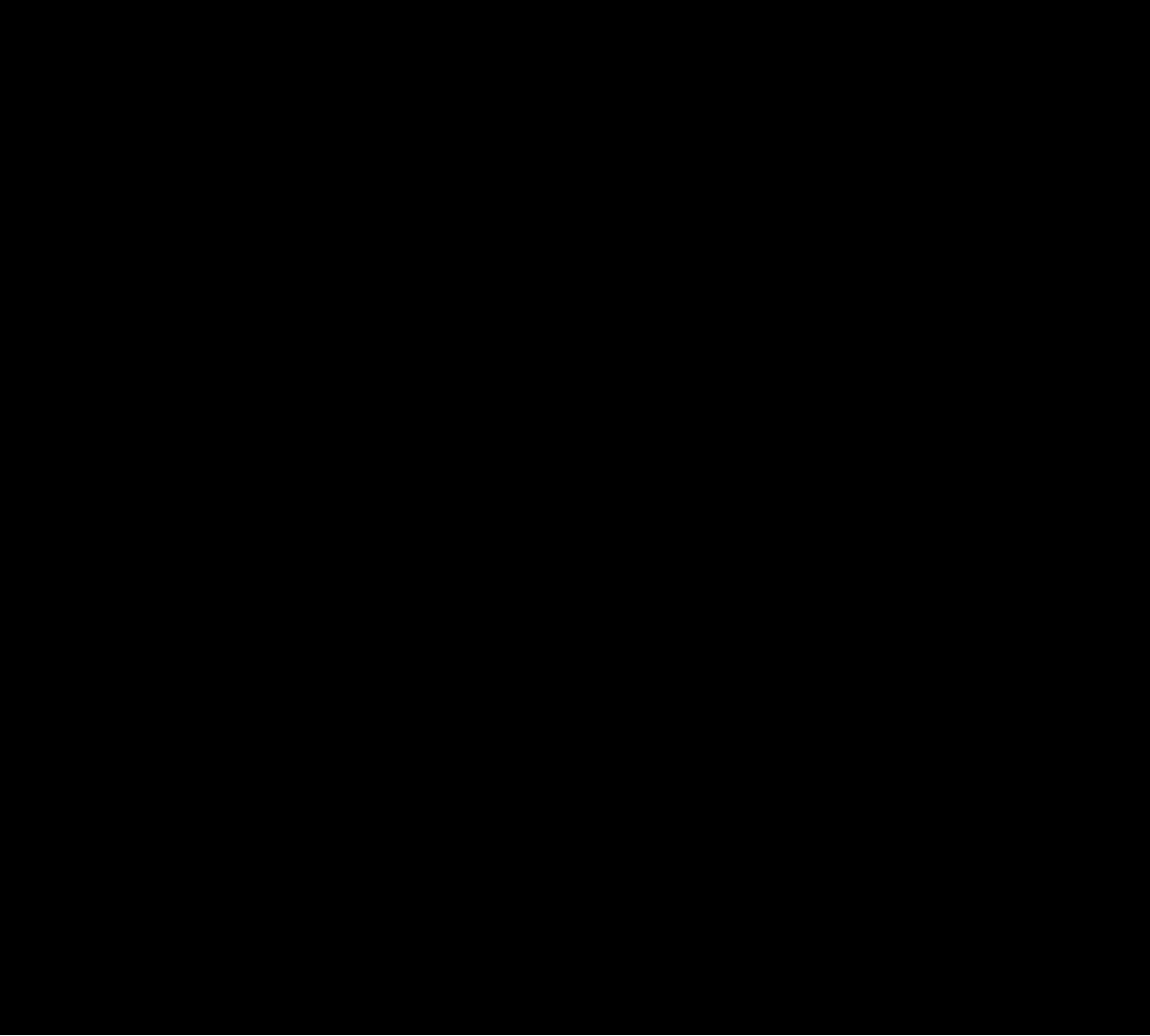
3.3.7 Seller shall be entitled to extend the Required Commercial Operation Date on a Day-for-Day basis up to the period of any delay in achieving Full Commercial Operation that is caused by one or more events of Force Majeure; provided, however, in no event shall the Required Commercial Operation Date be extended under this Section 3.3.7 beyond [REDACTED]

[REDACTED] Promptly upon becoming aware of the occurrence of an event of Force Majeure under this Section 3.3.7, Seller shall provide notice to Buyer describing the particulars of the occurrence of the event of Force Majeure, and shall exercise commercially reasonable efforts, including exercise of its contractual rights with Facility Owner, to remedy the applicable inability or delay in performance.

#### 3.4 Subsequent Decrease in Facility Capacity.

3.4.1 In the event that the Installed Nameplate Capacity of the Facility is reduced for any reason to an amount that is [REDACTED] of the COD Capacity for a period greater than [REDACTED] consecutive Days (provided that such Installed Nameplate Capacity shall not be considered reduced due to

the scheduled maintenance of any Designated Unit), then Buyer shall be entitled at any time during the continuance of such reduction, but shall not be required, in its sole and absolute discretion and by notice to Seller, [REDACTED]



3.4.2 In the event that the Installed Nameplate Capacity of the Facility is reduced for any reason to an amount that is below [REDACTED] of the COD Capacity for a period greater than [REDACTED] consecutive Days (provided that such Installed Nameplate Capacity shall not be considered reduced due to the scheduled maintenance of any Designated Unit), then the following shall apply:



(a)

[Redacted]

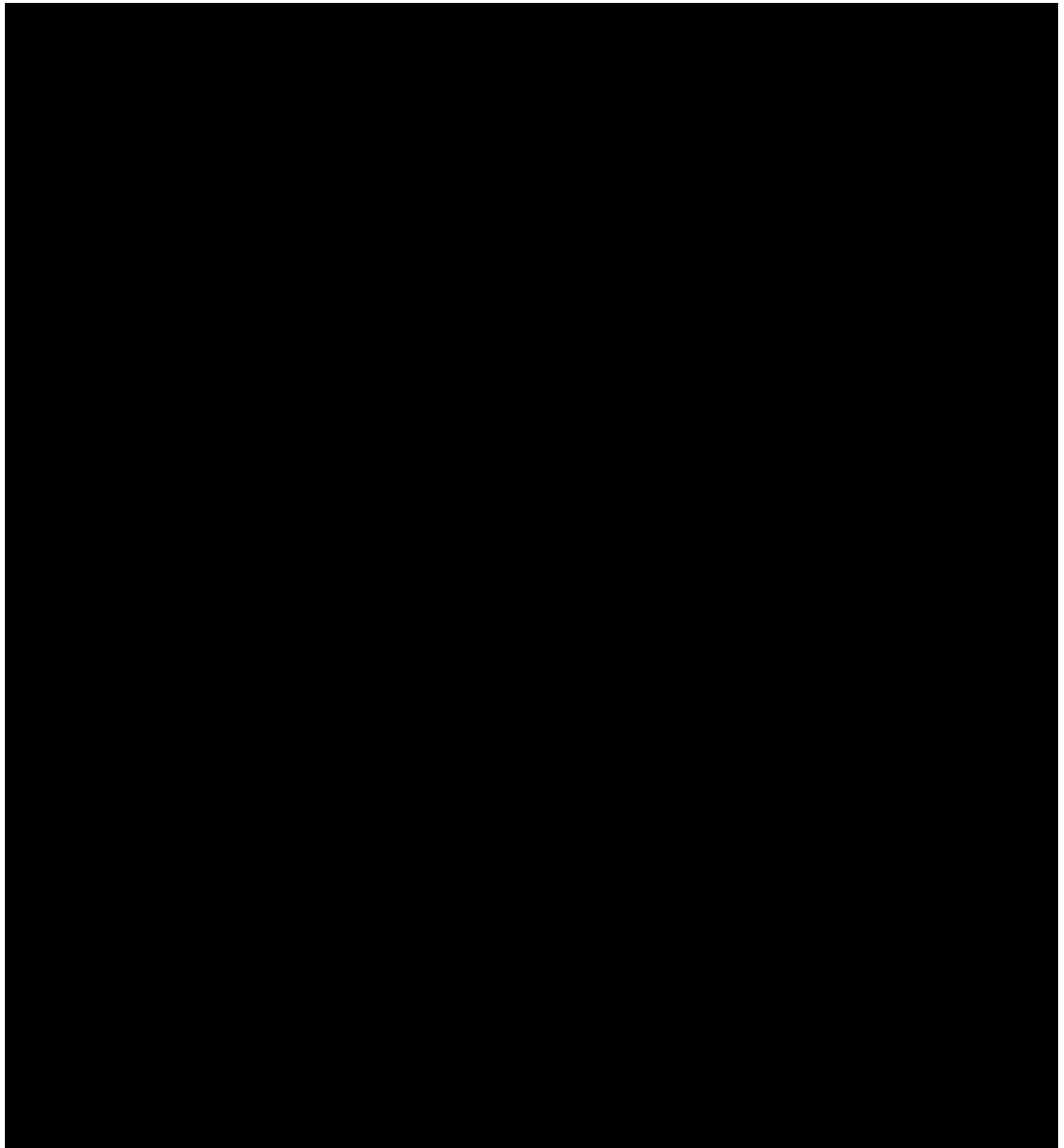
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(b)

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████████████████████ In the event of such termination, neither Party shall have any further liability or obligation under this Agreement, except for any liabilities or obligations accruing prior to termination or which expressly survive termination. Unless and until this Agreement so terminates, (i) this Agreement shall continue in full force and effect; (ii) Seller shall be required to sell and deliver, and Buyer shall be required to purchase and receive, electric energy pursuant to the terms and conditions of this Agreement; (iii) Seller shall be

required to provide Environmental Attributes to Buyer pursuant to the terms and conditions of this Agreement.

(d) [REDACTED]

[REDACTED]

(e) [REDACTED]

[REDACTED]

3.4.3 Notwithstanding any reduction in the Installed Nameplate Capacity of the Facility for any reason, unless Buyer terminates this Agreement pursuant to this Section 3.4, [REDACTED], there shall be no reduction in the quantity of energy and Environmental Attributes that Seller is required to provide under this Agreement.

3.5 Effect of Termination. Subject to the exercise of a Non-Defaulting Party's rights under Section 12.2, in the event that this Agreement is terminated, the rights and obligations of the Parties hereunder shall continue unaffected until the termination is effective in accordance with the terms and conditions thereof. Any termination of this Agreement shall not relieve Buyer of its obligation to pay any unpaid invoices for any energy delivered pursuant to this Agreement prior to the effective date of such termination, relieve Buyer of its obligation to pay amounts owing to Seller hereunder prior to the effective date of such termination, relieve Seller of its obligation to pay amounts owing by Seller hereunder prior to the effective date of such termination, relieve Seller of its obligation to provide energy and Environmental Attributes that Seller is required to

deliver hereunder prior to the effective date of such termination, relieve a Party from its obligation to pay amounts as applicable under Section 12.2, or relieve either Party of any of its other liabilities or obligations that accrue prior to or at termination, and such liabilities and obligations shall survive termination of this Agreement.

3.6 Redesignation of Designated Units. Seller may, at any time after the Commercial Operation Date, by giving not less than thirty (30) Days written notice to Buyer, designate a new set of wind turbine units of the Facility to be the Designated Units hereunder (such a notice, a “Redesignation Notice”). Such replacement Designated Units must: (i) be part of the Kingfisher Plant; (ii) be at least equivalent to the previous Designated Units in terms of their total Installed Nameplate Capacity and availability to produce energy and deliver such energy to the applicable transmission system; (iii) have metering equipment that separately measures the electrical output of the group of proposed replacement Designated Units from other units, pursuant to the definition of “Facility” hereunder; and (iv) not have initially been placed into service prior to the date that the Designated Units that are being replaced under this Section 3.6 were initially placed into service or, if such replacement units were initially placed into service prior to the date that the Designated Units that are being replaced under this Section 3.6 were initially placed into service, the proposed replacement Designated Units must have been placed into service in the same calendar year as the Designated Units that are being replaced. In no event shall the redesignation of Designated Units under this Section 3.6 increase, or be construed as increasing, the liabilities and obligations of Buyer under this Agreement (including increasing the amount of energy that Buyer is required to purchase hereunder) as such liabilities and obligations existed just prior to such redesignation.

**ARTICLE 4**  
**OPERATION AND MAINTENANCE OF THE FACILITY; OPERATING**  
**PROCEDURES; RECORDS**

4.1 General Standards. During the Service Term, Seller shall use commercially reasonable efforts to exercise any contractual rights Seller may have to cause other Persons to manage, control, operate and maintain the Generation Facilities in a manner consistent with Prudent Industry Practices and the requirements set forth in this Agreement. In addition, during the Service Term, Seller shall use commercially reasonable efforts to exercise any contractual rights Seller may have to cause other Persons to manage, control, operate and maintain the Generation Facilities in accordance with all applicable Legal Requirements, applicable reliability standards and operating policies of NERC and SERC, and the Operating Procedures developed by the Operating Committee. The Parties recognize that Seller does not own or operate the Facility, and that Seller's contractual agreements with the Facility Owner will not permit Seller to directly reserve, dispatch, or direct the actual operation of the Facility, but only to exercise those scheduling rights available to Seller under its agreement with the Facility Owner.

4.2 Operating Procedures. Seller and Buyer shall mutually develop and agree upon written Operating Procedures within sixty (60) Days prior to the Service Commencement Date. Such Operating Procedures shall address: (i) the method of day-to-day communications; (ii) daily energy reports including procedures for scheduling energy deliveries; (iii) designation of Confidential Information; (iv) the procedure for substantiating the transfer of Environmental Attributes under this Agreement [REDACTED] (v) the verification of information with respect to the production of Environmental Attributes transferred to Buyer hereunder for purposes of certification; and (vi) such other matters as the Operating Representatives shall agree are appropriate. The Operating Representatives shall be responsible for modifying the Operating Procedures in writing to reflect mutually agreed upon changes. In

the event of inconsistency or conflict between the Operating Procedures and specific terms of this Agreement, the specific terms of this Agreement shall take precedence.

4.3 Availability of Records. Buyer and Seller shall keep complete and accurate records and all other data with respect to their performance under this Agreement in accordance with the following guidelines:

4.3.1 All such records shall be maintained for a minimum of [REDACTED] years after the creation of such record or data and for any additional period of time required by any Legal Requirement or Governmental Authority.

4.3.2 Upon reasonable advance notice, either Party shall have the right to examine copies of the relevant portions of the records and data of the other Party in order to facilitate any determination that such Party is required or permitted to make under this Agreement.

4.4 Access to the Facility. Buyer may request that Seller arrange to provide Buyer's Representatives access to the Facility and to property owned, leased or controlled by Facility Owner during normal business hours in order to observe the operation of the Facility. Seller shall use commercially reasonable efforts to obtain such access for Buyer's Representatives, provided that Seller's agreement with the Facility Owner shall provide that Buyer's Representatives shall be able to have such reasonable access, subject to (a) Buyer and Buyer's Representatives executing and delivering such customary disclaimers and acknowledgments as Facility Owner may require, and (b) such restrictions as the terms of Facility Owner's insurance provider may impose. Buyer's Representatives shall comply with the reasonable rules and procedures of Facility Owner when accessing property owned or controlled by Facility Owner under this Section 4.4.

4.5 Disclaimer. Each Party understands and agrees that Buyer's review of any material or information related to the Facility or any physical inspection or observation of the Facility conducted by Buyer under any provision of this Agreement is solely for its own information. Any such review or inspection of materials, information or plans provided by Seller or Facility Owner, shall not be construed as endorsing the design, fitness or operation of the Facility nor as a warranty or guarantee, and in no event shall Buyer be deemed to have accepted any condition of the Facility that is not in full compliance with the terms of this Agreement. Seller shall in no way represent to any third party that, as a result of the Buyer's receipt and review of any material or information, or any inspections by Buyer, Buyer is in any way responsible for the engineering or construction soundness of the Facility. In no event shall any of Buyer's statements, representations, or lack thereof, either express or implied, relieve Seller of its exclusive responsibility for the maintenance and operation of the Facility.

4.6 Operating Committee.

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

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

**ARTICLE 5**  
**PERFORMANCE SECURITY**

5.1 Seller's Provision of Performance Security.

5.1.1 If at any time there shall occur or exist a Security Posting Condition with respect to Seller, then Seller shall immediately notify Buyer thereof and, within three (3) Business Days after such Security Posting Condition occurs or commences to exist, shall provide to and maintain, in favor of Buyer, Performance Security that secures all of Seller's obligations to Buyer under this Agreement, in an amount not less than the Required Seller Post Amount.

5.1.2 So long as no Event of Default by or attributable to Seller shall have occurred and be continuing, Buyer shall cooperate with Seller, at Seller's request and expense, to release and return to Seller the Performance Security theretofore provided by Seller to and then held by Buyer if and to the extent Seller contemporaneously provides to Buyer replacement or substitute Performance Security in an equal or greater amount that satisfies the requirements of this Agreement.

5.1.3 If, and to the extent, at any time after the Effective Date, the Required Seller Post Amount shall be more than the amount of the Performance Security provided by Seller to and then held by Buyer, Seller shall, within [REDACTED] Business Days of



Buyer's request, have additional Performance Security in the amount of such difference provided to Buyer unless Seller is no longer required to maintain such Performance Security under the terms of this Agreement. So long as no Event of Default by or attributable to Seller shall have occurred and be continuing under this Agreement, if, and to the extent, at any time after the Effective Date, the Required Seller Post Amount shall be less than the amount of the Performance Security theretofore provided by Seller to and then held by Buyer, Buyer shall cooperate with Seller, at Seller's request and expense, to have the Performance Security then held by Buyer reduced by the amount of such difference, subject to Seller's obligation to thereafter provide Performance Security to Buyer in order to comply with the provisions of this Agreement.

5.1.4 At such time that there is no longer a Security Posting Condition with respect to Seller and so long as no Event of Default by or attributable to Seller shall have occurred and be continuing under this Agreement, Seller may request and Buyer shall cooperate with Seller, at Seller's expense, to have Performance Security theretofore provided by Seller and then held by Buyer released and returned to Seller, subject to Seller's obligation to thereafter provide Performance Security to Buyer in order to comply with the provisions of this Agreement.

5.1.5 For the avoidance of doubt, in the event that Buyer draws upon and/or realizes payment from the Performance Security provided by Seller under this Agreement, immediately upon such draw or payment, Seller shall provide to Buyer an amendment to such Performance Security or additional Performance Security as necessary such that the total available undrawn amount of Performance Security provided to and held by Buyer hereunder continues to be equal to or greater than the Required Seller Post Amount.

5.1.6 If at any time a guaranty provided by Seller as an Eligible Guaranty no longer satisfies the definition of Eligible Guaranty under this Agreement (including due to the existence of a Material Adverse Financial Condition with respect to the applicable Guarantor), Seller shall provide Buyer with other Performance Security that satisfies the requirements of this Agreement within [REDACTED] Business Days of such occurrence and thereafter maintain such Performance Security pursuant to this Agreement.

5.2 Buyer's Provision of Performance Security.

5.2.1 If at any time there shall occur or exist a Security Posting Condition with respect to Buyer, then Buyer shall immediately notify Seller thereof and, within [REDACTED] Business Days after such Security Posting Condition occurs or commences to exist, shall provide to and maintain, in favor of Seller, Performance Security that secures all of Buyer's obligations to Seller under this Agreement, in an amount not less than the Required Buyer Post Amount.

5.2.2 So long as no Event of Default by or attributable to Buyer shall have occurred and be continuing, Seller shall cooperate with Buyer, at Buyer's request and expense, to release and return to Buyer the Performance Security theretofore provided by Buyer to and then held by Seller if and to the extent Buyer contemporaneously provides to Seller replacement or substitute Performance Security in an equal or greater amount that satisfies the requirements of this Agreement.

5.2.3 If, and to the extent, at any time after the Effective Date, the Required Buyer Post Amount shall be more than the amount of the Performance Security provided by Buyer to and then held by Seller, Buyer shall, within [REDACTED] Business Days of Seller's request, have additional Performance Security in the amount of such difference

provided to Seller unless Buyer is no longer required to maintain such Performance Security under the terms of this Agreement. So long as no Event of Default by or attributable to Buyer shall have occurred and be continuing under this Agreement, if, and to the extent, at any time after the Effective Date, the Required Buyer Post Amount shall be less than the amount of the Performance Security theretofore provided by Buyer to and then held by Seller, Seller shall cooperate with Buyer, at Buyer's request and expense, to have the Performance Security then held by Seller reduced by the amount of such difference, subject to Buyer's obligation to thereafter provide Performance Security to Seller in order to comply with the provisions of this Agreement.

5.2.4 At such time that there is no longer a Security Posting Condition with respect to Buyer and so long as no Event of Default by or attributable to Buyer shall have occurred and be continuing under this Agreement, Buyer may request and Seller shall cooperate with Buyer, at Buyer's expense, to have Performance Security theretofore provided by Buyer and then held by Seller released and returned to Buyer, subject to Buyer's obligation to thereafter provide Performance Security to Seller in order to comply with the provisions of this Agreement.

5.2.5 For the avoidance of doubt, in the event that Seller draws upon and/or realizes payment from the Performance Security provided by Buyer under this Agreement, immediately upon such draw or payment, Buyer shall provide to Seller an amendment to such Performance Security or additional Performance Security as necessary such that the total available undrawn amount of Performance Security provided to and held by Seller hereunder continues to be equal to or greater than the Required Buyer Post Amount.

5.2.6 If at any time a guaranty provided by Buyer as an Eligible Guaranty no longer satisfies the definition of Eligible Guaranty under this Agreement (including due to the existence of a Material Adverse Financial Condition with respect to the applicable Guarantor), Buyer shall provide Seller with other Performance Security that satisfies the requirements of this Agreement within [REDACTED] Business Days of such occurrence and thereafter maintain such Performance Security pursuant to this Agreement.

5.3 Use of Performance Security. A Party shall be entitled to draw and/or be paid upon the Performance Security provided by the other Party: (i) for any obligation of the providing Party arising under this Agreement that is not paid when due, whether or not an Early Termination Date has been declared or this Agreement has expired or otherwise been terminated; (ii) if such Performance Security is within [REDACTED] Days of expiry, expiration or termination and such Performance Security (or substitute or replacement Performance Security) is still required under the terms of this Agreement and substitute or replacement Performance Security that satisfies the requirements of this Agreement as to form, issuer and amount has not been provided; and/or (iii) otherwise in compliance with the terms of such Performance Security.

5.4 Grant of Security Interest in Cash Security. To secure its obligations under this Agreement and to the extent either or both Parties deliver Cash Security as Performance Security hereunder, each Party (a “Pledgor”) hereby grants to the other Party (the “Secured Party”) a present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all Cash Security, all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, such Secured Party, and each Party agrees to take such action as the other Party reasonably requires in order to perfect the Secured Party’s first-priority security

interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, the Non-Defaulting Party may do any one or more of the following: (i) exercise any of the rights and remedies of a Secured Party with respect to all Cash Security delivered as Performance Security hereunder, including any such rights and remedies under law then in effect; and (ii) liquidate all Cash Security delivered as Performance Security hereunder then held by or for the benefit of the Secured Party free from any claim or right of any nature whatsoever of the Defaulting Party, including any equity or right of purchase or redemption by the Defaulting Party. The Secured Party shall apply the proceeds of the Cash Security realized upon the exercise of any such rights or remedies to reduce the Pledgor's obligations under the Agreement (the Pledgor remaining liable for any amounts owing to the Secured Party after such application), subject to the Secured Party's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

**ARTICLE 6**  
**SALE AND PURCHASE OF ENERGY**

6.1 Sale and Purchase of Tier 1 Hourly Energy. During each Hour of the Service Term, subject to the terms and conditions of this Agreement, Seller shall deliver and sell to Buyer, and Buyer shall purchase and receive from Seller, electric energy in an amount equal to the Tier 1 Hourly Energy (in addition to Tier 2 Hourly Energy as required under this Agreement). The sale and purchase of Tier 1 Hourly Energy shall be in accordance with and subject to the following provisions (in addition to the other requirements of this Agreement):

6.1.1 [REDACTED]

[REDACTED]

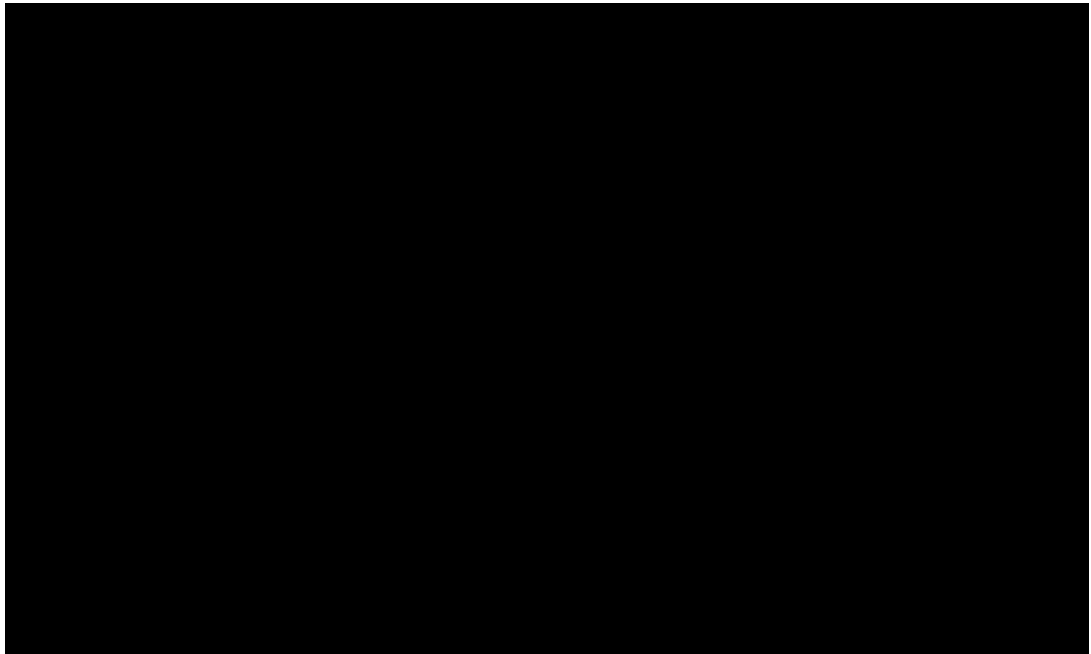
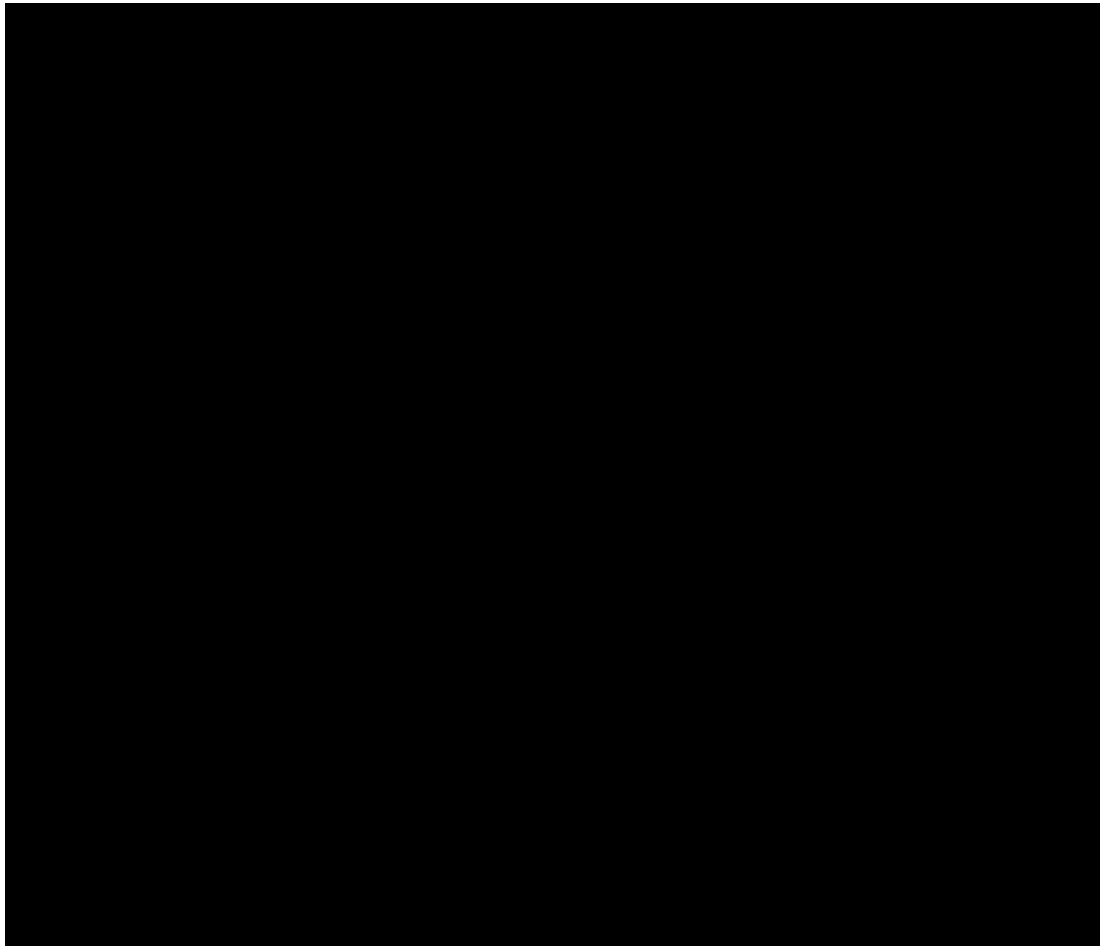
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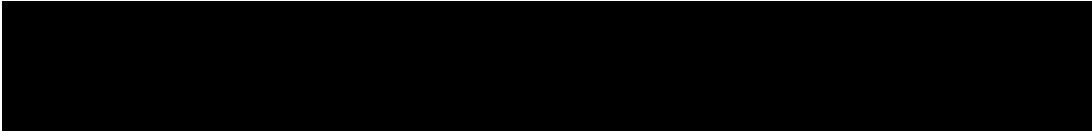
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(f) [REDACTED]

[REDACTED]

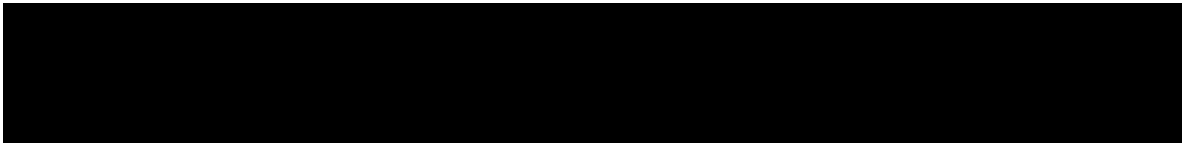


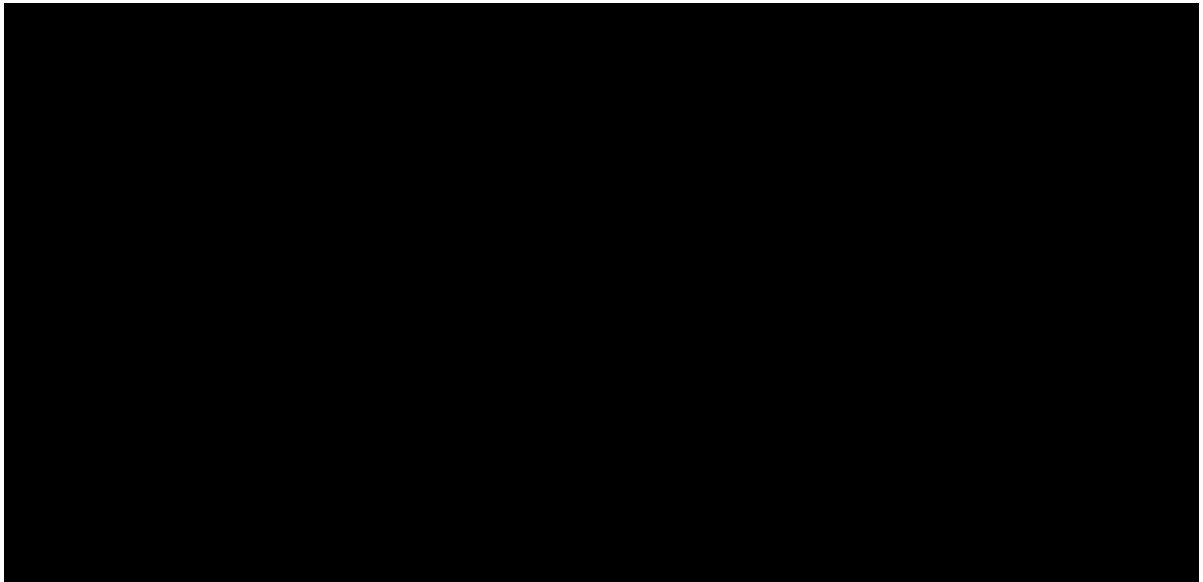
(g) The Operating Representatives shall agree upon Operating Procedures as appropriate in order to implement the provisions of this Section 6.1.2.

6.1.3 The delivery and scheduling of Tier 1 Hourly Energy shall be in compliance with all requirements of the applicable transmission tariffs governing transmission service on the Transmitting Utility Systems and all other balancing authority area requirements. Seller shall provide Buyer with timely notice of the identity of each generating facility being used to supply Tier 1 Hourly Energy under this Agreement in a manner consistent with the requirements of the Southern OATT and the business practices of the Southern Companies Transmission System in order to facilitate the delivery of energy to Buyer under this Agreement and Buyer's subsequent delivery of such energy to Buyer's customers.

6.2 Sale and Purchase of Tier 2 Hourly Energy. During each Hour of the Service Term, subject to the terms and conditions of this Agreement, Seller shall deliver and sell to Buyer, and Buyer shall purchase and receive from Seller, electric energy in an amount equal to the Tier 2 Hourly Energy (in addition to Tier 1 Hourly Energy as required under this Agreement). The sale and purchase of Tier 2 Hourly Energy shall be subject to the following provisions (and the other requirements of this Agreement):

6.2.1 

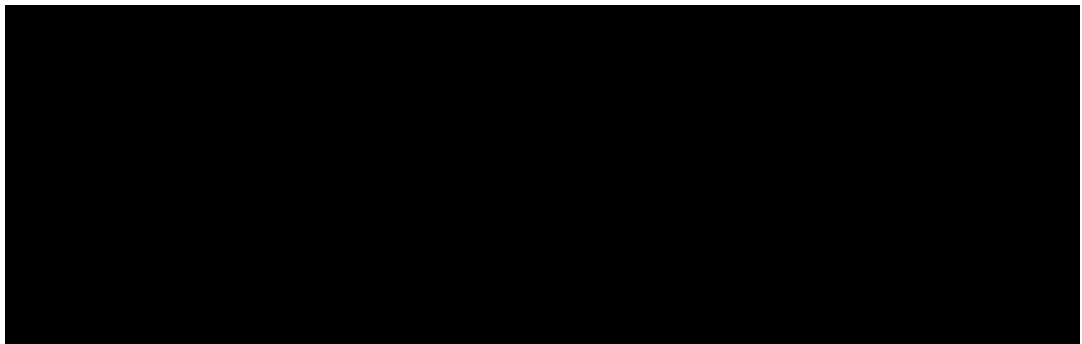




■ [Redacted]

[Redacted]

■ [Redacted]



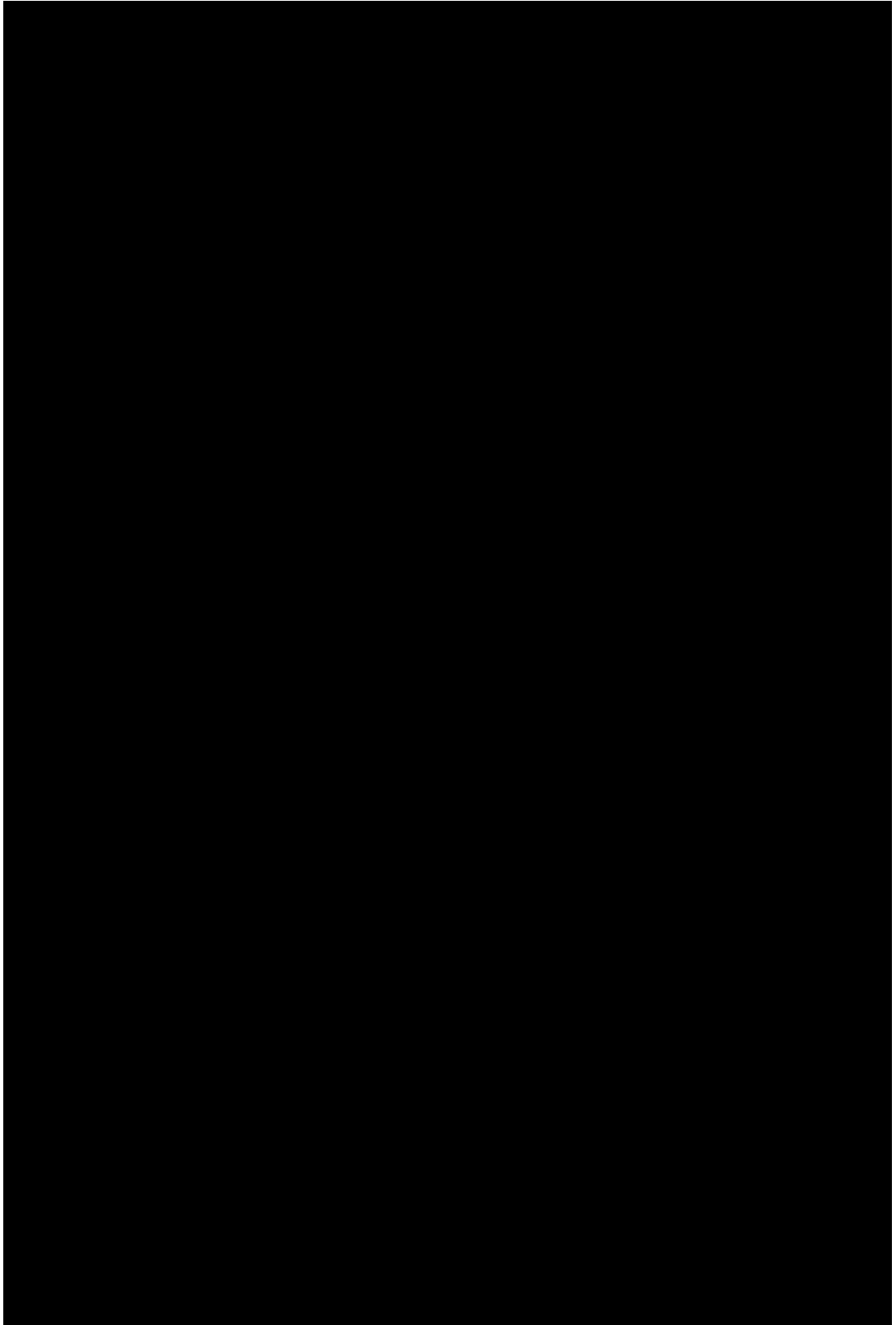
6.2.2 The Point(s) of Delivery for Tier 2 Hourly Energy shall be a point(s) on the Southern Companies Transmission System that is established pursuant to Section 6.2.3 below (and consistent with the requirements of Section 6.2.1 above).

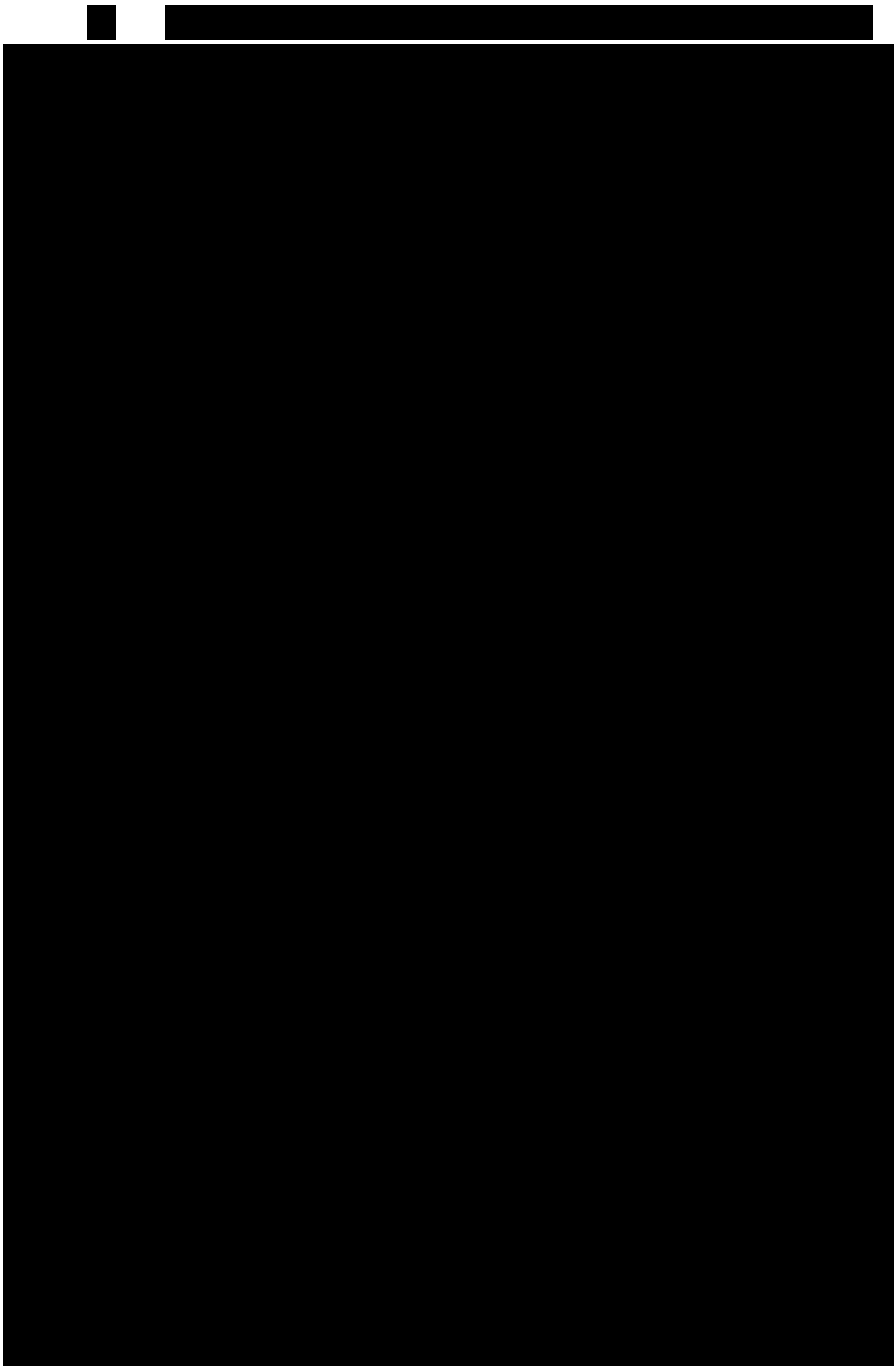
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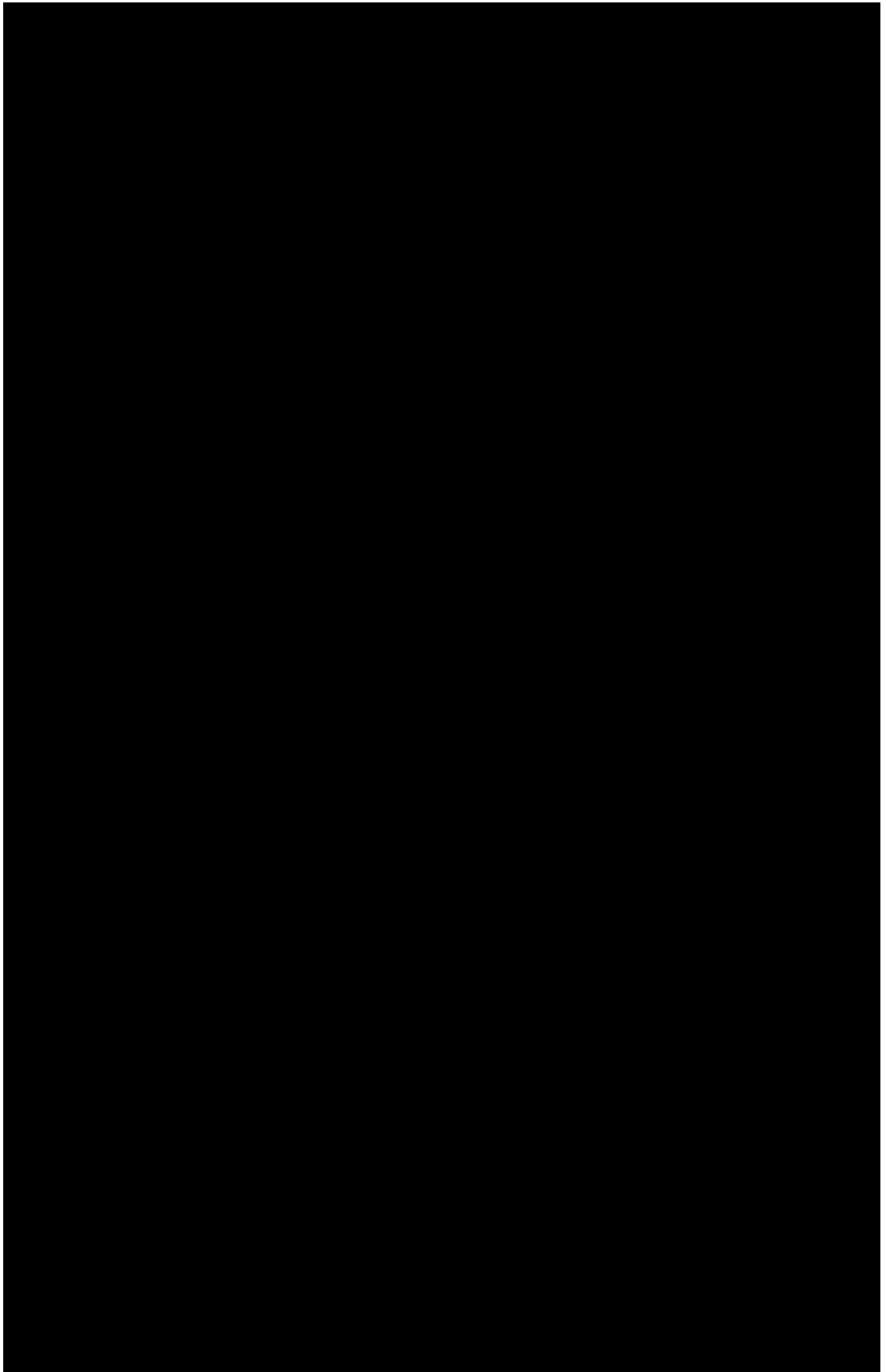
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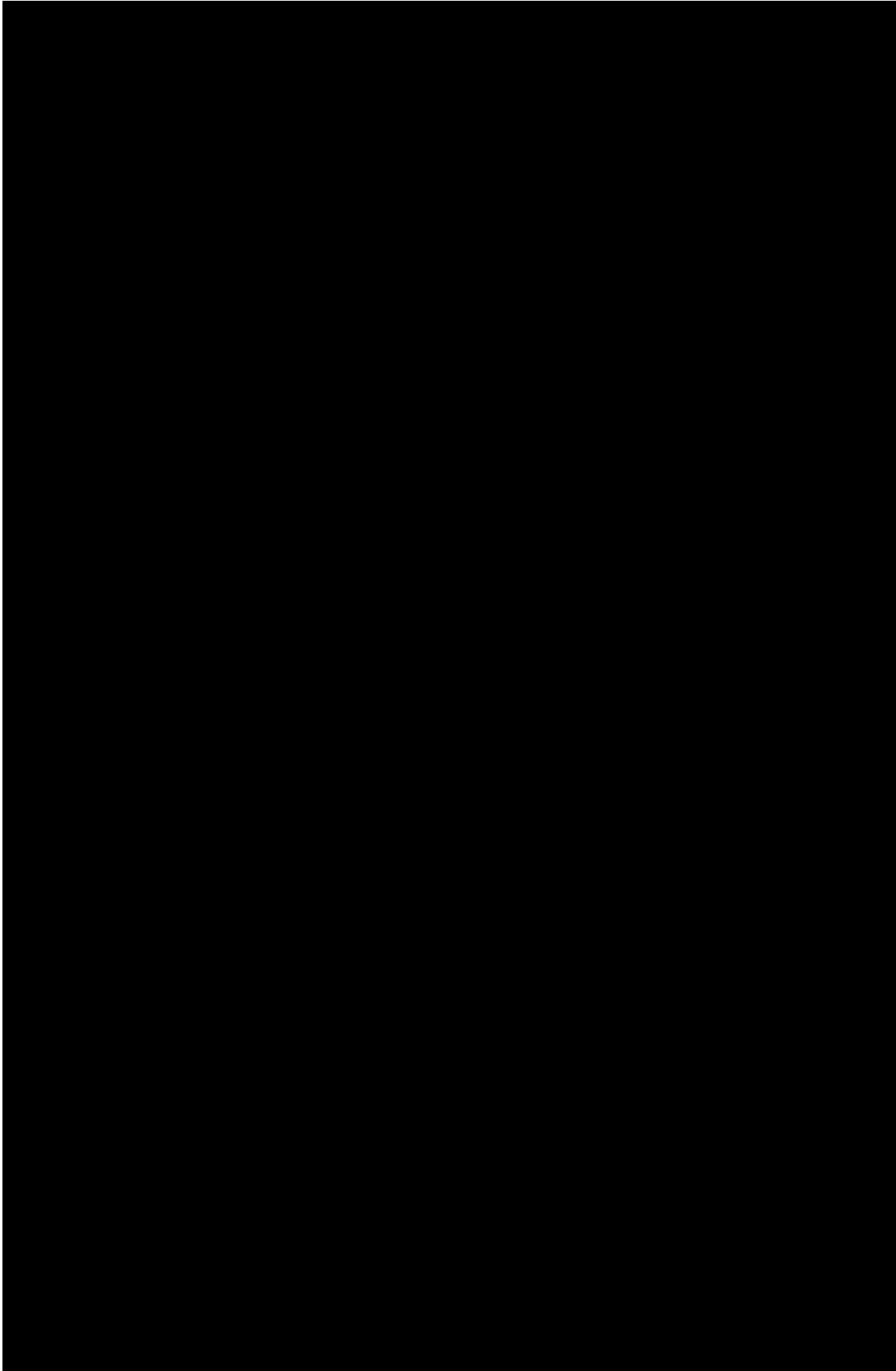
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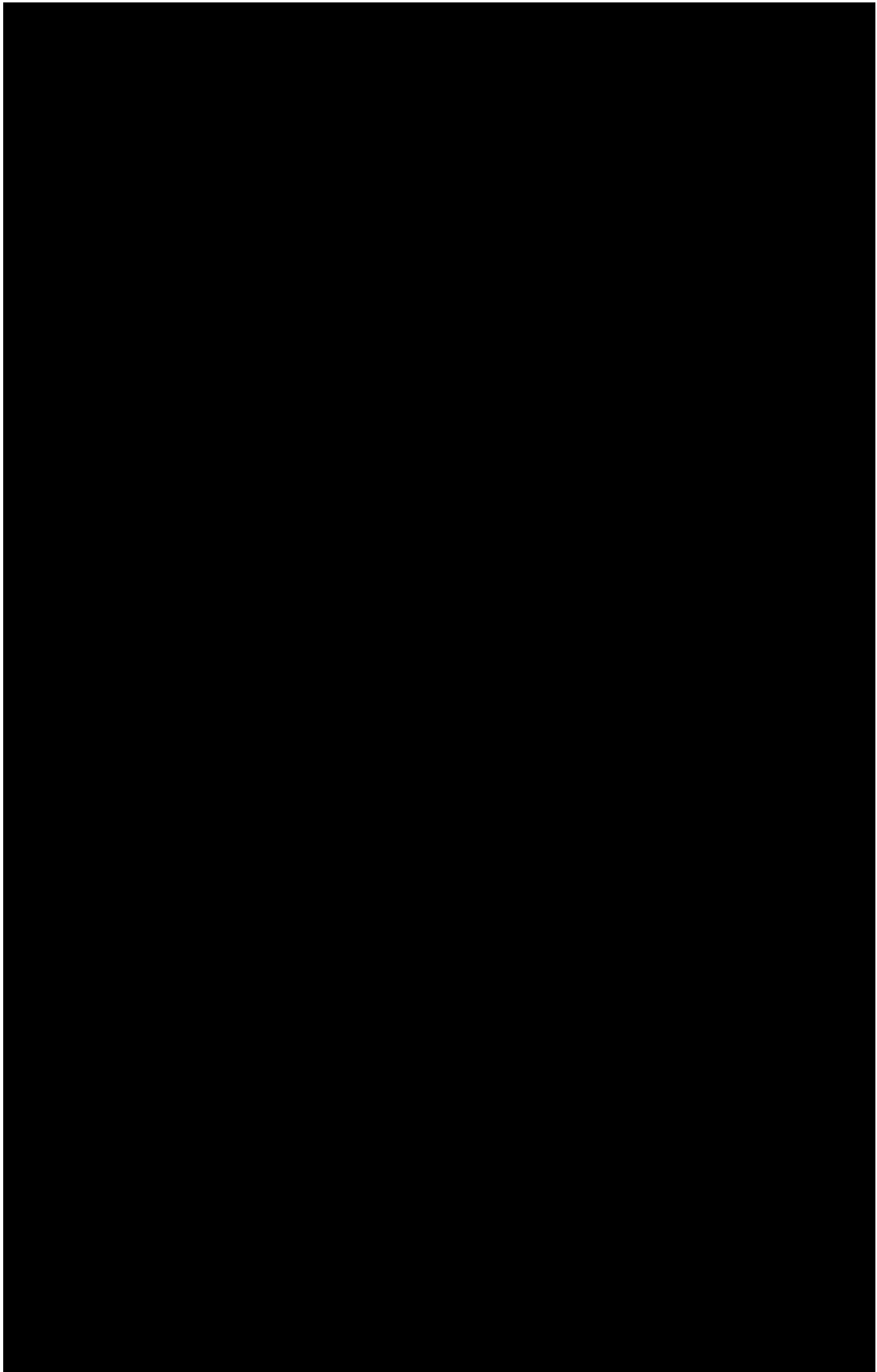
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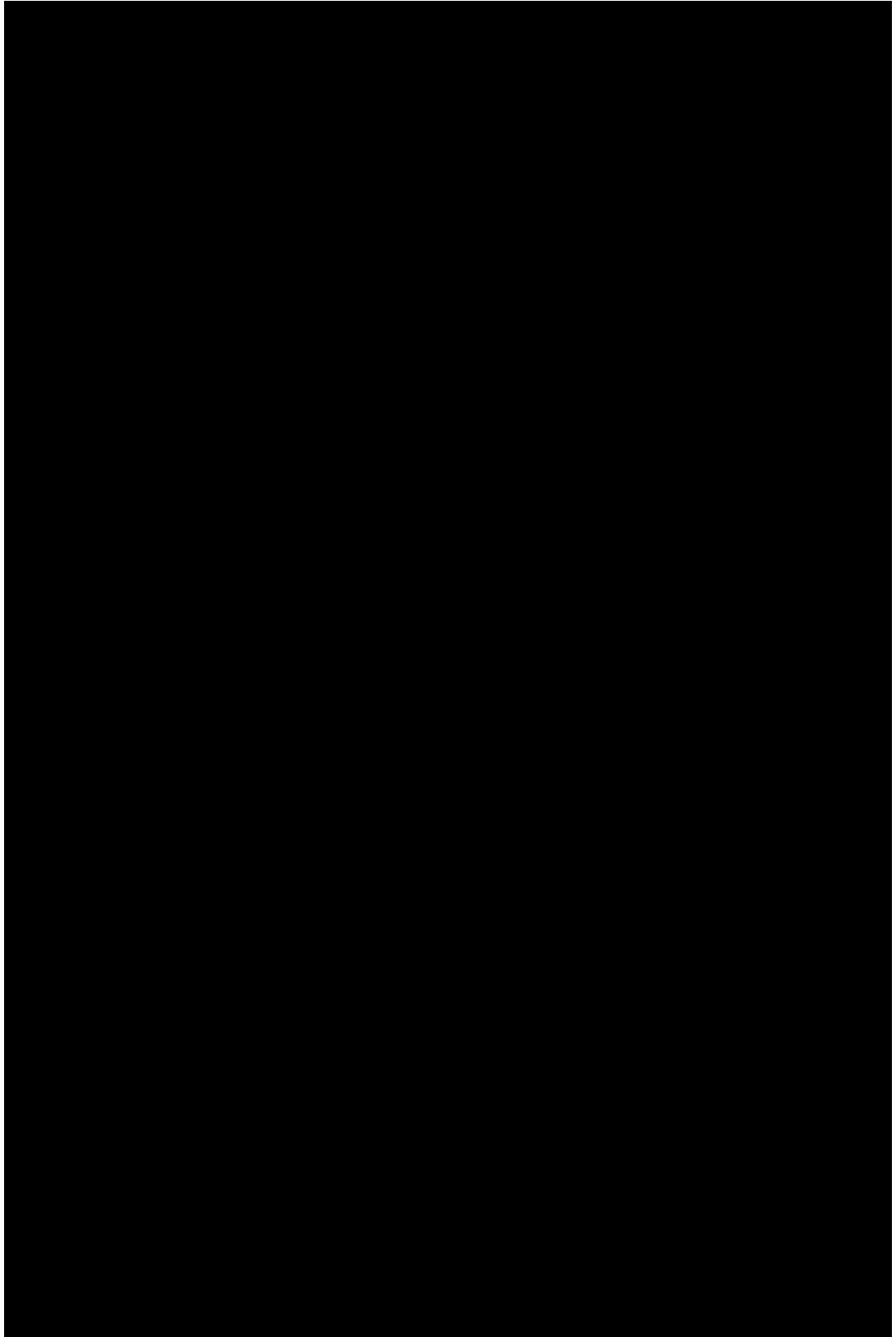












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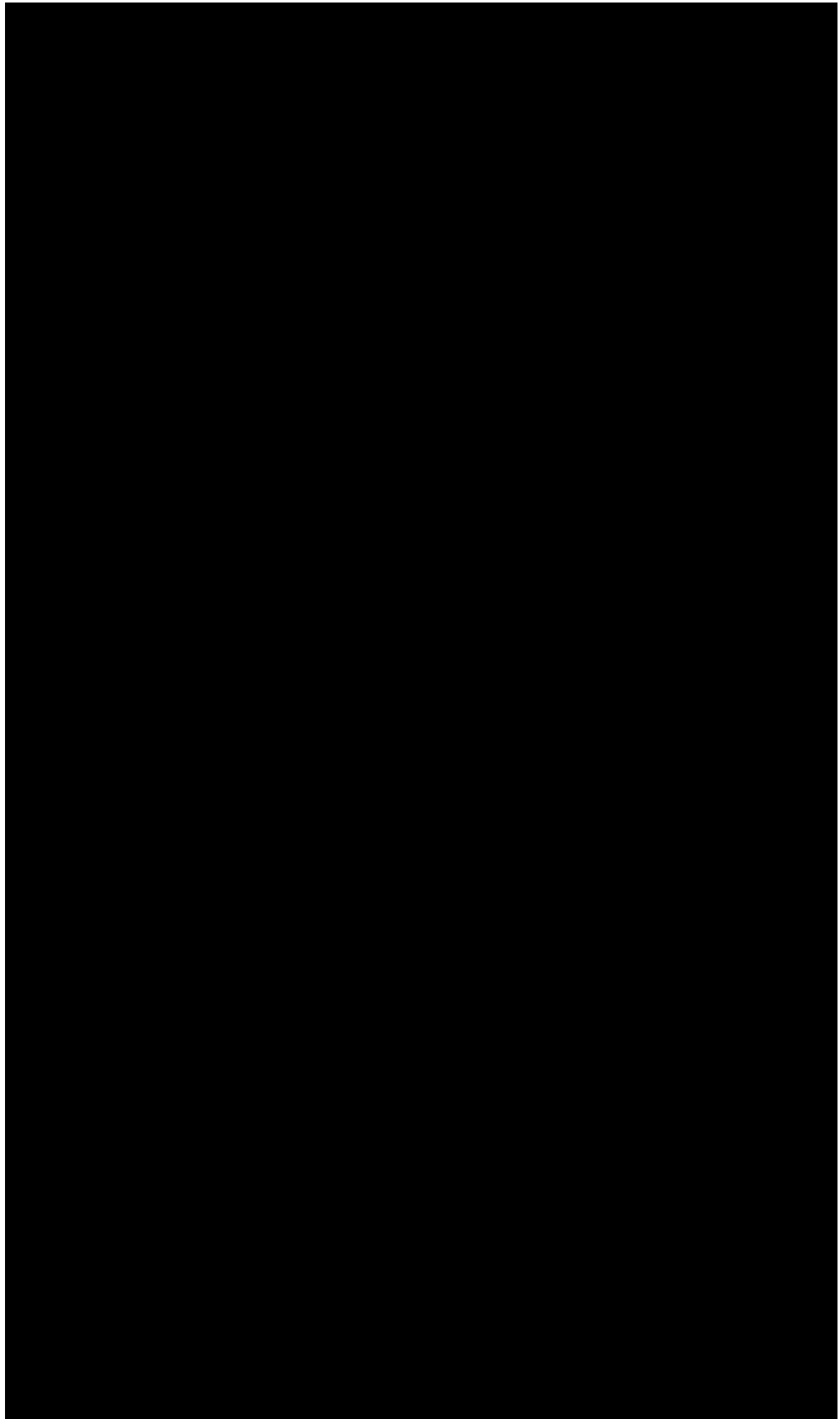
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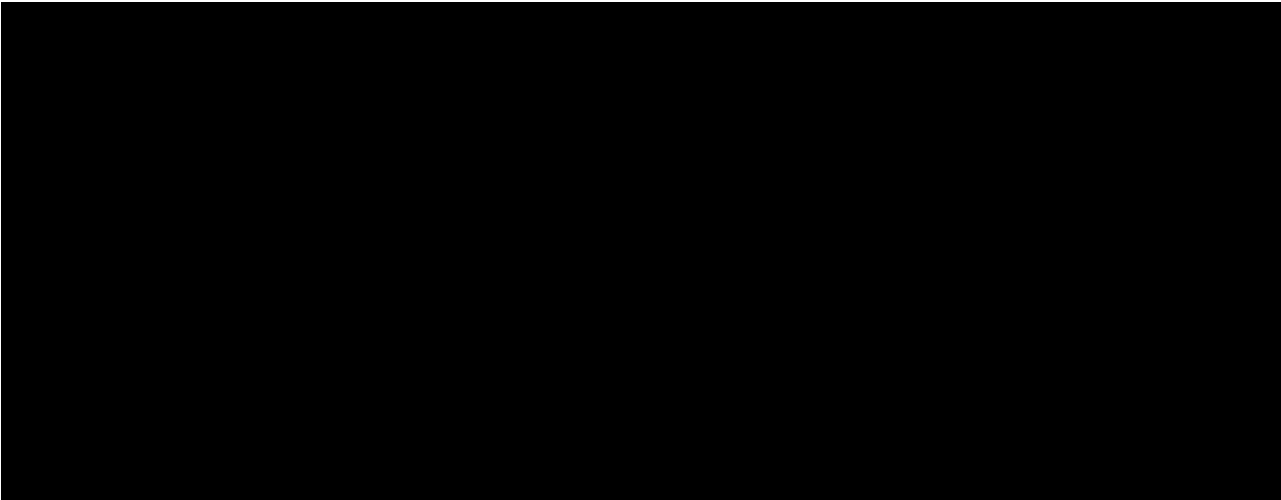


(g) The Operating Representatives shall agree upon Operating Procedures as appropriate in order to implement the provisions of this Section 6.2.3.

6.2.4 The delivery and scheduling of Tier 2 Hourly Energy shall be in compliance with all requirements of the applicable transmission tariffs governing transmission service on the Transmitting Utility Systems and all other balancing authority

area requirements. Seller shall provide Buyer with timely notice of the identity of each generating facility being used to supply Tier 2 Hourly Energy under this Agreement in a manner consistent with the requirements of the Southern OATT and the business practices of the Southern Companies Transmission System in order to facilitate the delivery of energy to Buyer under this Agreement and Buyer's subsequent delivery of such energy to Buyer's customers.

6.3 Point of Delivery; Title. Seller shall deliver all energy under this Agreement to Buyer at the applicable Point(s) of Delivery. Title to such electric energy shall pass from Seller to Buyer at the Point(s) of Delivery. Seller covenants that it shall have good and marketable title to all energy delivered to Buyer at the Point(s) of Delivery and that it has the right to, and will, sell and deliver such energy to Buyer free and clear of all liens and other encumbrances,



6.4 Determination of Amounts of Delivered Energy. The amounts of Delivered Energy delivered by Seller to Buyer during any Hour shall be deemed equal to the amount of energy confirmed for delivery to Buyer by Seller at the Point(s) of Delivery under this Agreement as set forth in the applicable transmission schedules and transmission tags, as such transmission schedules and transmission tags are confirmed by the applicable transmission

service provider(s) or balancing authority(ies). The Operating Procedures shall, as deemed necessary or desirable by the Parties, contain further provisions addressing applicable transmission schedules and the measurement and determination of Delivered Energy.

6.5 Failure to Deliver Energy.

6.5.1 For any Hour, if Seller for any reason fails to deliver to the Point of Delivery (or is deemed to have failed to deliver) all or any portion of Tier 1 Hourly Energy (excluding Tier 1 Hourly Energy Seller is excused from delivering under Section 7.1.4.2) or all or any portion of Tier 2 Hourly Energy that Seller is required to deliver pursuant to this Agreement, then Buyer shall determine: (i) the amount of Undelivered Energy for such Hour; and (ii) the Cover Costs for Undelivered Energy for such Hour. Buyer shall provide Seller a written statement which sets forth the amount of Cover Costs as soon as practicable, including the Replacement Price for each applicable Hour

\_\_\_\_\_ which statement shall be in the form of, and shall contain information of the type set forth in, **Appendix H**. After receiving such statement of Cover Costs from Buyer, Seller shall either (as required and directed by Buyer): (i) pay Buyer the amount of such Cover Costs within three (3) Business Days after receiving the statement of the applicable Cover Costs from Buyer; or (ii) include such amount of Cover Costs as credits in Seller's next invoice to Buyer; provided that if Buyer elects option (ii) and the total Cover Costs required to be credited to Buyer at any given time exceed the amount due from Buyer to Seller pursuant to Seller's next invoice to Buyer, then Seller shall pay Buyer the amount of such excess within five (5) Days after such invoice is sent to Buyer. Notwithstanding Section 10.2.2 and any other provision of this Agreement,

unless there is an Event of Default of Buyer then existing, Seller shall not be entitled to withhold or delay any credit or payment for any portion of the Cover Costs determined by Buyer; provided, further, that any dispute regarding Cover Costs shall be resolved pursuant to the procedure set forth in Article 16, and any amounts to be refunded to Seller as a result (which shall include interest at the Interest Rate from the original due date set forth above) shall be paid or credited within ten (10) Business Days after the relevant arbitration order or finding.

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

6.5.3 Except in the event of a termination of this Agreement by the Non-Defaulting Party under Section 12.2, and except for the right of Buyer to declare an Event of Default under Section 12.1.13 and exercise remedies available under Section 12.2 as a result of such an Event of Default, the Cover Costs determined pursuant to Sections 6.5.1 and 6.5.2 shall constitute Buyer's exclusive remedy for the damages incurred by Buyer due to Seller's failure to provide Tier 1 Hourly Energy and Tier 2 Hourly Energy under this Agreement.

6.6 Failure to Receive Energy.

6.6.1 Except in circumstances where Buyer is excused from receiving energy under Section 7.3, for any Hour, if Buyer for any reason fails to receive at the Point of Delivery all or any portion of Tier 1 Hourly Energy or all or any portion of Tier 2 Hourly Energy that Buyer is required to receive pursuant to this Agreement, then Seller shall determine: (i) such amount of energy Buyer failed to receive for such Hour as required by this Agreement; and (ii) the Cover Costs for such amount of energy for such Hour. Seller shall submit information regarding such Cover Costs to Buyer as soon as practicable. Such information shall include a written statement explaining, in reasonable detail, the calculation of such Cover Costs for such Month. After receiving such information and calculation of Cover Costs from Seller, as required and directed by Seller, (i) Buyer shall pay Seller the amount of such Cover Costs within three (3) Business Days after receiving the calculation of the applicable Cover Costs from Seller; or (ii) such Cover Costs shall be included, to the degree practicable, in Seller's next invoice to Buyer. Notwithstanding Section 10.2.2 and any other provision of this Agreement, unless there is an Event of Default of Seller then existing, Buyer shall not be entitled to withhold or delay any payment for any portion of the Cover Costs determined by Seller; provided, further, that any dispute regarding Cover Costs shall be resolved pursuant to the procedure set forth in Article 16, and any amounts to be refunded to Buyer as a result (which shall include interest at the Interest Rate from the original due date set forth above) shall be paid or credited within ten (10) Business Days after the relevant arbitration order or finding.



6.6.2 Buyer acknowledges and agrees that neither Seller nor its Affiliates shall be required to utilize or change their utilization of their owned or controlled assets (including electric generation facilities), purchased power or market positions in order to minimize the Sales Price or Cover Costs for any given Hour. Further, Buyer acknowledges and agrees that Seller shall be entitled (but shall not be required) to resell energy not received by Buyer as required under this Agreement to any Person(s) in its reasonable discretion and that any such resale may be utilized in the determination of the Sales Price and Cover Costs hereunder.

6.6.3 Except in the event of a termination of this Agreement by the Non-Defaulting Party under Section 12.2, the Cover Costs determined pursuant to Sections 6.6.1 and 6.6.2 shall constitute Seller’s exclusive remedy for the damages incurred by Seller due to Buyer’s failure to receive Tier 1 Hourly Energy and Tier 2 Hourly Energy as required under this Agreement.

6.7 Other Requirements.

6.7.1

[REDACTED]

6.7.2

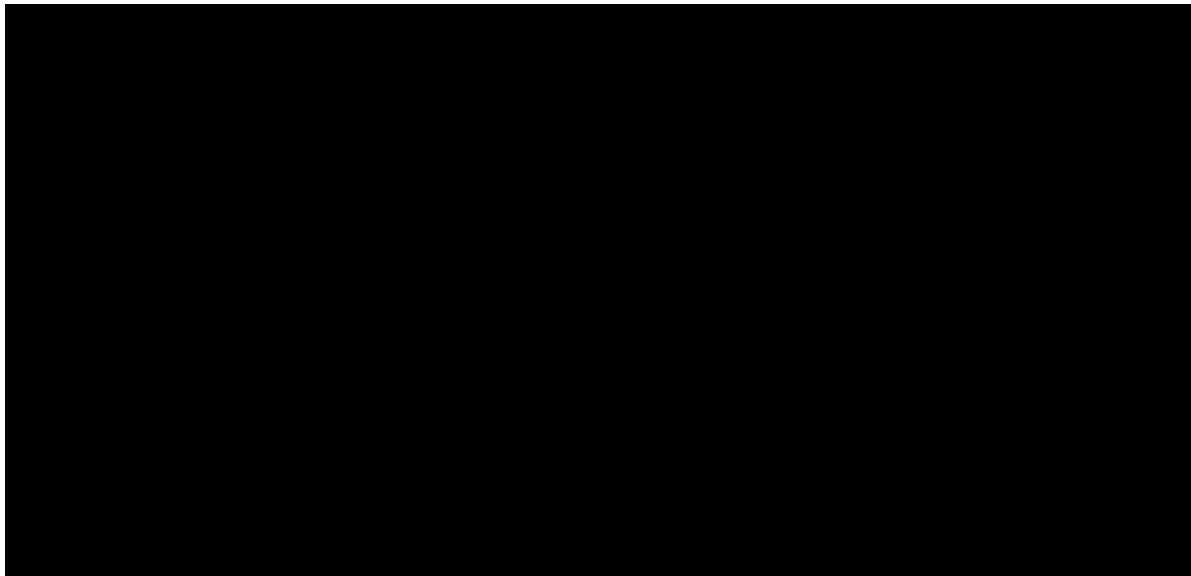
[REDACTED]

6.8 Modification of Energy Amounts.

6.8.1 During the Term of this Agreement, subject to Section 6.8.2, the Parties may mutually agree in writing to: (i) reduce the amount of Tier 2 Hourly Energy required to be provided by Seller under this Agreement for the remaining Term; and (ii) increase the amount of Tier 1 Hourly Energy required to be provided by Seller under this Agreement by an amount that is equal to the agreed upon amount of the reduction in the Tier 2 Hourly Energy for the remaining Term (i.e., the Total Hourly Energy amount would be unchanged) (the date on which such reduction and increase would be effective, as agreed by the Parties, being referred to as the “Hourly Energy Modification Date”); provided that neither Party shall be required to agree to any such reduction in Tier 2 Hourly Energy and increase in Tier 1 Hourly Energy, and each Party shall have the sole and absolute discretion for determining whether to agree to the same; provided further, that any such agreement to reduce the Tier 2 Hourly Energy and increase the Tier 1 Hourly Energy under this Agreement must be in writing and duly executed and delivered by both Parties.

6.8.2 [REDACTED]

[REDACTED]



6.9 Check-Out Procedures. Each Month, Seller shall calculate and send Buyer's Operating Representative(s) (or other person designated by Buyer through the Operating Committee) a notice setting forth: (i) Seller's calculation of the amount of Tier 1 Hourly Energy delivered by Seller [REDACTED] [REDACTED] for purposes of Section 6.1.2(f); and (b) Seller's calculation of the amount of Undelivered Energy for purposes of Section 12.1.13. Buyer shall have ten (10) Business Days to dispute Seller's calculation, failing which Seller's calculation shall be treated as conclusively correct; provided, however, if Buyer does not so dispute such a calculation of Seller and an error in such calculation is subsequently found and agreed upon by the Parties, the Parties shall correct such error for purposes of the determinations under Agreement; provided further, that if any such error is so corrected by agreement of the Parties, a violation of Section 6.1.2(f) or an Event of Default under Section 12.1.13 shall not occur with respect to a period prior to the correction of the error if such violation would result solely from the correction of the error; provided further, that for all periods after the correction is made, Seller shall thereafter be bound by the correction made, and

all determinations made with respect to, and all of Seller's obligations under, Section 6.1.2(f) and Section 12.1.13, shall reflect and take into account such correction.

**ARTICLE 7**  
**TRANSMISSION; CURTAILMENTS**

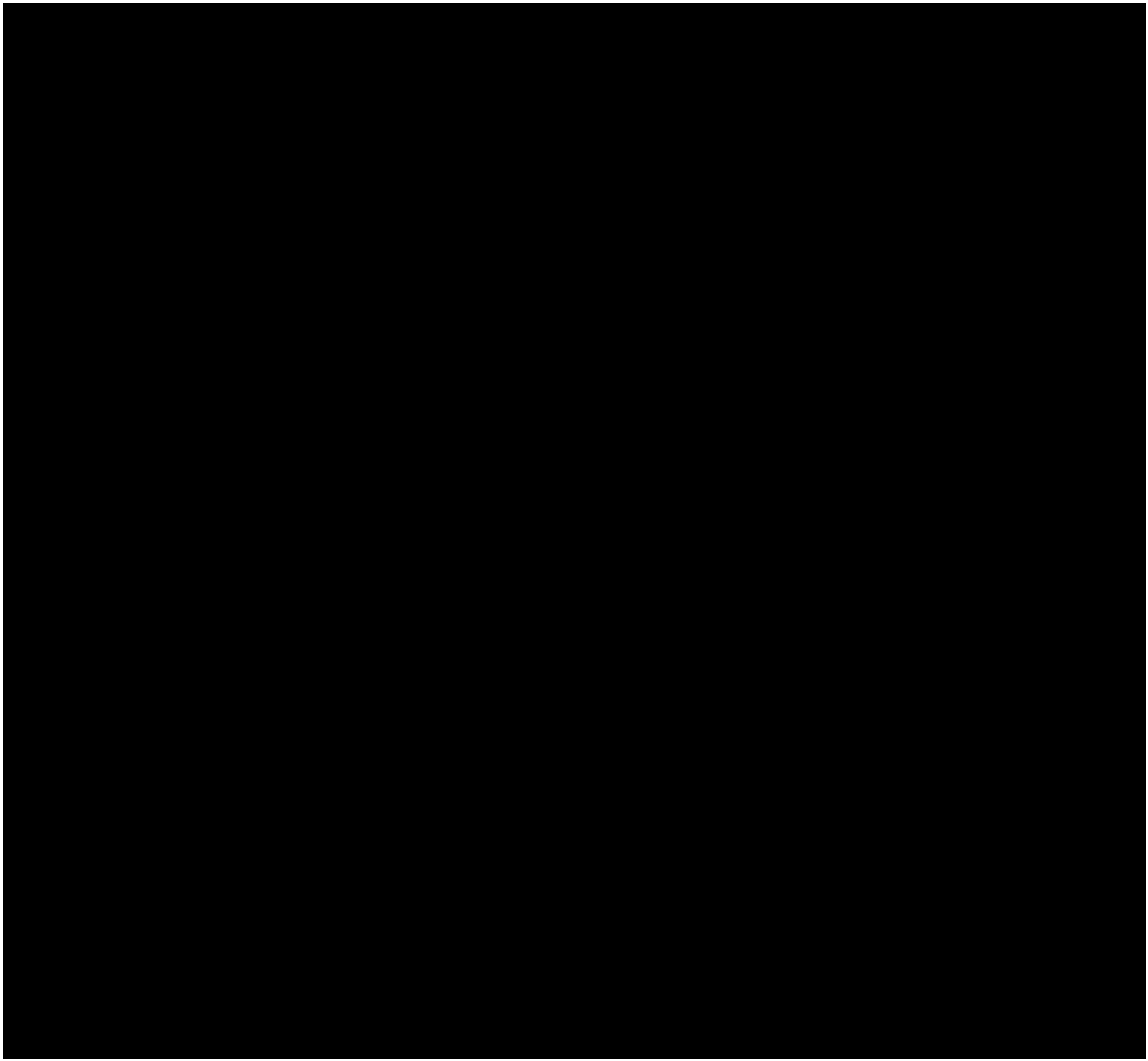
7.1 Transmission Responsibilities of Seller.

7.1.1 Seller shall be solely responsible for making all necessary arrangements for the transmission service necessary for the delivery of the energy to be provided under this Agreement to the Point of Delivery, including arranging for all required firm transmission and ancillary services. As between the Parties, Seller shall be solely responsible for any and all costs and charges incurred in connection therewith, whether imposed pursuant to standards or provisions established by FERC, another Governmental Authority, any transmission provider, or any other Person, including transmission and distribution costs, scheduling costs, generation and energy imbalance costs, congestion costs, operating reserve charges, and the cost of rights to utilize the transmission or distribution system.

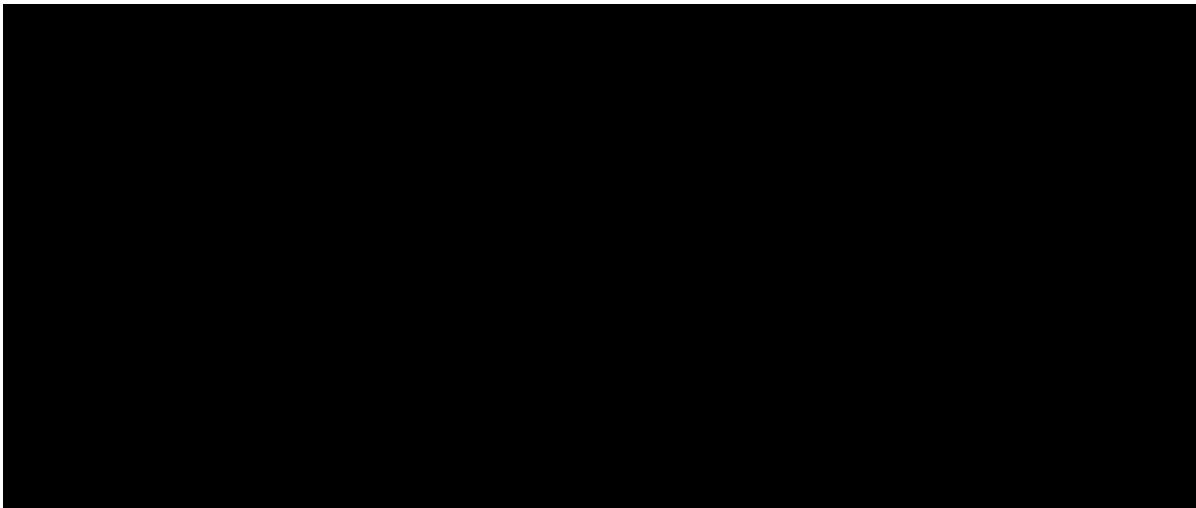
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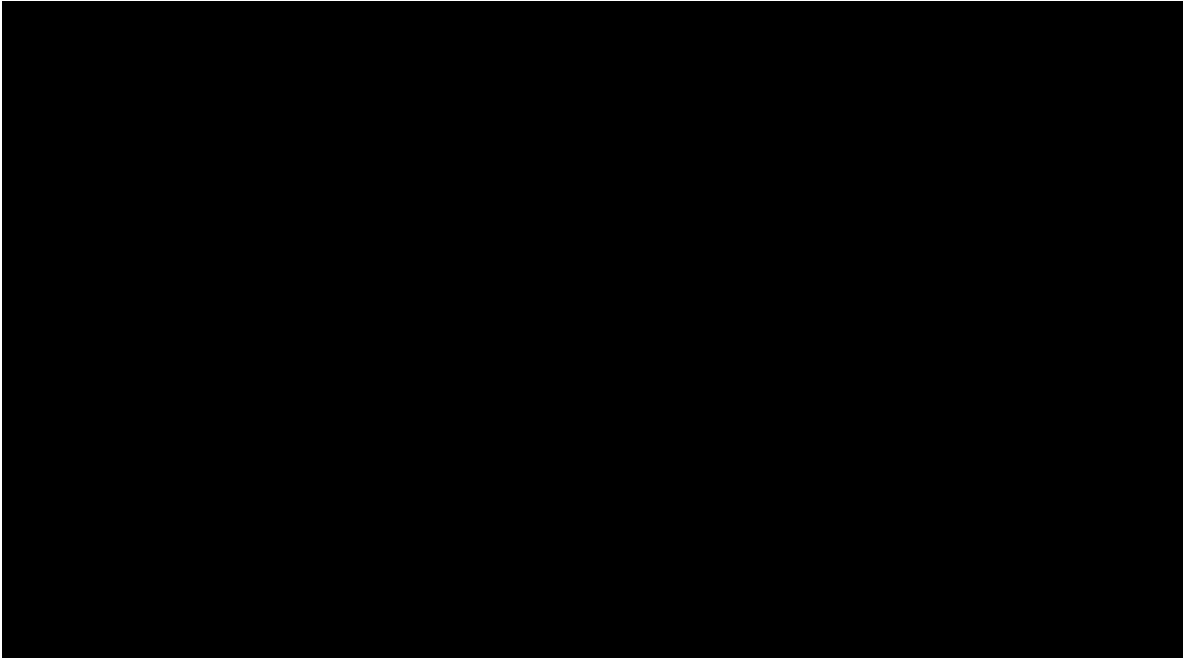
[REDACTED]

[REDACTED]

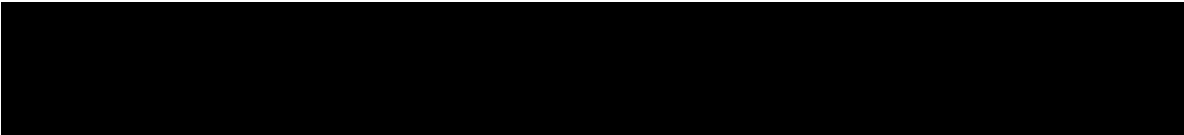


7.1.3

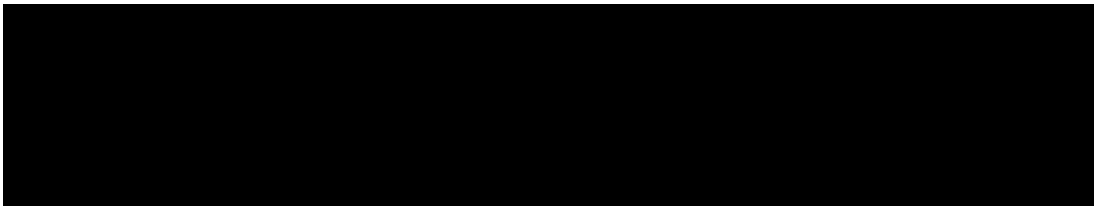




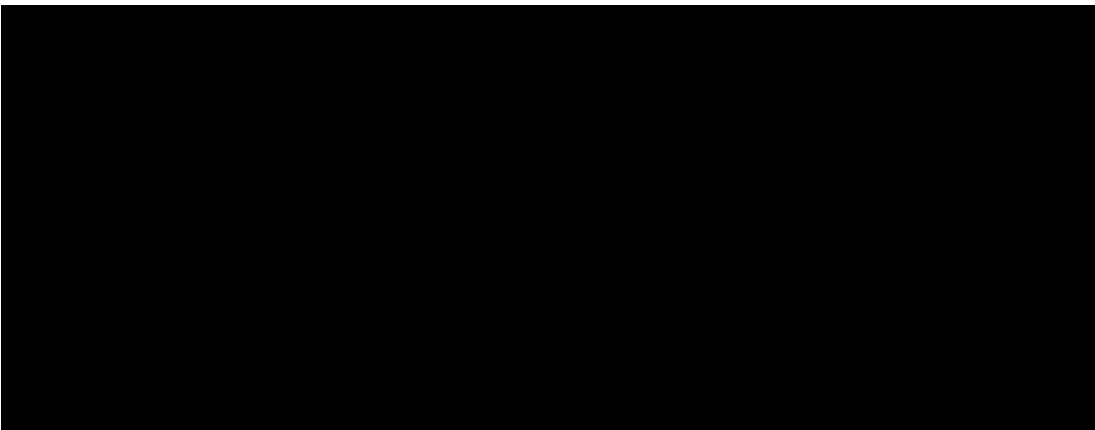
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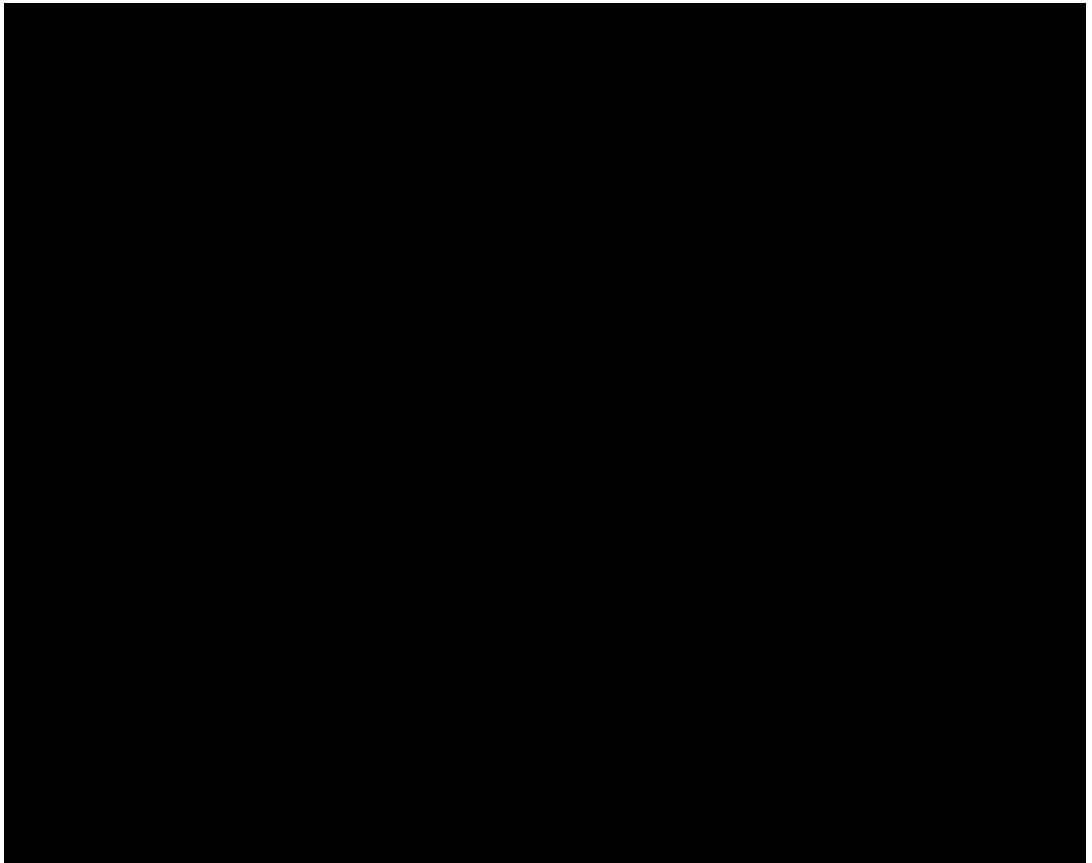
7.1.4.1



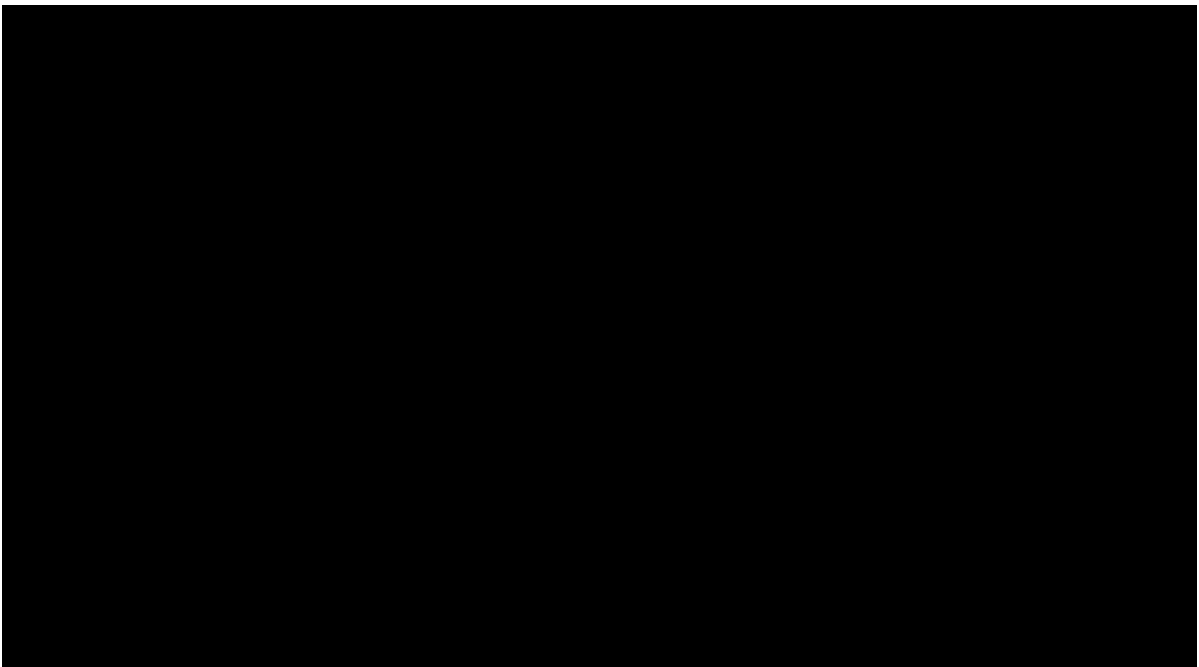
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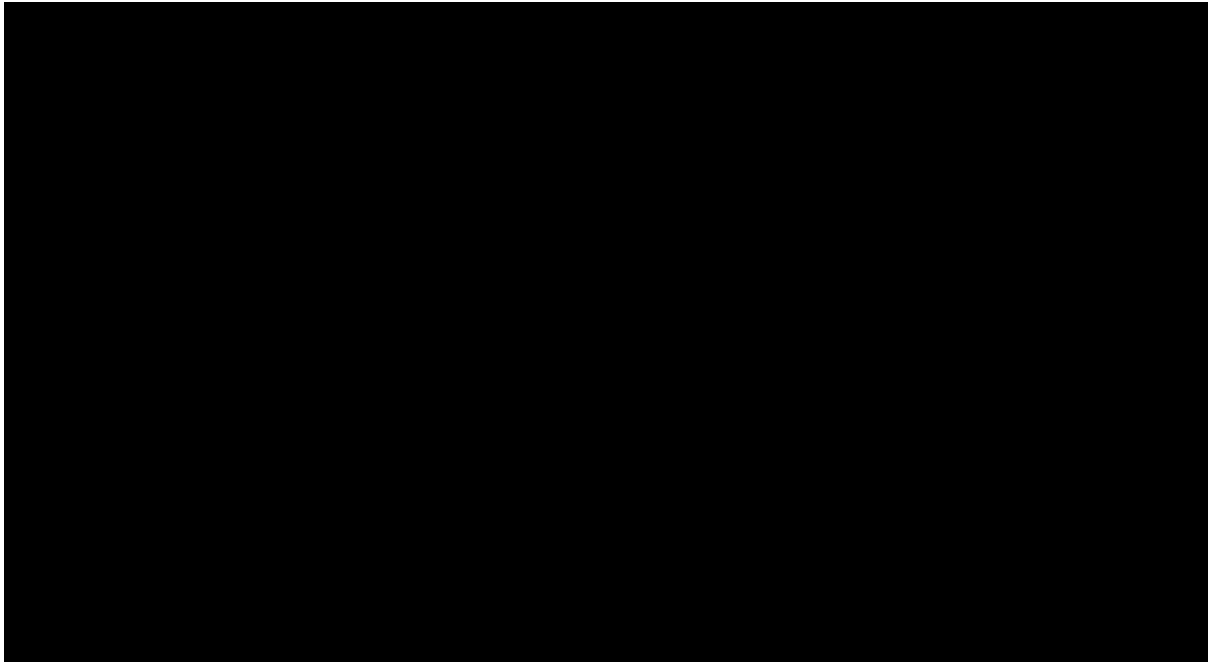
7.1.4.3



7.1.5



7.1.6 [REDACTED]



7.2 Transmission Responsibilities of Buyer.

7.2.1 Subject to the provisions of this Section 7.2, Buyer shall be solely responsible for scheduling and making all necessary arrangements for the delivery of the energy to be provided under this Agreement from and after the Point of Delivery. As between the Parties, except as otherwise provided in this Agreement, Buyer shall be solely responsible for any and all costs and charges incurred in connection therewith, whether imposed pursuant to standards or provisions established by FERC, another Governmental Authority, or any other Person.

7.2.2 Subject to Sections 6.1, 6.2 and the other provisions of this Agreement (including this Article 7), Buyer covenants and agrees that it shall request this Agreement to be designated as a Network Resource on a long-term basis for the deliveries of Tier 1 Hourly Energy [REDACTED]





[REDACTED]

[REDACTED] Subject to Sections 6.1, 6.2 and the other provisions of this Agreement (including this Article 7), any such designation that is made available to Buyer pursuant to such request shall be obtained and maintained by Buyer commencing on the Service Commencement Date and thereafter throughout the Term. Such request shall be consistent with the Network Resource process described in Section 30 of the Southern OATT. Seller shall provide Buyer with all relevant non-confidential information in its possession (and use reasonable efforts to obtain requisite approvals to disclose any confidential information to Buyer) in order to facilitate the designation of this Agreement as a Network Resource on a long term basis for Tier 1 Hourly Energy deliveries pursuant to this Section 7.2.2.

7.2.3 [REDACTED]

[REDACTED]

7.2.4 Notwithstanding the foregoing provisions of Section 7.2.2, and for the avoidance of doubt, because network transmission service is the type of service (as opposed to point-to-point service) required for serving Buyer's native load, Buyer shall have no obligation to procure or obtain any type of transmission service (including point to point service) on the Southern Companies Transmission System in order to receive and deliver energy under this Agreement other than the Southern Transmission Service.

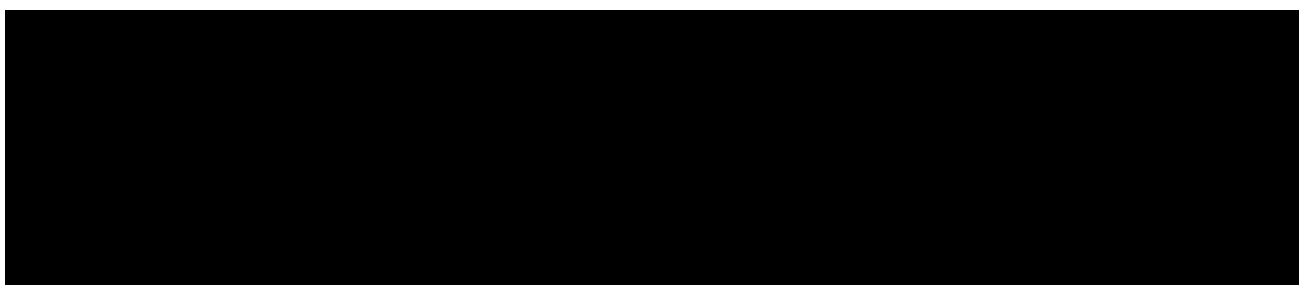
7.3 Buyer Curtailment Events. If during any Hour there is a Buyer Curtailment Event, then at Buyer's option, Buyer shall be excused from receiving and purchasing energy under this Agreement up to the amount of energy affected by such Buyer Curtailment Event (the amount of energy that Buyer is excused from receiving and purchasing due to such Buyer Curtailment Event being referred to as the "Buyer Curtailed Energy"). All Buyer Curtailed Energy shall be excluded from the determination of Delivered Energy for all purposes of this Agreement. Nothing in this Section 7.3 shall be construed as limiting any of the provisions of Section 6.1 or Section 6.2, including the determination of any amount of energy that Seller is deemed to have failed to deliver under Section 6.2.3 due to the curtailment, interruption or unavailability of network transmission service and the amount of resulting Undelivered Energy thereunder.

7.4 Other Curtailments of Energy Deliveries by Buyer. In addition to being excused from receiving and purchasing energy due to a Buyer Curtailment Event under Section 7.3, at Buyer's discretion, Buyer shall be entitled to require a reduction or cessation of energy deliveries under this Agreement at any time due to other operational considerations. In order to effectuate such reduction or cessation of receipt or energy due to operational considerations, Buyer shall be entitled: (i) to take the necessary actions, including making any necessary entries in

OASIS, to cause the curtailment or the cessation of the delivery of all or a portion of energy under this Agreement, or (ii) upon reasonable notice and pursuant to Prudent Industry Practices, to require Seller to curtail or cease the delivery of all or any portion of such energy under this Agreement (provided that any directive by Buyer to Seller under this Section 7.4 may be provided in writing, by electronic notice or orally). Seller shall cooperate with Buyer to effect a curtailment or cessation of delivery pursuant to the foregoing sentence and shall comply with any directive of Buyer to Seller in furtherance thereof. In the event that Buyer requires the cessation or reduction of deliveries under this Section 7.4 and such cessation or reduction is not required by Buyer due to a Buyer Curtailment Event under Section 7.3, then Buyer shall pay Cover Costs to Seller for such energy Buyer directs Seller not to deliver under this Section 7.4. Such payment by Buyer to Seller shall constitute Seller's sole and exclusive remedy for Buyer's failure to receive and purchase such energy.

**ARTICLE 8**  
**ENVIRONMENTAL ATTRIBUTES**

8.1 Provision of Environmental Attributes. In consideration of the purchase of energy under this Agreement, for each Month occurring in whole or in part during the Service Term (each such Month being referred to as a "Delivery Month"), Seller shall transfer, deliver and otherwise provide to Buyer, pursuant to this Section 8.1, Environmental Attributes that are equal in quantity, character, benefit, utility and economic value to the Contracted Facility Attributes that would be created or produced by the Facility during the Delivery Month [REDACTED]



[REDACTED]

[REDACTED], then Seller shall transfer, deliver and otherwise provide to Buyer a quantity of Environmental Attributes that is equal in quantity, character, benefit, utility and economic value to the Contracted Facility Attributes [REDACTED]

[REDACTED]

[REDACTED] Seller shall be obligated to transfer, deliver and provide [REDACTED] to Buyer pursuant to this Section 8.1 [REDACTED]

[REDACTED]

[REDACTED] Seller shall provide Environmental Attributes pursuant to this Section 8.1 as follows:

8.1.1 In the event that, during a given Delivery Month, the Facility produces an amount of energy [REDACTED] [REDACTED] then: (a) Seller must transfer, deliver and provide Buyer with all Contracted Facility Attributes produced by the Facility during such Delivery Month by no later than sixty (60) Days after the end of such Delivery Month; (b) Seller may, at its election,

transfer, deliver and provide Buyer with Other Kingfisher Environmental Attributes produced during such Delivery Month [REDACTED]

[REDACTED]

[REDACTED] Environmental Attributes that Seller elects to deliver under the foregoing subpart [REDACTED]

[REDACTED]

[REDACTED] if applicable. If Seller elects to deliver Other Kingfisher Environmental Attributes produced during a Delivery Month under the foregoing subpart (b), then no later than ten (10) Days after the end of such Delivery Month, Seller shall give notice to Buyer of the number of Other Kingfisher Environmental Attributes that it will deliver and shall transfer, deliver and provide to Buyer such Other Kingfisher Environmental Attributes by no later than sixty (60) Days after the end of such Delivery Month.

8.1.2 In the event that, during a given Delivery Month, the Facility produces an amount of energy that is equal to or greater than the [REDACTED]

[REDACTED]

[REDACTED] and the quantity of Contracted Facility Attributes produced by the Facility during such Delivery Month [REDACTED]

[REDACTED] then the following shall apply:

(i) Seller shall provide to Buyer Environmental Attributes produced by the Facility during such Delivery Month [REDACTED] [REDACTED] for such Delivery Month. Seller shall transfer, deliver and provide Buyer such Environmental Attributes by no later than sixty (60) Days after the end of such Delivery Month.

(ii) If, [REDACTED] [REDACTED] [REDACTED] by no later than sixty (60) Days after the end of such Delivery Month, Seller shall transfer, deliver and provide to Buyer an amount of Excess Facility Attributes (if any) produced during such Delivery Month equal to [REDACTED]

[REDACTED] Upon [REDACTED] [REDACTED]

(iii) If there are remaining Excess Facility Attributes for such Delivery Month that are not [REDACTED] to Buyer pursuant to Section 8.1.2(i) or (ii) [REDACTED] [REDACTED]

8.1.3 If any [REDACTED] Attributes are produced during a given Delivery Month pursuant to Section 8.1.2(iii), then Seller may elect to transfer, deliver and provide Buyer any such [REDACTED] Attributes, subject to the following:

(i) The Parties shall maintain a record of the cumulative quantity of [REDACTED] Attributes provided by Seller to Buyer during the Service Term. The cumulative quantity of [REDACTED] Attributes provided by Seller to Buyer hereunder, as may be adjusted hereunder from time to time, shall be referred to as the

[REDACTED]

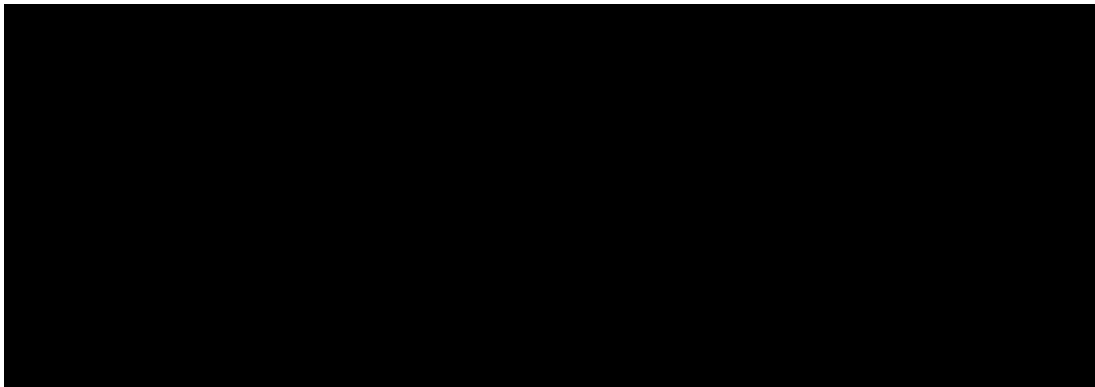
(ii) The maximum quantity of [REDACTED] Attributes produced in any given Delivery Month that may be [REDACTED]

[REDACTED]

(iii) Seller must transfer, deliver and provide to Buyer any [REDACTED] Attributes produced during a given Delivery Month by no later than sixty (60) Days after the end of such Delivery Month.

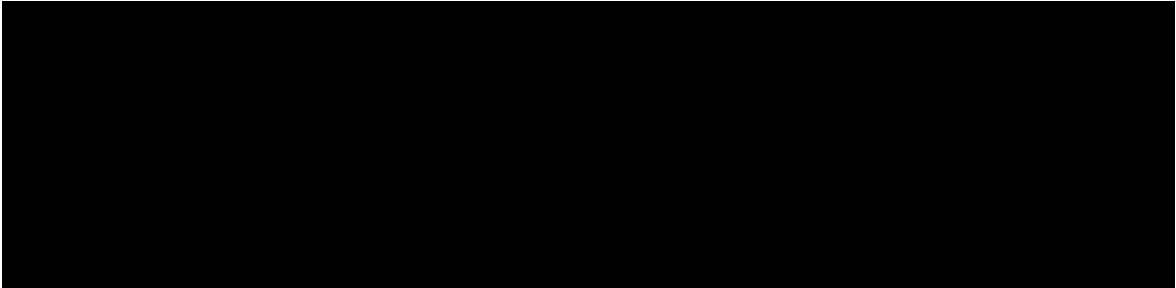
(iv) If there is [REDACTED]

[REDACTED]

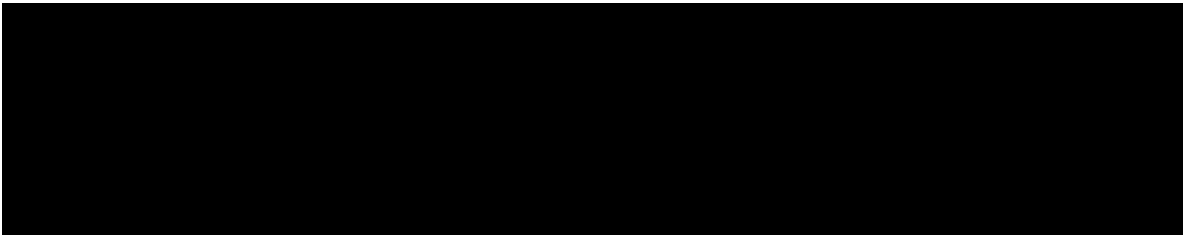


(v) The Parties agree to cooperate with each other to resolve any discrepancy in their calculations of the [REDACTED] Amount.

8.1.4 If, after the end of any calendar year, [REDACTED] for such calendar year [REDACTED] [REDACTED] then Seller shall, within ninety (90) Days following the end of such calendar year, transfer, deliver and provide [REDACTED] Attributes (which may include Other Kingfisher Environmental Attributes) to Buyer [REDACTED]



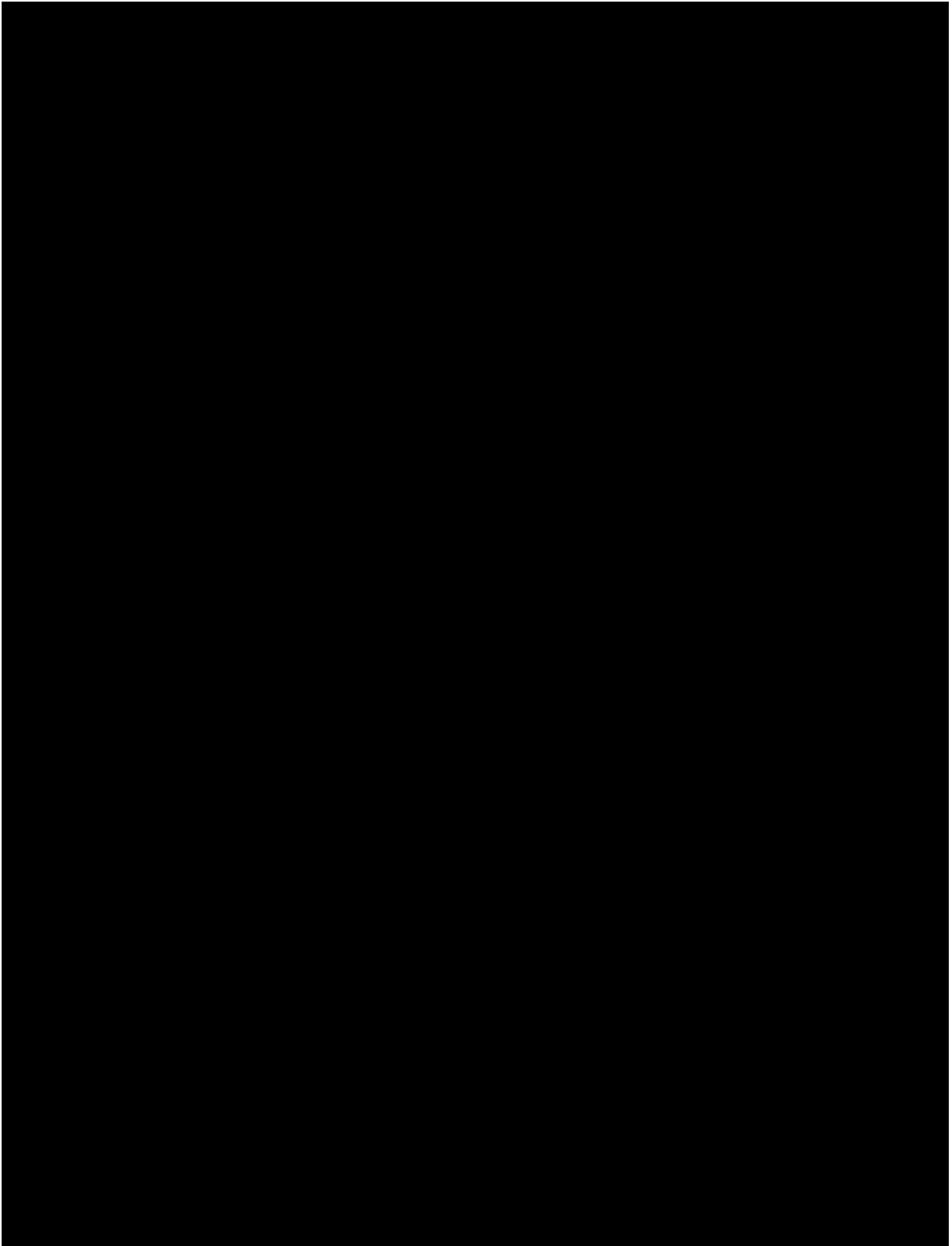
Such [REDACTED] Attributes must comply with all the requirements applicable to [REDACTED] Attributes in this Section 8.1.4 [REDACTED]



[REDACTED] For purposes hereof, [REDACTED] Attributes” means [REDACTED] Attributes that



(subject to the immediately following proviso): (a) are of the same character as Contracted Facility Attributes that would be sourced from the Facility during such period;





██████████ All Environmental Attributes provided by Seller to Buyer for a given Delivery Month that are not sourced from the Facility must be transferred to Buyer on the same Day.

8.2 Environmental Attributes other than RECs. During the Term, in the event that the Contracted Facility Attributes include any type of Environmental Attributes other than RECs, and Buyer desires for Seller to deliver or make available to Buyer such type of Environmental Attributes pursuant to this Agreement, Buyer shall provide notice (in written or electronic form) to Seller or Seller's Operating Representatives at least ninety (90) Days prior to the commencement of the Delivery Month for which Buyer desires such Environmental Attributes to be provided; provided that if it is not practicable for Seller to deliver such Environmental Attributes commencing at the end of such ninety (90) Day period, whether due to the application or licensing requirements of the Applicable Program (if any) or due to other similar operational or legal constraints, then, so long as Seller continues to act diligently to begin delivery, Seller shall have such additional period of time as may be necessary to begin delivery of such Environmental Attributes; provided further, that Buyer's failure to give such notice for any given Delivery Month shall not prejudice Buyer's right to deliver such a notice for any subsequent Delivery Month. Such notice shall include the proposed method of delivery (if any) of those Environmental Attributes and any other information that may be reasonably requested by Seller with respect to the Contracted Facility Attributes. After Buyer provides such notice for a

particular type of Environmental Attributes to be provided with respect to a given Delivery Month, such notice shall be effective for all subsequent Delivery Months, no further notices from Buyer shall be required for such Environmental Attributes, and Seller shall be required to provide such Environmental Attributes for all subsequent Delivery Months.

8.3 Tracking. [REDACTED]

8.4 Representations and Warranties. With respect to the Environmental Attributes provided to Buyer under this Agreement, Seller represents, warrants and covenants throughout the Service Term that, as of the date such Environmental Attributes are provided:

8.4.1 Seller has, and shall transfer to Buyer, good and marketable title to such Environmental Attributes;

8.4.2 Seller has the right to, and shall, deliver and provide all such Environmental Attributes (and all right, title and interest to such Environmental Attributes) to Buyer free and clear of any liens, Taxes (as provided in Section 17.2), claims, security interests and any other encumbrances;

8.4.3 Seller has not sold or transferred any of the Environmental Attributes to any other Person;

8.4.4 The Environmental Attributes are separate from the electric energy generated by the Generation Facilities from which the Environmental Attributes are sourced;

8.4.5 Neither the Environmental Attributes nor the electric energy that was generated with the Environmental Attributes have been or will be utilized by any

Person (other than Buyer) to satisfy or comply with any voluntary or involuntary renewable energy requirement or standard, including any renewable portfolio standard, renewable energy standard or any other similar standard or requirement;

8.4.6

[REDACTED]

[REDACTED]

8.4.7 Neither Seller, any of its Affiliates, nor Facility Owner has made or shall make any claim or statement in any form that the energy that was generated with the Environmental Attributes that are transferred to Buyer hereunder was generated from wind or other sustainable, perpetual, renewable or other particular type of fuel, in any report or disclosure for purposes of compliance with any renewable portfolio standard, renewable energy standard, or carbon reduction initiative (whether voluntary or mandatory);

8.4.8 Buyer shall have the right to sell or otherwise transfer to any Person any or all of the Environmental Attributes;

8.4.9 No Person (other than Buyer) has made or shall make any claim or statement that has caused or would cause the Environmental Attributes required to be transferred to Buyer under this Agreement to be used or retired for the benefit of any Person other than Buyer or to cause such Environmental Attributes to be “double counted” or “double claimed”, as determined in accordance with the rules, requirements and standards of any certification authority (whether with respect to voluntary or involuntary certification), Applicable Program, or Governmental Authority (including the Federal Trade Commission); and

8.4.10 Seller shall not be entitled to separate or additional compensation for Environmental Attributes beyond the Monthly Energy Payment as calculated in accordance with this Agreement.

Nothing in this Section 8.4 shall be interpreted or construed as relieving or diminishing any obligation of Seller to provide Environmental Attributes that are in conformance with the other requirements of this Article 8.

8.5 Exclusivity. Buyer shall have exclusive rights to all Environmental Attributes required to be provided to it under this Agreement, which shall include the exclusive right to: (i) report that it owns such Environmental Attributes to any Governmental Authority or other Person for compliance with any Legal Requirement or other purposes; and (ii) reference the renewable nature of the energy that was generated with such Environmental Attributes to customers or potential customers for purposes of marketing and advertising. For the avoidance of doubt, any Environmental Attributes produced by the Designated Units above the quantity required to be provided to Buyer under this Agreement may be retained by Seller or Facility Owner, as applicable, or sold to any third party.

8.6 Further Action by Seller. During the Term of this Agreement, Seller shall take, or cause to be taken all reasonable actions and execute, or cause to be executed all documents or instruments necessary to effectuate the provision and use of Environmental Attributes for Buyer's sole benefit, which actions shall include:

8.6.1 Seller shall provide to Buyer all information pertaining to the Environmental Attributes, including all relevant information regarding the generation facility(ies) from which such Environmental Attributes are sourced and any and all

certificates, verifications, attestations and other documentation reasonably requested by Buyer.

8.6.2 If Seller is not the owner of the generation facilities from which the Environmental Attributes were sourced, Seller shall cooperate with Buyer in any reasonable efforts to review the records of the original seller of such Environmental Attributes or owner of such generation facilities.

8.6.3 Seller shall maintain and provide to Buyer (or, if directed by Buyer, other applicable Persons) such information as may be necessary to transfer, substantiate, account for, and track the quantity of Environmental Attributes under this Agreement, including all information necessary for Buyer to comply with the requirements of any Governmental Authority or other certifying or standard-setting body relating to the Environmental Attributes to be provided under this Agreement. Seller shall provide Buyer with attestations regarding the accuracy of such information as reasonably requested by Buyer.

8.6.4 Seller shall take or cause to be taken such actions as may be reasonably required in order for the Facility to provide Environmental Attributes that qualify for use by Buyer in satisfying any Renewable Standards legally applicable to Buyer. Such actions shall be at Seller's sole cost and expense to the extent they are required to comply with Renewable Standards legally applicable to Buyer as of the Effective Date. Such actions shall be at Buyer's sole cost and expense to the extent they are required to comply with Renewable Standards that become legally applicable to Buyer after the Effective Date. At Buyer's request, Seller shall also take or cause to be taken such actions as may be reasonably required in order for the Facility to provide


Environmental Attributes that qualify for use by Buyer's Affiliates in satisfying any Renewable Standards legally applicable to such Affiliates; provided, however, that such actions shall be at Buyer's sole cost and expense. Notwithstanding the foregoing, the Parties acknowledge that, as of the Effective Date, Buyer is not subject to any Renewable Standards and that, with respect to any Renewable Standards that become legally applicable to Buyer after the Effective Date, Seller does not represent or warrant that the Environmental Attributes delivered hereunder will qualify for or otherwise satisfy such Renewable Standards, or that Facility Owner will consent to modifications to the physical plant of the Facility or to incur other capital expenses, even if reimbursed by Buyer.

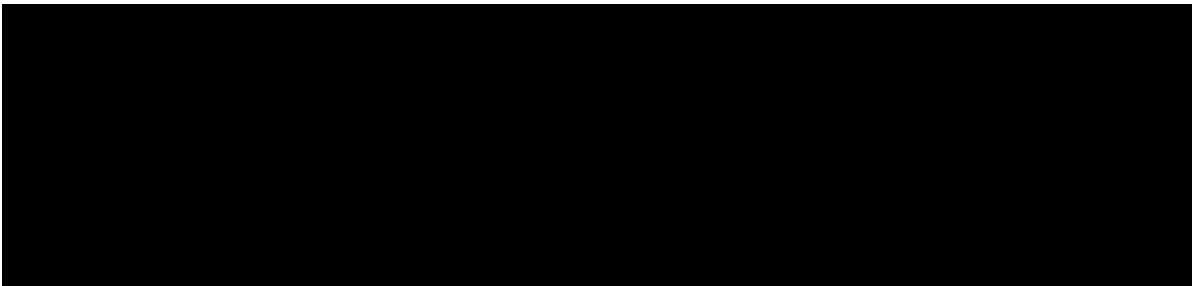
8.6.5 Subject to Section 8.6.4, Seller shall cooperate with Buyer in Buyer's efforts to have the Environmental Attributes certified, registered and verified pursuant to Renewable Standards.

8.6.6 Seller shall take or cause to be taken such actions in order to provide and deliver to Buyer: (i) all Green-e RECs that are associated with, or which may be derived from, the Environmental Attributes required to be provided hereunder; and (ii) all other RECs that are associated with, or which may be derived from, the Environmental Attributes required to be provided hereunder, including pursuant to any certification or verification renewable energy programs or standards promulgated or published by Persons other than Green-e. Seller shall complete and provide all required attestation forms and any other applications or documentation required to be completed in connection therewith. Seller shall also take or cause to be taken all actions required on its part in order to have such Green-e RECs and other RECs certified pursuant to the Applicable Program. The Parties recognize that, as of the Effective Date, Green-e will

only certify RECs from a given generation facility as being eligible for meeting the Green-e National Standard for a maximum of a fifteen (15) year term, and that it is Buyer's responsibility to apply to Green-e to have the certifiable RECs supplied by Seller certified by Green-e. For the avoidance of doubt, any of the foregoing actions in this Section 8.6.6 that are required to be taken by Seller arising from any changes after the Effective Date in any Applicable Program or in any other standards or determinations or Legal Requirements applicable to the creation, ownership, delivery or transfer of RECs or other Environmental Attributes shall not require any alterations to or capital improvements of the Facility.

8.6.7 Seller shall comply with all Legal Requirements and other applicable standards regarding the transfer of Environmental Attributes; provided, that the foregoing shall not be construed to require any alterations to or capital improvements to the Facility.

8.6.8 Seller shall take such actions as may be reasonably necessary to transfer 



8.7 Effect. In no way shall the right to, transfer of, or acquisition of Environmental Attributes under this Agreement cause Buyer to be deemed an owner or operator of any Generation Facility or in any way cause Buyer to be responsible for any Generation Facility's compliance with any Legal Requirements.



8.8 Warranties. THE EXPRESS WARRANTIES SET FORTH IN THIS ARTICLE 8 AND IN THIS AGREEMENT ARE THE EXCLUSIVE WARRANTIES WITH RESPECT TO THE ENVIRONMENTAL ATTRIBUTES PROVIDED UNDER THIS AGREEMENT, AND SELLER MAKES NO OTHER WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE ENVIRONMENTAL ATTRIBUTES DELIVERED, WHETHER AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, COMPLIANCE WITH ANY RENEWABLE STANDARD OR ANY OTHER MATTER.

**ARTICLE 9**  
**PAYMENTS**

9.1 Energy Payment. Subject to the terms and conditions of this Agreement, for each Month of the Service Term, Buyer shall pay to Seller a Monthly Energy Payment. The calculation of the Monthly Energy Payment is set forth in **Appendix B**.

9.2 Additional Payments. In addition to the payments specified in this Article 9, each Party shall pay all amounts due from such Party pursuant to the other provisions of this Agreement.

**ARTICLE 10**  
**PAYMENT PROCEDURE**

10.1 Billing and Payment.

10.1.1 No later than ten (10) Days after the end of each Month during the Service Term, Seller shall provide Buyer with: (i) the amount of Delivered Energy for such Month; and (ii) an invoice for the Monthly Energy Payment (determined in accordance with this Agreement) as well as any other amounts required to be paid by Buyer to Seller for such Month.

10.1.2 No later than ten (10) Days after the end of each Month of the Service Term, Buyer shall provide Seller with an invoice stating any amounts required to be paid by Seller to Buyer for such Month.

10.1.3 Each Monthly payment shall be due and payable on or before the twentieth (20th) Day after a Party's receipt of such invoice; provided, however, that any amount due pursuant to a provision of this Agreement that provides for a specific period for payment shall be due and payable as set forth in such provision. If such twentieth (20th) Day after a Party's receipt is not a Business Day, then payment shall be due on the next succeeding Business Day. Payment of an invoice shall be made on or before the date due in immediately available funds through wire transfer of funds or other means acceptable to the Parties. In the event payment is not made on or before such twentieth (20th) Day (or, if such twentieth (20th) Day is not a Business Day, the next succeeding Business Day), then interest at the Interest Rate shall be added to the overdue payment, from the date such overdue payment was due until such overdue payment together with interest is paid.

10.2 Billing Disputes and Final Accounting.

10.2.1 The Parties shall each have until the three hundred sixty-fifth (365th) Day after receipt of a Monthly invoice to question or contest the correctness of any charge or credit set forth in such invoice. If no question or contest is raised during such time period, the correctness of all such charges and credits shall be conclusively presumed.

10.2.2 In the event a Party questions or contests the correctness of any invoiced amount, whether a charge or a credit, of any payment claimed by the other Party to be due pursuant to this Agreement, such Party shall provide written notice to the other Party

(“Billing Dispute Notice”) that: (i) states the good faith basis for the dispute, (ii) specifies the portion of the invoiced amount in dispute, if any, and (iii) provides documentation reasonably supporting the determination of the disputed amount. Except as provided in Section 6.5, Section 6.6 and Section 12.2.2, the disputing Party may withhold payment of any disputed amount until the dispute is resolved pursuant to the dispute resolution provisions of Article 16.

10.2.3 In the event that a Party, by timely notice in accordance with Sections 10.2.1 and 10.2.2, questions or contests the correctness of any charge or credit, the other Party shall promptly review the questioned charge or credit and shall notify such Party, within twenty (20) Business Days following receipt by the other Party of the Billing Dispute Notice, of the amount of any error and the amount of any reimbursement, if any, that such Party is entitled to receive with respect to such alleged error. Reimbursements determined to be due from a Party under this Section 10.2.3 shall be included on the next Monthly invoice and shall include interest at the Interest Rate from the date the original payment was received until the date such reimbursement together with interest is invoiced.

10.3 Netting. The Parties hereby agree that they shall discharge debts and payment obligations due and owing to each other on the same date under this Agreement through netting, in which case all amounts owed by each Party to the other Party under this Agreement (including Cover Costs, interest, credits or other amounts due) shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it; provided that the foregoing shall not be construed as altering or modifying any of the dates provided in this Agreement for when amounts owing are required to be paid by the Party who owes such amount, and each Party shall

be required to pay all amounts it is required to pay under this Agreement by the date specified for such amounts in the applicable provisions.

**ARTICLE 11**  
**REPRESENTATIONS, WARRANTIES AND RELATED COVENANTS**

11.1 Execution and Authority. Each Party represents and warrants to the other Party as of the Effective Date that: (i) it has all the necessary corporate or limited liability company authority (as applicable) and all legal power and authority and has been duly authorized by all necessary corporate or limited liability company action (as applicable) to enable it to lawfully execute, deliver and perform under this Agreement; and (ii) it is a valid legal entity duly organized and validly existing in good standing under the laws of the state of its formation and is, to the extent required, qualified to do business in the state of Florida. Seller has entered into or will enter into such agreements as are necessary or appropriate to enable Seller to comply with the terms and conditions of this Agreement, including Article 6, Article 7 and Article 8.

11.2 Binding Obligations. Each Party represents and warrants to the other Party that, as of the Effective Date, this Agreement is the valid and binding obligation of such Party, enforceable against such Party in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or other similar laws affecting enforcement generally, and by equitable principles regardless of whether such principles are considered in a proceeding at law or in equity.

11.3 Execution and Consummation. Each Party represents and warrants to the other Party that, as of the Effective Date, the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of and compliance with the provisions of this Agreement do not and will not conflict with any of the terms, conditions or provisions of its organizational documents or any law applicable to it, or result in a

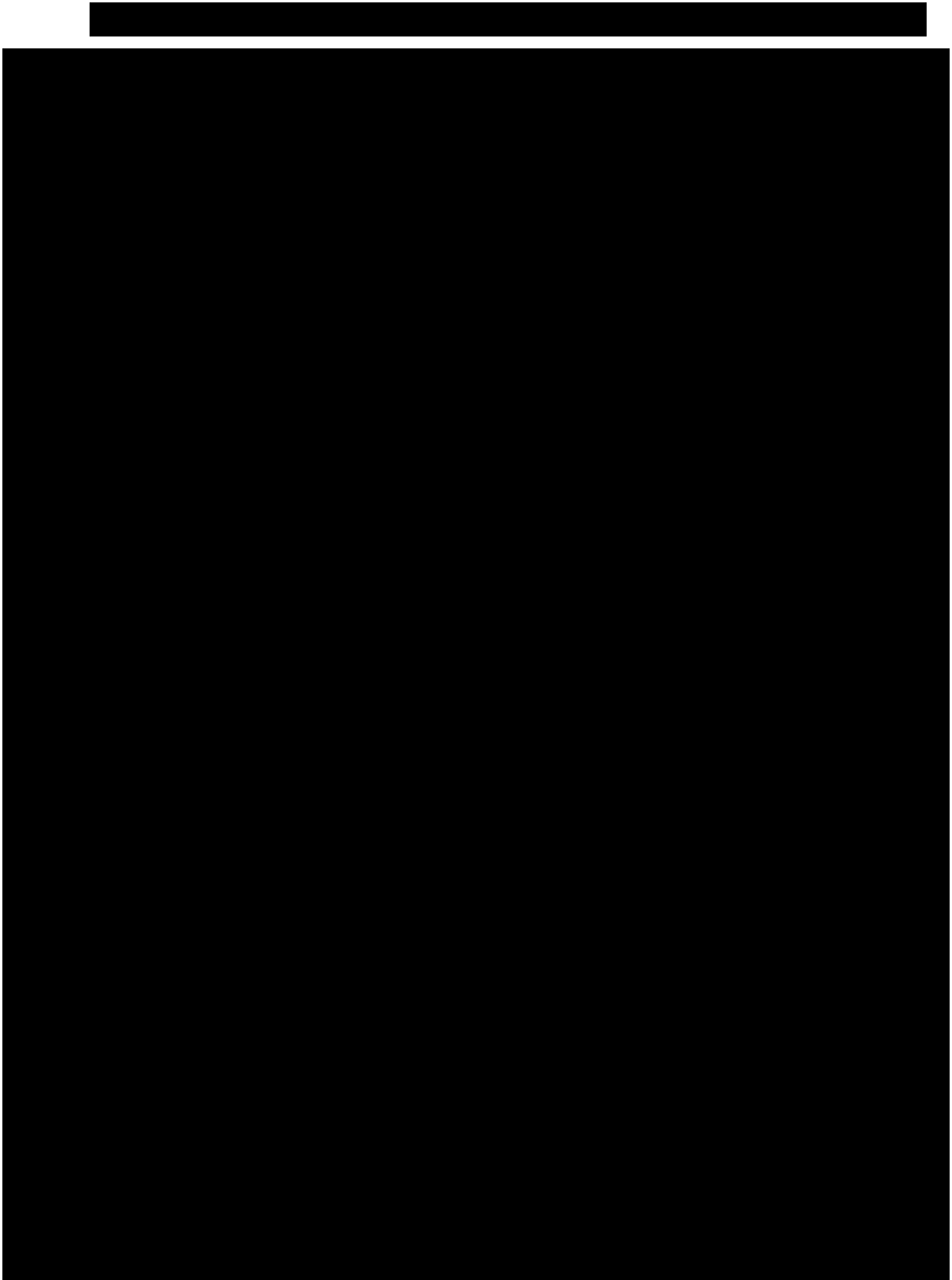
breach or default under any evidence of its indebtedness or any other agreement or instrument to which it is a party or by which it or any of its property is bound that has a reasonable likelihood of materially and adversely affecting the consummation of the transactions contemplated hereby or the performance by the Party of any of its obligations under this Agreement.

11.4 Actions and Proceedings. Each Party represents and warrants to the other that, as of the Effective Date, there is no pending or, to the knowledge of such Party, threatened action or proceeding affecting such Party before any Governmental Authority that has a reasonable likelihood of materially and adversely affecting or reasonably threatening the ability of such Party to perform its obligations under this Agreement or the validity or enforceability of this Agreement against it and that there are no bankruptcy proceedings pending or being contemplated by it or, to its knowledge, threatened against it.

11.5 Absence of Certain Events. Each Party represents and warrants to the other Party that, as of the Effective Date, no Event of Default attributable to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement.

11.6 No Reliance. Each Party represents and warrants that it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement.

11.7 Variable Interest Entity.



[REDACTED]

[REDACTED]

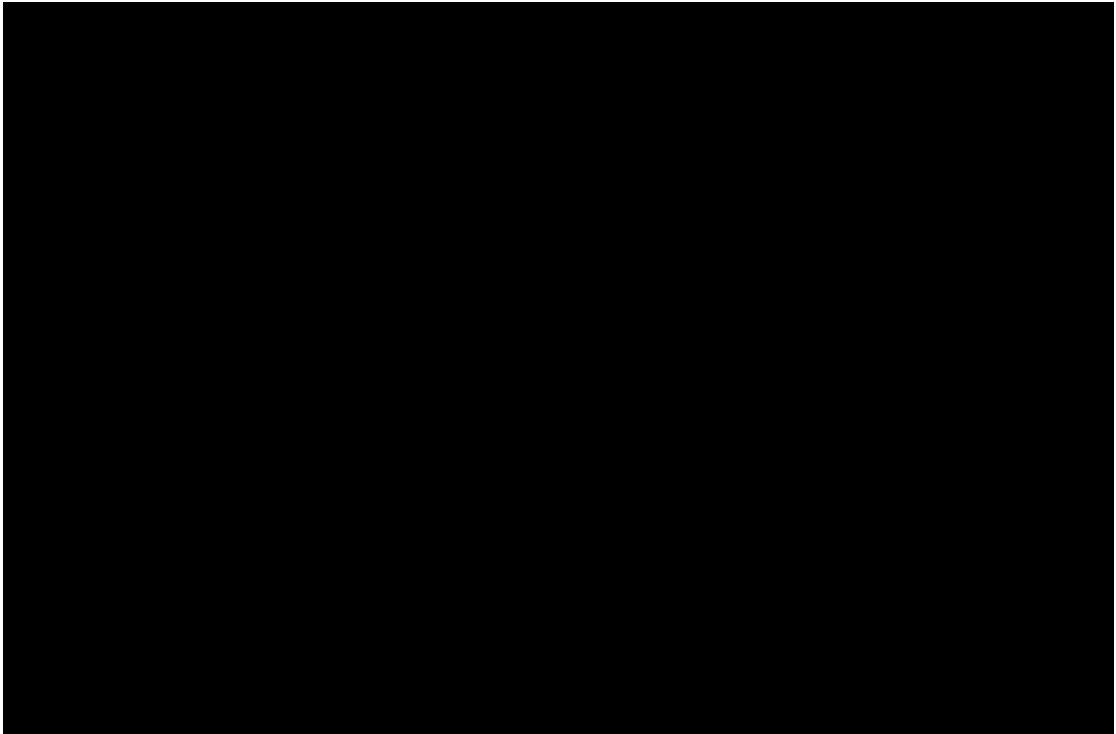
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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



**ARTICLE 12**  
**EVENTS OF DEFAULT; REMEDIES**

12.1 Events of Default. The occurrence of any one or more of the following events with respect to a Party shall constitute an “Event of Default” by and attributable to such Party under this Agreement:

12.1.1 With respect to Seller (and Seller only), Seller sells or supplies energy, or Environmental Attributes required to be provided to Buyer under this Agreement, to a Person other than Buyer;

12.1.2 The failure by a Party to pay any undisputed amount to the other Party pursuant to this Agreement after said amount shall have become due and payable and the



Party owing payment fails to cure such failure to pay within ten (10) Business Days after receipt of written demand therefor from the Party demanding payment;

12.1.3 A Party fails to comply or cause compliance with the Performance Security requirements of Article 5, or the Guarantor under a guaranty provided as Performance Security breaches any of its obligations under such guaranty, or if any representation or warranty made by Guarantor in the guaranty shall prove to be incorrect in any material respect when made, unless any of the foregoing is cured by the end of the second (2<sup>nd</sup>) Business Day following receipt of a written notice from the other Party of a failure under this Section 12.1.3;

12.1.4 A court having jurisdiction shall enter: (i) a decree or order for relief in respect of a Party or its Guarantor in an involuntary case or proceeding under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law; or (ii) a decree or order, the entry of which was sought by an entity other than the Person subject to such decree or order, adjudicating a Party or its Guarantor bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of such Person under any applicable federal or state law, or appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of such Person or of any substantial part of its affairs, provided, however, that the occurrence of such an event with respect to the Guarantor of a Party shall not constitute an Event of Default under this Section 12.1.4 if such Party provides Performance Security to the other Party in the form of an Eligible Letter of Credit pursuant to Article 5 within three (3) Business Days after the occurrence of such event;

12.1.5 A Party or its Guarantor shall: (i) commence a voluntary case or proceeding under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law or any other case or proceeding to be adjudicated a bankrupt or insolvent; (ii) consent to the entry of a decree or order for relief in respect of itself in any involuntary case or proceeding under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against it; (iii) file any petition, answer or consent seeking reorganization or similar relief under any applicable federal or state law, which, if granted would have the effect of relieving such Person of any of its obligations; (iv) consent to the filing of any petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or similar official of such Person or of any substantial part of its property; (v) make an assignment for the benefit of creditors; (vi) admit in writing its inability to generally pay its debts as they become due; or (vii) take any action in furtherance of any of the foregoing, provided, however, that the occurrence of such an event with respect to the Guarantor of a Party shall not constitute an Event of Default under this Section 12.1.5 if such Party provides Performance Security to the other Party in the form of an Eligible Letter of Credit pursuant to Article 5 within three (3) Business Days after the occurrence of such event;

12.1.6 A Party violates the requirements of Section 17.1 through an assignment or transfer of this Agreement;

12.1.7 With respect to Seller (and Seller only), Seller fails to comply with the delivery requirements of Section 6.1.2(f);

12.1.8 Any representation or warranty made by a Party herein or in any certificate or other document delivered to the other Party pursuant hereto shall prove to be incorrect in any material respect when made, unless such Party shall promptly commence and diligently pursue action to cause such representation or warranty to become true in all material respects, and does so within thirty (30) Days after such Party has been provided notice thereof by the other Party (unless such cure is not capable of being effected within such thirty (30) Day period, in which case such Party shall have an additional thirty (30) Day period in which to perform such cure) and such cure removes any material adverse effect on the other Party of such representation or warranty having been incorrect; provided, further, that this Section 12.1.8 shall not apply to the representations and warranties set forth in Section 8.4, which representations and warranties are addressed by Section 12.1.9 below;

12.1.9 With respect to Seller (and Seller only), Seller fails to provide Buyer with Environmental Attributes as required by and in accordance with this Agreement, or any of the representations, warranties or covenants set forth in Section 8.4 are not true and satisfied at any time, unless Seller shall promptly commence and diligently pursue action to cure such failure by delivering such Environmental Attributes to Buyer, or to cause such representation or warranty to become true in all material respects, and does so within thirty (30) Days after Seller has been provided notice thereof by Buyer and such cure removes any adverse effect on Buyer due to such failure to provide Environmental Attributes or such representation or warranty having been incorrect;

12.1.10 [Reserved];

12.1.11

[REDACTED]

[REDACTED]

12.1.12 With respect to Seller (and Seller only), an Event of Default of Seller under Section 7.1.3;

12.1.13

[REDACTED]

[REDACTED]



12.1.14 A Party or its Guarantor consolidates or amalgamates with, or merges with or into another entity and, at the time of such consolidation, amalgamation or merger: (i) the resulting or surviving entity fails to assume all the obligations of such Party or Guarantor under this Agreement or any Eligible Guaranty, as applicable, by operation of law or pursuant to an agreement reasonably satisfactory to the other Party to this Agreement; (ii) the benefits of any Performance Security provided by such Party (or substitute Performance Security reasonably acceptable to the other Party) fail to extend to such Party's or, as applicable, its resulting or surviving entity's performance of its obligations under this Agreement; or (iii) the consolidated, amalgamated, or merged entity does not have the legal power and authority to perform and satisfy the obligations then and thereafter to become due to the other Party under this Agreement;

12.1.15 A Party or its Guarantor enters into an agreement to consolidate or amalgamate with, or merge with or into another entity and neither applicable law nor such agreement provides that at the time of such consolidation, amalgamation or merger: (i) the resulting or surviving entity will assume all the obligations of such Party or Guarantor under this Agreement or any Eligible Guaranty, as applicable, in a manner reasonably satisfactory to the other Party to this Agreement; and (ii) the benefits of any Performance Security (or substitute Performance Security reasonably acceptable to the other Party) will

extend to the consolidated, amalgamated or merged entity's performance of its obligations under this Agreement;

12.1.16 The occurrence or existence of (i) a default, event of default or other similar condition or event (however described) in respect of such Party or a Guarantor of such Party under one or more agreements or instruments relating to Indebtedness of any of them (individually or collectively) in an aggregate amount of not less than [REDACTED] [REDACTED] which has resulted in such Indebtedness becoming due and payable under such agreements or instruments, before it would otherwise have been due and payable or (ii) a default by such party or such Guarantor in making one or more payments on the due date thereof in an aggregate amount of not less than [REDACTED] [REDACTED] (after giving effect to any applicable notice requirement or grace period); provided, however, that the occurrence of the foregoing (i) or (ii) with respect to the Guarantor of a Party providing an Eligible Guaranty under this Agreement shall not constitute an Event of Default under this Section 12.1.16 if such Party provides replacement Performance Security to the other Party in the form of an Eligible Letter of Credit pursuant to Article 5 within three (3) Business Days after the occurrence of the foregoing (i) or (ii); or

12.1.17 A Party fails to perform or observe any material obligation of such Party under this Agreement, other than those obligations specifically addressed in this Section 12.1, which failure materially and adversely affects the ability of either Party to perform its respective obligations under this Agreement and continues for a period of thirty (30) Days after written notice thereof from the other Party unless such cure is not capable of being effected within such thirty (30) Day period, in which case such Party

shall have an additional thirty (30) Day period in which to perform such cure; provided, further, this Section 12.1.17 shall not apply to any event described in Sections 12.1.1 through 12.1.16. For the avoidance of doubt, this Section 12.1.17 shall not apply to a breach of the covenant in Section 11.7.1, which is exclusively addressed in Section 12.1.11.

The Party in default or the Party to whom an Event of Default is attributable as provided in this Section 12.1 shall be referred to as the “Defaulting Party” and the other Party shall be referred to as the “Non-Defaulting Party.” Upon the occurrence of any Event of Default, the Defaulting Party shall promptly notify the Non-Defaulting Party of such Event of Default.

#### 12.2 Remedies for Events of Default.

12.2.1 If an Event of Default occurs at any time during the Term, the Non-Defaulting Party may, for so long as the Event of Default is continuing, subject to the provisions of Article 16, take one or more of the following actions in its sole discretion: (i) establish a date (which date shall be no more than ten (10) Business Days after such Non-Defaulting Party delivers written notice of such date to the Defaulting Party) on which this Agreement shall terminate (“Early Termination Date”); (ii) proceed by appropriate proceedings in accordance with this Agreement, at law, in equity or otherwise, to protect and enforce its right to damages (including, in the case where the Defaulting Party has not paid an amount of money as required by this Agreement, an action to recover the amount of money not paid or, where the Event of Default is one other than the failure to pay money, equitable relief, including specific performance); (iii) with respect to Buyer as the Non-Defaulting Party, if the Event of Default is due to Seller’s

failure to provide Environmental Attributes in accordance with the requirements of this Agreement or if the Event of Default is due to any of the representations, warranties or covenants set forth in Section 8.4 being untrue or not being satisfied, Buyer may pursue an action for damages equal to the costs and expenses associated with procuring Environmental Attributes to replace those not so provided or for which such representations, warranties or covenants are untrue or not satisfied (provided that such damages shall not be duplicative of any amounts recovered by Buyer through payment of any Termination Payment calculated in accordance with Section 12.2.2); and (iv) immediately cease performance or withhold any payments to offset and apply against any Cover Costs or other damages that the Defaulting Party may owe to the Non-Defaulting Party, or both, due in respect of this Agreement. For the avoidance of doubt, nothing in Article 5 is intended to limit liability under this Section 12.2, and nothing in this Article 12 shall limit a Party's rights under any Performance Security as described in Article 5.

12.2.2 Without prejudice to or limiting any other remedies available to a Non-Defaulting Party under Section 12.2.1, if an Early Termination Date has been established, then the following shall apply:

- (i) The Non-Defaulting Party shall in good faith calculate its Gains, Losses and Costs resulting from the termination of this Agreement, aggregate such Gains, Losses and Costs into a single net amount, and then notify the Defaulting Party of the amount of the Termination Payment. If the Non-Defaulting Party's aggregate Losses and Costs resulting from the termination of this Agreement exceed its aggregate Gains, then the net positive amount shall equal the Termination Payment, and the Defaulting Party shall pay such



Termination Payment to the Non-Defaulting Party. [REDACTED]

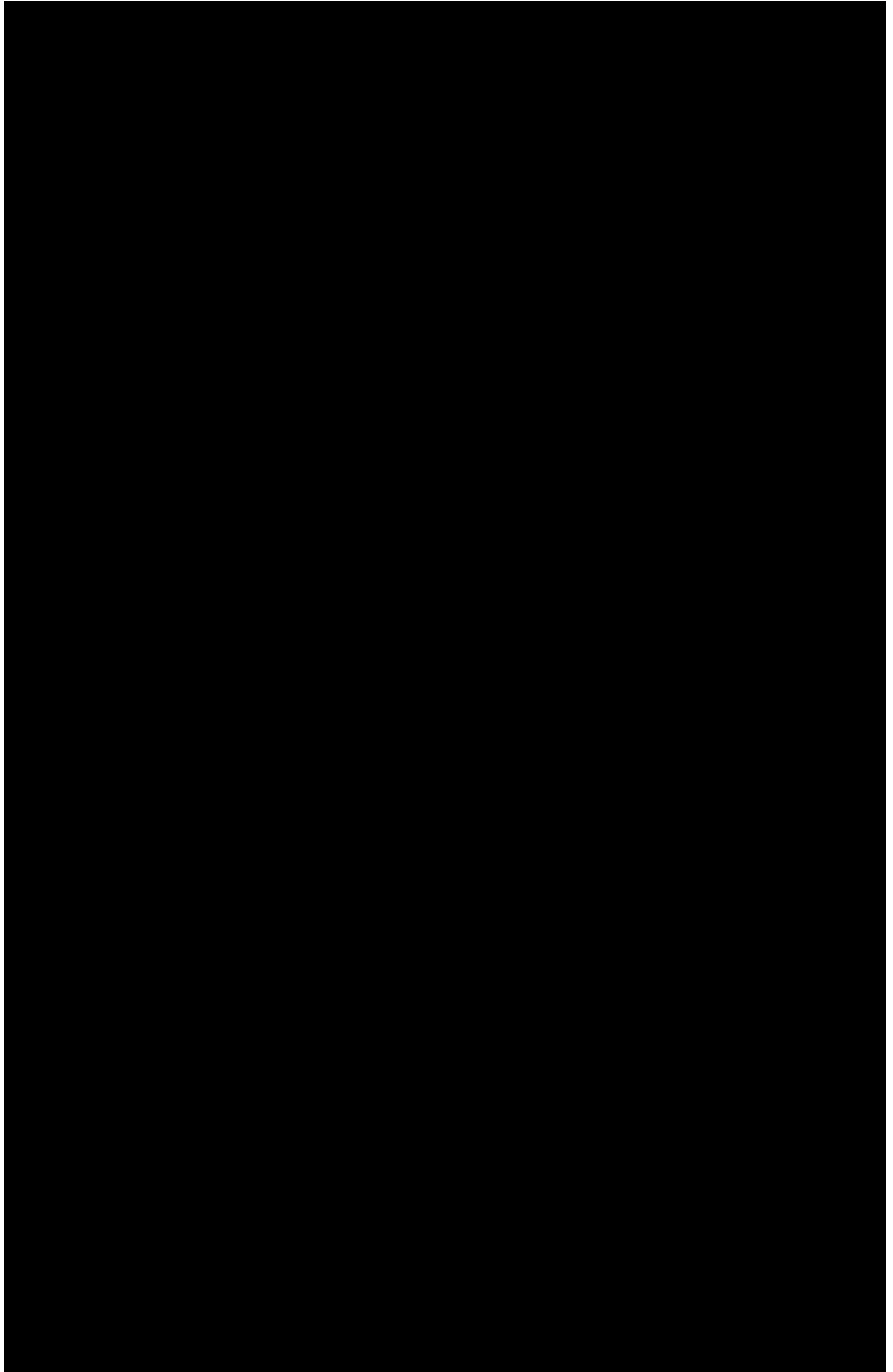
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[REDACTED] The Non-Defaulting Party's Gains, Losses and Costs shall be determined by comparing the price under this Agreement of the energy and Environmental Attributes that would be available to Buyer under this Agreement for the remainder of the Term had this Agreement not been terminated to the market price of energy (subject to equivalent terms and conditions regarding reliability and delivery) and products that are equivalent to the Environmental Attributes that would have been available to Buyer under this Agreement for the remaining Term had this Agreement not been terminated. To ascertain such market price, the Non-Defaulting Party may consider, among other evidence, the settlement prices of NYMEX energy futures contracts, quotations from leading dealers in swap contracts for energy and products that are equivalent to the Environmental Attributes that would have been available to Buyer under this Agreement, offers and proposals for the sale of energy and products that are equivalent to such Environmental Attributes (including offers and proposals received by the Non-Defaulting Party or its Affiliates in response to any request for proposals), all adjusted for the length of the remaining Term (had this Agreement not been

terminated) and differences in locational basis (including costs of transmission investments and transmission service), reliability, scheduling flexibility and any other considerations affecting value. The Non-Defaulting Party shall not be required to enter into any replacement transactions in order to determine the Termination Payment. As used in this Section 12.2.2: (a) “Costs” shall mean brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred by the Non-Defaulting Party either in terminating any agreement that it has entered into to fulfill its obligations hereunder or entering into new agreements that replace this Agreement, and reasonable attorneys’ fees, if any, incurred in connection with enforcing its rights under this Agreement; (b) “Gains” shall mean an amount equal to the economic benefit determined on a mark to market basis (exclusive of Costs), if any, resulting from the termination of this Agreement; and (c) “Losses” shall mean an amount equal to the economic loss determined on a mark to market basis (exclusive of Costs), if any, resulting from the termination of this Agreement, provided that the term Losses shall not include the lost value of any ITC, PTC, or any other similar tax credit or benefit associated with any Generation Facility.

(ii) 





[REDACTED]

[REDACTED]

[REDACTED]

(iv) This Agreement shall terminate on the Early Termination Date and upon such termination, neither Party shall have any further obligation under this Agreement, except for obligations and liabilities that survive termination as provided in this Agreement or which accrue prior to or at termination (including a

Party's obligation to pay the Termination Payment pursuant to this Section 12.2.2).



12.3 Limitation of Remedies, Liability and Damages. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISIONS AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY HEREIN PROVIDED (INCLUDING IN SECTION 6.5,

SECTION 6.6 AND SECTION 12.2.2), THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY. SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, AND EXCEPT FOR THE PAYMENT OF LIQUIDATED DAMAGES TO THE EXTENT SPECIFIED HEREIN, NEITHER PARTY OR THEIR RESPECTIVE AFFILIATES SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT OR OTHERWISE; PROVIDED, HOWEVER, THAT SUCH LIMITATION SHALL NOT APPLY IN THE CASE OF AMOUNTS OWED TO THIRD PARTIES AND FOR WHICH EITHER PARTY IS ENTITLED TO INDEMNIFICATION UNDER THIS AGREEMENT OR TO LIMIT THE LIABILITY OF A PARTY WHOSE ACTIONS GIVING RISE TO SUCH LIABILITY CONSTITUTE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE ACTUAL DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE LIQUIDATED DAMAGES DO NOT CONSTITUTE A PENALTY AND ARE A REASONABLE APPROXIMATION OF THE HARM OR LOSS; PROVIDED, FURTHER, THAT SUCH LIMITATION SHALL NOT LIMIT OR REDUCE THE AMOUNTS OWED BY A DEFAULTING PARTY UNDER SECTION 12.2.2 OR COVER COSTS UNDER SECTION 6.5 OR SECTION 6.6, IT BEING EXPRESSLY AGREED BY THE PARTIES THAT NO PORTION OF SUCH TERMINATION PAYMENT OR

COVER COSTS SHALL BE CONSIDERED AS CONSTITUTING CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES; PROVIDED, FURTHER, THAT IT IS EXPRESSLY AGREED THAT THE LOST VALUE OF ANY ITC, PTC OR ANY OTHER SIMILAR TAX CREDIT OR BENEFIT SHALL BE CONSIDERED CONSEQUENTIAL DAMAGES.

**ARTICLE 13**  
**COMPLIANCE; REGULATORY**

13.1 Compliance. As between the Parties, Seller shall be responsible for all costs and expenses associated with procuring all emissions allowances, offsets and credits required for the Generation Facilities to operate and produce energy provided to Buyer under this Agreement, and in no event shall Buyer be required to provide Seller with, or reimburse Seller for, any such costs or expenses. Buyer shall have no responsibility for the foregoing with respect to any Generation Facility. Each Party shall comply with Prudent Industry Practices in performing its obligations under this Agreement.

13.2 Change In Law. Notwithstanding any provision in this Agreement, Seller acknowledges that the payments required to be made by Buyer to Seller pursuant to this Agreement shall not be altered as a result of any Change In Law or any costs or expenses incurred by Seller as a result of any Change In Law.

13.3 Preservation of Terms.

13.3.1 Each Party agrees that except with the prior written consent of the other Party, it will not institute or voluntarily cooperate in the institution or conduct of any claim, action or proceeding before FERC under Section 205, Section 206 or any other portion of the Federal Power Act, or any other Governmental Authority under any

provision of federal law or state or local law or any other Legal Requirement which claim, action or proceeding is intended for the purpose of changing the terms of this Agreement then in effect. Without limiting the foregoing, but subject to the terms of this Agreement, the Parties agree that the rates for service specified herein shall remain in effect for the Term and shall not be subject to change through application to FERC pursuant to the provisions of Section 205 or 206 of the Federal Power Act, or to any other Governmental Authority under any provision of federal law or state or local law or any other Legal Requirement, absent written agreement of the Parties.

13.3.2 The Parties waive all rights to submit filings to FERC seeking modifications or rescission of this Agreement under Sections 205 or 206 of the Federal Power Act. Absent the agreement of all Parties to the proposed change, the standard of review for changes to this Agreement proposed by a Party, a non-Party or FERC acting sua sponte shall be the “public interest” application of the “just and reasonable” standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956), and clarified by NRG Power Marketing LLC v. Maine Public Utility Commission, 130 S. Ct. 693 (2010).

13.4 Other Approvals. Each Party shall diligently seek to obtain, maintain, pursue, or cause to be pursued, comply with and, as necessary, renew and modify from time to time any and all other consents and approvals, required to be possessed by such Party, in a manner that is reasonably expected to enable such Party to perform its obligations under this Agreement. Each Party agrees to assist and support the other Party, in obtaining such consents and approvals.



Upon request, each Party shall provide a copy of such consents and approvals to the requesting Party.

13.5

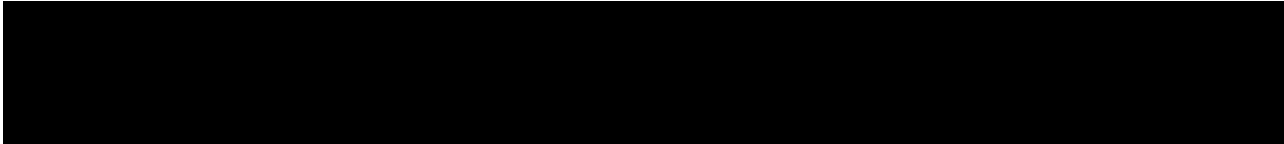
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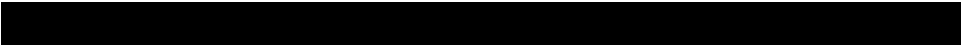
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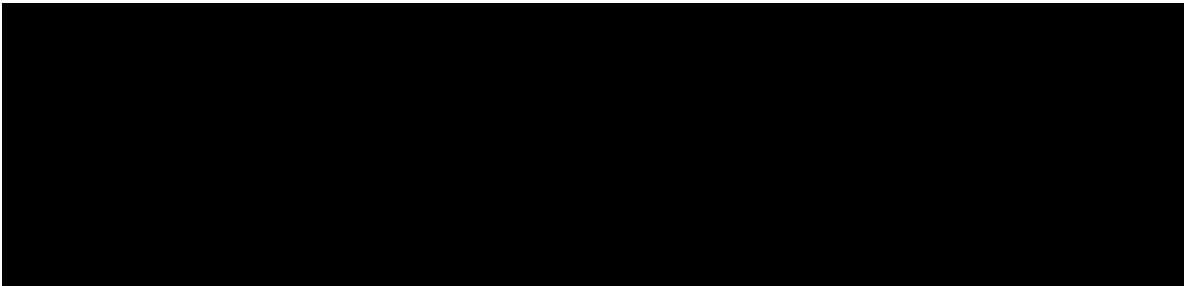



**ARTICLE 14**  
**INDEMNIFICATION**

14.1 Indemnity for the Parties' Personnel and Property.

14.1.1 Buyer releases and shall defend, indemnify and hold harmless Seller and its Representatives from and against all Claims relating to this Agreement for illness, injury and death of Buyer's and its Representatives' personnel and for damage to and loss of Buyer's and its Representatives' property.

14.1.2 



14.2 Indemnity for Ownership and Operation of Generation Facilities. 



14.3 Indemnity for Energy. Each Party releases and shall defend, indemnify and hold harmless the other and its respective Representatives from and against all Claims relating to energy delivered or requested to be delivered under this Agreement and arising on its respective side of the Point of Delivery.

14.4 Scope of Indemnity; Waiver of Subrogation. IT IS THE PARTIES' INTENT THAT, EXCEPT AS PROVIDED IN SECTION 14.2, THE INDEMNITY OBLIGATIONS IN THIS AGREEMENT ARE WITHOUT REGARD TO THE CAUSES OF INDEMNIFIED CLAIMS, INCLUDING THE NEGLIGENCE OF ANY INDEMNIFIED PARTY, WHETHER SUCH NEGLIGENCE IS SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE OR THE STRICT LIABILITY OF ANY INDEMNIFIED PARTY. Seller and Buyer shall each cause its respective insurers to waive all express and implied rights of subrogation against the other Party and the Representatives of such other Party to the extent and scope of liabilities assumed under this Agreement.

14.5 Indemnity Procedure. The indemnified Party shall promptly notify the indemnifying Party in writing of any Claim and the indemnifying Party shall have the right to assume the investigation and defense of the Claim, including employing legal counsel. If the indemnifying Party does not within thirty (30) days assume the investigation and defense of the Claim, the indemnified Party may do so, including employing legal counsel of its choice, at the indemnifying Party's expense. In any case, the indemnifying Party shall pay or reimburse the indemnified Party for all court costs, attorneys' fees and experts' fees relating to the Claim and post any appeals bonds. If the indemnifying Party assumes the defense of a Claim, the indemnified Party has the right to employ at its expense separate legal counsel and participate in the defense of the Claim. The indemnifying Party shall not be liable for any settlement of a Claim without its written consent to the settlement. To prevent double recovery for a Claim, the indemnified Party shall reimburse the indemnifying Party for payments or costs incurred in an indemnity Claim with the proceeds of any judgment, insurance, bond, surety or other recovery by the indemnified Party for the indemnified Claim.

14.6 Survival. Notwithstanding any termination of this Agreement, payment of the Termination Payment under Section 12.2.2 or the terms of Section 12.3, the Parties' indemnification obligations under this Article 14 shall survive and continue in full force and effect after such termination, by default or otherwise, regardless of whether such obligations accrue prior to or after such termination.

**ARTICLE 15**  
**INSURANCE**

15.1 Insurance. Seller's agreement with the Facility Owner shall provide that the Facility Owner is required to procure and maintain insurance coverage on the Facility in amounts and coverages that are customary and prudent for the geographic area, type of facility and risks undertaken. Seller will provide Buyer with reasonable documentation of such coverage upon request by Buyer. For the avoidance of doubt, nothing in this Article shall provide Buyer with any rights or interest with respect to such insurance policy or any amount paid thereunder.

**ARTICLE 16**  
**DISPUTE RESOLUTION**

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

16.2 Dispute Resolution; Arbitration.

16.2.1 Any dispute or claims arising under this Agreement that cannot be resolved by the Parties through negotiation by the Parties' managers within thirty (30) Days after notice of such dispute or claim shall be referred to senior executives (president or a vice president) of the Parties for resolution, which executives shall have the authority to decide or resolve the matter in dispute. If such senior executives are unable to resolve any such

dispute or claim to the mutual satisfaction of the Parties within thirty (30) Days after such matter has been referred to such senior executives by the Parties' managers, then upon notice by either Party to resolve matter by arbitration, any such dispute or claim shall be resolved in accordance with Section 16.2.2.

16.2.2 In the event a dispute is not resolved by senior executives under Section 16.2.1 and a Party provides notice to resolve the matter by arbitration, the Parties agree to arbitrate such dispute in accordance with the following procedures:

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

16.2.2.2 The arbitration shall be conducted by a panel of three (3) arbitrators selected as follows:

(i) The Party initiating arbitration shall nominate one (1) arbitrator at the same time it sends the Demand. The other Party shall nominate one (1) arbitrator within twenty (20) Days of receiving the Demand. The two (2) arbitrators ("Party-Appointed Arbitrators") shall appoint a third arbitrator ("Third Arbitrator"). The Party-Appointed Arbitrators and the Third Arbitrator shall be attorneys who are competent

and experienced in matters involving the electric energy business in the United States, with at least ten (10) years of experience in the electric industry, and shall be impartial and independent of either Party and the Party-Appointed Arbitrators. None of the Party-Appointed Arbitrators or Third Arbitrator shall have provided services to either Party or any of their respective Affiliates within the last five (5) years. Each Party shall pay for the expenses incurred by its Party-Appointed Arbitrator and the costs of the Third Arbitrator shall be divided equally between the Parties.

(ii) If the Party-Appointed Arbitrators are unable to agree on the Third Arbitrator within thirty (30) Days from initiation of arbitration, then the Third Arbitrator shall be selected by the AAA with due regard given to the selection criteria above and input from Seller, Buyer and the Party-Appointed Arbitrators. Parties shall undertake to request the AAA to complete selection of the Third Arbitrator no later than ninety (90) Days from the date of the Demand. Costs charged by the AAA for this service shall be borne by the Parties equally.

(iii) In the event the AAA should fail to select the Third Arbitrator within ninety (90) Days from the date of the Demand, then either Party may petition a court of competent jurisdiction in Florida to select the Third Arbitrator. Due regard shall be given to the selection criteria above and input from the Parties and the Party-Appointed Arbitrators.

(iv) If, prior to the conclusion of the arbitration, a Party-Appointed Arbitrator or the Third Arbitrator becomes incapacitated or otherwise unable to serve, then a replacement arbitrator shall be appointed in the manner described above and applicable to the original arbitrator being replaced.

16.2.2.3 The arbitration shall be held in [REDACTED] and shall be governed by the United States Arbitration Act, 9 U.S.C. §§ 1 et seq.

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

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

16.2.2.6 Unless otherwise ordered by the arbitrators, each Party shall bear its own costs and fees, including attorneys' fees and expenses. The Parties expressly agree that the arbitrators shall have no power to consider or award any

form of damages barred by Section 12.3, or any other multiple or enhanced damages, whether statutory or common law.

16.2.3 The Parties, to the fullest extent permitted by law, hereby irrevocably waive and exclude any rights of application or appeal or rights to state a special case for the opinion of the courts or any other recourse to the court system other than to enforce the Parties' agreement to resolve disputes in accordance with Article 16.

16.2.4 EACH PARTY UNDERSTANDS AND AGREES THAT ARBITRATION UNDER SECTION 16.2.2 IS MANDATORY AND WAIVES ANY RIGHT TO SEEK JUDICIAL RELIEF OR COURT PROCEEDINGS TO DETERMINE THE MATTERS UNDER SECTION 16.2.2 OTHER THAN THE RIGHT TO SEEK JUDICIAL RELIEF TO COMPEL ARBITRATION IN ACCORDANCE WITH THIS AGREEMENT.

**ARTICLE 17**  
**MISCELLANEOUS**

17.1 Assignment and Assumption of Obligations.

17.1.1 Neither Party may assign this Agreement or any portion thereof to any Person without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Any proposed assignee of this Agreement shall: (i) agree to assume the assigning Party's obligations hereunder, and (ii) deliver to the other Party such assurances regarding its financial condition and its ability to perform all obligations of the assigning Party hereunder, as the other Party may reasonably request. Any assignment of this Agreement made in compliance with the preceding sentences shall constitute an acceptance and assumption of such obligations by the assignee, a novation of the assignee in place of the assigning Party with respect to such



obligations (and any related interests so transferred), and a release and discharge by the other Party from, and an agreement by the other Party not to make any claim for payment, liability, or otherwise against the assigning Party with respect to, such obligations from and after the effective date of the assignment. Notwithstanding the foregoing, neither Party shall be required to accept any limitation of its rights under this Agreement or expansion of the liability, risks or obligations imposed on it under this Agreement due to an assignment of this Agreement [REDACTED]

[REDACTED]

[REDACTED] It shall be reasonable for either Party to condition its consent required by this Section 17.1 on the execution of amendments to this Agreement that are reasonably determined by such Party to be necessary to preserve the value and protection afforded to such Party under this Agreement, [REDACTED]

[REDACTED] It shall be a condition of any assignment or transfer of this Agreement that all Performance Security required under Article 5 shall remain in place notwithstanding such disposition, or that replacement security in form, substance and amount in full compliance with this Agreement or otherwise reasonably acceptable to Buyer, or Seller, as the case may be, shall have been provided prior to such disposition. Any purported assignment or transfer of this Agreement that is not in compliance with this Section 17.1 shall be null and void, and of no force and effect at the option of the non-assigning Party.

17.1.2 [REDACTED]

[REDACTED]

17.1.3 [REDACTED]

[REDACTED]

long as all Performance Security required under Article 5 remains in place notwithstanding such assignment, or replacement Performance Security that satisfies the requirements of Article 5 is provided in full compliance with this Agreement prior to such assignment.

17.2 Taxes.

17.2.1 [REDACTED]

[REDACTED]

17.2.2 Buyer shall pay, or cause to be paid, all Taxes on or with respect to subsequent sales made by Buyer to third Persons of the energy and Environmental Attributes received by Buyer under this Agreement. It is the intent of the Parties that

such Taxes for which Buyer is responsible shall not include: (i) any sales, transfer and other similar Taxes on the sale to Buyer of energy under this Agreement and/or the provision of Environmental Attributes to Buyer under this Agreement; (ii) any Taxes on or with respect to the Generation Facilities; (iii) any Taxes that are associated with environmental emissions from the Generation Facilities; or (iv) any Taxes on or with respect to the procurement and use of fuel.

17.2.3 Each Party shall use reasonable efforts to implement and administer the provisions of this Agreement in accordance with the intent of the Parties to minimize Taxes (including the provision of resale exemption certificates as applicable) so long as neither Party in its own good faith judgment is materially adversely affected by such efforts.

17.2.4 In the event Seller is required by law or regulation to remit or pay Taxes that are Buyer's responsibility hereunder, Seller may include such Taxes in the next Monthly invoice (on an After-Tax Basis) and Buyer shall remit payment thereof in accordance with Article 10; provided that if Seller does not elect to include such amounts, Buyer shall pay such amounts to Seller after receipt of an invoice pursuant to Article 10. Conversely, if Buyer is required by law or regulation to remit or pay Taxes that are Seller's responsibility hereunder, Buyer may deduct the amount of any such Taxes from the amounts otherwise due to Seller under this Agreement (on an After-Tax Basis), provided that if Buyer does not elect to deduct such amount, Seller shall pay such amount to Buyer upon request by Buyer. Any refunds associated with such Taxes will be handled in the same manner.

17.2.5 Notwithstanding anything to the contrary in this Agreement, each Party shall bear sole responsibility for the reporting and payment of any taxes on such Party's revenues or income.

17.3 No Partnership. Seller and Buyer do not intend for this Agreement to, and this Agreement shall not, create any joint venture, partnership, association taxable as a corporation, or other entity for the conduct of any business for profit. Neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, or to act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

17.4 Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon any respective permitted successors and assigns of Seller and Buyer.

17.5 No Third Party Benefit. Nothing in this Agreement shall be construed to create any duty, obligation or liability of Buyer to any person or entity not a party to this Agreement.

17.6 No Buyer Affiliate Liability. Notwithstanding any other provision of this Agreement, no Affiliate of Buyer (including any Affiliate of Buyer acting as Buyer's agent where Buyer's agent is given certain authorities pursuant hereto) shall have any liability whatsoever for any party's performance, nonperformance or delay in performance under this Agreement.

17.7 Time of Essence; No Waiver. Time is of the essence with respect to the performance under this Agreement. Neither Buyer's nor Seller's failure to enforce any provision or provisions of this Agreement shall in any way be construed as a waiver of any such provision or provisions as to any future violation thereof, nor prevent it from enforcing each and every other provision of this Agreement at such time or at any time thereafter. The waiver by either Buyer or Seller of any right or remedy shall not constitute a waiver of its right to assert said right

or remedy, at any time thereafter, or any other rights or remedies available to it at the time of or any time after such waiver.

17.8 Amendments. This Agreement may be amended by and only by a written instrument duly executed by both Parties, each of which has received all approvals of Governmental Authorities of competent jurisdiction necessary for the effectiveness thereof.

17.9 Notice. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); or (c) on the third (3rd) Day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications shall be sent to the respective Parties at the following addresses (or at such other address for a Party as shall be specified in a notice given in accordance with this Section 17.9):

(i) **To Buyer:**

Gulf Power Company  
Attn: Project Manager Renewables  
One Energy Place  
BIN 0335  
Pensacola, Florida 32520

**with copies to:**

Southern Company Services, Inc.  
Attn: Vice President, Commercial Operations and Services  
600 18th Street North  
Birmingham, AL 35291

(ii) **To Seller:**

Managing Director  
Morgan Stanley Capital Group Inc.  
2000 Westchester Avenue  
Purchase, NY 10577

**with a copy to:**

Legal Department – Commodities  
Morgan Stanley Capital Group Inc.  
2000 Westchester Avenue  
Purchase, NY 10577

17.10 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

17.11 Cross-References. All cross-references contained in this Agreement to Sections, are to the Sections of this Agreement, unless otherwise expressly noted.

17.12 Article and Section Headings. The descriptive headings of the various Sections of this Agreement have been inserted for convenience of reference only and shall in no way modify or restrict any of the terms or provisions hereof.

17.13 Entire Agreement. This Agreement constitutes the entire understanding between the Parties and supersedes any previous agreements related to the subject matter hereof between the Parties.

17.14 Reliance. The Parties have entered into this Agreement in reliance upon the representations and mutual undertakings contained herein and not in reliance upon any oral or written representations or information provided by one Party to the other Party not contained or incorporated herein.

17.15 Governing Law. The validity, interpretation and performance of this Agreement, and each of its provisions, shall be governed by the laws of the state of Florida.

17.16 Submission to Jurisdiction; Waiver of Jury Trial.

17.16.1 OTHER THAN THE SPECIFIC MATTERS TO BE RESOLVED BY ARBITRATION UNDER ARTICLE 16 OF THIS AGREEMENT, ANY LEGAL SUIT, ACTION OR PROCEEDING ARISING OUT OF OR BASED UPON THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE BROUGHT IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA, OR IF JURISDICTION IS NOT AVAILABLE IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA, IN THE CIRCUIT COURT IN PENSACOLA, FLORIDA, AND EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING. THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY OBJECTION TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR ANY PROCEEDING IN SUCH COURTS AND IRREVOCABLY WAIVE AND AGREE NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

17.16.2 EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING

WAIVER IN THE EVENT OF A LEGAL ACTION, (B) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY AND KNOWINGLY AFTER CONSULTING WITH ITS OWN COUNSEL, AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL PROVISIONS IN THIS SECTION 17.16.2.

17.17 Confidentiality.

17.17.1 The Parties acknowledge that portions of this Agreement contain Confidential Information and that this Agreement may require the Parties to disclose additional Confidential Information to one another. Each Party agrees that it shall not, without the written consent of the other Party or as otherwise provided herein, disclose to any third party (other than to Buyer's retail operating Affiliates, or Affiliates of the Receiving Party or consultants and advisors to such Affiliates and the Receiving Party who need to know such information in connection with the performance of their duties or services for such Affiliates or such Receiving Party), such portions of this Agreement, or the terms or provisions hereof, or any additional Confidential Information disclosed pursuant to such Party's performance of this Agreement and identified as Confidential Information at the time of such disclosure, except to the extent that disclosure is requested by a Governmental Authority with jurisdiction over the Party or that disclosure to a third party is required by Legal Requirements or the rules or listing requirements of any stock exchange or trading market on which securities issued by the Receiving Party or any of its Affiliates are listed or quoted or as otherwise authorized under this Agreement; provided, however, that a Party shall notify the other Party, to the extent reasonably practicable, of



any Legal Requirement, proceeding, rule, request or requirement of which it is aware that may result in disclosure and use reasonable efforts to prevent or limit the disclosure consistent with its obligations with respect to the applicable disclosure requirement. The Parties acknowledge and agree that disclosure of Confidential Information by a Party in violation of this Section 17.17 could damage the other Party and that said other Party, therefore, has an interest in protecting such information by all legal means, and further that breach of the promises set forth in this Section 17.17 could cause irreparable damage to the Party possessing proprietary rights in information wrongfully disclosed, and still further that in the event of such breach, said Party shall have the right to seek an injunction, specific performance, or other equitable relief to prevent the violation of the promises set forth in this Section 17.17. For purposes of this Section 17.17.1, “Affiliates” with respect to Seller shall not include MSDPI.

17.17.2 The Parties agree to seek confidential treatment by all legal means of any Confidential Information (i) disclosed to the FPSC; (ii) disclosed to FERC; (iii) in connection with requests made under the Freedom of Information Act; provided, however, that the Parties acknowledge that certain terms, conditions and provisions of this Agreement may need to be disclosed to the FPSC or FERC, as the case may be, in connection with Buyer’s petition to the FPSC pursuant to Section 2.2 and under Buyer’s regulatory obligations before the FPSC and FERC. No assurance or commitment is made regarding the ability of Buyer to obtain confidential treatment of any Confidential Information.

17.17.3 Except as required under any Legal Requirement (and subject to Section 17.17.1), any public statement by a Party concerning the transaction described herein shall

be reviewed and agreed upon by the Parties before release to the public, which agreement shall not be unreasonably withheld, conditioned or delayed.

17.17.4 The provisions in this Section 17.17 are given in consideration of the Confidential Information and other mutual obligations and agreements set forth herein, the sufficiency of which is hereby acknowledged. This Section 17.17 shall be construed as an agreement independent of any other provision in this Agreement. If any provision in this Section 17.17 is held invalid in any respect, it shall not affect the validity or enforceability of other provisions of this Agreement. If any provision of this Section 17.17 is held to be unreasonable as to the time, scope or otherwise, or held to be in violation of public policy, it shall be construed by limiting and reducing it so as to be enforceable under then applicable law.

17.17.5 Notwithstanding anything in this Agreement to the contrary, the Parties agree that they (and their employees, representatives, and other agents) may disclose to any and all persons, without limitation of any kind from the commencement of discussions, the U.S. federal and state income tax treatment and tax structure of the transactions contemplated hereby and all materials of any kind (including opinions or other tax analyses) that are provided to it relating to the tax treatment and tax structure. For this purpose, "tax structure" is limited to facts relevant to the U.S. federal and state income tax treatment of the transactions contemplated hereby and does not include information relating to the identity of the Parties, their affiliates, agents or advisors.

17.18 Construction. The language used in this Agreement is the product of both Parties' efforts. Accordingly, each Party irrevocably waives the benefit of any rule of contract

construction that disfavors the drafter of a contract or the drafter of specific language in a contract.

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

17.20 Severability. If any provision, or any portion thereof, of this Agreement is determined to be invalid, illegal or unenforceable, the remaining provisions of this Agreement remain in full force, if the material purposes of this Agreement can be determined and effectuated.

17.21 Forward Contract Merchant. Each Party is a “forward contract merchant” within the meaning of the United States Bankruptcy Code.

17.22 Physical Delivery. The Parties agree that it is their intent, and that they have the ability, to make and take physical delivery of the products hereunder.

17.23 Mitigation of Damages. Each Party shall use commercially reasonable efforts to mitigate the damages incurred by such Party due to the other Party’s breach or default of this Agreement; provided, however, that: (i) in accordance with Section 6.5.2, neither Buyer nor its Affiliates shall be required to utilize or change their utilization of their owned or controlled assets (including electric generation facilities), purchased power or market positions in order to minimize the Replacement Price or Cover Costs for any given Hour; and (ii) in accordance with Section 6.6.2, neither Seller nor its Affiliates shall be required to utilize or change their utilization of their owned or controlled assets (including electric generation facilities), purchased

power or market positions in order to minimize the Sales Price or Cover Costs for any given Hour.

[The next page is the signature page.]

IN WITNESS WHEREOF, Seller and Buyer have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

**GULF POWER COMPANY**

By: Michael L. Burroughs  
Name: MICHAEL L. BURROUGHS  
Title: VICE-PRESIDENT

**Attest:**  
By: Terry A. Davis  
Terry A. Davis, Assistant Secretary

**MORGAN STANLEY CAPITAL GROUP INC.**

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

**EXECUTION VERSION**


**CONFIDENTIAL**

IN WITNESS WHEREOF, Seller and Buyer have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

**GULF POWER COMPANY**

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

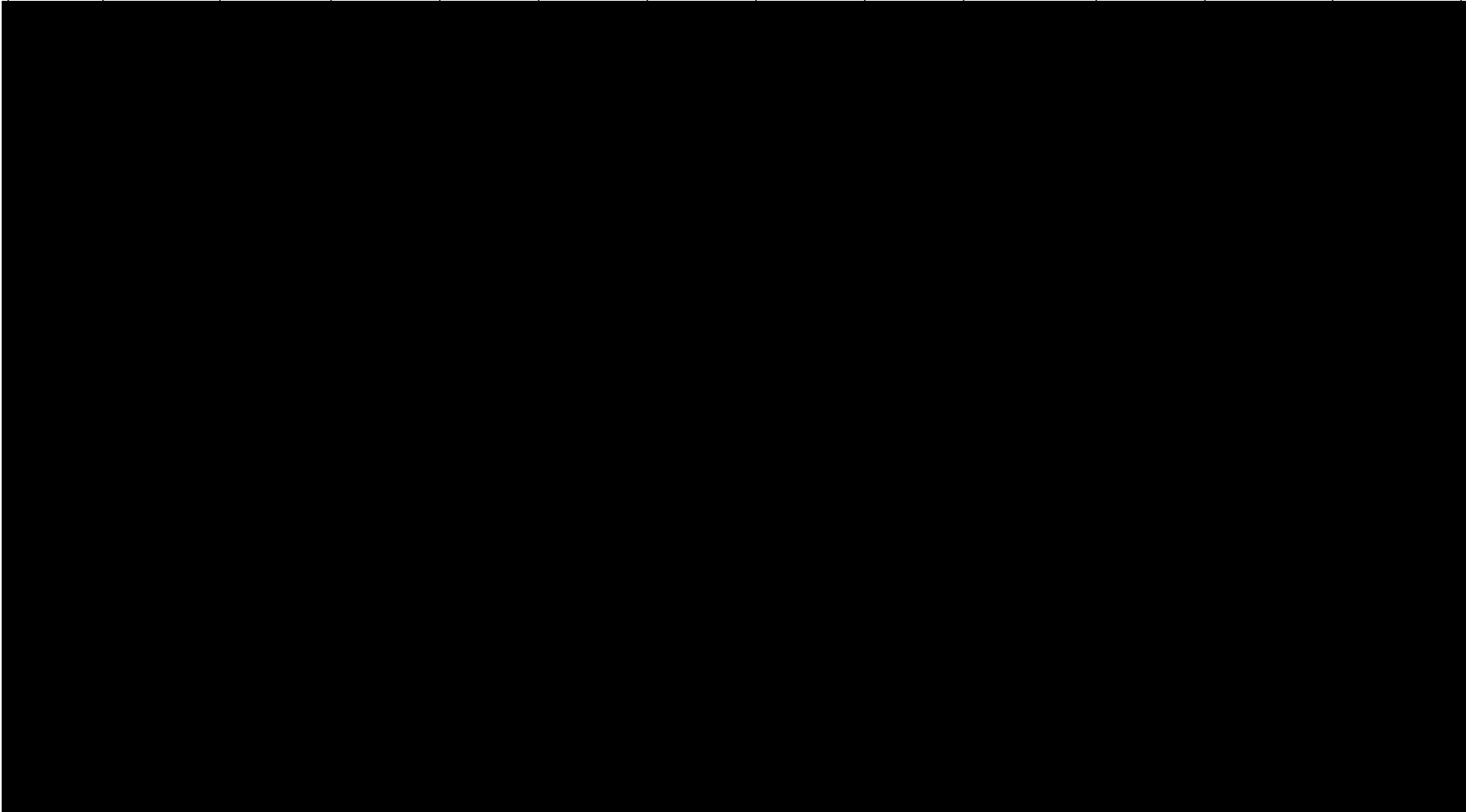
**MORGAN STANLEY CAPITAL GROUP INC.**

By:  \_\_\_\_\_  
Name: **MARTIN MITCHELL**  
Title: **AUTHORIZED SIGNATORY**

APPENDIX A

TOTAL HOURLY ENERGY (in MWh per Hour)

Hour Ending	January	February	March	April	May	June	July	August	September	October	November	December
-------------	---------	----------	-------	-------	-----	------	------	--------	-----------	---------	----------	----------



**APPENDIX B**

**MONTHLY ENERGY PAYMENT CALCULATION**

For each Month of the Service Term, the Monthly Energy Payment shall equal the sum of the Hourly Energy Charges (“HEC”) for all Hours of the Month. The HEC shall be determined for each Hour as follows:

$$\text{HEC} = \text{Delivered Energy} * \text{Energy Price}$$

Where:

Delivered Energy = The total amount of Delivered Energy (in MWh) for the applicable Hour.

Energy Price = The energy price (in \$/MWh) for the applicable year in which such Hour occurs, as set forth in Table B-1 below.

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APPENDIX C

FORM OF LETTER OF CREDIT

\_\_\_\_\_, 20\_\_

[Name and Address  
of Beneficiary]

Dear Sirs:

We hereby establish in your favor, for the account of [NAME OF ACCOUNT PARTY] (“[Account Party]”), with respect to the Energy Purchase Agreement dated as of December 18, 2014 between [Account Party] and you (“Beneficiary”) (the “PPA”), our irrevocable standby letter of credit no. \_\_\_\_\_ (the “Standby Letter of Credit”) whereby we hereby irrevocably authorize you to demand payment from us, in accordance with the terms and conditions hereinafter set forth, an amount not to exceed \_\_\_\_\_ United States Dollars (U.S. \$\_\_\_\_\_).

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

Delivery of such demands and such certificates shall be made on any day which is a business day for us at or prior to 5:00 p.m. (Eastern Prevailing Time) at our office located at \_\_\_\_\_, or at any other office in the United States of America which may be designated by us in a written notice delivered to you. If such demand and such certificate are received at either such office, all in strict conformity with the terms and conditions of this Standby Letter of Credit, on or prior to the expiration date hereof, we hereby agree with you that we will duly honor the same within three (3) business days of such presentation. Notwithstanding the foregoing, Beneficiary may demand payment under this Standby Letter of Credit by telecopy or e-mail when promptly confirmed by written demand; however, actual disbursement of funds pursuant to a demand presented by telecopy or e-mail shall not occur until we are presented with the original Standby Letter of Credit.

This Standby Letter of Credit is effective immediately and expires at 5:00 p.m. (Atlanta time) on \_\_\_\_\_, 20\_\_. It is a condition of this Standby Letter of Credit that it will be deemed automatically extended for successive periods of one year each from the present or any future expiration date (but in no event later than \_\_\_\_\_, 20\_\_), unless we notify you, in writing, by certified or registered mail at your respective addresses, not less than ninety (90) days prior to any such date, that we have elected not to extend such expiration date for such additional period.

We hereby undertake that we will not modify, revoke or terminate this Standby Letter of Credit without your written consent. Except as stated herein, payment of demands made under this Standby Letter of Credit is not subject to any condition or qualification. This Standby

Letter of Credit sets forth in full the terms of our undertaking, and such undertaking shall not be modified, annulled or amplified by reference to any other document, instrument or agreement referred to herein or in which the Standby Letter of Credit is referred or to which the Standby Letter of Credit relates, and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement. Our obligations hereunder are primary obligations that shall not be affected by the performance or non-performance by [Account Party] of any obligations under any loan agreement or under any agreement between [Account Party] and you or between [Account Party] and us or between [Account Party] and its agents.

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

This Standby Letter of Credit is transferable in its entirety (but not in part). Each letter of credit issued upon any such transfer and assignment may be successively transferred and assigned. Transfer of this Standby Letter of Credit to any transferee shall be effected by the presentation to us of this Standby Letter of Credit accompanied by a certificate in the form attached as Annex 2 hereto, with appropriate insertions. Upon such presentation we shall forthwith issue an irrevocable letter of credit to such transferee with provisions therein consistent with this Standby Letter of Credit.

To the extent not contrary to the express terms hereof, this Standby Letter of Credit shall be governed by the International Standby Practices (herein referred to as the "ISP98"). This Standby Letter of Credit shall be deemed to be a contract made under the laws of the state of [\_\_\_\_\_] and shall, as to matters not governed by the ISP98, be governed by and construed in accordance with the laws of the state of [\_\_\_\_\_].

Yours very truly,

[ISSUING BANK]

ANNEX 1

CERTIFICATE

Re: Energy Purchase Agreement dated \_\_\_\_\_, 20\_\_ between [Name of Account Party] (“[Account Party]”) and [Name of Beneficiary] (“[Beneficiary]”) (the “PPA”).

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

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

Pursuant to the provisions of the PPA, an event has occurred under the PPA that entitles Beneficiary to demand payment under the Standby Letter of Credit in the amount of the demand accompanying this certificate (an example of such an event includes, without limitation, an Event of Default described in the PPA).

or

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

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

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

[BENEFICIARY]

By:  
Title:

By:  
Title:

ANNEX 2

INSTRUCTION TO ASSIGN IN ENTIRETY

\_\_\_\_\_, 20\_\_

\_\_\_\_\_

Re: Irrevocable Standby Letter of Credit No.

Gentlemen:

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

(Name of Assignee)

(Address)

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

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

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

Very truly yours

[Beneficiary]

By:  
Title:

By:  
Title:

## APPENDIX D-1

## BUYER GUARANTY AGREEMENT

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

**WHEREAS** Beneficiary and \_\_\_\_\_ (the “Company”), [a subsidiary of the Guarantor], have entered into that certain Energy Purchase Agreement dated as of \_\_\_\_\_, 20\_\_ (the “Agreement”);

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

**WHEREAS**, the Guarantor qualifies as a “Guarantor” under the Agreement and this Guaranty qualifies as an “Eligible Guaranty” under the Agreement; and

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

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

## ARTICLE 1 - DEFINITIONS

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

## ARTICLE 2 - GUARANTY

2.1 *Guaranty.* Guarantor hereby unconditionally and irrevocably guarantees to the Beneficiary and its successors and assigns, the prompt and full payment and performance of any and all obligations of the Company to the Beneficiary when due, whether by acceleration or otherwise, with such interest as may accrue thereon, under the Agreement (the “Guaranteed Obligations”); provided, however, that Guarantor’s liability under this Guaranty shall in no event exceed the amount of the Required Buyer Post Amount required to be provided by Buyer from time to time pursuant to Article 5 of the Agreement. If Company fails to pay or perform any Guaranteed Obligation, then Guarantor will immediately pay for or perform or cause the performance of such obligation upon demand by the Beneficiary.

2.2 *Guaranty Absolute.* (a) The Guarantor absolutely guarantees that the Guaranteed Obligations will be paid and performed strictly in accordance with the terms of the Agreement, regardless of any law or regulation now or hereafter in effect in any jurisdiction affecting any of such terms or the rights of the Beneficiary with respect thereto. This Guaranty constitutes a guarantee of payment and performance and not of collection. The obligations of the

Guarantor hereunder are several from the Company or any other person, and are primary obligations concerning which the Guarantor is the principal obligor. The liability of Guarantor under this Guaranty shall be direct and immediate and not conditional or contingent upon the pursuit of any remedies against the Company or any other person, nor against securities or liens available to the Beneficiary, its successors or assigns. The liability of the Guarantor under this Guaranty shall be irrevocable, absolute and unconditional irrespective of, and the Guarantor hereby irrevocably waives any defenses it may now have or hereafter acquire in any way relating to, any or all of:

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

This Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Guaranteed Obligations is rescinded or must otherwise be returned by the Beneficiary or any other Person upon the insolvency, bankruptcy, or reorganization of the Company, all as though such payment had not been made.

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

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

### 2.3 *Waivers and Acknowledgments.*

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

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

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

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



## ARTICLE 3 - REPRESENTATIONS AND WARRANTIES

The Guarantor hereby represents and warrants to the Beneficiary as follows:

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

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

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

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

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

## ARTICLE 4 - MISCELLANEOUS

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

4.2 *Notices.* All notices, requests, demands and other communications which are required or may be given under this Guaranty shall be in writing and shall be deemed to have

been duly given when actually received if (a) personally delivered; (b) transmitted by facsimile, electronic or digital transmission method; or (c) if sent by certified or registered mail, return receipt requested. In each case notice shall be sent:

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

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

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

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

4.5 *Entire Agreement; Amendments.* This Guaranty and any agreement, document or instrument attached hereto or referred to herein integrate all the terms and conditions mentioned herein or incidental hereto and supersede all oral negotiations and prior writings in respect to the subject matter hereof. In the event of any conflict between the terms, conditions and provisions of this Guaranty and any such agreement, document or instrument, the terms, conditions and provisions of this Guaranty shall prevail. This Guaranty may only be amended or modified by an instrument in writing signed by each of the Guarantor and the Beneficiary and any permitted assignees of the Beneficiary.

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

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

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

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

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

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

**[Company]**

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

## APPENDIX D-2

## SELLER GUARANTY AGREEMENT

Morgan Stanley

1585 BROADWAY

NEW YORK, NY 10036-8293

[DATE]

To: [COUNTERPARTY]

Ladies and Gentlemen:

In consideration of Gulf Power Company, a Florida corporation (hereinafter "Counterparty") having entered into or entering into that certain Energy Purchase Agreement dated as of [DATE] with Morgan Stanley Capital Group Inc., a Delaware corporation (hereinafter "Obligor") (such Energy Purchase Agreement, together with all annexes, exhibits and schedules thereto, all as amended from time to time, hereinafter the "Agreement"), Morgan Stanley, a Delaware corporation (hereinafter "Guarantor"), hereby irrevocably and unconditionally guarantees to Counterparty and its successors and assigns, with effect from the date of the Agreement, the due and punctual payment of all amounts payable by Obligor under the Agreement when the same shall become due and payable, whether on scheduled payment dates, upon demand, upon declaration of termination or otherwise, in accordance with, and subject to, the terms of the Agreement and giving effect to any applicable grace period (the "Guaranteed Obligations"); provided, however, that Guarantor's liability under this Guaranty Agreement shall in no event exceed the amount of the Required Seller Post Amount required to be provided by Seller from time to time pursuant to Article 5 of the Agreement. Upon failure of Obligor punctually to pay any such amounts, and upon written demand by Counterparty to Guarantor at its address set forth in the signature block of this guarantee (the "Guarantee") (or to such other address as Guarantor may specify in writing), Guarantor agrees to pay or cause to be paid such amounts; *provided* that delay by Counterparty in giving such demand shall in no event affect Guarantor's obligations under this Guarantee. This Guarantee is a guarantee of payment and not of collection. For the avoidance of doubt, this Guarantee does not apply to transactions that are given up for clearing to a derivatives clearing organization.

Guarantor hereby agrees that its obligations hereunder shall be continuing and unconditional and will not be discharged except by complete payment of the amounts payable under the Agreement, irrespective of (1) any claim as to the Agreement's validity, regularity or enforceability or the lack of authority of Obligor to execute or deliver the Agreement; or (2) any change in or amendment to the Agreement; or (3) any waiver or consent by Counterparty with respect to any provisions thereof; or (4) the absence or existence of any action to enforce the Agreement, or the recovery of any judgment against Obligor or of any action to enforce a judgment against Obligor under the Agreement; or (5) the dissolution, winding up, liquidation or insolvency of Obligor, including any discharge of obligations therefrom; or (6) any similar circumstance which might otherwise constitute a legal or equitable discharge or defense of a guarantor generally.

Guarantor hereby waives diligence, presentment, demand on Obligor for payment or otherwise (except as provided hereinabove), filing of claims, requirement of a prior proceeding against Obligor and protest or notice, except as provided for in the Agreement with respect to amounts payable by Obligor. If at any time payment under the Agreement is rescinded or must be otherwise restored or returned by

Counterparty upon the insolvency, bankruptcy or reorganization of Obligor or Guarantor or otherwise, Guarantor's obligations hereunder with respect to such payment shall be reinstated upon such restoration or return being made by Counterparty.

Guarantor represents to Counterparty, as of the date hereof, that:

1. it is duly organized and validly existing under the laws of the jurisdiction of its incorporation and has full power and legal right to execute and deliver this Guarantee and to perform the provisions of this Guarantee on its part to be performed;
2. its execution, delivery and performance of this Guarantee have been and remain duly authorized by all necessary corporate action and do not contravene any provision of its certificate of incorporation or by-laws or any law, regulation or contractual restriction binding on it or its assets;
3. all consents, authorizations, approvals and clearances (including, without limitation, any necessary exchange control approval) and notifications, reports and registrations requisite for its due execution, delivery and performance of this Guarantee have been obtained from or, as the case may be, filed with the relevant governmental authorities having jurisdiction and remain in full force and effect and all conditions thereof have been duly complied with and no other action by, and no notice to or filing with, any governmental authority having jurisdiction is required for such execution, delivery or performance; and
4. this Guarantee is its legal, valid and binding obligation enforceable against it in accordance with its terms except as enforcement hereof may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights or by general equity principles.

Each of the provisions contained in this Guarantee shall be severable and distinct from one another and if one or more of such provisions are now or hereafter becomes invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions of this Guarantee shall not in any way be affected, prejudiced or impaired thereby.

By accepting this Guarantee and entering into the Agreement, Counterparty agrees that Guarantor shall be subrogated to all rights of Counterparty against Obligor in respect of any amounts paid by Guarantor pursuant to this Guarantee, *provided* that Guarantor shall be entitled to enforce or to receive any payment arising out of or based upon such right of subrogation only to the extent that it has indefeasibly paid in full all amounts payable by Obligor under the Agreement.

This Guarantee shall be governed by and construed in accordance with the laws of the State of New York, without reference to its choice of law doctrine. All capitalized terms not otherwise defined herein shall have the respective meanings assigned to them in the Agreement.

**MORGAN STANLEY**

By: \_\_\_\_\_

Name:

Title:

Address: 1585 Broadway  
New York, NY 10036

Attn: Treasurer

Fax No.: 212-762-0337

Phone: 212-761-4000



**APPENDIX F**

**TRANSFER OF INFORMATION ACKNOWLEDGEMENT**

Morgan Stanley Capital Group Inc. (“Seller”) and Gulf Power Company (“Buyer”) have entered into that certain Energy Purchase Agreement (“Agreement”) dated as of December 18, 2014. The Agreement contemplates that certain information that could be considered to be non-public information that potentially has implications under the Federal Energy Regulatory Commission’s Standards of Conduct will be provided by Seller to Buyer and/or Southern Company Services, Inc. as agent for the transmission owning subsidiaries of Southern Company (Alabama Power Company, Georgia Power Company, Gulf Power Company, and Mississippi Power Company). Seller acknowledges that such information is being provided for the purposes of operational implementation and administration of the Agreement (which includes conducting Gulf Power Company’s system operations and dispatch functions) and will be utilized by individuals in both Transmission Provider and Energy Affiliate/wholesale marketing unit functions under the Standards of Conduct.

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

Acknowledged on behalf of Seller:

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



APPENDIX G

DETERMINATION OF SELLER SECURITY AMOUNT AND  
BUYER SECURITY AMOUNT

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

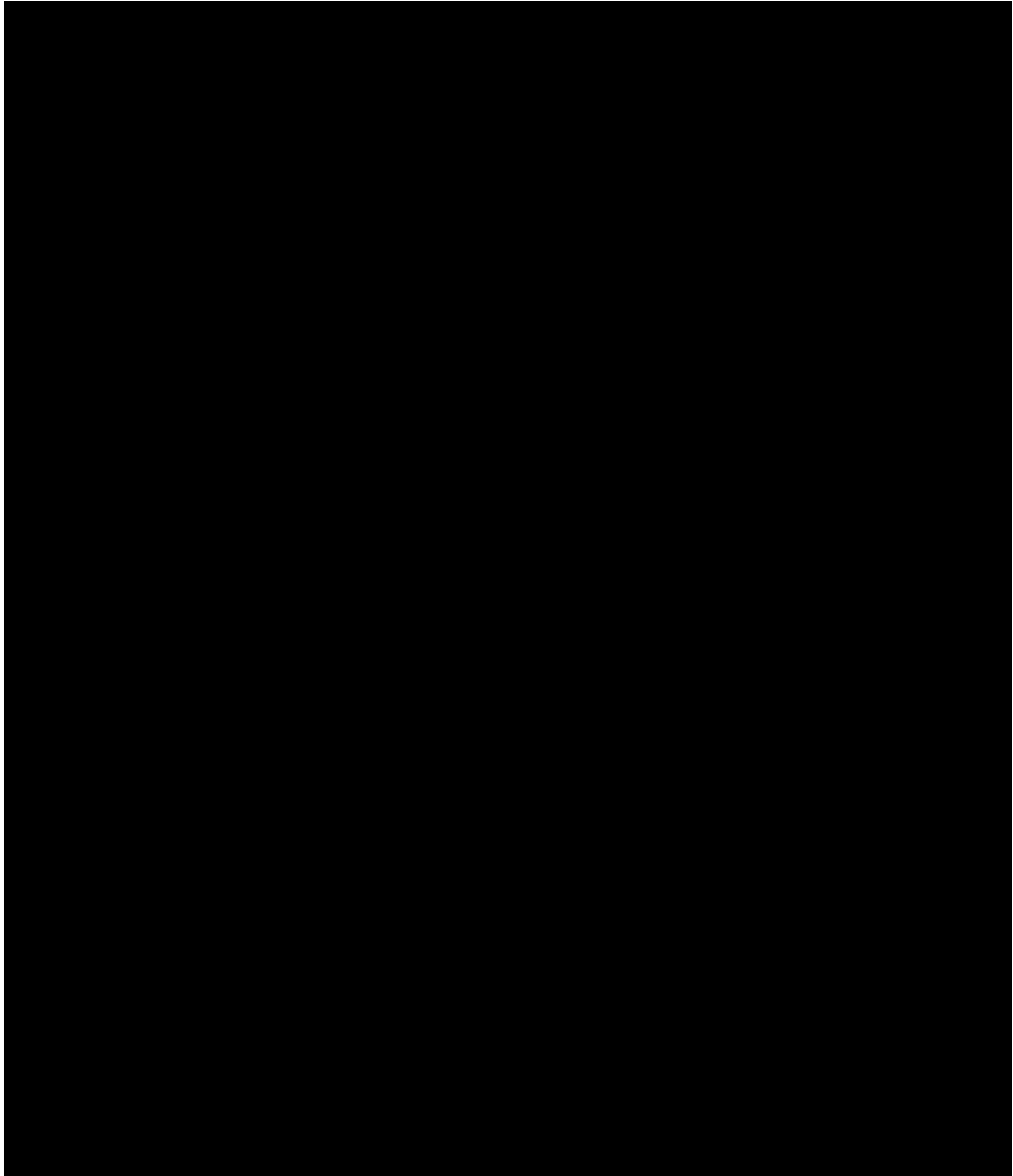
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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



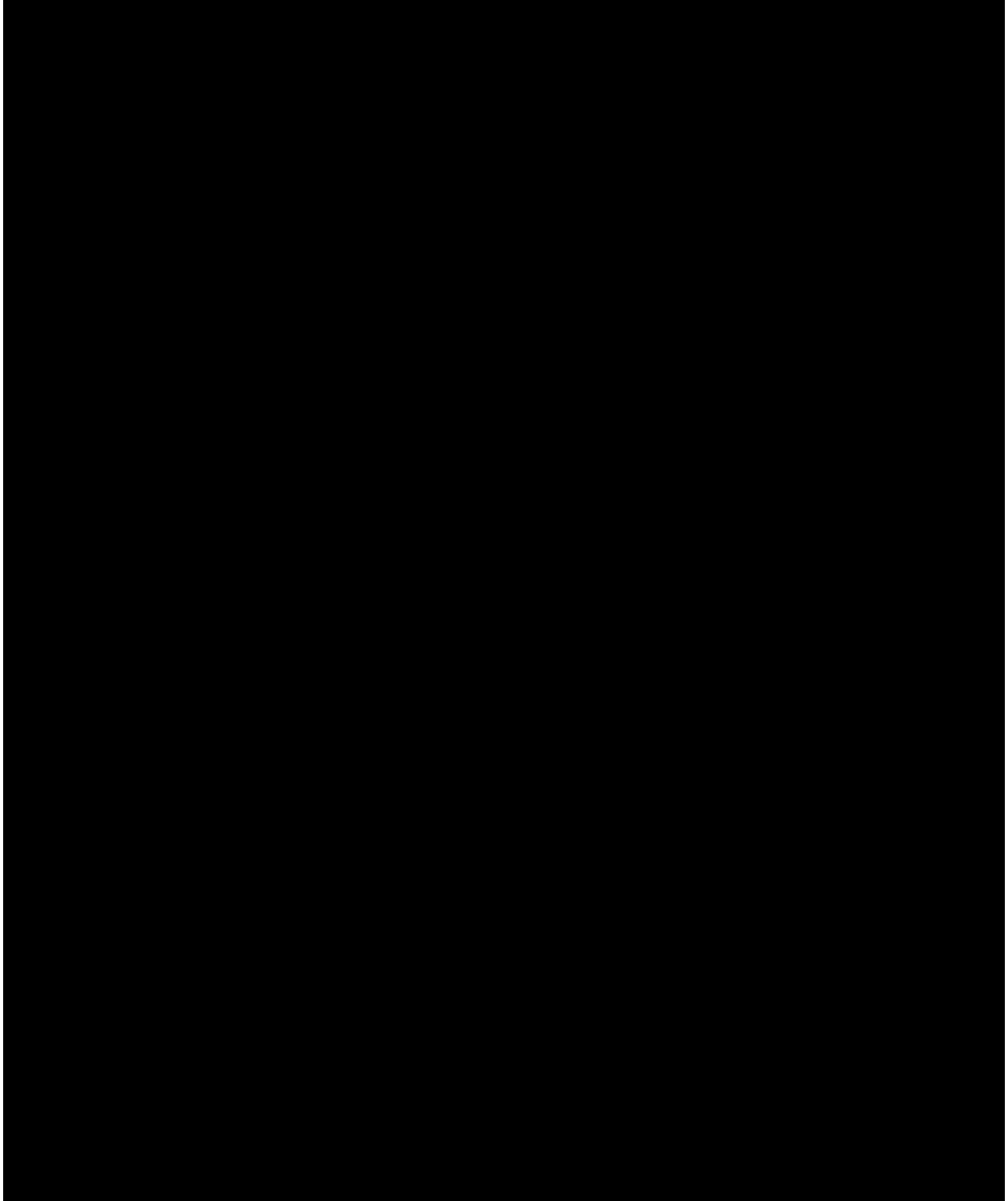
[Redacted]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Table G-1

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]





APPENDIX H

EXAMPLE STATEMENT OF COVER COSTS

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]							[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]