

STANDARD OFFER CAPACITY AGREEMENT

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This STANDARD OFFER CAPACITY AGREEMENT (“Agreement”), dated as of [] (“Effective Date”), is entered into by and between [UTILITY], a corporation organized under the law of the New Jersey (“Utility”) and [CAPACITY SELLER], a corporation organized under the law of [] (“Generator”).

WHEREAS, the State of New Jersey has established the Long-Term Capacity Agreement Pilot Program (“LCAPP”) to promote construction of qualified electric generation facilities pursuant to P.L.____ c. __ (C.____) (the “Act”);

WHEREAS, the Act requires that each Electric Public Utility enter into a standard offer capacity agreement as described in the Act and in a form approved by the New Jersey Board of Public Utilities with each Eligible Generator approved by the New Jersey Board of Public Utilities;

WHEREAS, Generator has commenced or intends to commence construction of an [] MW electric power generation facility located in [], [] after January 28, 2011 (the “Capacity Facility”);

WHEREAS, Generator is willing to commit to offer and clear [] MW of unforced capacity of the Capacity Facility into each Base Residual Auction conducted by PJM for all Delivery Years through the Conclusion Date.

WHEREAS, Generator is willing to commit to offer all the electric energy output and ancillary services of the Capacity Facility into the PJM markets during the Delivery Term;

WHEREAS, Generator’s selection to participate in the LCAPP as an Eligible Generator has been approved by the New Jersey Board of Public Utilities;

WHEREAS, this Agreement is in the form approved by the New Jersey Board of Public Utilities;

WHEREAS, Utility is an Electric Public Utility; and

WHEREAS, Generator and Utility have entered into a security agreement (the “Security Agreement”), dated as of the date hereof and attached hereto as Attachment A, pursuant to which Generator grants Utility, as security for Generator’s payment obligations hereunder, a first priority security interest in any and all payments Generator receives from PJM for Generator’s supply of unforced capacity in the RPM in each Delivery Year for, and to the extent to which, Generator has any payment obligation to Utility under Section 4.1.2 of this Agreement.

NOW, THEREFORE, in consideration of the foregoing and mutual terms and conditions set forth herein, and for further good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

SECTION 1
DEFINITIONS; RULES OF INTERPRETATION

1.1. Defined Terms. Unless otherwise required by the context in which any term appears, initially capitalized terms used herein have the following meanings:

“Act” is defined in the first Recital hereof.

“Affiliate” means, with respect to any Person, each Person that directly or indirectly controls, is controlled by, or is under common control with such designated Person. For purposes of this definition, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any Person, shall mean (a) the direct or indirect right to cast at least ten percent (10%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of at least ten percent (10%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person.

“Agreement” is defined in the Preamble hereof.

“Annual Forecasted Peak Demand” means in the case of Utility, its forecasted peak demand and, in the case of another Electric Public Utility, the forecasted peak demand of such other Electric Public Utility, for a given Delivery Year as determined by PJM and published in the most recent PJM Load Forecast Report issued before the start of the Delivery Year.

“Applicable Law” means all legally binding constitutions, treaties, statutes, laws, ordinances, rules, regulations, orders, interpretations, permits, judgments, decrees, injunctions, writs and orders of any Governmental Authority or arbitrator that apply to the LCAPP or any one or both of the parties to this Agreement or the terms hereof.

“Automated Clearing House” or “ACH” means an electronic network for financial transactions administered by NACHA-The Electronic Payments Association.

“Available Capacity Amount” means the lesser of: (i) the quantity of unforced capacity from the Capacity Facility that is offered by Generator and cleared by PJM in the relevant Base Residual Auction, and (ii) the quantity of unforced capacity from the Capacity Facility that the Capacity Facility is deemed by PJM to be capable of supplying for the Delivery Year in accordance with the RPM Rules; provided, however, if the Available Capacity Amount exceeds the Awarded Capacity Amount then in such case for purposes of the calculations required under Section 4.1, the Available Capacity Amount shall equal the Awarded Capacity Amount.

“Awarded Capacity Amount” means the amount of capacity for which the Board has approved Generator to enter into standard offer capacity agreements with the Electric Public Utilities pursuant to the Act, which amount is [] megawatts.

“Awarded Commencement Date” means the first day of the first Delivery Year for which the Board has approved Generator to receive or make payments under standard offer capacity agreements with the Electric Public Utilities pursuant to the Act, which date is June 1, [].

“Base Residual Auction” means the primary auction conducted by PJM as part of PJM’s Reliability Pricing Model to secure electrical capacity as necessary to satisfy the capacity requirements imposed under the PJM reliability assurance agreement for the Delivery Year.

“Board” means the New Jersey Board of Public Utilities or any successor agency.

“Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday.

“Calculation Dispute” is defined in Section 12.2.1.

“Capacity Facility” is defined in the third Recital hereof.

“Commencement Date” means the last to occur of: (i) the Awarded Commencement Date; and (ii) the date the Capacity Facility achieves commercial operation.

“Conclusion Date” means May 31, [].

“Defaulting Party” is defined in Section 9.1.1.

“Delivery Year” means each 12-month period from June 1st through May 31st numbered according to the calendar year in which it ends beginning on the Commencement Date and concluding on the Conclusion Date.

“Delivery Term” means the period commencing with the Commencement Date and concluding on the Conclusion Date.

“Denial of Utility’s Recovery” is defined in Section 8.1.3.

“Dispute” is defined in Section 12.1.

“Early Termination Date” means the date determined in accordance with Section 9.1.

“Effective Date” is defined in the Preamble hereof.

“EFORD” means a measure calculated by PJM of the probability that an electric power generating unit will not be available due to a forced outage or forced derating when there is a demand on the unit to generate.

“Electric Public Utility” means each of Public Service Electric and Gas Company, Atlantic City Electric Company, Jersey Central Power & Light Company, and Rockland Electric Company.

“Eligible Generator” means a developer of an electric power generating facility that the Board has determined to qualify as an “eligible generator” pursuant to the Act.

“Elimination or Substantial Modification of RPM” is defined in Section 8.1.4.

“Execution or Clearing Requirement” is defined in Section 8.1.5.

“Event of Default” is defined in Section 7.1.

“Generator” is defined in the Preamble hereof.

“Governmental Authority” means any international, national, federal, provincial, state, municipal, county, regional or local government, administrative, judicial or regulatory entity with jurisdiction over any party hereto, this Agreement, the LCAPP, or PJM, and includes any department, commission, bureau, board, administrative agency or regulatory body of any government.

“Interest Rate” means for any date, the per annum rate of interest equal to the yield on Two-Year U.S. Treasury Notes as may be published in *The Wall Street Journal* on such day (or if not published on such day the most recent preceding day on which published) plus sixty (60) basis points.

“Illegality” is defined in Section 8.1.1.

“Invalidity of the Act” is defined in Section 8.1.2.

“LCAPP” is defined in the first Recital hereof.

“Month” means a calendar month commencing on the first day of such month and ending on the last day of such month.

“NACHA Operating Rules” means the rules issued by NACHA – The Electronic Payments Association for the administration of the Automated Clearing House.

“Non-Defaulting Party” is defined in Section 9.1.1.

“Payment Date” is defined in Section 2.2.

“Person” means an individual, partnership, corporation, limited liability company, joint venture, association, trust, unincorporated organization, Governmental Authority, or other form of entity.

“PJM Interconnection, L.L.C.” or “PJM” means the regional transmission organization that manages the regional, high-voltage electricity grid serving New Jersey and all or parts of other states and, among other things, administers the Reliability Pricing Model, and any successor.

“Reliability Pricing Model” or “RPM” means PJM’s capacity-market model that secures capacity on behalf of electric load serving entities to satisfy load obligations not satisfied through the output of electric generation facilities owned by those entities or otherwise secured by those entities through bilateral contracts.

“Resource Clearing Price” or “RCP” means the clearing price (\$/MW-day) for the applicable Delivery Year established by the Base Residual Auction and posted by PJM for the unforced capacity offered into the Base Residual Auction from the Capacity Facility and cleared by PJM.

“RPM Rules” means the provisions of PJM’s tariffs and agreements accepted by the Federal Energy Regulatory Commission and the provisions of PJM’s manuals governing the Reliability Pricing Model, as in effect from time to time during the term of this Agreement.

“Security Agreement” is defined in the ninth Recital hereof.

“Standard Offer Capacity Price” or “SOCP” means the price at which the Board has approved Generator to enter into standard offer capacity agreements with the Electric Public Utilities pursuant to the Act, which price is \$[]/MW-day.

“Termination Date” means the earlier to occur of (i) the Conclusion Date or (ii) the Early Termination Date.

“Termination Event” is defined in Section 8.1.

“Total Annual Forecasted Peak Demand” for a given Delivery Year means the sum of the Annual Forecasted Peak Demands for each Electric Public Utility for such Delivery Year.

“Transaction” means the calculations, payments and payment obligations under Section 4.1 and the related provisions of this Agreement (including without limitation Section 2.1).

“Unpaid Amounts” owing to any party means, with respect to an Early Termination Date, the amounts that became payable to such party under Section 2.1 in respect of the Transaction on or prior to such Early Termination Date (including amounts not paid by the other party on the ground of the occurrence of an Event of Default, in accordance with Section 2.4) and which remain unpaid as at such Early Termination Date, together with (to the extent permitted under Applicable Law) interest from (and including) the date such amounts were to have been paid to (but excluding) such Early Termination Date, at the Interest Rate. Such amounts of interest will be calculated on the basis of a 360-day year, daily compounding and the actual number of days elapsed.

“Utility” is defined in the Preamble hereof.

“Utility’s Load-Ratio Factor” means the percentage derived by dividing Utility’s Annual Forecasted Peak Demand by Total Annual Forecasted Peak Demand, both for a given Delivery Year.

1.2. Rules of Interpretation

1.2.1. General. Unless otherwise required by the context in which any term appears, (a) the singular includes the plural and vice versa; (b) references to “Articles,” “Sections,” “Schedules,” “Annexes,” “Appendices” or “Exhibits” (if any) are to articles, sections, schedules, annexes, appendices or exhibits hereof; (c) all references to a particular entity or an electricity or gas market price index include a reference to such entity’s or index’s successors and (if applicable) permitted assigns; (d) the words “herein,” “hereof” and “hereunder” refer to this Agreement as a whole and not to any particular Section or subsection hereof; (e) references to this Agreement include a reference to all appendices, annexes, schedules and exhibits hereto, as the same may be amended, modified, supplemented or replaced from time to time; (f) the masculine includes the feminine and neuter and vice versa; (g) the definitions of terms herein shall apply equally to the singular and plural forms of the terms defined; (h) “including” means “including, without limitation” or “including, but not limited to”; and (i) the word “or” is not necessarily exclusive.

1.2.2. Terms Not to be Construed For or Against Either Party. Each term hereof will be construed simply according to its fair meaning and not strictly for or against either party. No term hereof will be construed against a party on the ground that the party is the author of that provision.

1.2.3. Headings. The headings used for the sections and articles hereof are for convenience and reference purposes only and will in no way affect the meaning or interpretation of the provisions hereof.

1.2.4. Rounding. Calculations of megawatt-days will be rounded to the nearest third decimal place.

SECTION 2
OBLIGATIONS

2.1. General Conditions. Each party will make each payment specified herein to be made by it, including without limitation the payments under Section 2.2, subject to Section 2.4 and the other provisions hereof.

2.2. Calculation and Payment of Transaction Amounts. In the case of the first Delivery Year, no less than thirty (30) days prior to the Awarded Commencement Date and, in the case of each subsequent Delivery Year, no less than thirty (30) days prior to the commencement of such Delivery Year, Utility will provide a statement to Generator of the result of the calculation under Section 4.1 for the Delivery Year, specifying the party obligated to make payments with respect to such Delivery Year, and the monthly amount of such payments, including any correction made under Section 2.9. The party obligated to make payments will make such payments with respect to each Month on or before the last Business Day of the

subsequent Month (the “Payment Date”) to the account specified herein in freely transferable funds via electronic funds transfer through a system that provides for final credit no later than one business day after transfer including without limitation the ACH. If payment is made through ACH, the paying party will originate the ACH credit for receipt the following Business Day. Each party agrees to be bound by the NACHA Operating Rules in connection with payments made via ACH and agrees that the origination of all ACH transactions will comply with applicable provisions of U.S. law. Whenever payments are made via ACH, the receiving party hereby authorizes the paying party to initiate credit entries to the account of the receiving party at the receiving party’s financial institution as set forth in Section 2.6. This authorization will remain in full force and effect until a party has received prior written notice from the other party of its termination, such notice to be provided in such time and in such manner as to afford the party receiving such notice a reasonable opportunity to act on it.

2.3. Obligations of Generator.

2.3.1. Generator shall cause the Capacity Facility to qualify under the RPM Rules as a capacity resource in an amount no less than the Awarded Capacity Amount for the Base Residual Auction associated with each Delivery Year during the term of this Agreement, commencing upon the Commencement Date.

2.3.2. Generator shall cause the Capacity Facility to achieve commercial operation no later than the Awarded Commencement Date.

2.3.3. Throughout the Delivery Term, Generator shall:

(a) Cause the Capacity Facility to comply with all obligations of a capacity resource under the RPM Rules, including without limitation the obligations relating to the submission of offers to supply electric energy and ancillary services in PJM markets, and Generator shall bear all costs associated with such compliance, including without limitation all fees and penalties imposed by PJM;

(b) Submit a supply offer for the Awarded Capacity Amount from the Capacity Facility in accordance with the RPM Rules in the Base Residual Auction associated with each Delivery Year during the term of this Agreement, which supply offer shall clear in each such Base Residual Auction;

(c) Provide on a timely basis (which, in the case of documentation provided to Generator by PJM, shall mean within five (5) Business Days of Generator’s receipt of such documentation) all documentation required by Utility to make the calculations and notifications required by Sections 2.2 and 4.1, including without limitation: (i) documentation provided to Generator by PJM after the conclusion of each Base Residual Auction showing the amount of unforced capacity offered from the Capacity Facility and cleared by PJM in such Base Residual Auction; (ii) documentation provided to Generator by PJM in advance of each Delivery Year showing the all EFORd measurements for the Capacity Facility for the Delivery Year; (iii) the result of any capability test of the Capacity Facility conducted by PJM; (iv) documentation

provided to Generator by PJM in advance of each Delivery Year showing the Available Capacity Amount for the Delivery Year or required to calculate the Available Capacity Amount for the Delivery Year; and (v) documentation notifying Generator of any correction to an input to a calculation, as provided in Section 2.9; provided that Generator may redact from any such documentation data that do not relate to the Capacity Facility;

(d) Provide on a timely basis all documentation reasonably requested by Utility to demonstrate Generator's compliance with all of its obligations as set forth in this Section 2.3 and affirmative covenants as set forth in Section 6. Utility shall have the right, upon reasonable notice to Generator, to request such information once each year and, in addition, upon the occurrence of any event or upon Utility's receipt of information that gives Utility reasonable grounds for concern in good faith as to Generator's compliance with one or more such obligations; and

(e) Fulfill all Generator's obligations under, and otherwise comply with all terms of, the Security Agreement.

2.4. Conditions Precedent to Obligations. Each obligation of each party under this Agreement is subject to (1) the condition precedent that no Event of Default with respect to the other party has occurred and is continuing and (2) the condition precedent that no Early Termination Date has occurred or been effectively designated.

2.5. Suspension of Obligations.

In the event the Board exercises its authority under the Act to suspend the applicability of any provision of the Act that (i) imposes an obligation on either party to make any payment to another party; (ii) assures Utility of recovery from ratepayers through a non-bypassable irrevocable charge of all costs directly or indirectly associated with this Agreement or any costs of the agent retained to implement provisions of the Act; or (iii) imposes an obligation on Generator to offer and clear capacity from the Capacity Facility in the Base Residual Auction, then, no payment pursuant to Sections 2.1, 2.2 and 4.1 with respect to any Delivery Year or portion of a Delivery Year that is within the period of suspension shall be owed by either party, and the non-performance of the requirements of those provisions with respect to the period of suspension shall not be an Event of Default.

2.6. Accounts; Change of Account

2.6.1. Payments are to be made to the following accounts:

Generator:

Pay:

For the Account of:

Account Number:

Fed. ABA Number:

Utility:

Pay:

For the Account of:

Account Number:

Fed. ABA Number:

2.6.2. Either party may change its account for receiving a payment by giving written notice to the other party, which notice will be effective for the next payment date that is at least five Business Days after the effective date of such notice unless such other party gives timely notice of a reasonable objection to such change.

2.6.3. The parties agree that any payments hereunder shall be deemed made in full when confirmation is received from the financial institution holding the account into which payment is made that the payment has been successfully received in immediately available funds. Such confirmation shall be considered by the parties as conclusive evidence of receipt.

2.7. Default Interest; Other Amounts. Prior to the occurrence or effective designation of an Early Termination Date, a party that defaults in the performance of any payment obligation will, to the extent permitted by law and subject to Section 9.3.3, be required to pay interest (before as well as after judgment) on the overdue amount to the other party on demand for the period from (and including) the original due date for payment to (but excluding) the date of actual payment, at the Interest Rate. Such interest will be calculated on the basis of a 360-day year, daily compounding and the actual number of days elapsed. Each payment will be made in U.S. Dollars in freely transferable funds via electronic funds transfer, as set forth in Section 2.2, on the relevant Payment Date (or if that date is not a Business Day, on the next Business Day).

2.8. Calculations. Utility shall make all calculations of payments due under Sections 2.2 and 4.1 in accordance with the terms of this Agreement, in good faith and with commercial reasonableness, and its determinations and calculations will be binding, subject to the resolution of any Calculation Dispute. Inaccuracy in any calculation shall not be an Event of Default. The sole remedy of the parties with respect to any inaccuracy of a calculation will be the right (but not the obligation), to commence a Calculation Dispute.

2.9. Corrections to Input to Transaction Payment. If PJM revises any of the inputs required for Utility to calculate any payment required under Section 4.1, Utility will reflect the amount (if any) that is payable as a result of that correction (including without limitation interest on such amount payable from the date of original payment under Section 4.1 through the date of payment under this Section 2.9 at the Interest Rate) in the calculation of payment of payments due for the Delivery Year after Utility receives notice of the revision. Utility shall calculate the correction so as to place the parties in the same economic position after such payment as they would have been had the correct input been employed initially.

SECTION 3
TERM AND TERMINATION

This Agreement is effective as of the Effective Date and will remain in effect until the later to occur of the Termination Date or the fulfillment by the parties of all obligations hereunder.

SECTION 4
TRANSACTIONS

4.1. Transactions.

4.1.1. If, for a Delivery Year, the Standard Offer Capacity Price is greater than the Resource Clearing Price then, subject to Section 2.4, Utility will pay Generator each Month during the Delivery Year one-twelfth of the product of (i) the difference between the Standard Offer Capacity Price and the Resource Clearing Price for the applicable Delivery Year, (ii) the Available Capacity Amount, (iii) the number of days in the Delivery Year; and (iv) Utility's Load-Ratio Factor for the applicable Delivery Year.

4.1.2. If, for a Delivery Year, the Resource Clearing Price is greater than the Standard Offer Capacity Price then, subject to Section 2.4, Generator will pay Utility each Month an amount equal to one-twelfth of the product of (i) the difference between the Resource Clearing Price for the applicable Delivery Year and the Standard Offer Capacity Price, (ii) the Available Capacity Amount, (iii) the number of days in the Delivery Year, and (iv) Utility's Load-Ratio Factor for the applicable Delivery Year .

4.2. Structure of Transaction. Nothing in this Agreement shall entitle or obligate Utility to purchase or take delivery of capacity, electric energy or ancillary services from the Capacity Facility.

SECTION 5
REPRESENTATIONS AND WARRANTIES

5.1. Mutual Representations and Warranties. Each party represents to the other party, continuing from the Effective Date throughout the Delivery Term, that:

5.1.1. It is duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation and, if relevant under such laws, in good standing.

5.1.2. It has the power to execute this Agreement, the Security Agreement and any other documentation relating hereto or thereto, to deliver this Agreement, the Security Agreement and any other documentation that it is required by this Agreement or the Security Agreement to deliver and to perform its obligations hereunder or thereunder and has taken all necessary action to authorize such execution, delivery and performance.

5.1.3. Such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets.

5.1.4. Its obligations under this Agreement and the Security Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

5.1.5. All governmental and other consents that are required to have been obtained by it with respect to this Agreement and the Security Agreement are in full force and effect and all conditions of any such consents have been complied with.

5.1.6. No Event of Default or event which, with notice or the passage of time or both, would constitute an Event of Default has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations hereunder or under the Security Agreement.

5.1.7. All applicable information that is furnished in writing by or on behalf of it to the other party required by Section 6.1 is, as of the date of the information, true, accurate and complete in every material respect.

5.1.8. It is an "eligible contract participant" within the meaning of Section 1(a)18 of the Commodities Exchange Act, as amended.

5.1.9. In connection with the negotiation of, the entering into, and the confirming of the execution of, this Agreement: (i) it is acting as principal (and not as agent or in any other capacity, fiduciary or otherwise); (ii) the other party is not acting as a fiduciary or financial or investment advisor for it; (iii) it is not relying upon any representations (whether written or oral) of the other party other than the representations expressly set forth in this Agreement; (iv) the other party has not given to it (directly or indirectly through any other Person) any advice, counsel, assurance, guarantee, or representation whatsoever as to the expected or projected success, profitability, return, performance, result, effect, consequence, or benefit (either legal, regulatory, tax, financial, accounting, or otherwise) hereof; (v) it has consulted with its own legal, regulatory, tax, business, investment, financial, and accounting advisors to the extent it has deemed necessary, and it has made its own decision to enter into the

Transaction based upon its own judgment and upon any advice from such advisors as it has deemed necessary, and not upon any view expressed by the other party; and (vii) it is entering into this Agreement with a full understanding of all the risks hereof and thereof (economic and otherwise), and it is capable of assuming and willing to assume (financially and otherwise) those risks.

5.1.10. It is a “United States person” (within the meaning of section 7701(a)(30) of the Internal Revenue Code of 1986, as amended, and is exempt from backup withholding under Code section 3406 and relevant Treasury Regulations.

5.2. Generator’s Representations and Warranties. Generator hereby represents and warrants to Utility as of the Effective Date that:

5.2.1. Generator’s selection to participate in the LCAPP has been approved by the Board.

5.2.2. Generator is an Eligible Generator approved by the Board pursuant to the Act to enter into standard offer capacity agreements with the Electric Public Utilities for the Awarded Capacity Amount at the SOCP.

5.2.3. Generator will not, either alone or in combination with any Affiliate of Generator that is an Eligible Generator, enter into more than 700 MW of financially-settled standard offer capacity agreements pursuant to the LCAPP.

SECTION 6
AFFIRMATIVE COVENANTS

Each party agrees with the other that, so long as either party has or may have any obligation hereunder:

6.1. Furnish Specified Information.

6.1.1. Each party will deliver to the other party such proof of the names, true signatures and authority of Persons signing this Agreement on its behalf as the other party may reasonably request upon execution hereof;

6.1.2. Generator will deliver to Utility on a timely basis:

(a) All information required by the Utility to perform the calculations specified in Sections 2. 2 and 4.1, including without limitation information supplied to Generator by PJM;

(b) All documents, including all written notifications and other communications from PJM, related to Generator’s compliance or non-compliance with the RPM Rules

6.2. Maintain Authorizations. Each party will use all reasonable efforts, including the maintenance of records and provision of notices, to maintain in full force and effect all consents, licenses or approvals of PJM and of any Governmental Authority or other authority that are required to be obtained by it with respect to this Agreement and the Security Agreement and its obligations hereunder and thereunder and will use all reasonable efforts to obtain any that may become necessary in the future.

6.3. Comply with Laws and RPM Rules. Each party will comply in all material respects with all Applicable Laws and orders and all RPM Rules to which it may be subject if failure so to comply would materially impair its ability to perform its obligations hereunder or under the Security Agreement.

SECTION 7

EVENTS OF DEFAULT

7.1. Events of Default. The occurrence at any time with respect to a party of any of the following events constitutes an event of default (an “Event of Default”) with respect to such party:

7.1.1. Failure to Pay. Failure by the party to make, when due, any payment under this Agreement required to be made by it if such failure is not remedied on or before the third (3rd) Business Day after notice of such failure is given to the party.

7.1.2. Failure to Provide Information.

Failure by Generator to provide to Utility such information or documentation required by Section 2.3.3 or Section 6.1.2 if such failure is not remedied on or before the fifth (5th) Business Day after notice of such failure is given to Generator by Utility.

7.1.3. Breach of Agreement. Failure by the party to comply with or perform any agreement or obligation (other than an obligation to make any payment under this Agreement or to provide information or documentation) to be complied with or performed by the party in accordance with this Agreement if such failure is not remedied on or before the thirtieth (30th) day after notice of such failure is given to the party, or, in the case of a failure to comply with any applicable provision of the RPM Rules, within the time (if any) provided in the RPM Rules to remedy such failure.

7.1.4. Misrepresentation. A representation made or repeated by the party in this Agreement proves to have been incorrect or misleading in any material respect when made or repeated or deemed to have been made or repeated and such misrepresentation is not cured within thirty (30) days after such misrepresentation is made or repeated;

7.1.5. Bankruptcy. The party: (1) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (2) becomes insolvent or is unable to pay its debts or

fails or admits in writing its inability generally to pay its debts as they become due; (3) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (4) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition (A) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (B) is not dismissed, discharged, stayed or restrained in each case within fifteen (15) days of the institution or presentation thereof; (5) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (6) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets; (7) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within fifteen (15) days thereafter; (8) causes or is subject to any event with respect to it which, under the Applicable Laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (1) to (7) (inclusive); or (9) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts; or

7.1.6. Merger Without Assumption. The party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer the resulting, surviving or transferee entity fails to assume all the obligations of such party hereunder or under the Security Agreement.

7.1.7. Failure to Achieve Commercial Operation of the Capacity Facility.

Generator fails to cause the Capacity Facility to achieve commercial operation by no later than the six (6) months after the Awarded Commencement Date.

7.1.8. Failure to Participate in a Base Residual Auction

With respect to Generator, Generator fails to submit a supply offer for an amount equal to ninety percent (90%) or more of the Awarded Capacity Amount from the Capacity Facility in any Base Residual Auction with respect to a Delivery Year during the Delivery Term.

7.1.9. Failure to Clear a Base Residual Auction

With respect to Generator, Generator's supply offer from the Capacity Facility fails to clear in any Base Residual Auction with respect to a Delivery Year during the Delivery Term.

7.1.10. Security Agreement Default.

With respect to Generator: (i) failure by Generator to comply with any provision of, or to perform any of its obligations under, the Security Agreement if such failure is continuing after any applicable grace period has elapsed; (ii) the expiration or termination of the Security Agreement or the failing or ceasing of the Security Agreement to be in full force and effect; (iii) Generator disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, the Security Agreement; or (iv) a default or event of default, howsoever characterized, occurs under the Security Agreement.

SECTION 8
TERMINATION EVENTS

8.1. Termination Events. The occurrence at any time of any of the following events constitutes a Termination Event (a “Termination Event”).

8.1.1. Illegality. Due to the adoption of, or any change in, any Applicable Law after the Effective Date, or due to the promulgation of, or any change in, the interpretation by any court, tribunal or regulatory authority with competent jurisdiction of any Applicable Law after such date, it becomes unlawful (other than as a result of a breach by the party of Section 6.2) for a party:

- (1) to perform any absolute or contingent obligation to make a payment or to receive a payment in respect of the Transaction or to comply with any other material provision of this Agreement;
- (2) to perform any contingent or other obligation which the party has or any other material provision of this Agreement; or
- (3) to perform its obligations under the Security Agreement, to maintain the security interest under the Security Agreement or to maintain the first priority perfected status of such security interest.

8.1.2. Invalidation of the Act. If a court invalidates or declares unconstitutional the Act or portion thereof requiring or specifying some performance, right, or obligation of Utility or Generator.

8.1.3. Denial of Utility’s Recovery. If the Board or any court with jurisdiction denies Utility, or fails to uphold Utility’s right to, timely and complete recovery from ratepayers through a non-bypassable, irrevocable charge of any payment under this Agreement or any other cost directly or indirectly arising from Utility’s performance of this Agreement or any costs of the agent retained to implement provisions of the Act.

8.1.4. Elimination or Substantial Modification of RPM. If PJM's RPM is eliminated or modified in such a way that the performance, calculation and payment of the Transaction set forth in Sections 2 and 4 cannot be performed or implemented.

8.1.5. Execution or Clearing Requirement. The Transaction is determined to be subject to any requirement that it be executed or cleared on an exchange or a multiparty platform or similar facility.

SECTION 9 **REMEDIES**

9.1. Right to Terminate Following Event of Default or Termination Event.

9.1.1. If at any time an Event of Default with respect to a party (the "Defaulting Party") has occurred and is then continuing, then: (i) in the case of an Event of Default under Section 7.1.9, an Early Termination Date will occur immediately without further action by Utility upon Utility's obtaining notice of the results of a Base Residual Auction in which Generator's supply offer from the Capacity Facility fails to clear; or (ii) in the case of any other Event of Default, the other party (the "Non-Defaulting Party") may, by not more than twenty (20) days notice to the Defaulting Party specifying the relevant Event of Default, designate a day not earlier than the day such notice is effective as an Early Termination Date.

9.1.2. If at any time a Termination Event has occurred and is then continuing, then either party in the case of an Illegality, an Invalidity of the Act, an Elimination or Substantial Modification of RPM or an Execution or Clearing Requirement or Utility in the case of Denial of Utility's Recovery, may, by not more than twenty (20) days notice to the other party specifying the relevant Termination Event, designate a day not earlier than the day such notice is effective as an Early Termination Date.

9.2. Effect of Designation.

9.2.1. If notice designating an Early Termination Date is given under Section 9.1, the Early Termination Date will occur on the date so designated, whether or not the relevant Event of Default or Termination Event is then continuing.

9.2.2. Upon the occurrence or effective designation of an Early Termination Date, no further payments under Section 2.1 or 2.6 will be required to be made, and this Agreement shall be null and void, except with respect to the provisions hereof required to effect payments of the amounts, if any, payable in respect of an Early Termination Date, which amounts shall be determined and paid pursuant to Section 9.3.

9.3. Payments on Early Termination. If an Early Termination Date occurs, the following provisions will apply.

9.3.1. Events of Default. If the Early Termination Date results from an Event of Default, the Defaulting Party will pay the Non-Defaulting Party: (i) all Unpaid Amounts owing to the Non-Defaulting Party; (ii) all expenses payable under Section 9.4: and (iii), in the case of an Event of Default relating to participating in or clearing a Base Residual Auction, an amount equal to the product of (a) the amount, if any, by which the Resource Clearing Price for such Base Residual Auction exceeds the Standard Offer Capacity Price; (b) the Awarded Capacity Amount; (c) three hundred and sixty-five (365); and (d) the number of Delivery Years remaining in the Delivery Term starting with and including the Delivery Year associated with such Base Residual Auction.

9.3.2. Termination Events. If an Early Termination Date results from Section 8.1.1 (an Illegality), Section 8.1.2 (an Invalidity of the Act), or Section 8.1.5 (Execution or Clearing Requirement), each party shall return to the other party all amounts received from that party pursuant to Sections 2.2 and 4.1 of this Agreement. If an Early Termination Date results from Section 8.1.3 (a Denial of Utility's Recovery), the Generator shall return to Utility all amounts paid by Utility to Generator pursuant to Section 2.2 and 4.1 of this Agreement recovery of which has been denied Utility. If an Early Termination Date results from Section 8.1.4 (an Elimination or Substantial Modification of RPM), each party shall pay to the other all Unpaid Amounts owing pursuant to the terms of this Agreement.

9.3.3. Notice and Payment. The party designating an Early Termination Date shall provide notice of such Early Termination Date to the other party. Upon Utility's issuance or receipt of such notice, Utility shall, as soon as practicable, calculate the amounts payable under Section 9.3.1 or 9.3.2, as applicable, and shall provide the calculation to the parties, specifying the party who is obligated to pay and the amount of such payment. An amount calculated as being due in respect of an Unpaid Amount will be payable, as applicable: (i) on the day that notice of the amount payable is effective (in the case of an Early Termination Date which is designated or occurs as a result of an Event of Default); or (ii) on the day which is two (2) Business Days after the date on which notice of the amount payable is effective (in the case of an Early Termination Date which is designated as a result of a Termination Event). Such amount will be paid together with (to the extent permitted under Applicable Law) interest thereon (before as well as after judgment), from (and including) the relevant Early Termination Date to (but excluding) the date such amount is paid, at the Interest Rate. Such interest will be calculated on the basis of daily compounding and the actual number of days elapsed.

9.4. Expenses. A Defaulting Party will, on demand, indemnify and hold harmless the other party for and against all reasonable out-of-pocket expenses, including legal fees, incurred by the Non-Defaulting Party by reason of the enforcement and protection of its rights hereunder or under the Security Agreement or by reason of the early termination of the Transaction, including, but not limited to, costs of collection.

9.5. LIMITATION OF LIABILITY. NO PARTY WILL BE REQUIRED TO PAY OR BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT, OR PUNITIVE DAMAGES (WHETHER OR NOT ARISING FROM ITS NEGLIGENCE) TO ANY OTHER PARTY EXCEPT TO THE EXTENT THAT THE PAYMENTS REQUIRED TO BE MADE

PURSUANT HERETO ARE DEEMED TO BE SUCH DAMAGES. IF AND TO THE EXTENT ANY PAYMENT REQUIRED TO BE MADE PURSUANT HERETO IS DEEMED TO CONSTITUTE LIQUIDATED DAMAGES, THE PARTIES ACKNOWLEDGE AND AGREE THAT SUCH DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE AND THAT SUCH PAYMENT IS INTENDED TO BE A REASONABLE APPROXIMATION OF THE AMOUNT OF SUCH DAMAGES AND NOT A PENALTY.

SECTION 10 **TRANSFER**

10.1. Restriction of Assignments. Except as otherwise provided in this Section 10, neither party may assign this Agreement without (i) the other party's prior written consent, such consent not to be unreasonably delayed, conditioned or withheld, it being understood that refusal to consent to the assignment of the Agreement to a Person that does not own or control the operation of the Capacity Facility shall not be deemed to be unreasonable, and (ii) the prior written consent of the Board. Any assignment in violation of this provision shall be void.

10.2. Generator's Assignment Without Consent. Notwithstanding the foregoing or anything expressed or implied herein to the contrary, Generator may, without the prior written consent of Utility and the Board, assign this Agreement (i) to a purchaser of all or substantially all of the assets of Generator; or (ii) in connection with a merger of Generator with another Person or any other transaction resulting in a direct or indirect change of control of Generator; provided that such purchaser or the Person surviving such merger, as applicable, agrees in writing to be bound by the terms of this Agreement, including the satisfaction of all obligations through its ownership of or control over the operation of the Capacity Facility, and not from another electric generating facility.

10.3. Utility's Assignment Without Consent. Notwithstanding the foregoing or anything expressed or implied herein to the contrary, Utility may, without the prior written consent of Generator, assign this Agreement (i) to a purchaser of all or substantially all of the assets of Utility; or (iii) in connection with a merger of Utility with another Person or any other transaction resulting in a change of control of Utility; provided that such purchaser, Affiliate or the Person surviving such merger, as applicable, agrees in writing to be bound by the terms of this Agreement.

10.4. Assumption by Assignee; No Release from Liabilities. Any permitted assignee or transferee of a party's interest in this Agreement shall assume all existing and future obligations of such party to be performed under this Agreement. Whether or not prior written consent to an assignment is required hereunder, the assignor shall give notice to the other party promptly after a permitted assignment of this Agreement. Unless otherwise agreed to by the parties and except as set forth in Sections 10.2 and 10.3 above, upon any permitted assignment of this Agreement to an assignee and such assignee's written assumption of this Agreement, the assigning party shall be released from the performance of its obligations under this Agreement for the period from and

after the date of such assignment and assumption; provided, however, that in all other cases, the assigning party shall continue to be bound by this Agreement unless the parties otherwise agree.

SECTION 11
NOTICES

11.1. Effectiveness. Any notice or other communication in respect hereof may be given in any manner set forth below (except that a notice or other communication under Section 7, 8 or 9 will not be effective if given by facsimile transmission or electronic messaging system) to the address or number or in accordance with the electronic messaging system details provided and will be deemed effective as indicated: (i) if in writing and delivered in person or by courier, on the date it is delivered; (ii) if sent by telex, on the date the recipient's answerback is received; (iii) if sent by facsimile transmission, on the date that transmission is received by a responsible employee of the recipient in legible form (the burden of proving receipt will be on the sender and will not be met by a transmission report generated by the sender's facsimile machine); (iv) if sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), on the date that mail is delivered or its delivery is attempted; or (v) if sent by electronic messaging system, on the date that electronic message is received, unless the date of that delivery (or attempted delivery) or that receipt, as applicable, is not a Business Day or that communication is delivered (or attempted) or received, as applicable, after the close of business on a Business Day, in which case that communication will be deemed given and effective on the first following day that is a Business Day.

11.2. Addresses for Notices.

11.2.1. Addresses for notices or communications to Generator:

Address:

11.2.2. Address for notices or communications to Utility:

Address:

11.2.3. Change of Addresses. Either party may by notice to the other change the address, telex or facsimile number or electronic messaging system details at which notices or other communications are to be given to it.

SECTION 12

RESOLUTION OF DISPUTES

12.1. Notice of Dispute.

In the event of any dispute, controversy or claim arising out of or relating to this Agreement or the breach, termination or validity thereof should arise between the parties (a "Dispute"), a party may declare a Dispute by delivering to the other party a written notice identifying the disputed issue.

12.2. Resolution by the Parties

12.2.1. If the Dispute relates to the accuracy of Utility's calculation of any payment required to be made under this Agreement (a "Calculation Dispute"), then Generator must provide written notice of the Dispute to Utility within ten (10) Business Days of Generator's receipt of Utility's calculation of the payment pursuant to Section 2.2., which notice must state the nature of Generator's disagreement with Utility's calculation and include all documentation upon which Generator bases its disagreement. Within ten (10) Business Days of Utility's receipt of a written notice claiming a Calculation Dispute, Utility shall either: (a) notify Generator that Utility agrees the initial calculation was in error and provide a revised calculation of the payment that is the subject of the Calculation Dispute; or (b) provide Generator with the basis of Utility's determination that the calculation was correct, including all documentation upon which Utility relies. If Generator does not accept Utility's revised calculation or Utility's explanation of the original calculation, then, within ten (10) Business Days, executives of both parties shall meet at a mutually agreeable time and place and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the Dispute.

12.2.2. If the Dispute is not a Calculation Dispute, then upon receipt of a written notice claiming a Dispute, executives of both parties shall meet at a mutually agreeable time and place within ten (10) Business Days after delivery of such notice and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the Dispute. In such meetings and exchanges, a party shall have the right to designate as confidential any information that such party offers. No confidential information exchanged in such meetings for the purpose of resolving a Dispute may be used by a party in litigation against the other party.

12.2.3. Any correction to a calculation upon which the parties agree to resolve the Calculation Dispute, shall be reflected in the Utility's calculation under Section 2.2 for the next Delivery Year following the resolution of the Dispute.

12.3. Optional Resolution Through Arbitration

If the parties are unable to resolve a Dispute between themselves pursuant to Section 12.2, then, if both parties mutually agree to submit the Dispute to binding arbitration, then the disputing party may initiate binding arbitration in Newark, New Jersey, conducted in accordance with the then current American Arbitration Association's ("AAA") Large, Complex Commercial Rules or other mutually agreed procedures. If the parties do not mutually agree to submit a Dispute to binding arbitration, then either party may initiate a proceeding in a court of competent jurisdiction with respect to the Dispute.

12.4. Effect of Dispute

The pendency of a Dispute shall not suspend, either: (a) the obligation of the parties to perform their obligations under this Agreement, including the obligation to make payments, prior to a Termination Date; or (b) the effectiveness of a notice of an Event of Default under Section 9.1.1 or a notice designating an Early Termination Date under Section 9.1.2.

**SECTION 13
MISCELLANEOUS**

13.1. Entire Agreement. This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter and supersedes all oral communication and prior writings with respect thereto.

13.2. Amendments. No amendment, modification or waiver in respect hereof will be effective unless in writing (including a writing evidenced by a facsimile transmission) and executed by each of the parties or confirmed by an exchange of telexes or electronic messages on an electronic messaging system.

13.3. Remedies Cumulative. Except as provided in this Agreement, the rights, powers, remedies and privileges provided in this Agreement are cumulative and not exclusive of any rights, powers, remedies and privileges provided by law.

13.4. Counterparts. This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile transmission), each of which will be deemed an original.

13.5. No Waiver of Rights. A failure or delay in exercising any right, power or privilege in respect hereof will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or

further exercise, of that right, power or privilege or the exercise of any other right, power or privilege.

13.6. Governing Law and Jurisdiction

13.6.1. Governing Law. This Agreement will be governed by and construed in accordance with the substantive law of the State of New Jersey, without regard to the application of such state's laws relating to conflicts of laws.

13.6.2. Jurisdiction. With respect to any suit, action or proceedings relating hereto ("Proceedings"), each party irrevocably: (i) submits to the exclusive jurisdiction of the courts of the State of New Jersey; and (ii) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court, waives any claim that such Proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over such party. Nothing in this Agreement precludes either party from bringing Proceedings in any other jurisdiction in order to enforce any judgment obtained in any Proceedings referred to in the preceding sentence.

13.7. Waiver of Immunities. Each party irrevocably waives, to the fullest extent permitted by Applicable Law, with respect to itself and its revenues and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or other similar grounds from (i) suit, (ii) jurisdiction of any court, (iii) relief by way of injunction, order for specific performance or for recovery of property, (iv) attachment of its assets (whether before or after judgment) and (v) execution or enforcement of any judgment to which it or its revenues or assets might otherwise be entitled in any Proceedings in the courts of any jurisdiction and irrevocably agrees, to the extent permitted by Applicable Law, that it will not claim any such immunity in any Proceedings.

13.8. Waiver of Jury Trial. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. EACH PARTY ACKNOWLEDGES THAT IT AND THE OTHER PARTY HAVE BEEN INDUCED TO ENTER HEREINTO BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF the parties have executed this Agreement as of the date first above written.

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____