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February 14, 2011

Via Electronic Mail and Hand Delivery

Ms. Kristi Izzo
Secretary of the Board
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

Re: I/M/O the Long-Term Capacity Agreement Pilot Program ("LCAPP")
BPU Docket No. EO11010026

Dear Secretary Izzo:

Pursuant to the Board Order dated February 10, 2011 ("Board Order") in the above captioned matter, enclosed please find an original and ten (10) copies of the Division of Rate Counsel's ("Rate Counsel") comments to the form of Standard Offer Capacity Agreement ("SOCA") to be used in the LCAPP. Due to the tight timeframe and expedited schedule set forth in the Board Order, Rate Counsel submits these comments in lieu of a form of SOCA as requested by the Board. These comments will also be posted at www.nj-lcapp.com as directed in the Board Order. Please stamp and date the copy as "filed" and return it to our courier.

Introduction

New Jersey's recently enacted legislation P.L. 2011, c.9 ("LCAPP Law") allows for the construction of up to 2,000 MW of new baseload/intermediate capacity to be supported by hedged capacity contracts, referred to as SOCA. Under the LCAPP Law, each selected eligible generator ("Seller") will enter into a SOCA with each New Jersey electric utility. The utility will pay the Seller a \$ per MW-day capacity charge, as provided in the contract, minus the applicable capacity Resource Clearing Price ("RCP"). The utility never actually takes physical possession of the power. Rather, the legislation requires that the Seller sell its products into the PJM energy, capacity and ancillary service markets. No further detail is given other than the requirement that the Seller must offer the contract capacity into the PJM Base Residual Auction ("BRA") and that the capacity must "clear" the auction.

Rate Counsel submits at this time a discussion of the major elements that should be included in a model contract. Accompanying this outline is a useful example of a draft model contract ("Model Contract") prepared by the Maryland Public Service Commission ("MPSC") issued in December 29, 2010 along with a draft RFP (See, Attachment A, State of Maryland Public Service Commission Draft Request for Proposal I/M/O Whether New Generating Facilities Are Needed to Meet Long-Term Demand for Standard Offer Service MPSC Case No. 9214 Attachment 10). This Model Contract attached to the MPSC's draft RFP package is in a form to acquire up to 1,800 MW of new installed generating capacity. The MPSC draft RFP shares many common features with the New Jersey capacity pilot program, but there are also important differences. In particular, the MPSC requires Seller bids for energy and ancillary services, which New Jersey's legislation does not. Consequently, while much of the language in the Maryland draft contract is applicable to the SOCA, there are a number of differences.

The following outline identifies what Rate Counsel believes to be many of the key contracting features that should be reflected in the Form of SOCA approved by the Board.

Contracting Features

- (1) Introduction and Recitals. [Discussion of New Jersey’s public policy objectives and Buyer / Seller obligations]
- (2) Definitions. Should track definitions in the New Jersey legislation, as appropriate.
- (3) Physical Generation Facility. Although the SOCA is a purely financial contract, which is intended to provide financial (and hedging) benefits to both Buyer and Seller, the underlying public purpose is to support the construction of new generating capacity to ensure reliability and to serve the wholesale market. Thus, the SOCA requires a section of the contract that specifies, identifies and describes in detail the physical generating unit to be linked to the financial hedge transaction contract. This should correspond to the bid and the physical generating unit reviewed and approved by the Board and its agent (i.e., Levitan). See Article 2, for example, of the Maryland Model Contract (“Facility Description and Supplier’s Obligations during Development and Construction”). Ratepayers and the State are paying not just for a financial hedge but for an array of other benefits, i.e., job creation, environmental benefits, and reliability. Hence, the contract must require the facility to be built and ready to provide service, as proposed.
- (4) Seller’s Obligations and Commercial Operation. Even though the SOCA is a financial hedge contract, ratepayers have an interest in setting standards for performance. This is addressed in a very limited way in the legislation. After all, if the unit cannot operate

properly, ratepayers will not receive the full range of anticipated benefits from having new capacity. The form of SOCA should reflect the following standards:

- Operate in accordance with Prudent Utility Practice;
- Operate in compliance with PJM rules and regulations, any applicable NERC requirements;
- Buyer is not responsible for any penalties levied by PJM, NERC, FERC, EPA, etc. related to unit operation; and
- Establish a contractual target for unit availability, with penalties, if actual availability (on an annual basis) falls below the contractual target. The target availability can be defined excluding scheduled maintenance and can specify seasonal targets. Certain *force majeure* events (to be defined) would be exempted from the capacity factor compliance calculations.

(5) Operations Continued -- Market Participation. The legislation requires that the generating unit subject to this contract sell its generating products into the PJM capacity (specifically the PJM BRA) energy and ancillary services markets. For capacity, the contract should specify that the initial BRA shall be for the PJM planning year coinciding with the unit's planned in-service date and each succeeding BRA (or succeeding PJM capacity market mechanism) for the life of the contract.

In the case of the energy market, we recommend that the Seller bid into the PJM next-day market (and real-time market) at prices reflecting its actual variable operating cost. (This provision will help ensure ratepayers obtain maximum congestion reduction benefits from the operation of the unit even though the Seller retains all revenue margins from the sales. It also serves to maximize the environmental benefits.) The contract should permit an audit or compliance review mechanism by the Buyer and the Board.

To the extent feasible, the ancillary services that the unit can provide shall be bid into the PJM ancillary services markets at cost.

The Seller shall not be permitted to improperly withhold its generation products from the market, for example by improperly declaring unit's capacity to be derated or unavailable or by overstating costs.

The legislation requires the Seller's contract capacity shall clear the PJM BRA. The legislation does not specify the consequences of the capacity failing to clear the BRA process. Rate Counsel believes the intent is that in such a case the Seller would not receive his SOCA "delta" payment for that year.

- (6) Effective Date and Term. The contract is effective after the issuance of a Board Order approving the contract and upon execution by Buyer and Seller.

- (7) Capacity Amount. There are several issues pertaining to the contract capacity amount. First, presumably, the bidder will be bidding in anticipated rated capacity of the unit to be built, although conceivably it could be a portion of a unit. In conventional utility PPAs this is pretty straightforward, and is typically validated through annual performance testing. In this case, it may make sense to use the Unit's Unforced Capacity ("UCAP") as determined by PJM. That is, it should be the capacity amount (MWs) that the Seller bids into the BRA, as recognized by PJM.

The second contractual issue pertains to the Buyer's capacity obligation. Each utility is required to purchase only its load ratio share of capacity as determined by PJM's year-ahead load forecast. This should be clarified to be the utility's distribution load.

Administratively, it would make sense for the Board to specify and assign each utility its percentage allocation for each upcoming PJM planning year. The Buyer will want assurance that this sums to 100 percent of the total contract capacity approved by the Board in its original project selection process.

- (8) Seller Obligations and Payments. The generation products are the property of the Seller, and the Buyer does not take physical possession. The contract may specify a capacity price as \$ per MW-day. One contract issue is whether the SOCP is constant or can change from year-to-year. A constant price would be desirable for both simplicity, and to avoid undue “front loading”, which could burden ratepayers. The “MW” should be the amount recognized for Seller’s facility by PJM in the BRA multiplied by the utility’s allocated share (i.e., determined annually by the Board).

The contract also must specify the payment method. This is the contract price minus the BRA clearing price multiplied by the utility’s (i.e., the Buyer’s) MW obligation. The payment (or credit if the BRA clearing price exceeds the contract price) should be made monthly. If there are any performance penalties under the contract, they would be subtracted from the payment (or alternatively, the credit increased).

- (9) Representations and Warranties. This must be fully specified in the contract, but the contract should make clear that the Buyer has no responsibility or liability pertaining to any aspect of the ownership or operation of the unit. The Buyer’s obligation pertains to the SOCA payments.
- (10) Default, Termination and Force Majeure. There needs to be a specified list of conditions that would constitute default under the contract. Examples might include loss of PJM

membership or the unit failing to meet PJM standards, Seller bankruptcy, failure to make payments due to Buyer, etc. Default may or may not lead to contract termination since there should be “cure” opportunities. The Buyer should have the opportunity to exercise a termination right in the case of the Seller’s failure to make reasonable or acceptable progress with construction, obtaining necessary environmental permits, making unacceptable design changes to the unit, an extended unit outage or poor operational performance over a protracted period (standards to be defined). Similarly, the Seller should have the right to terminate if the Buyer is delinquent with or fails to make capacity payments.

The Default and Termination provisions (along with any performance penalties) would be subject to *force majeure* exceptions specified in the contract.

- (11) Security and Collateral. While not addressed in the legislation, the project should provide security and/or collateral from the effective date of the contract at least until the new generating unit is constructed and enters commercial service. The central purpose of the contract is to ensure the new capacity actually is built and is in service, providing capacity and energy to the wholesale market. Once the unit is completed and operating, there is far less concern. For example, even if the Seller ends up defaulting on the contract due to bankruptcy (i.e., unable to meet debt service), that really would not necessarily alter the unit’s physical operation.

The question is how and in what form such security should be provided. The Maryland RFP sets it at \$100 per kW during construction and \$50 per kW thereafter. (The latter declines linearly over the term, e.g., we understand that it begins at \$50

initially and \$5 in year ten of a ten year PPA.) These seem like commercially realistic amounts, and will help ensure that the Board does not approve projects where the developer is not certain he can actually succeed. That is, a collateral requirement provides the developer a big incentive not to cancel and walk away. The form of security will need to be specified in the contract. Typically, these can take the form of a bank Letter of Credit, an escrow account, a parental guarantee from an investment grade parent or a combination of the above. A number of details and parameters need to be addressed, but this is a standard commercial practice for long-term PPAs.

At this time, Rate Counsel does not see a need for the Buyer to provide security.

- (12) Assignment. Assignment should be subject to both Buyer and Board approval, with any new Seller agreeing to be bound by all contract terms and Board directives pertaining to the contract. Assignment to an affiliate of the Buyer might be problematic, but the Board approval requirement could address such concerns.

- (13) Contract Modification. Under the legislation, the Board cannot unilaterally change the SOCA contract. However, over time there may be a need to make contract amendments to adapt to changing conditions. No one can anticipate the changes in institutional arrangements or applicable law that can take place over the next 15 years that could affect the contract and the relationship between Buyer and Seller. This could include structural changes in the PJM market, key aspects of the PJM tariff and FERC regulation. The contract should include language stating that Buyer and Seller may mutually agree on and propose contract amendments that are intended to preserve the purposes of the contract specified in the New Jersey legislation and that are in the public interest. Any

such amendments shall be jointly submitted to the Board for approval by Seller and Buyer. Rate Counsel and Board Staff shall be copied on any such request for amendment.

Thank you for your consideration and attention to this matter.

Respectfully submitted,

STEFANIE A. BRAND
DIRECTOR, DIVISION OF RATE COUNSEL

By: s/ Ami Morita
Ami Morita, Esq.
Deputy Rate Counsel

Enclosures

C: President Lee A. Solomon, Board of Public Utilities

Attachment A

Attachment 10
Agreement
Fixed/Indexed Pricing Contract for Differences

WITNESSETH:

WHEREAS, pursuant to Section 7-510(c)(4)(ii)1.B, 7-510(c)(4)(ii)2.A and 7-510(c)(6) (collectively, parts of the “Customer Choice Act”) of the Maryland Public Utility Article, *Annotated Code of Maryland* (“PUA”), the Maryland Public Service Commission may require or allow an investor-owned electric company (“IOU”) to procure electricity through bilateral contracts, as part of a portfolio of blended wholesale supply contracts of short, medium or long terms, and other appropriate electricity products and strategies, as needed to meet demand in a cost-effective manner and to construct, acquire or lease, and operate its own generating facilities to meet long-term anticipated demand in the State; and

WHEREAS, the Buyer issued a Request For Proposals (“RFP”) to solicit offers to procure electricity through bilateral contracts for the construction, acquisition or lease and operation of generating facilities to meet long-term demand; and

WHEREAS, the MDPSC carefully evaluated the responses to the RFP, including the response submitted by the Supplier, and concluded that the Supplier is a qualified Respondent pursuant to the RFP, and that Supplier’s offer to supply ____ MW of Capacity (“Original Contract Quantity”), Energy, Ancillary Services and other products from the Facility pursuant to the terms of this Agreement meets the standards for selection in the RFP;

WHEREAS, the Buyer and Supplier wish to execute this Agreement in order to formalize their contractual arrangements on the terms and conditions set out herein;

WHEREAS, the Supplier will develop and operate the Facility to supply Capacity, Energy, Ancillary Services and other products from the Facility into the PJM Markets;

WHEREAS, the Buyer acknowledges that all payments it receives from the Supplier as a result of this Agreement, including any liquidated damages and/or Early Termination Payment, are for the benefit of Maryland ratepayers and should be credited back to Maryland ratepayers;

NOW, THEREFORE, in consideration of the promises and of the mutual agreements herein contained, the Parties to this Agreement covenant and agree as follows:

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Article 13 EXHIBITS

EXHIBIT A: FACILITY DESCRIPTION AND SITE MAP

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EXHIBIT C: DESIGN PARAMETERS OF THE FACILITY AND PERFORMANCE BENCHMARKS

EXHIBIT D: FINANCIAL OFFER

EXHIBIT E: CODE OF CONDUCT

EXHIBIT F: ANCILLARY SERVICES

EXHIBIT G: PRICING MECHANISM

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Article 1

General definitions

Initially capitalized terms used but not defined in this Agreement shall have the meanings set forth in the PJM Agreements or PJM Tariff (defined below). References to a given Article, Section, Subsection, or Exhibit are in reference to Articles, Sections, Subsections, or Exhibits in this Agreement, unless otherwise specified. The terms "hereof", "herein", "hereto", and "hereunder" refer to this Agreement as a whole. As used herein, the following terms shall have the following meanings:

"Actual Availability" means the ratio of Available Hours to Period Hours as reported by the Supplier to PJM based on the data in the GADS maintained by NERC or its successor, as applied in Section 3.4(c) of this Agreement.

"Additional Ratepayer Funding" has the meaning set forth in Section 3.3 in this Agreement.

"Adjustment Ratio" has the meaning set forth in Section 6.2(b) of this Agreement.

"Ancillary Services" has the meaning ascribed thereto in the PJM Agreements and shall include the Ancillary Services set forth in Exhibit F hereto.

"Availability" means the capability of a resource, in whole or in part, at any given time, to produce and supply Energy, Capacity, or Ancillary Services, infed from a node east of the Western Interface and deliverable to Maryland east of the Western Interface without congestion charges, in accordance with accepted electric industry practice, and "Available" shall mean that a resource is capable, in whole or in part, at a given time, to produce and supply Energy, Capacity, or Ancillary Services, dispatchable from a node east of the Western Interface and deliverable to Maryland east of the Western Interface without congestion charges, in accordance with such accepted electric industry practice standard. Period availability expressed as a percentage shall be equal to the Available Hours divided by Period Hours as set forth herein.

"Availability Deficiency" shall have the meaning set forth in Section 3.4(c) (4) of this Agreement.

"Available Hours" shall have the meaning set forth in the GADS Data Instructions Version 01/2006 Section IV-D "Unit Time" or its successor.

“Bankrupt” means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it (unless such receivership is dismissed or stayed within thirty (30) calendar days), (ii) makes an assignment or any general arrangement for the benefit of creditors other than collateral assignments or other security instruments in favor of a Financing Party, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

“Bankruptcy” means a proceeding under the Bankruptcy Code.

“Bankruptcy Code” means those laws of the United States of America related to bankruptcy codified and enacted as Title 11 of the United States Code, entitled “Bankruptcy” and found at 11 U.S.C. § 101 et seq., as such laws may be amended, modified, replaced or superseded from time to time.

“BRA” means the Base Residual Auction in PJM’s RPM or any successor to the RPM.

“Business Day” means any day except a Saturday, Sunday or a day that PJM declares to be a holiday, as posted on the PJM website. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. Eastern Prevailing Time (“EPT”).

“Buyer” means an electric company regulated by the MDPSC and the Party serving as the counterparty to the Supplier in this Agreement.

“Capacity” means the continuous load carrying capability of the generating Facility at a given time; this will be defined consistent with the PJM Agreements, as amended from time to time.

“Capacity Clearing Price” means the market clearing price in the RPM BRA or Incremental Auction for an applicable Delivery Year or any successor auction or equivalent market if an auction is no longer utilized

“Capability Testing” means the PJM testing of capacity resources to assess the seasonal claimed capability of each resource pursuant to PJM’s rules and Procedures for Determination of Generating Capability, or as specified in PJM Agreements, as it may be amended from time to time.

“Claiming Party” means the Party claiming relief from liability or obligations hereunder as the result of a Force Majeure event or circumstance.

“Code of Conduct” has the meaning defined in Exhibit to this Agreement.

“Commercial Operation” means a status under which the Facility has officially started commercial operations, and meets all of the requirements set out in Section 2.6 of this Agreement.

“Commercial Operation Date” means the date on which the Facility is supposed to attain Commercial Operation, as set forth in Exhibit B to this Agreement.

“Completion and Performance Security” has the meaning set forth in Section 10.1 of this Agreement.

“Confirmed Contract Quantity” means the quantity of Capacity in MW terms that the Supplier has offered to supply into the RPM BRA and that the Parties will be settling against under this Agreement, as confirmed at the Facility’s Commercial Operation Date.

“Contract Heat Rate” means the amount of energy in BTUs consumed by the Units to produce a kWh of energy as specified in the Supplier’s Proposal and listed in Exhibit C.

“Contract Summer Qualified Capacity” means the benchmark measure of capacity established in accordance with Section 2.6(e) of this Agreement.

“Contract Year” means a twelve (12) month period during the Term which begins on the Term Commencement Date or the anniversary date thereof.

“Cost of Service Agreement” means a type of contract with a generator for the provision of electric supply in exchange for a pre-established series of payments that cover the full costs of operation.

“Credit Rating” means the rating assigned to a Party’s or Qualified Institution’s unsecured senior long-term debt obligations (not supported by third party credit enhancements) or if a Party does not have a rating for its senior unsecured long-term

debt, then one rating notch below the rating then assigned to the Party as an issuer and/or corporate credit rating by S&P, Moody's, or Fitch. If there are split ratings, the lowest of the Credit Ratings will apply.

"Customer Choice Act" has the meaning set forth in the preamble to this Agreement.

"Day-Ahead Energy Market" means the hourly day-ahead energy market currently operated by PJM, or any successor market thereto.

"Day Ahead Locational Marginal Price" means the hourly energy market clearing price in the PJM Day-Ahead Energy Market at a specified location.

"Defaulting Party" has the meaning set forth in Section 8.6 of this Agreement.

"Delist" means removed from PJM Capacity Resource status, as provided in Appendix DD of PJM's Open Access Transmission Tariff, Section 5.6.6(d).

"Deliverable" means that the Facility is electrically interconnected to the PJM System and that the electrical output of the Facility is anticipated to flow to the benefit of Maryland load during transmission network peak loading conditions, as analyzed by PJM, or a competent third party acceptable to the MDPSC.

"Delivery Year" means the PJM Planning Period for which a Capacity Resource is committed pursuant to the RPM auction procedures.

"Disclosing Party" has the meaning set forth in Section 12.10 of this Agreement.

"Dispatchable" has the meaning set forth in the PJM Agreements.

"Early Termination Date" has the meaning set forth in Section 8.6 of this Agreement.

"Early Termination Payment" has the meaning set forth in Section 8.7 of this Agreement.

"EDC" means an Electric Distribution Company.

“Effective Date” has the meaning set forth in Section 5 of this Agreement.

“Energy” means a three-phase, 60-cycle alternating current electric energy, expressed in units of kilowatt-hours or megawatt-hours.

“EPC Contractor” means the Engineering, Procurement, and Construction Contractor responsible for designing and building the Facility.

“Escrow” means a deposit account held in a Qualified Institution bearing interest equal to 2% above a Qualified Institution’s prime rate.

“Event of Default” has the meaning set forth in Article 8 of this Agreement.

“Execution Date” means the later of (i) the date on which both Parties execute this Agreement or (ii) the date on which the second of the Parties executes this Agreement in the event that both Parties were unable to execute the Agreement on the same date, as set forth in the preamble to this Agreement.

“Export Offer” has the meaning that is defined in the PJM Tariff and Agreements.

“Facility” means as all land, rights of way, Units and related equipment and facilities of the electric generating plants to be or being constructed by the Supplier on site in connection with the Units. The Facility shall include, without limitation, the Units and all auxiliary equipment and facilities installed at the plant necessary or used for production, control, delivery or monitoring of electricity produced on the Site by such Units.

“Federal Power Act” means the Federal Power Act, 16 U.S.C. §§ 791 et seq, as amended from time to time.

“FERC” means the Federal Energy Regulatory Commission, or any successor thereto.

“Financial Participant” means the term used under the Bankruptcy Code, pursuant to 11 U.S.C 11 § 101 (22A), as it may be amended from time to time.

“Financing Parties” means the lending institutions (including any trustee or agent on behalf of such institutions) providing financing or refinancing, any other credit

enhancement or interest rate hedging products to the Supplier for the acquisition, construction, ownership, operation, maintenance, or leasing of the Facility.

“Fitch” means Fitch Investor’s Service, Inc., or its successor.

“Force Majeure” means an event or circumstance that (i) prevents one Party from performing its obligations under this Agreement; (ii) is not within the reasonable control of, or the result of the negligence of, the Claiming Party; and, (iii) by the exercise of due diligence, the Claiming Party is unable to overcome or avoid, or cause to be avoided; provided, however, notwithstanding the foregoing, none of the following events or circumstances will constitute Force Majeure: (a) the loss or failure of Supplier’s Fuel supply, except when caused by Force Majeure; (b) Supplier’s ability to sell Capacity at a price greater than the price set out in Article 6; (c) the breakdown of Supplier’s plant and/or equipment, except when caused by Force Majeure; (d) an occurrence or an event that merely increases the costs of, or causes an economic hardship to, a Party; and (e) Buyer’s ability to procure the supply of Capacity at a price lower than that set forth in Article 6 to this Agreement.

“Fuel” means any fuel used to start or operate the generating Facility. The type of Fuel used by this Facility is specified in Exhibit C to this Agreement.

“GADS” means the Generating Availability Data System (“GADS”), which is managed by NERC and which collects, records, and retrieves operating information from generators.

“Government Authority” means any federal, state, local, territorial or municipal government body; any governmental, judicial, regulatory or administrative department, agency, commission, board, bureau, body, or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory, or taxing authority or power, including any independent system operator or any control area operator, or any court or governmental tribunal.

“Incremental Auction” has the meaning set forth in the PJM Tariff and PJM Agreements.

“Indemnified Party” has the meaning set forth in Section 12.8 of this Agreement.

“Indemnifying Party” has the meaning set forth in Section 12.8 of this Agreement.

“Initial Notice” has the meaning set forth in Section 12.9 of this Agreement.

“Interconnection Agreement” means the contracts that each new generation Facility must sign with PJM and/or with the entity that owns the transmission or distribution facilities with which such new Facility interconnects in order to interconnect to the PJM electricity network, as specified by PJM rules on interconnections and the PJM Agreements.

“Investment Grade Rating” means a Credit Rating of “Baa3” or better from Moody’s, and “BBB-” or better from S&P or Fitch. If there are split ratings, the lowest of the Credit Ratings will apply.

“IOU” means an investor-owned Electric Company.

“Key Milestone Event” means the Milestone Events that are starred with an asterisk in Exhibit B to this Agreement.

“kW” means a kilowatt or kilowatts.

“Law” or “Laws” means all laws, rules, regulations, codes, injunctions, judgments, orders, decrees, rulings, interpretations, constitutions, ordinances, common law, or treaty, of a Government Authority.

“Letter(s) of Credit” means one or more irrevocable, transferable standby letters of credit issued by a U.S. commercial bank or a U.S. branch of a foreign bank. Requirements for qualified Letters of Credit under this Agreement are described in Article 10 of this Agreement.

“Market Based Rate Authorization” means the FERC process authorized pursuant to Section 205 of the Federal Power Act granting generators the right to sell Energy, Capacity, and/or Ancillary Services at market based rates.

“Market Change” means any change in the PJM Tariff, as well as any other significant and material change to the Tariff or the operation of the PJM Markets.

“MDPSC” means the Maryland Public Service Commission, or any successor thereto.

“Milestone Date” means the date by which a specific Milestone Event shall be completed, as laid out in Exhibit B to this Agreement.

“Milestone Event” means the end of each phase of Facility development, culminating in the Facility’s Commercial Operation. Milestone Events under this Agreement are provided in Exhibit B to this Agreement.

“Monthly Payment Amount” has the meaning set forth in Exhibit G hereto.

“Moody’s” means Moody’s Investors Service or its successor.

“MW” means a megawatt or megawatts.

“New Entry” has the meaning set forth in the PJM Tariff and PJM Agreements.

“Non-Claiming Party” means the counterparty under this Agreement to the Claiming Party.

“Non-Defaulting Party” has the meaning set forth in Section 8.6 of this Agreement.

“Non-Disclosing Party” has the meaning set forth in Section 12.10 of this Agreement.

“Non-Paying Party” has the meaning set forth in Section 6.5(c) of this Agreement.

“North American Electric Reliability Council” or “NERC” means the North American Electric Reliability Council or any successor organization.

“Off-peak Day-Ahead Locational Marginal Price” means hourly energy market clearing prices during off-peak hours in the PJM Day-Ahead Energy Market at a specified location, as defined by PJM.

“On-peak Day-Ahead Locational Marginal Price” means hourly energy market clearing prices during on-peak hours in the PJM Day-Ahead Energy Market at a specified location, as defined by PJM.

“Original Contract Quantity” means the RPM Contract Quantity that was specified in the Supplier’s Proposal and was listed in Exhibit D at the Execution Date, as may be adjusted pursuant to Section 2.5(d) of this Agreement.

“Parties” means collectively both the Supplier and the Buyer.

“Party” means either the Supplier or the Buyer.

“Pass-Through Component” means, if the proposed Generation Capacity Resource is offered on a Fixed/Indexed basis, Respondents may offer certain components of capital costs on a “pass-through” basis from the Respondent if such costs can not be determined until after the completion of certain analyses, such as gas or electric interconnection studies. In this case, the estimated capital cost of the items to be passed through must be provided in detail, along with a description of all assumptions regarding scope, level of confidence and other factors.

“Paying Party” has the meaning set forth in Section 6.5(c) of this Agreement.

“Period Hours” means all hours in a specified period of time.

“Permits” means all siting, environmental, and local municipal permits and/or approvals that must be obtained in order for a generation Facility to begin or continue operations in the state of Maryland.

“Person” means a natural person, firm, trust, partnership, limited partnership, limited liability company, or corporation (with or without share capital), joint venture, sole proprietorship, governmental entity, or other entity of any kind.

“PJM” means the PJM Interconnection, LLC or any successor organization thereto.

“PJM Agreements” means the PJM Operating Agreement, PJM Reliability Assurance Agreement, PJM West Reliability Assurance Agreement, and any other applicable PJM manuals or documents, or any successor, superseding or amended versions that may take effect from time to time.

“PJM Markets” means all markets currently operated by PJM, and any successor markets thereto, and any additional markets that may be developed by PJM in the future.

“PJM Planning Period” has the meaning set forth in the PJM Agreements. Currently, the PJM Planning Period is the twelve months beginning June 1 and extending through May 31 of the following year.

“PJM System” or “System” means the electricity network and wholesale market operated by PJM.

“Point of Interconnection” means the point on the electricity network at which the Facility interconnects to the electricity network, and is listed in Exhibit A of this Agreement.

“Proposal” means the proposal submitted by the Supplier to the MDPSC under the Buyer’s competitive solicitation process to encourage the development of new or incremental Capacity in the state of Maryland which resulted in this Agreement.

“Prudent Utility Practice” means the practices, methods, and acts recognized as good engineering practices applicable to the design, building, and operation of electric generating Facilities of similar type, size and capacity, and that at a particular time, in the exercise of reasonable judgment in light of the facts known or that shall reasonably have been known at the time a decision was made, will have been expected to accomplish the desired result in a manner consistent with applicable Law, Permits, equipment manufacturer’s recommendations, reliability, safety, environmental protection, and the Supplier’s obligations under this Agreement. With respect to the Facility, Prudent Utility Practice includes (but is not limited to) taking reasonable steps to ensure that:

1. equipment, materials, resources, and supplies, including spare parts inventories, are available to meet the Facility’s needs;
2. sufficient operating personnel are available at all times and are adequately experienced and trained and licensed as necessary to operate the Facility properly (taking into account manufacturers’ guidelines and specifications as well as interconnected electric system status), efficiently, and in coordination with the Buyer and PJM and are capable of responding to emergencies as well as normal conditions;

3. preventive, routine, and non-routine maintenance and repairs are performed on a basis that ensures reliable, long-term and safe operation, and are performed by knowledgeable, trained, and experienced personnel utilizing proper equipment and tools;

4. appropriate monitoring and testing are performed to ensure equipment is functioning as designed and will be expected to function properly during normal, abnormal and emergency conditions;

5. equipment is not operated in a reckless manner, in violation of manufacturer's guidelines or in a manner unsafe to workers, the general public, the interconnected system, or contrary to Laws or Permits or without regard to defined limitations such as flood conditions, safety inspection requirements, operating voltage, current, volt-ampere reactive (VAR) loading, frequency, synchronization, and/or control system limits; and

6. equipment and components meet or exceed the standard of durability that is generally used for electric generation operations in the region and will function as designed over the full range of ambient temperature and weather conditions reasonably expected to occur at the Site and under both normal conditions and conditions involving an emergency.

"Qualified Institution" means a commercial bank or trust company with (i) a Credit Rating of at least (a) "A" by S&P and "A2" by Moody's, if such entity is rated by both S&P and Moody's or (b) "A" by S&P or "A2" by Moody's, if such entity is rated by either S&P or Moody's but not both, and (ii) having a capital surplus of at least \$10,000,000,000.

"Ramp Rate" means a Facility's capability to increase or decrease energy output after start-up, synchronization to the system, and technically required hold generation "set" points, for operation between minimum load and maximum continuous rating, as defined in PJM Agreements, as it may be amended from time to time.

"Reliability Must Run Contracts" or "RMRS" means cost-of-service contracts that are signed with generators by PJM for reliability purposes and approved by FERC.

"Reliability Pricing Model" "RPM" means the mechanism established in the PJM Tariff for pricing capacity.

“Renewable Attribute” means any renewable attribute that the Facility may possess, including but not limited to renewable energy credits and low emissions attributes.

“Replacement Price” means the price at which the Buyer, acting in a commercially reasonable manner, purchases or could have purchased Capacity, Energy or Ancillary Services, as the case may be, equal to the amount of Capacity, Energy or Ancillary Services, as the case may be, that were otherwise not provided by the Supplier in accordance with this Agreement, plus costs reasonably incurred by the Buyer in purchasing such replacement Capacity, Energy and Ancillary Services. Any applicable market prices, shall be deemed to be commercially reasonable prices for purposes of this definition.

“Representatives” has the meaning set forth in Section 12.10 of this Agreement.

“S&P” means Standard & Poor's Rating Group, a division of McGraw-Hill, Inc., and its successors.

“Settlement Amount” means the amount calculated in accordance with Section 8.7 of this Agreement.

“Site” means those parcels of real estate and rights of way on or by which the Facility is or will be located.

“Supplier” means a [legal form of Supplier], [incorporated/organized] under the laws of the State of Maryland, that pursuant to this Agreement is assuming the obligations of offering in a specified quantity of Capacity, Energy and Ancillary Services into the PJM Markets for the Term of this Agreement.

“Target Availability” means the percentage Availability (for a particular Contract Year) that the Supplier has committed under the terms of this Agreement to maintaining the Facility over the period of a given Contract Year, reflecting adjustments for forced outages and planned maintenance, as stated in Exhibit C to this Agreement.

“Tariff” means the Open Access Transmission Tariff and market rules established by PJM for the operation of the PJM Markets, including but not limited to the Reliability Pricing Model, and the Day-Ahead Energy Market.

“Tax” or “Taxes” means all taxes that are currently or may in the future be assessed on any products or services that are the subject of this Agreement.

“Term” has the meaning set forth in Article 5 in this Agreement.

“Term Commencement Date” has the meaning defined in Article 5.2 of this Agreement.

“Term Termination Date” means the earlier of (i) the date on which this Agreement expires, which will be the day before the Term Commencement Date plus the number of years in the Term, or (ii) the date upon which a Party terminates this Agreement in accordance with the provisions of the Agreement.

“Unforced Capacity” or “UCAP” means the installed Capacity of the Facility rated at summer conditions that are not on average experiencing a forced outage or forced de-rating, as determined by PJM pursuant to the PJM Agreements and PJM Tariff.

“Unit(s)” means the physical unit(s) of the Facility supporting the Supplier’s offer of Capacity, Energy, or Ancillary Services pursuant to the terms of this Agreement.

“Western Interface” means the interface that extends from north to south across western Pennsylvania, Maryland, and West Virginia. It is comprised of the major, high-voltage transmission lines that run from eastern Ohio, West Virginia, and western Pennsylvania to central Maryland and Pennsylvania and into northern Virginia. The Western Interface includes the Keystone-Juniata 5004 line, the Conemaugh-Juniata 5005 line, the Conemaugh-Hunterstown 5006 line, and the Doubs-Brighton 5055 line. All are 500 KV facilities.

Article 2
Facility Description and Supplier's Obligations during
Development and Construction

2.1 Summary of Facility Development and Construction

(a) The Supplier shall construct, own, operate, and maintain the Facility, which shall consist of a [_insert prime mover/technology of facility_], located in _____ having an Original Contract Quantity of [___] MW, the technology of which complies with the eligibility criteria established by the RFP. Exhibit A provides a detailed description of the Facility, including identification of all the equipment and components.

(b) The Supplier shall at no time after the Execution Date of this Agreement modify, vary, or amend in any respect any of the features or specifications of the Facility described in Exhibit A, in particular any changes affecting the Facility's Original Contract Quantity, Contract Summer Qualified Capacity Availability, level of environmental emissions, or operating efficiency in such a way as will materially and adversely affect the Supplier's ability to perform its obligations under this Agreement, or which changes the economic balance of this Agreement, as defined by the anticipated payments relative to anticipated benefits under this Agreement for each Party as of the Execution Date, except as provided for in Section 2.1(d) of this Agreement.

(c) The Supplier may make immaterial changes to the Facility as long as such immaterial changes do not have an adverse impact on the Supplier's ability to fulfill its obligations under this Agreement. The Supplier must notify the Buyer of any such immaterial changes by providing written notice within thirty (30) calendar days of the immaterial change. The Buyer shall amend this Agreement as needed, send the amended Agreement to the Supplier, and file the amended Agreement with the MDPSC within thirty (30) calendar days of the date on which written notice was sent by the Supplier regarding such immaterial changes.

(d) If the Supplier seeks to change any features or specifications of the Facility in Exhibit A in a manner that is material, but which will not adversely affect the Supplier's ability to perform its obligations under this Agreement, the Supplier must submit written notification about such changes and their potential impact on Supplier performance to the Buyer for its review and recommendation approving, approving with modification or rejecting the proposed changes. Buyer shall submit its written recommendation to the MDPSC for its review and

decision. If the MDPSC approves any proposed changes, the Supplier shall provide an amended Exhibit A to the Buyer and the MDPSC within five (5) Business Days.

2.2 Location

(a) The Facility shall be interconnected to the System such that the Facility's Original Contract Quantity shall be infed to a node east of the Western Interface and Deliverable to Maryland east of the Western Interface without likely congestion charges.

(b) The physical address of the Facility is [_____]. A scaled map that identifies the location of the Facility, the location of the Point of Interconnection, and the location of the important ancillary and interconnection facilities is included in Exhibit A.

2.3 General Design of Facility

The Supplier shall construct the Facility according to Prudent Utility Practice, meeting PJM's interconnection standards, the PJM Agreements, and all other applicable Laws and Permits. The Supplier shall ensure that the Facility is designed, engineered and constructed to operate in accordance with the requirements of this Agreement from the Effective Date until the end of the Term.

2.4 Interconnection

The Supplier shall assume responsibility for and bear all costs and expenses of the generator interconnection process for the Facility that are imposed in accordance with (i) the PJM Agreements, (ii) applicable Laws, including all the costs of any interconnection studies, and (iii) all other interconnection-related costs associated with, or triggered by, the Supplier's Facility. Consistent with the PJM Agreements, the Buyer shall cooperate with the Supplier and shall make reasonable efforts to ensure the timely negotiation and execution of the interconnection Agreement and timely completion of the Interconnection and any required system upgrades.

2.5 Milestones for Commercial Operation

The Supplier acknowledges that time is of the essence to the Buyer with respect to attaining Commercial Operation of the Facility by the corresponding Milestone Date set out in Exhibit B, and agrees:

(a) that each of the Milestone Events as described in Exhibit B to this Agreement shall be achieved in a timely manner and by its corresponding Milestone Date. The Supplier will provide written notice to the Buyer and the MDPSC substantiating and certifying the completion of each Milestone Event (or, if not completed, providing a status report and expected completion date) no later than five (5) Business Days after the Milestone Date. The Supplier's failure to timely achieve a Milestone Event, except the Milestone Date for Commercial Operation as provided herein, shall not constitute an Event of Default.

(b) that, subject to Section 9.2(c), each of the "Key Milestone Events" (which are Milestone Events that are starred with an asterisk in Exhibit B to this Agreement) before Commercial Operation shall be achieved in a timely manner and by its corresponding Milestone Date, failing which the Supplier shall pay to the Buyer within five (5) Business Days after receipt of an invoice from the Buyer, as liquidated damages, a sum of money to be held in an escrow account equal to U.S. Dollars 5 per MW multiplied by the Original Contract Quantity (MW) for each calendar day after the applicable Milestone Date, until the corresponding Milestone Event has been achieved. However, if Commercial Operation is achieved on or before the Milestone Date for Commercial Operation listed in Exhibit B hereto, then all such liquidated damages for delays prior to Commercial Operation paid by the Supplier shall be refunded to the Supplier, plus any interest that has accrued on said amount while said amount was held in an Escrow account;

(c) that, subject to Section 9.2(c), Commercial Operation shall be achieved by the Milestone Date for Commercial Operation listed in Exhibit B hereto, failing which the Supplier shall pay to the Buyer on or before five (5) Business Days after receipt of an invoice from the Buyer, as liquidated damages, a sum of money to be held in an escrow account equal to U.S. Dollars 150 per MW multiplied by the Original Contract Quantity (MW), for each calendar day after the anticipated Milestone Date for Commercial Operation listed in Exhibit B hereto until Commercial Operation has been achieved or until 90 calendar days has expired, as set forth in Section 8.1(d)1;

(d) that, using a methodology consistent with PJM's approach for verifying a resource's Unforced Capacity, the Supplier must demonstrate that the Facility's Unforced Capacity is equal to or more than the Original Contract Quantity (MW) at the date of Commercial Operation, or, in the case of a Facility that is already in operation, the Effective Date.

1. If the Facility's Unforced Capacity is equal to or exceeds the Original Contract Quantity, the Confirmed Contract Quantity shall equal the Original Contract Quantity.

2. The Supplier shall have thirty (30) calendar days to cure any deficiency in the Facility's Unforced Capacity, failing which the Supplier shall pay to the Buyer on or before five (5) Business Days after receipt of an invoice from the Buyer, as liquidated damages, a sum of money equal to U.S. Dollar 226 per kW multiplied by the deficiency between the Unforced Capacity and the Original Contract Quantity.

3. If the Supplier cannot demonstrate that the Unforced Capacity of the Facility is equal to or more than the Original Contract Quantity within this thirty (30) calendar day cure period, and provided that the Supplier has paid to the Buyer all of the liquidated damages required by this Subsection 2.5(d), the Confirmed Contract Quantity shall be set equal to the demonstrated Unforced Capacity. The Supplier will provide notice immediately to the MDPSC and the Buyer of the Confirmed Contract Quantity.

(e) that if this Agreement is terminated due to an Event of Default under Section 8.1(e), the Supplier shall pay to Buyer, in addition to liquidated damages provided in this Article 2 an Early Termination Payment pursuant to Section 8.7.

(f) that the damages set out in this Article 2 will not apply and the failure to achieve Commercial Operation by the Milestone Date for Commercial Operation shall not constitute an Event of Default, if the MDPSC determines that the delay is due to (i) a Force Majeure event; (ii) a material breach by the Buyer of its obligations under this Agreement, pursuant to Article 4; (iii) a delay in obtaining regulatory approval from any relevant Government Authority, which was not caused by the Supplier, by the Supplier's failure to perform a required task, or otherwise not the fault of the Supplier or its agent; or (iv) an appeal to the MDPSC Decision approving the executed contracts in Case No. 9214;

1. The Supplier will provide the Buyer and the MDPSC with written notification and supporting documentation of having obtained all required regulatory approvals within two (2) Business Days of the Milestone Date.

2. If the MDPSC determines that a delay is excused by Section 2.5(ii) through (iv) above, a new Milestone Date for Commercial Operation shall be established that results in a day for day extension of the Milestone Date for Commercial Operation corresponding to the length of the delay created by (ii) through (iv) above. Any extension of time provided for a Force Majeure event shall be governed by Section 9.2.

(g) that each Party acknowledges and agrees with respect to the liquidated damages in this Article 2 that:

1. the actual damage expected as a result of the Supplier's breach of these requirements would be substantial;
2. both Parties intend that the Supplier would pay the specified liquidated damages amount for such a breach;
3. this amount of damages is not a penalty;
4. the amount of damages is reasonable in the sense that it is not disproportionate to the damages the Parties expect that the Buyer would sustain if the Supplier breaches this provision;
5. the amount of liquidated damages is a genuine pre-estimate of the loss that the Buyer will incur; and
6. such liquidated damages shall be the sole damages to which the Buyer shall be entitled as a result of the Supplier's breach of these requirements, except that the Buyer is entitled to assess an Early Termination Payment, if also applicable, to the Supplier's failure to achieve Commercial Operation.

2.6 Requirements for Commercial Operation

The Facility will be deemed to have achieved Commercial Operation at the point in time when all of the following occur:

(a) The Supplier (i) has completed its Interconnection Agreement with PJM and, if applicable, FERC has accepted the Interconnection Agreement and (ii) has provided the Buyer and MDPSC with copies of the Interconnection Agreement filed with FERC.

(b) The interconnection of the Facility to the PJM System has been completed in accordance with the Interconnection Agreement, and Supplier has provided Buyer and the MDPSC with a true copy of written confirmation from PJM confirming that interconnection service is available at the Point of Interconnection.

(c) The Buyer has received a certificate addressed to it from an independent professional engineer, knowledgeable in power facility construction and duly qualified to practice engineering in Maryland. The Supplier's EPC Contractor can serve as an independent engineer as long as the EPC Contractor is not the Supplier, subject to the Buyer's approval. The certificate shall be procured at the expense of the Supplier, and shall state that:

1. the Facility has been completed in all material respects excepting punch list items that do not materially and adversely affect the ability of the Supplier to operate the Facility in accordance with, and perform its obligations under, the provisions of this Agreement; and

2. the Facility in its current form is capable of operating reliably as a part of the PJM interconnected system, and that the Facility is able to perform according to the terms described in Exhibit C to this Agreement.

(d) The Supplier commits to participating in the RPM BRA, the Day-Ahead Energy Market, Ancillary Services Market or other markets as determined by the MDPSC in accordance with Section 3.3 of this Agreement, that the Facility meets all requirements in the PJM Agreements for RPM BRA, the Day-Ahead Energy Market, Ancillary Services Market or other markets, as laid out in the applicable PJM Agreements, as they may be amended from time to time.

(e) The Supplier has certified that the Facility is ready to begin Commercial Operation and has provided the documentation to the Buyer and the MDPSC resulting from the Facility's operational test, and any other relevant documentation from PJM allowing it to begin Commercial Operation of the Facility, including but not limited to PJM's Procedures For Establishing The Capability Of Generation Capacity Resources (Schedule 9 to the Reliability Assurance Agreement or any successor provision) and PJM's Procedures For

Establishing Deliverability Of Generation Capacity Resources (Schedule 10 to the Reliability Assurance Agreement or any successor provision) for the purpose of determining the Facility's Unforced Capacity. Based on the results of this operational test, the Contract Summer Qualified Capacity shall be set equal to the Facility's Unforced Capacity.

(f) The Supplier has obtained and submitted to the Buyer certificates of insurance evidencing the coverage required by Section 2.8 of this Agreement.

(g) A duly authorized officer of the Supplier familiar with the Facility must submit to the Buyer and the MDPSC an affidavit stating that all Permits to construct and/or operate the Facility have been obtained in compliance with applicable Law and this Agreement by the Supplier (at the Supplier's sole cost and expense) and are in full force and effect, and that Supplier is in compliance with the terms and conditions of this Agreement and said Permits in all material respects.

(h) The Supplier must provide documentation to the MDPSC and the Buyer demonstrating (i) that it has the required Permits to burn its primary and secondary fuels and (ii) its secondary fuel requirement is met by consuming liquid fuel stored on site, that it has adequate on-site storage for such liquid fuel and/or contracts to refill on-site storage when the liquid fuel is spent sufficient to operate the Facility for at least 24 consecutive hours using the secondary fuel. The Supplier must update this documentation annually, as specified in Section 3.2(a) of this Agreement.

2.7 Progress Reports During Design and Construction; Buyer's Ability to View and Confirm Supplier Tests and Milestones

(a) By the fifteenth (15th) day of each January, April, July, and October of each Contract Year following the Effective Date of this Agreement and continuing until the Commercial Operation Date, the Supplier shall provide the Buyer and the MDPSC with quarterly progress reports in a form agreed to by the Parties describing the status of efforts made by the Supplier to meet each Milestone Date and the progress of the design and construction work. At the MDPSC's or the Buyer's request, the Supplier shall provide an opportunity for the Buyer to meet with appropriate personnel of the Supplier to discuss and assess the contents of any such quarterly progress report.

(b) With respect to each Milestone Event and test that this Agreement requires the Supplier to complete, the Buyer, the MDPSC, and their designated agents

shall have (i) the right (but not the obligation) to obtain access to the Site, the Facility, and relevant Supplier records (accompanied by an employee or representative of the Supplier) to confirm that each such Milestone Event has been achieved and/or that each Milestone Event complies with the applicable requirements of this Agreement, and (ii) the right to receive prior notice of, and an opportunity to view, each test the Supplier is required to perform pursuant to this Agreement.

2.8 Insurance Covenants

(a) The Supplier hereby agrees to put in effect and maintain, or cause its contractors and subcontractors, where appropriate, to maintain from the commencement of construction of the Facility to the end of the Term, at its own cost and expense, with insurers reasonably acceptable to the Buyer and authorized to underwrite insurance in the state in which the Facility is located, all the necessary and appropriate insurance that a prudent Person in the business of the Supplier (developing, constructing, and operating an electric generating facility) will maintain, including the following:

1. "all-risk" property insurance covering property of every description, in the joint names of at least the Supplier and its principal contractors, insuring not less than the full replacement value of the Facility. During the construction of the Facility until the Commercial Operation Date, the policy shall include as additional insured all subcontractors, as their respective interests may appear.

2. boiler and machinery insurance, if applicable, in protecting the interest of the Supplier and its principal contractors, and anyone having an ownership interest in the property in question, as their respective interests may appear, insuring not less than the full replacement value of the boilers, machinery, pressure vessels, service supply objects and other insurable objects forming part of the Facility.

3. commercial general liability insurance covering death, bodily injury and property damage and other types of damage that may be caused to third parties as a result of the Supplier's activities in connection with the Facility or performance of its obligations under this Agreement, and

4. environmental / pollution liability insurance, providing coverage for any third party claims for bodily injury, property damage and clean-up

for pollution and environmental incidents arising out of the construction, operation or maintenance of the Facility.

(b) The Supplier shall provide the Buyer with proof of the insurance required in this Section 2.8 in the form of valid certificates of insurance that reference this Agreement and confirm the required coverage, on or before the commencement of construction of the Facility, and renewal or replacements on or before the expiration of any such insurance. Buyer shall be named as an “additional insured” party on the insurance policy. Each such certificate of insurance shall require the insurance carrier and/or insurance broker to provide the Buyer with thirty (30) calendar day’s prior notice in the event of any material change, cancellation, or failure to renew the insurance coverage required by this Section 2.8. The Supplier’s failure to maintain coverage identified in (1) through (4) of Section 2.8(a) shall be an Event of Default pursuant to Section 8.1(c).

Article 3

Supplier’s Obligations after Commercial Operation of the Facility

3.1 Operations and Performance Requirements

(a) During Commercial Operation, the Supplier shall agree to operate and maintain the Facility according to Prudent Utility Practice, consistent with PJM’s interconnection standards, and in accordance with the Interconnection Agreement, all Permits and requirements of Law applicable to the Facility.

(b) At all times during Commercial Operation, the Supplier shall be responsible for all performance requirements mandated by the PJM Tariff and PJM Agreements, including performance requirements (and payment of penalties, if any) associated with the PJM Markets, and successors thereto, that the Supplier is contractually obligated to participate in (pursuant to Section 3.1(a) and 3.1(b) of this Agreement).

(c) The Supplier may not recover amounts or any penalty payments or payment deductions incurred by the Supplier resulting from the Supplier’s failure to meet PJM Tariff performance requirements if said failure to meet the performance requirement is not excused by Force Majeure, unless the MDPSC has approved any such cost recovery.

(d) The Supplier does not bear the risk of changes to the PJM transmission system that are beyond Supplier’s control and which may result in energy from the Facility not being Deliverable as specified in Section 2.2(a).

(e) The Supplier must not undertake any actions (other than actions that are reasonably required in accordance with Prudent Utility Practice), or neglect to perform any reasonably required actions, with respect to the Facility such that Energy from any portion of its UCAP represented in Exhibit A is not Deliverable in the state of Maryland over the Term of this Agreement.

(f) The Supplier must maintain its warranted Target Availability for the Facility throughout the Term of the Agreement.

1. The Supplier must provide to the Buyer and the MDPSC a copy of the GADS data on the same day that the Supplier is required to provide the data to PJM.

2. The Facility must maintain the level of Target Availability for the given Contract Year.

3. The Buyer will assess the Facility's Actual Availability on a rolling annual average for a two-year period basis based on the GADS data provided to the Buyer and the MDPSC by the Supplier by dividing the number of hours in the previous two Contract Years that the Facility was Available (Available Hours) by the total number of hours in the previous two Contract Years (Period Hours), excluding hours where performance was prevented due to Force Majeure. For the first year of Commercial Operation, Actual Availability will be assessed using only that first year of data. If the Supplier's Actual Availability on average over the previous Contract Year is more than 5% below the Target Availability for that Contract Year and warranted by the Supplier in the annual Target Availability schedule listed in Exhibit C, the Supplier will pay liquidated damages to the Buyer, according to Section 3.1(f)(4) below. If the Supplier's Actual Availability on average over the previous Contract Year is more than 5 % above the Target Availability for that Contract Year and warranted by the Supplier in the annual Target Availability schedule listed in Exhibit C, the Buyer will pay the Buyer an Availability Bonus, according to 3.1(f)(5) below.

4. The Availability Deficiency will be calculated as shown in the formula below (in this Section 3.1(f)(4)). Note that these damages are independent from any other liquidated damages or penalties that the Supplier may pay to PJM for availability or performance issues, which are used to adjust the Monthly Payment Amount pursuant to Section 6.2 of this Agreement.

i. Availability Deficiency = Actual Availability - (Target Availability - 5%)

ii. If the Availability Deficiency is less than zero, the Supplier must pay the Buyer liquidated damages equal to the product of (i) the weighted average of (A) the annual average On-peak Day-Ahead Locational Marginal Price and (B) the annual average Off-peak Day-Ahead Locational Marginal Price (calculated using the weighted average of On-peak and Off-peak hours for the node from which the Facility is dispatchable for the relevant two-year period), (ii) the Availability Deficiency expressed as a percentage, (iii) Confirmed Contract Quantity, and (iv) the number of Period Hours in previous Contract Year.

5. The Availability Bonus will be calculated as shown in the formula below (in this Section 3.1(f)5).

i. Availability Bonus = (Target Availability + 5%) - Actual Availability

ii. If the Availability Bonus is less than zero, the Buyer must pay the Seller an Availability Bonus equal to the product of (i) the weighted average of (A) the annual average On-peak Day-Ahead Locational Marginal Price and (B) the annual average Off-peak Day-Ahead Locational Marginal Price (calculated using the weighted average of On-peak and Off-peak hours for the node from which the Facility is dispatchable for the relevant two-year period), (ii) the Availability Bonus expressed as a percentage, (iii) Confirmed Contract Quantity, and (iv) the number of Period Hours in previous Contract Year.

6. If a Force Majeure event affects the Facility's Actual Availability in a material manner (which shall be defined as a decrease of more than 5% from the Target Availability), the Supplier must send written notification in accordance with Article 9 of this Agreement to the Buyer and to the MDPSC, providing documentation about the said Force Majeure event, and requesting an exception to the liquidated damages resulting from the Availability Deficiency. The Supplier must pursue negotiations with the Buyer regarding this issue, and should the Buyer and Supplier not be able to resolve the issue bilaterally, they should follow the guidelines set forth in Section 12.9 of this Agreement.

7. Each Party acknowledges and agrees with respect to the liquidated damages pursuant to Section 3.1(f)(4)(ii) that:

A. the actual damage expected as a result of the Supplier's breach of these requirements would be substantial;

B. both Parties intend that the Supplier would pay the specified liquidated damages amount for such a breach;

C. this amount of damages is not a penalty;

D. the amount of damages is reasonable in the sense that it is not disproportionate to the damages the Parties expect that the Buyer would sustain if the Supplier breaches this provision;

E. the amount of liquidated damages is a genuine pre-estimate of the loss that the Buyer will incur; and,

F. such liquidated damages shall be the sole damages to which the Buyer shall be entitled as a result of the Supplier's breach of these requirements.

(g) The Supplier shall demonstrate that it has maintained the Facility's heat rate in accordance with the terms of this Agreement by conducting a heat rate test on an annual basis. This heat rate test will show that the Facility's thermal efficiency (otherwise known as the heat rate of the Facility) has not fallen more than 5% below the rate warranted by the Supplier in its Proposal, listed in Exhibit C.

1. The Supplier shall schedule to conduct the initial heat rate test within the first ninety (90) calendar days of attaining Commercial Operation. An independent engineer shall conduct or supervise the initial heat rate test. The Supplier's EPC Contractor may serve as the independent engineer as long as the EPC Contractor is not the Supplier, if approved by the Buyer.

2. Following the Execution Date, each subsequent heat rate test must be completed not sooner than ten (10) months or later than thirteen (13) months from the previous heat rate test.

3. Test procedures shall be consistent with the American Society of Mechanical Engineers Performance Test Code 46, as may be amended or supplemented, and must be submitted to the Buyer for approval not less than sixty (60) calendar days prior to conducting the initial heat rate test. Buyer shall either approve the submitted test procedure, or using reasonable judgment consistent with Prudent Utility Practice, provide a written notification of deficiencies in the proposed procedure to Supplier by not less than twenty (20) calendar days prior to the initial heat rate test. Supplier shall correct the listed deficiencies to the satisfaction of the Buyer.

4. Supplier shall provide the results of each heat rate test to Buyer and the MDPSC not more than two (2) Business Days after completion of each heat rate test performed after the Execution Date. If the tested heat rate is greater than heat rate listed in Exhibit C to this Agreement for the specific Site and atmospheric conditions at the Facility during the test by more than 5%, this shall constitute a Supplier Event of Default as set forth in Article 8 if not cured within the ninety (90) calendar day cure period.

(h) The Supplier must submit documentation on an annual basis to the Buyer and the MDPSC to demonstrate its continued compliance with Section 2.6(h). The Supplier must provide this written documentation no later than thirty (30) calendar days after the end of each Contract Year.

(i) If, after the Commercial Operation Date, the Facility's Unforced Capacity decreases to a level at which it is less than the Confirmed Contract Quantity for non-Force Majeure related reasons:

1. If the reduction in Unforced Capacity is less than or equal to 3% of the Confirmed Contract Quantity, the Confirmed Contract Quantity is automatically reduced through an addendum to this Agreement for the purposes of settlement under Article 6 until the Facility's Unforced Capacity can be re-tested in accordance with PJM procedures and the Confirmed Contract Quantity is restored.

2. If the reduction in Unforced Capacity is more than 3% of the Confirmed Contract Quantity, the Supplier shall have twenty-one (21) calendar days to cure before incurring liquidated damages. As of the twenty-second (22nd) day after the Facility's Unforced Capacity decreased below the Confirmed Contract Quantity level, the Supplier

shall pay to the Buyer liquidated damages equal to the positive difference (if any) between the Replacement Price for the foregone Confirmed Contract Quantity (Confirmed Contract Quantity minus Unforced Capacity) and the amount that Buyer would have paid hereunder during the period from the calendar day when the Unforced Capacity decreased to a level below the Confirmed Contract Quantity until the calendar day that such deficiency is cured, which must be less than forty-five (45) calendar days in total, from the calendar day when the Unforced Capacity decreased to level below the Confirmed Contract Quantity. As of the forty-sixth (46th) calendar day after the Unforced Capacity decreased, (1) the Supplier shall pay to the Buyer liquidated damages on a monthly basis equal to the positive difference (if any) between the Replacement Price for the foregone Confirmed Contract Quantity (Confirmed Contract Quantity minus Unforced Capacity) and the amount that Buyer would have paid hereunder until the Confirmed Contract Quantity level is restored, and (2) the Confirmed RPM Contract Quantity will be reduced through an addendum to this Agreement for the purposes of settlement under Article 6 until the Facility's Unforced Capacity can be re-tested in accordance with PJM procedures and the Confirmed Contract Quantity level is restored.

3. Each Party acknowledges and agrees with respect to the liquidated damages pursuant to Section 3.2(d) that:

i. the actual damage expected as a result of the Supplier's breach of these requirements will be substantial, but such damages are uncertain in amount and/or difficult to ascertain;

ii. both Parties intend that the Supplier will pay the specified liquidated damages amount for such a breach;

iii. this amount of damages is not a penalty;

iv. the amount of damages is reasonable in the sense that it is not disproportionate to the damages the Parties expect that the Buyer will sustain if the Supplier breaches this provision;

v. the amount of liquidated damages is a genuine pre-estimate of the loss that the Buyer will incur; and

vi. such liquidated damages shall be the sole damages to which the Buyer shall be entitled as a result of the Supplier's breach of these requirements.

3.2 PJM Market Participation

(a) The Supplier warrants that the Facility is eligible to and will participate in and offer into all PJM Markets pursuant to guidelines established by the MDPSC, including but not limited to the RPM BRA, the Day-Ahead Energy Market and the Ancillary Services Market consistent with PJM Rules. The Supplier will participate in those PJM Markets as recommended by Buyer and approved by the MDPSC from time to time.

(b) Beginning on the RPM BRA auction date covering capacity obligations for the Delivery Year that first follows the Commercial Operation Date, the Supplier will have the Units offer and participate in the RPM BRA. The Supplier will continue to have the Units offer and participate in the RPM BRA until otherwise directed by the MDPSC. The Supplier will also have the Units offer and participate in any Incremental Auctions for which it is eligible and which cover a Delivery Year prior to that of the first RPM BRA auction for which they are eligible.

1. In the first RPM BRA for the Facility during the Term, the Supplier must qualify the Facility as New Entry and for that RPM BRA and each subsequent RPM BRA thereafter, offer such that it is not setting the Capacity Clearing Price.

2. The Supplier may not withhold generation resources from the Facility from any PJM Market in which it has elected to participate either through its offering behavior or by incorrectly declaring resources to be unavailable, as per the guidelines used by the PJM in assessing and mitigating market power.

Beginning on the Commercial Operations Date, the Supplier will have the Units offer and participate in the Day-Ahead Energy Market and Ancillary Services Market. The Units shall submit cost-based offers only.

(c) The Supplier represents, warrants, and covenants that the Facility will be capable of fully participating in the PJM Markets, based on the design of the Facility and the Facility's compliance with the technical qualifications in current PJM Agreements.

(d) This Agreement is exclusive with the Supplier providing the Buyer, upon Commercial Operation, with all of the Supplier's revenues from sales and other activities, including but not limited to those from the sale of the Facility's electricity products and services into the PJM markets; sales of renewable or environmental attribute certificates; and any other revenues available to the Facility, which revenues are netted against the Monthly Payment Amount described in Article 6. In exchange for providing the Buyer all revenues, the Supplier receives the Monthly Payment Amount from the Buyer who collects said compensation through retail rates approved by the MDPSC. This Agreement is settled financially on a monthly basis, in accordance with Article 6. The resulting cash flows from month to month may either be to Buyer or to Supplier. Revenues earned prior to Commercial Operation shall be retained by Seller. If the MDPSC orders that the Buyer take title to the Supplier's electricity products and services pursuant to Section 4.1(b), the Supplier shall provide the Buyer with title to all such products and services including but not limited to Energy, Capacity, Ancillary Services, and any renewable or environmental attribute certificates. This Agreement precludes the Supplier from entering into a bilateral contract or other arrangement to sell any of its output, products or services, including but not limited to Reliability Must Run Agreements or any similar arrangement with another third party, PJM, or any Government Agency during the Term of the Agreement, unless approved by the MDPSC.

(e) The Supplier cannot seek to Delist any portion of the Contract Summer Qualified Capacity in the RPM BRA, unless otherwise approved by the MDPSC in writing. The Supplier must offer accordingly to ensure the Contract Summer Qualified Capacity is not delisted from the RPM BRA, unless otherwise approved by the MDPSC. Such approval can be sought by the Supplier or the Buyer by requesting it in writing from the MDPSC at least sixty (60) calendar days in advance of the qualifications deadline[s] for the RPM BRA in which the Buyer or Supplier would like the Supplier seek to Delist. Once the MDPSC approves a request to seek to Delist, the Supplier must offer accordingly in the next RPM BRA.

(f) The Supplier shall not submit an Export Offer for any portion of the Contract Summer Qualified Capacity in the RPM BRA, unless the MDPSC provides prior written approval. Such approval can be sought by the Supplier or the Buyer by requesting it in writing from the MDPSC at least sixty (60) calendar days in advance of the qualifications deadline[s] for the RPM BRA in which the Buyer or Supplier would like the Supplier to submit an Export Offer. Once the MDPSC approves a request to submit an Export Offer, the Supplier must offer accordingly in the next RPM BRA.

(g) The Supplier must request and take reasonable steps to ensure that PJM issues weekly and/or monthly invoices, as applicable, that identify the market(s) in which the Supplier participated and the revenues earned and any penalties accrued by the Supplier. Any penalties accrued by the Supplier shall be the sole responsibility of the Supplier and the Supplier shall not be entitled to recover any

such amounts from Buyer. The Supplier must provide the invoices to the Buyer with the monthly bill the Supplier submits to the Buyer. The Supplier's failure to provide said invoices for more than two (2) consecutive months, except if the failure is caused by the PJM's refusal to issue such invoices, constitutes a curable Event of Default, Section 8.1.(c)(4), and the Buyer shall withhold payments to the Supplier until said invoices are provided. The Supplier shall make the invoices available to MDPSC upon request.

3.3 Other Covenants of the Supplier

(a) The Supplier shall comply with applicable Law and the procedures, rules and regulations of PJM and the requirements of the PJM Agreements.

(b) The Supplier, or its agent, will apply for and maintain its Market Based Rate Authorization with FERC or such other appropriate authorization from FERC under Section 205 of the Federal Power Act to enable the Supplier to participate in the PJM Markets.

(c) The Supplier will comply in full with all relevant and applicable FERC requirements.

(d) The Supplier must keep separate financial records for the Facility, including quarterly revenues and costs and balance sheet statements, and make them available upon request in accordance with Section 11 of this Agreement.

(e) Supplier shall provide to Buyer reasonably requested information that the Buyer requires for its accounting analysis or Securities Exchange Commission reporting purposes.

(f) The Supplier must give the Buyer and the MDPSC thirty (30) calendar days' notice before it would receive additional state-approved or federal-approved ratepayer funding ("Additional Ratepayer Funding") for the operation of the Facility and must submit all information regarding the Additional Ratepayer Funding to the Buyer and the MDPSC at the time of notice.

1. Upon the MDPSC's receipt of a notice that the Supplier shall receive Additional Ratepayer Funding, the MDPSC shall instruct the Buyer and the Supplier to reduce the amount of payments owed from the Buyer to the Supplier by an amount equal to the Additional Ratepayer Funding. The structure of such payment reductions will be determined by the MDPSC based on the nature of and structure of Additional Ratepayer Funding.

2. The Supplier agrees that the MDPSC can reduce compensation to the Supplier under the terms of this Agreement such that total ratepayer

funding for the Facility does not exceed the total amount payable to the Supplier anticipated under this Agreement.

Article 4

Buyer's Obligations

4.1 Payment to Supplier

(a) After the Supplier has attained Commercial Operation and has begun participating in the PJM Markets as required by this Agreement, the Buyer shall pay the Supplier and the Supplier shall pay the Buyer the amounts due according to Article 6, as the case may be, in accordance with the terms of this Agreement.

(b) The Buyer shall not take title to or risk of loss to any products or services generated, delivered, or sold by the Facility unless ordered to do so by the MDPSC upon the recommendation of the Buyer or Seller. Either Party can initiate an amendment to the Agreement to require that the Buyer receive title to the Supplier's output. In such event, the Buyer shall provide the Supplier copies of the full set of information provided by PJM that the Supplier would have otherwise received directly from PJM prior to such transfer of title of the Supplier's output.

4.2 Required Approvals

(a) Each Party's obligations under this Agreement shall be of no force and effect until the Effective Date of this Agreement.

(b) Notwithstanding Section 4.2(a) above, the Buyer agrees to release the Supplier from this Agreement if a MDPSC approval is not obtained within one-hundred and eighty (180) calendar days of the Execution Date if the Supplier does not choose to continue to wait for MDPSC approval

(c) If the Supplier agrees to wait for MDPSC approval after one-hundred and eighty (180) calendar days has elapsed, the fixed portion of the Monthly Payment Amount will be escalated by the Handy-Whitman Index of Public Utility Construction Costs for the period of time between the deadline for the submission of financial offers during the procurement process and the one-

hundred and eightieth (180th) calendar day after the Execution Date. This revised figure will constitute the new Monthly Payment Amount. The Buyer agrees to release the Supplier from this Agreement if MDPSC approval is not obtained three-hundred and sixty (360) calendar days after the Execution Date.

4.3 Other Obligations of the Buyer

- (a) The Buyer shall comply with all applicable PJM Tariffs and PJM Agreements.
- (b) The Buyer shall comply with all of its obligations under this Agreement.
- (c) Using the information and documentation provided to it by the Supplier, the Buyer shall assess the Supplier's performance with respect to the Supplier's obligations set forth in Exhibit H hereto and report as appropriate to the MDPSC if the Buyer believes the Supplier is not meeting its obligations under this Agreement or if the Buyer believes that it is in the interest of ratepayers for the MDPSC to direct the Supplier to participate in different PJM Market(s) than the market or markets in which the Supplier is currently participating. The Supplier shall be copied on such submittal to the MDPSC, and following a hearing if one is requested by the Buyer or the Supplier, the MDPSC shall determine whether the Supplier is meeting its obligations and whether the Supplier should participate in different PJM Market(s) than those in which the Supplier is currently participating.
- (d) The Buyer is responsible for communicating in writing any problems or insufficiency in performance of the Supplier to the MDPSC within five (5) Business Days following Buyer's discovery thereof. The Buyer shall request direction for treatment for any such problems or insufficiency from the MDPSC, unless treatment is detailed under this Agreement.
- (e) The Buyer shall comply with all requirements listed in the Code of Conduct, which is attached to this Agreement as Exhibit E.
- (f) The Buyer acknowledges that the payments it receives from the Supplier, including any liquidated damages and/or Early Termination Payments, are for the benefit of and should be credited back to Maryland ratepayers.
- (g) The Buyer shall provide commercially reasonable assistance, consistent with PJM rules, procedures and standards, in supporting the Supplier's efforts to

attain Commercial Operation on a timely basis, and shall provide any documents or information that the Supplier may reasonably request that are necessary for the Facility to interconnect to the electric system or otherwise attain Commercial Operation.

Article 5

Term

5.1 Execution Date and Effective Date

(a) This Agreement is executed on the Execution Date.

(b) This Agreement shall become effective 30 days after the date of the issuance of the MDPSC decision in Case No. 9214, approving this Agreement, if no appeal is taken, or, if an appeal is taken, when the appeal is finally resolved and no further appeals can be taken (hereinafter, the "Effective Date").

5.2 Term

(a) The Term of this Agreement shall be [___] years from the Commercial Operation Date (as described in Supplier's Proposal) (the "Term"), unless this Agreement is terminated earlier pursuant to Article 8 of this Agreement [or extended pursuant to Section 12.11 of this Agreement].

(b) The first day of the Term is the "Term Commencement Date."

Article 6

Payment Terms and Billing

6.1 Determination of Monthly Payment Amount

(a) The Buyer agrees to pay the Supplier and the Supplier agrees to pay the Buyer, as the case may be, the amounts determined pursuant to the terms of Article 6 of this Agreement for the Term of this Agreement.

(b) The Monthly RPM Payment Amount, Monthly Energy Payment Amount, Monthly Ancillary Services Payment Amount and Monthly REC Payment are each defined in Exhibit G.

(c) The Monthly Payment Amount shall be equal to the sum of the Monthly RPM Payment Amount, the Monthly Energy Payment Amount, the Monthly Ancillary Services Payment Amount and the Monthly REC Payment.

1. If the Monthly Payment Amount is positive then the Buyer will pay the Supplier the Monthly Payment Amount.
2. If the Monthly Payment Amount is negative then the Supplier will pay the Buyer the Monthly Payment Amount.
3. If the Monthly Payment Amount is zero, then no payments are due to either Party.

6.2 Adjustments to Monthly Payment Amount

(a) If there is a delay in the Commercial Operation Date of no more than twenty-nine (29) calendar days, the Monthly Payment Amount will be reduced on a pro-rata basis, calculated by the number of days the Facility is not yet in operation over the number of days in a particular month it was originally intended to be in service. This will be a one-time adjustment to reflect the delay in the Commercial Operation Date. Liquidated damages for the delay, as described in Section 2.5 of this Agreement, will also be applied.

(b) The Parties acknowledge that the Buyer shall not pay for Capacity, Energy, or Ancillary Services that PJM deems was not made available up to the performance standards required by PJM Agreements and PJM Tariff. An Adjustment Ratio shall be used to adjust Monthly Payment Amount such that the Monthly Payment Amount factor in PJM availability or other performance penalties.

(c) The Adjustment Ratio will be calculated by adding actual PJM payments to the Supplier based on the Supplier's Confirmed Contract Quantity and/or delivered Energy or Ancillary Services, as the case may be, and dividing that

total by the payments the Supplier would have expected to receive from PJM if performance was satisfactory given PJM requirements using the formulas set forth below:

1. The “Adjustment Ratio” will be calculated by taking the actual PJM payment for participation in the PJM Markets for the previous month divided by the expected PJM payment for participation in the PJM Markets for the previous month, as illustrated in the formula below.

Adjustment Ratio = (Actual PJM payment for PJM Markets / Expected PJM payment for PJM Markets)

Where:

- Actual PJM payment is equal to the Clearing Price in the applicable PJM Markets for the applicable month times the cleared quantity *minus* any penalties assessed by PJM for that month’s performance in the applicable PJM Markets

- Expected PJM payment is equal to the Clearing Price in the PJM Markets for applicable month times the cleared quantity

2. If the Supplier is making payment to the Buyer, and the Adjustment Ratio is between 0 and 1, the Supplier’s payment to the Buyer shall be increased pro rata by the Adjustment Ratio by dividing the Monthly Payment Amount by the Adjustment Ratio, to represent the effective shortfall in contract quantity and resulting loss in Buyer’s benefits due to underperformance by the Supplier.

3. If the Buyer is making payment to the Supplier, and the Adjustment Ratio is between 0 and 1, the Buyer’s payment to the Supplier shall be reduced pro rata by the Adjustment Ratio by multiplying the Monthly Payment Amount by the Adjustment Ratio, to represent the effective shortfall in contract quantity and resulting loss in Buyer’s benefits due to underperformance by the Supplier.

4. If the Adjustment Ratio is less than zero, the Monthly Payment Amount will be reduced to zero.

(d) The Supplier must provide the Buyer and the MDPSC with a copy of PJM's weekly billing statement regarding the Supplier's activities in the RPM within two (2) Business Days of receipt of such a document. If invoices from PJM's weekly statements are delayed beyond two (2) Business Days after the end of a month, adjustments to the Monthly Payment Amount pursuant to Section 6.2 above shall be made in the next monthly bill, pursuant to Section 6.5 of this Agreement.

(e) If the Facility's Actual Availability is less than its Target Availability for a relevant period, as set forth in Section 3.4(c), the next Monthly Payment Amount will be adjusted by the liquidated damages described in Section 3.4(c). If the Facility's Actual Availability is greater than its Target Availability for a relevant period, as set forth in Section 3.4(c), the next Monthly Payment Amount will be adjusted by the Availability Bonus described in Section 3.4(c).

(f) If the Supplier must pay liquidated damages as a result of non-compliance with Section 2.6(g), Section 3.2(d) and Section 3.2(e), such damages may be netted against any Monthly Payment Amount.

6.3 Billing Period

As soon as practicable after the end of each month during the Term but not later than thirty (30) Business Days after the end of such month, the Supplier shall provide the Buyer with one bill for the Monthly Payment Amount, pursuant to Section 6.1. The bill will include a detailed calculation of the aggregate Monthly Payment Amount for purposes of billing, determined in accordance with the provisions of Article 6 of this Agreement. Depending on the determination of the Monthly Payment Amount pursuant to Section 6.1, the Buyer will pay to the Supplier or the Supplier will pay the Buyer, as the case may be.

6.4 Timeliness and Form of Payment

(a) All bills submitted pursuant to this Article 6 shall bear the date of rendering and shall be due and payable on or before the later of : (i) the last Business Day of the month or (ii) twenty (20) Business Days following the date on which the Buyer received the Supplier's bill. Any amount remaining unpaid after such period shall bear interest at the rate set forth in the regulations of FERC for interest payments on refunds.

(b) All payments sent by the Buyer to the Supplier shall be sent by electronic funds transfer to the bank account specified by the Supplier.

(c) All payments sent by the Supplier to the Buyer shall be sent by electronic funds transfer to the bank account specified by the Buyer.

6.5 Adjustments of Invoices and Disputes

(a) Each bill rendered under this Agreement shall be subject to adjustment in order to true-up charges based on changes resulting from any recent PJM billing statements or revisions, if any, to previous PJM billing statements.

(b) Any further revisions to any bill will be reflected as soon as practicable and in accordance with the PJM Agreements and the provisions of Article 6 of this Agreement. All refunds or additional payments owed to either Party shall include the payment of interest from the due date in the case of additional payments and from the payment date in the case of refunds, in either case to the date of payment calculated in accordance with the regulations of the FERC applicable to the payment of interest on refunds.

(c) If either Party disputes the amount of any bill, it shall so notify the other Party in writing.

1. If the disputed amount is unrelated to an Event of Default, 50% of the disputed amount will be paid by the paying Party ("Paying Party"), with the remainder held in Escrow for the benefit of the non-paying Party ("Non-Paying Party") until both Parties have resolved the dispute. Once the dispute has been resolved, interest accrued in the Escrow account will be paid on a pro-rata basis to the Buyer and the Supplier relative to the determination regarding the disputed amount.

2. If the disputed amount is related to a Supplier Event of Default, and, the Buyer is the Paying Party:

a. If it is a Supplier Event of Default that has no cure or is an Event of Default that has not been cured within the applicable cure period, then the Buyer shall not pay the disputed amount until the specific Event of Default by Supplier has been cured to the satisfaction of the Buyer, or the dispute has been resolved. Escrow

interest accrued in the Escrow account or interest that would have accrued, had payment of a disputed amount been subject to Escrow, will be paid to the Supplier once the Event of Default has been cured, or will be paid on a pro-rata basis to the Buyer and the Supplier relative to the determination regarding the disputed amount.

b. If the Supplier Event of Default is due to the Supplier's loss of Market Based Ratemaking Authority, 50% of the disputed amount will be paid by the Buyer, with the remainder held in Escrow until this Event of Default has been cured or the dispute has been resolved. Escrow interest accrued in the Escrow account will be paid to the Supplier once the Event of Default has been cured, or will be paid on a pro-rata basis to the Buyer and the Supplier relative to the determination regarding the disputed amount.

3. If the disputed amount is related to a Buyer Event of Default that has no cure or is an Event of Default that has not been cured within thirty (30) calendar days or within the timeframe allotted pursuant to Section 8.5(b), and if the Supplier is the Paying Party, then the Supplier shall not pay the disputed amount until the specific Event of Default by Buyer has been cured to the satisfaction of the Supplier, or the dispute has been resolved. Escrow interest accrued in the Escrow account will be paid to the Buyer once the Event of Default has been cured, or will be paid on a pro-rata basis to the Buyer and the Supplier relative to the determination regarding the disputed amount.

4. If the non-payment by Buyer is related to non-performance of a contract covenant in this Agreement that is itself in dispute and not covered by Section 6.2(a) through (c) above, 50% of the disputed amount will be paid by the Paying Party, with the remainder held in Escrow for the benefit of the Non-Paying Party until both Parties have resolved the dispute. Once the dispute has been resolved, interest accrued in the Escrow account will be paid on a pro-rata basis to the Buyer and the Supplier relative to the determination regarding the disputed amount.

5. For all other issues or billing disputes, 50% of the disputed amount will be paid by the Paying Party, with the remainder held in Escrow for the benefit of the Non-Paying Party until the dispute has been resolved. Once the dispute has been resolved, interest accrued in the Escrow account will be paid on a pro-rata basis to the Buyer and the Supplier relative to the determination regarding the disputed amount.

(d) Neither Party shall have the right to challenge any bill or to bring any court or administrative action of any kind questioning the propriety of any bill after a period of twenty-four (24) months from the date the bill was due; provided, however, that in the case of a bill based on estimates, such twenty-four (24) month period shall run from the due date of the final adjusted bill.

6.6 Payment Obligation with Netting

The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing under this Agreement to each other on the same date, in which case all amounts owed by each Party to the other Party during the monthly billing period under this Agreement, including any related damages, interest, and payments or credits, shall be netted (to the extent possible) so that only the excess amount remaining due shall be paid by the relevant Party.

6.7 Use of Completion and Performance Security for Payment of Invoices

(a) Unless the Buyer notifies the Supplier in writing, and except in connection with liquidation and termination in accordance with Article 8 of this Agreement, all amounts netted pursuant to this Article 6 shall not take into account or include any portion of the Completion and Performance Security, which secures the Supplier's performance under this Agreement.

(b) In the case of non-payment by the Supplier, the Buyer has the right to monies from the Completion and Performance Security (unless there is a dispute over the billing amount, in which case both Parties shall proceed in accordance with Article 6.5(c)) if payment is not made on a timely basis.

Article 7

Representations and Warranties

7.1 Representations of the Supplier

The Supplier represents to the Buyer as follows, and acknowledges that the Buyer is relying on such representations in entering into this Agreement:

(a) The Supplier is a [legal form of Supplier], [incorporated/organized] under the Laws of [state of], and is registered or otherwise fully qualified to carry on business in the State of Maryland, and has the requisite power to enter into this Agreement and to perform its obligations hereunder. The executed Agreement, however, is subject to final approval by the MDPSC.

(b) This Agreement has been duly authorized, executed, and delivered by the Supplier and is a valid and binding obligation of the Supplier enforceable in accordance with its terms except as such enforcement may be limited by Bankruptcy.

(c) The execution and delivery of this Agreement by the Supplier and the consummation of the transactions contemplated by this Agreement will not result in the breach or violation of any of the provisions of, or constitute a default under, or conflict with or cause the termination, cancellation or acceleration of any material obligation of the Supplier under:

1. any contract or obligation to which the Supplier is a party or by which it or its assets may be bound, except for such defaults or conflicts as to which requisite waivers or consents have been obtained;
2. the articles, by-laws or other resolutions of the directors or shareholders of the Supplier;
3. any judgment, decree, order or award of any Government Authority or arbitrator;
4. any license, Permit, approval, consent or authorization held by the Supplier; or
5. any Laws that could reasonably be expected to have a material adverse effect on the Supplier or the performance of the Supplier's obligations under this Agreement.

(d) There is no Bankruptcy, insolvency, reorganization, receivership, seizure, realization, arrangement or other similar proceedings pending against or being contemplated by the Supplier or, to the knowledge of the Supplier, threatened against the Supplier.

(e) There are no actions, suits, proceedings, judgments, rulings or orders by or before any Government Authority or arbitrator, or, to the knowledge of the Supplier, threatened against the Supplier, which could reasonably be expected to have a material adverse effect on the Supplier, or the ability of the Supplier to perform its obligations under this Agreement.

(f) All requirements for the Supplier to make any filing, declaration or registration with, give any notice to or obtain any license, Permit, certificate, registration, authorization, consent or approval of, any Government Authority as a condition to entering into this Agreement have been satisfied.

(g) All statements, specifications, data, confirmations, and information that have been set out in the Exhibits to this Agreement are complete and accurate in all material respects and are hereby restated and reaffirmed by the Supplier as representations made from the Supplier to the Buyer under this Agreement and there is no material information omitted from the Exhibits which makes the information in the Exhibits and this Agreement misleading or inaccurate.

7.2 Representations of the Buyer

The Buyer represents to the Supplier as follows, and acknowledges that the Supplier is relying on such representations in entering into this Agreement:

(a) The Buyer has the requisite power to enter into this Agreement and to perform its obligations hereunder. The executed Agreement, however, is subject to final approval by the MDPSC.

(b) This Agreement has been duly authorized, executed, and delivered by the Buyer and is a valid and binding obligation of the Buyer enforceable in accordance with its terms, except as enforcement may be limited by Bankruptcy.

(c) The execution and delivery of this Agreement by the Buyer and the consummation of the transactions contemplated by this Agreement will not result in the breach or violation of any of the provisions of, or constitute a default under, or conflict with or cause the termination, cancellation or acceleration of any material obligation of the Buyer under:

1. any contract or obligation to which the Buyer is a party or by which it or its assets may be bound, except for such defaults or conflicts as to which requisite waivers or consents have been obtained;
2. the by-laws or resolutions of the directors (or any committee thereof) or shareholders of the Buyer;
3. any judgment, decree, order or award of any Governmental Authority or arbitrator;
4. any license, Permit, approval, consent or authorization held by the Buyer; or
5. any Law that could reasonably expect to have a material adverse effect on the Buyer or the Buyer's performance of its obligations under this Agreement.

(d) There is no Bankruptcy, insolvency, reorganization, receivership, seizure, realization, arrangement or other similar proceedings pending against, or being contemplated by the Buyer or, to the knowledge of the Buyer, threatened against the Buyer.

(e) There are no actions, suits, proceedings, judgments, rulings or orders by or before any Government Authority or arbitrator, or, to the knowledge of the Buyer, threatened against the Buyer that could reasonably expect to have a material adverse effect on the Buyer or the Buyer's ability to perform its obligations under this Agreement.

(f) All requirements for the Buyer to make any declaration, filing or registration with, give any notice to or obtain any license, Permit, certificate, registration, authorization, consent or approval of, any regulatory authority as a condition to entering into this Agreement have been satisfied.

Article 8

Events of Default; Remedies

8.1 Events of Default of Supplier

(a) Any of the following shall constitute an Event of Default of Supplier if the Supplier has failed to cure such an Event of Default within three (3) Business Days after the date of written notice given by the Buyer to the Supplier and the MDPSC, unless the MDPSC determines that it is in the best interest of ratepayers to excuse non-performance and not terminate the Agreement:

1. The Supplier is no longer eligible to participate in any PJM Market in which it is obligated to participate under this Agreement for any reason other than those described in Section 8.1(b), 8.1(c), and 8.1(d) below. If the Supplier can demonstrate to the MDPSC, within three (3) Business Days after the date of written notice given by the Buyer: 1) that the Supplier can cure the Event of Default within thirty (30) Business Days after the date of written notice given by the Buyer, and 2) that the PJM Agreements and PJM Tariff will permit the Supplier to resume participation and earn revenues in the PJM Markets within thirty (30) Business Days after the date of written notice given by the Buyer, the Supplier's loss of eligibility to participate in the PJM Markets shall constitute an Event of Default of Supplier if the Supplier has failed to cure such an Event of Default within thirty (30) Business Days after the date of written notice given by the Buyer. This 30-Business Day cure period does not apply if, after the cure is achieved, the Supplier must remain out of the RPM for a year, in which case the 3-Business Day cure period will apply.

2. The Facility cannot deliver benefits to the state of Maryland in accordance with Section 2.2 due to an action of the Supplier or lack of reasonable action in instances where action was warranted and the Supplier had the ability to provide such action;

3. The Supplier becomes Bankrupt;

4. The Supplier consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of the Supplier under this Agreement pursuant to an assignment or assumption agreement reasonably satisfactory to the Buyer and approved by the MDPSC;

5. Supplier seeks or enters into a Reliability Must Run, a Cost of Service contract, or a similar agreement for any part of the Facility's output,

products or services without MDPSC approval during the Term of this Agreement;

6. The Supplier dissolves or liquidates;

7. The Supplier sells any part of its output, products or services from the Facility to a third party without approval by the MDPSC;

8. The Supplier intentionally provides false information required by this Agreement or intentionally fails to provide information required by this Agreement on material topics; or,

(b) Any of the following shall constitute an Event of Default of Supplier if the Supplier has failed to cure such an Event of Default within seven (7) Business Days after the date of written notice given by the Buyer to the Supplier and the MDPSC, unless the MDPSC determines that it is in the best interest of ratepayers to excuse non-performance and not terminate the Agreement;

1. The Supplier fails to maintain the Project Completion and Performance Security, pursuant to Article 10 of this Agreement.

(c) Any of the following shall constitute an Event of Default of Supplier if the Supplier has failed to cure such an Event of Default within thirty (30) Business Days after the date of written notice given by the Buyer to the Supplier and the MDPSC, unless the MDPSC determines that it is in the best interest of ratepayers to excuse non-performance and not terminate the Agreement:

1. The Supplier fails to comply with any obligation under this Agreement that would result in a material adverse impact on the Buyer or ratepayers;

2. The Supplier is unable to participate in the PJM Markets due to events including but not limited to the termination of its membership (or the membership of its agent), or suspension of membership rights or termination of its Operating Agreement with PJM unless the PJM Tariff will permit the Supplier to resume participation and earn revenues in the PJM Markets within thirty (30) Business Days after the date of written notice given by the Buyer. This 30-Business Day cure period does not apply if, after the cure is achieved, the Supplier must remain out of the

RPM for a year in which case the 3-Business Day cure period would apply;

3. The Supplier is eligible to participate but does not participate in PJM Markets as directed by the MDPSC in accordance with Section 3.1(b) unless the PJM Tariff will permit the Supplier to resume participation and earn revenues in the PJM Markets within thirty (30) Business Days after the date of written notice given by the Buyer. This 30-Business Day cure period does not apply if, after the cure is achieved, the Supplier must remain out of the RPM for a year in which case the 3-Business Day cure period would apply;

4. The Supplier fails to submit PJM invoices required by Section 3.3(g) with its bill to the Buyer evidencing its participation in and revenues earned in PJM Markets for two (2) consecutive months;

5. The Supplier fails to meet requirements of Section 2.6(h); or

6. The Supplier fails to maintain insurance coverage as required by Section 2.8.

(d) Any of the following shall constitute an Event of Default of Supplier if Supplier has failed to cure such an Event of Default within ninety (90) calendar days after the date of written notice given by the Buyer to the Supplier and the MDPSC, unless the MDPSC determines that it is in the best interest of ratepayers to excuse non-performance and not terminate the Agreement:

1. The Supplier breaches any other covenant or obligation in a material manner in this Agreement not explicitly listed in Sections 8.1(a), 8.1(b) or 8.1(c).

2. The Facility's performance on an annual heat rate test falls more than 5% below the threshold level established in Exhibit C.

(e) The failure of the Supplier to achieve the Milestone Date for Commercial Operation shall constitute an Event of Default of the Supplier if the Supplier has failed to cure such an Event of Default within one hundred eight (180) calendar days after the date of written notice given by the Buyer to the Supplier and MDPSC unless an extension of time is approved by the MDPSC pursuant to

Article 2. In the event the Supplier does not achieve its Milestone Date for Commercial Operation, and the failure is not excused, the Buyer shall provide written notice to the Supplier and MDPSC the next Business Day after the Milestone Date for Commercial Operation.

(f) For any Event of Default excused by a MDPSC determination that it is in the interest of ratepayers to excuse non-performance and not terminate the Agreement, the following terms and conditions apply. The Supplier must cure any Event of Default on or before a new deadline for curing the Event of Default set by the MDPSC. If prior to curing the Event of Default the Supplier earns monthly revenue in excess of its monthly costs, the Supplier must return any excess revenue to the Buyer.

8.2 Remedies Available to the Buyer

(a) If there is an Event of Default by the Supplier and such Event of Default is not cured in a timely manner by the Supplier pursuant to any applicable cure period provided by this Agreement, the Buyer, subject to the approval of the MDPSC, shall have the right to seek any of the remedies (or combinations thereof) listed below.

1. Designate an "Early Termination Date" pursuant to Section 8.6;
2. Withhold any payments due to the Supplier under this Agreement unless the Supplier continues to perform according to its obligations under this Agreement in which case the Buyer must compensate the Supplier for its services according to this Agreement; any payments required from the Buyer to the Supplier for services prior to the Event of Default will be credited to the Buyer in calculating the Early Termination Payment; and/or,
3. Exercise any remedy available at Law, in equity, or under this Agreement to the extent an Event of Default shall have occurred and be continuing.

(b) If the Event of Default by Supplier is the voluntary or involuntary filing of a petition commencing a case under the Bankruptcy Code, then the Buyer shall have the right to terminate this Agreement by notice to the Supplier and such termination shall take effect immediately upon issuance of such notice by Buyer to Supplier. The Buyer shall have the right to damages (if any) calculated

pursuant to 11 U.S.C § 562, as it may be amended from time to time, and other applicable Law. The Parties agree that each is a Financial Participant for the purposes of the Bankruptcy Code and waive any right to contest the other's status as a Financial Participant in any proceeding under the Bankruptcy Code. The Early Termination Payment, as described in Section 8.7, will not apply in this instance.

8.3 Financing Parties' Right to Cure Default of Supplier

(a) The Supplier shall provide to the Buyer and the MDPSC a notice identifying the Financing Parties and providing appropriate contact information for the Financing Parties at the Execution Date of this Agreement, and from time to time during the Term, as such information may change. Following the effective date of such notice, the Buyer shall provide prompt notice of any event described in Section 8.1 hereof to the Financing Parties, and the Buyer will accept a cure performed by the Financing Parties, so long as the cure is accomplished within the applicable cure period set forth in Section 8.1 hereof.

(b) Within ten (10) calendar days following the effective date of written notice from the Financing Parties of default, or the Financing Parties' intent to exercise any remedies, the Supplier shall deliver a copy of such notice to the Buyer and the MDPSC.

8.4 Events of Default by Buyer

(a) Any of the following shall constitute an Event of Default of Buyer with no cure period:

1. The Buyer's dissolution or liquidation. If there is a successor to the Buyer, this shall not constitute dissolution or liquidation as long as the successor assumes all the rights and responsibilities of the Buyer under this Agreement; and/or

2. Without the approval of the MDPSC under 6-105 of the PUA, the Buyer consolidates or amalgamates with, or merges into or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting surviving or transferee entity fails to assume all the obligations of the Buyer under this Agreement pursuant to an assignment or assumption agreement approved by the MDPSC.

(b) The following shall constitute an Event of Default of the Buyer if the Buyer has failed to cure such an Event of Default within ten (10) calendar days after the Buyer receives written notice of such Event of Default from the Supplier:

1. The Buyer fails to make any payment due hereunder.

(c) Any of the following shall constitute an Event of Default of the Buyer if the Buyer has failed to cure such an Event of Default within thirty (30) calendar days after Buyer's receipt of written notice of such Event of Default from the Supplier:

1. The Buyer fails to comply with any other covenant or obligation under this Agreement that will result in a material adverse impact on the Supplier;
2. The Buyer intentionally provides false information required by this Agreement or intentionally fails to provide information required by this Agreement on material topics; or,
3. The Buyer becomes Bankrupt and the MDPSC is unable to take timely actions to ensure that another entity stands in for the Buyer and performs the Buyer's obligations to the Supplier under this Agreement.

8.5 Remedies available to Supplier

(a) If the Credit Rating of the Buyer falls below Investment Grade level (as per the notifications required in Section 12.2), the Supplier shall submit a notice to the MDPSC, notifying the MDPSC of the *potential* of an Event of Default. If the MDPSC chooses to do so, the MDPSC may respond to this notice by facilitating a pre-emptive cure of this *potential* Event of Default.

(b) In case of an Event of Default of the Buyer pursuant to Section 8.4, the Supplier must also send a written notice thereof to the MDPSC. If the MDPSC issues a reply notice within ten (10) Business Days of receipt of such notice from the Supplier, this reply notice will temporarily suspend the Supplier's ability to seek any of the remedies available to the Supplier at Law, in equity, or under this Agreement for a period of ninety (90) calendar days, while the MDPSC undertakes by exercise of its statutory authority to facilitate the process of curing the Event of Default of Buyer. During the above-mentioned ninety (90) calendar-

day period, the Supplier temporarily shall place any payments due to the Buyer under this Agreement in an interest-bearing escrow account until a cure has been achieved. Once the Event of Default has been cured, the Supplier must pay any outstanding payments owed to the Buyer and the Buyer must pay the Supplier any outstanding payments owed to the Supplier, whichever the case may be.

(c) If an uncured Event of Default of Buyer shall have occurred and be continuing, and the MDPSC has not effected a cure pursuant to Section 8.5(b) within the allotted cure period, the Supplier shall have the right to seek any of the following remedies (or combinations thereof):

1. Designate an "Early Termination Date" pursuant to Section 8.6;
2. Withhold any payments due to the Buyer under this Agreement;
3. Suspend performance under this Agreement; and/or,
4. Exercise any remedy available at Law, in equity, or under this Agreement to the extent an Event of Default has not been timely cured by the Buyer.

(d) If the Event of Default by Buyer is the voluntary or involuntary filing of a petition commencing a case under the Bankruptcy Code, then the Supplier shall have the right to terminate this Agreement by notice to the Buyer and such termination shall take effect immediately upon issuance of such notice by the Supplier to the Buyer. The Supplier shall have the right to damages (if any) calculated pursuant to 11 U.S.C § 562, as it may be amended from time to time, and other applicable Law. The Parties agree that each is a Financial Participant for the purposes of the Bankruptcy Code and waive any right to contest the other's status as a Financial Participant in any proceeding under the Bankruptcy Code. The Early Termination Payment, as described in Section 8.7, will not apply in this instance.

8.6 Notice and Declaration of an Early Termination Date

If an Event of Default as set forth in Section 8.1 or Section 8.4, has occurred and is continuing, and any relevant cure period pursuant to Section 8.1 or Section 8.4 has expired, the non-defaulting Party (the "Non-Defaulting Party") shall have the right (i) to notify the defaulting Party (the "Defaulting Party") and to designate a day, no earlier

than the effective date of such notice and no later than twenty (20) calendar days after such notice is effective as an early termination date (the "Early Termination Date"); (ii) to request and obtain payment from the Defaulting Party of the Early Termination Payment calculated pursuant to Section 8.7 hereof plus all amounts owed by the Defaulting Party to the Non-Defaulting Party for performance or non-performance that occurred, arose or accrued prior to the Early Termination Date; and, (iii) to terminate the Agreement between the Parties as of the Early Termination Date.

8.7 Calculation of Early Termination Payment

(a) For all Events of Default other than Bankruptcy, as described in Sections 8.2(b) and Section 8.5(d), the Non-Defaulting Party shall calculate, in a commercially reasonable manner, an "Early Termination Payment" which will be based on the following "Settlement Amount":

1. The "Settlement Amount" will be equal to the Losses or Gains, and Costs, expressed in U.S. Dollars, which such Party incurs as a result of the liquidation of this Agreement, pursuant to Section 8.6.

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

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

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

2. The Gains and Losses for this Agreement shall be determined by calculating the amount that would be incurred or realized to replace or to

provide the economic equivalent of the remaining payments or deliveries in respect to this Agreement. The non-Defaulting Party (or its agent) may determine its Gains and Losses by reference to information either available to it internally or supplied by one or more third parties including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets. Third parties supplying such information may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The non-Defaulting Party shall provide all data used to determine its Gains and Losses, including but not limited to price curves to the Defaulting Party.

3. The discount rate to be used in the calculation of the Early Termination Payment shall be equal to the discount rate used by the MDPSC to evaluate offers in the competitive solicitation process that resulted in this Agreement.

(b) The Parties must pay one another any outstanding amounts owed.

(c) The Parties further agree that, at the option of the Non-Defaulting Party, any cash or other form of security then available to the Non-Defaulting Party from the Defaulting Party pursuant to Article 10 of this Agreement shall be withdrawn, drawn on, or otherwise collected or netted against the Early Termination Payment and retained by the Non-Defaulting Party.

(d) As soon as practicable after such termination and receipt of security, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the Early Termination Payment. The notice shall include a written statement explaining in reasonable detail the calculation of such payment amount. Any amount by which the Early Termination Payment exceeds the funds already received shall be paid by the Defaulting Party if it owes any excess within five (5) Business Days after such notice is effective.

(e) Each Party acknowledges and agrees with respect to the liquidated damages in this section that:

1. the actual damage expected as a result of the Defaulting Party's breach of these requirements would be substantial;

2. both Parties intend that the Defaulting Party would pay the specified liquidated damages amount for such a breach;
3. this amount of damages is not a penalty;
4. the amount of damages is reasonable in the sense that it is not disproportionate to the damages the Parties expect that the Non-Defaulting Party would sustain if the Defaulting Party breaches this provision;
5. the amount of liquidated damages is a genuine pre-estimate of the loss that the Non-Defaulting Party will incur; and
6. such liquidated damages shall be the sole damages to which the Non-Defaulting Party shall be entitled as a result of the Defaulting Party's breach of these requirements.

Article 9

Force Majeure; Limitation on Liability

9.1 Force Majeure

Each Party shall be excused from performing its respective obligations under this Agreement and shall not be liable in damages or otherwise to the Non-Claiming Party if and to the extent that the MDPSC finds that the Claiming Party is unable to so perform or is prevented from performing its obligations by an event of Force Majeure.

9.2 Limitation on remedies for Force Majeure

(a) If the MDPSC finds that either Party is rendered wholly or partly unable to perform its obligations hereunder because of Force Majeure, then that Party shall be excused from performance of its obligations to the extent that such performance is affected by the Force Majeure, provided that:

1. The Claiming Party shall, as soon as practicable after the occurrence of Force Majeure, give the MDPSC and the Non-Claiming Party written notice describing the particulars of the occurrence and requesting that the

MDPSC make a determination within 15 days on the issue of whether the occurrence constitutes a Force Majeure event that excuses performance;

2. The suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure;

3. The Claiming Party uses all commercially reasonable efforts to remedy its inability to perform; and,

4. Nothing in this Section 9.2 shall affect a Party's obligation to make payments when due or becoming due with respect to performance or non-performance prior to the event of Force Majeure.

(b) While an event of Force Majeure is in effect, the Claiming Party shall take all commercially reasonable steps to mitigate the effects of Force Majeure, shall inform the Non-Claiming Party in writing on a weekly basis of when it expects to remove the cause of Force Majeure and what steps it is taking to cure or eliminate the event of Force Majeure.

(c) If an event of Force Majeure causes the Supplier to not achieve a Milestone Event by the relevant Milestone Date, or to not achieve Commercial Operation on or before the Milestone Date for Commercial Operation, as applicable, then such Milestone Date shall be extended for a period of time equal to the period of delay resulting from such Force Majeure event.

(d) If an event of Force Majeure described in Section 9.2(c) has delayed the Commercial Operation Date of the Facility by more than eighteen (18) months after the original Milestone Date (prior to any extension pursuant to Section 9.2(c)) set out for attaining Commercial Operation of the Facility, then notwithstanding anything in this Agreement to the contrary, while the delay that is a result of the event of Force Majeure is continuing, the Buyer, with the MDPSC's approval, may terminate this Agreement upon written notice to the Supplier, and, thirty (30) calendar days after the effective date of notice, this Agreement shall automatically terminate and without any costs or payments of any kind to either Party, and the Completion and Performance Security shall be returned forthwith.

(e) If, by reason of Force Majeure, the Supplier is unable to perform or comply with its obligations (other than payment obligations) hereunder after the Commercial Operation Date for more than eighteen (18) months, then

notwithstanding anything in this Agreement to the contrary, while the delay that is a result of the event of Force Majeure is continuing, then the Buyer, with the MDPSC's approval, may terminate this Agreement upon thirty (30) calendar days' written notice to the Supplier, and thirty (30) calendar days after the effective date of the said written notice, this Agreement shall automatically terminate without any costs or payments of any kind to either Party, and the Completion and Performance Security shall be returned forthwith.

(f) If the Buyer is the Claiming Party and the Buyer is unable to perform or comply with its obligations hereunder after the Commercial Operation Date for more than eighteen (18) months, then notwithstanding anything in this Agreement to the contrary, while the delay that is a result of the event of Force Majeure is continuing, then the Supplier may terminate this Agreement upon thirty (30) calendar days' written notice to the Buyer, and thirty (30) calendar days after the effective date of the said written notice, this Agreement shall automatically terminate without any costs or payments of any kind to either Party, and the Completion and Performance Security shall be returned forthwith.

(h) After the Term Commencement Date, an event of Force Majeure shall not extend the Term of this Agreement.

9.3 Liability and Damages

Except as provided for under this Agreement, neither Party shall be liable under this Agreement for any special, indirect, incidental, consequential, or punitive damages of any kind, including but not limited to loss of use, out of pocket expenses, and lost profits (past or future), by statute, in tort or contract, or otherwise.

Article 10

Credit and Security Requirements

10.1 Completion and Performance Security Amount

The Supplier shall provide security to the Buyer on the Effective Date of this Agreement for the performance of the Supplier's obligations under this Agreement, in the applicable amount as set out in Section 10.1 below and in the form described in Section 10.2 (the "Composition of the Completion and Performance Security").

(a) The amount of the Completion and Performance Security applicable prior to the Facility's Commercial Operation Date shall be set at U.S. Dollar 100 per kW of the Facility's UCAP. Upon the Facility's Commercial Operation Date, the Completion and Performance Security shall be set at U.S. Dollar 50 per kW of the Facility's UCAP.

(b) Effective 365 days after the Facility's Commercial Operation Date and on each yearly anniversary thereafter, and provided that the Buyer has determined that any liquidated damages payable by the Supplier under Article 2 have been paid in full by the Supplier, then the amount of the Completion and Performance Security shall be reduced by an amount equal to the product of (i) U.S. Dollar 50 per kW of UCAP and (ii) 1/Term, for the remaining Term of this Agreement.

(c) In the event that the Buyer, in accordance with this Agreement, has recovered monies that were due to it using all or part of the Completion and Performance Security, the Supplier shall within a commercially reasonable time, not to exceed three (3) Business Days, provide replacement security to cover an amount equal to that recovered or paid out of the Completion and Performance Security.

(d) Not maintaining the Completion and Performance Security at its full amount shall be an Event of Default with a three (3) Business Day cure period, pursuant to Section 8.1.

(e) The Supplier shall provide to the MDPSC and the Buyer reasonable evidence of any security that it posts for the same Original Contract Quantity to participate in the RPM before the Facility reaches Commercial Operation. The amount of security provided to PJM may be used to reduce the Completion and Performance Security required under this Agreement as long as the security provided to PJM is not in the form of a guarantee, such that the total security provided by the Supplier to the Buyer and to PJM for the purpose of Confirmed Contract Quantity participating in the RPM totals the Completion and Performance Security calculated pursuant to this Section 10.1.

(f) The Buyer shall return the Completion and Performance Security to the Supplier with accrued interest (if relevant) on the first Business Day following the last calendar day of the Term of this Agreement (or, if relevant, on the first Business Day after the Early Termination Date), provided that the Buyer has determined that the Supplier has paid in full any outstanding liquidated damages or Early Termination Payments.

10.2 Composition of Completion and Performance Security

(a) The Completion and Performance Security shall be provided in the form of either (i) cash, which will be held in an interest-bearing Escrow account by a Qualified Institution selected by the Buyer for the benefit of the Buyer; (ii) a Letter of Credit; (iii) a performance bond; (iv) a certified check made payable to Buyer; (v) a bank draft made payable to Buyer; or (vi) other equivalent form of security acceptable to the Buyer acting reasonably, and subject to the approval of the MDPSC, but for certainty, shall not include guarantees. The Completion and Performance Security can also be composed of a mix of such instruments so long as the total amount required under Section 10.1 of this Agreement is achieved. The MDPSC's determination under this Section 10.2(a) is not subject to the dispute resolution guidelines listed in Section 12.9.

(b) Costs of the Completion and Performance Security shall be borne by the Supplier.

(c) If cash is provided by the Supplier for the Completion and Performance Security, such cash will be held in an interest-bearing Escrow account by the Buyer in a Qualified Institution. The interest accrued in this Escrow account will be paid to the Supplier upon the Term Termination Date as long as there are no outstanding disputes between the Parties.

(d) If a Letter of Credit is used:

1. The bank providing the Letter of Credit must be a Qualified Institution, or be otherwise submitted to the MDPSC for approval.
2. Within two (2) Business Days of the Effective Date, Supplier shall provide to Buyer a Letter of Credit in the amount of \$ [_____] to secure Supplier's performance from the Effective Date until either expiration of this Letter of Credit or the Termination Date. The Letter of Credit shall have a term of not less than one (1) year and an evergreen clause acceptable to the Buyer and the MDPSC. The Letter of Credit shall provide that if this Agreement remains in effect and the Letter of Credit is due to expire, Buyer shall have the right to draw on the full amount of such Letter of Credit. In that event, Buyer will hold such funds until Supplier has provided Buyer with a replacement Letter of Credit or other form of security that meets the requirements of this Article 10 of this Agreement.

3. If the Credit Rating of the Qualified Institution providing the Letter of Credit falls below the levels specified in the definition of a Qualified Institution, the Supplier shall have five (5) Business Days following written notice by the Buyer to obtain a suitable Letter of Credit from another Qualified Institution, unless the Buyer agrees in writing to extend such cure period.

(e) If a performance bond is used:

1. The performance bond must allow the Buyer, acting reasonably, to determine whether the surety will pay or perform the Defaulting Party's obligations.

2. The performance bond must require the surety to pay all undisputed amounts requested in writing by the Buyer within five (5) Business Days, and must deposit any disputed amounts into an Escrow account for the benefit of the Buyer pending resolution of the dispute between the Buyer and the surety. Any interest accrued in the Escrow account must be paid to the Buyer or the surety on a pro rata basis depending on how the issue is resolved.

3. The performance bond must be irrevocable, and must remain in place for the entire Term of this Agreement.

4. The surety must agree to (i) waive notice of any alteration or extension of time provided by either Party under this Agreement; (ii) waive notice of any amendment to this Agreement; (iii) following the occurrence of an uncured Event of Default by the Supplier, waive any requirement under applicable Law or otherwise that Buyer first proceed against (and obtain judgment against) the Supplier before Buyer can enforce its rights under the performance bond against the surety.

5. In the event that Buyer prevails in its attempts to enforce its rights under the performance bond, the surety must agree to pay for all the documented legal costs, fees, and expenses Buyer incurred in the enforcement action.

6. The performance bond must be governed by and enforced in accordance with the Laws of the State of Maryland; and any proceeding

under the Performance Bond must be instituted in a court of competent jurisdiction in Maryland.

Article 11
Contract Administration

11.1 Inspection and Audit

Each Party and the MDPSC has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. If requested, the Supplier shall provide to the Buyer and the MDPSC and/or its staff statements evidencing the performance of its obligations. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the interest rate (as defined in Section 6.4) from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twenty-four (24) months from the rendition thereof, and thereafter any objection shall be deemed waived.

11.2 Notices

(a) Any notice, demand, or request permitted or required under this Agreement shall be delivered in person, by prepaid overnight United States mail or by overnight courier service, return receipt requested, to a Party at the applicable address set forth below:

To Buyer:

Name or Title:

Company:

Full Address:

City, State, Zip

Telephone:

To Supplier:

Name or Title:

Company:
Full Address:
City, State, Zip
Telephone:

To MDPSC:
Executive Secretary
6 St. Paul Street
Baltimore, MD 21202
Tel: 410-767-8068

(b) Notices by hand delivery or facsimile (provided a copy is also sent by overnight mail) shall be effective at the close of business on the day actually sent, if sent during sending Party's business hours on a Business Day, and otherwise shall be effective at the close of business on the next Business Day.

(c) The addresses for notice specified in Section 11.2(a) may be changed from time to time by written notice by any Party or the MDPSC to all other Parties and the MDPSC without amendment of this Agreement.

11.3 Records and Billing Verification Rights

(a) The Supplier and the Buyer each shall keep complete and accurate records with respect to its performance under this Agreement and shall maintain such records for a period of five (5) years after final billing for verification by the other Party and the MDPSC. In the event of any billing dispute, all such records pertaining to the dispute shall be maintained until such later time as the billing dispute is resolved. If a billing dispute establishes that any bill submitted to and paid by the Buyer was for an amount greater than properly chargeable under this Agreement, the Supplier shall refund to the Buyer the excess amount collected together with interest calculated from the date of payment to the refund date in accordance with the regulations of FERC applicable to the payment of interest on refunds. If a billing dispute establishes that any bill submitted to and paid by the Buyer was for an amount less than properly chargeable under this Agreement, the Buyer shall make such additional payment to the Supplier, together with interest calculated from the due date to the date of payment in accordance with regulations of FERC applicable to the payment of interest on refunds.

(b) In the event of a good faith dispute regarding any bill issued or payment due under this Agreement, each Party shall have the right to verify the accuracy or the calculation of the bill, at its own expense, to obtain copies of relevant portions of the books or records of the other Party insofar as may be necessary for the purpose of ascertaining the accuracy of any invoice or calculation of payment due. Each Party supplying information hereunder may require that the other Party maintain the confidentiality of such information in accordance with Section 12.10. The Parties agree to individually and jointly request from PJM, or other appropriate source, any data or information that either Party believes is reasonably necessary for purposes of a requested accounting or resolution of a billing dispute.

Article 12

Miscellaneous

12.1 Change of Control, Sale of Facility, or Assignment

(a) Except as part of a collateral assignment or stock pledge in favor of the Financing Parties, no direct or indirect change of control of the Supplier shall be allowed without the MDPSC's approval pursuant to 6-105 of the PVA. By entering into this Agreement, the Supplier agrees to submit to the jurisdiction of the MDPSC for purposes of Title 6 of the PUA and to comply with the provisions of that article. The successor entity must assume all responsibilities and obligations of the Supplier under this Agreement and must sufficiently demonstrate to the MDPSC that it has the technical, managerial, and financial wherewithal to serve as the Supplier for the remainder of the Term and that the transaction meets the requirements of 6-105(g)(3)..

(b) The Buyer may assign, pledge or transfer this Agreement to a successor electric company, subject to MDPSC approval.

(c) This Agreement shall be binding upon, and shall inure to the benefit of, and shall be performed by, each permitted successor and assignee of the Parties, except that no assignment, pledge or transfer of this Agreement by either Party shall operate to release the assignor, pledgor, or transferor from any of its obligations under this Agreement unless the MDPSC approves the assignment, pledge or other transfer and expressly releases the assignor, pledgor, or transferor from its obligations hereunder.

(d) The Buyer agrees that (i) the Supplier may assign, mortgage, hypothecate, pledge or otherwise encumber, by way of security or collateral, all or any portion

of the Supplier's interest in and to this Agreement in favor of any Financing Party and its successors and assigns and (ii) any such Financing Party may assign such interest in and to this Agreement to any subsequent assignee that is also a Financing Party in connection with the sale, transfer, or exchange of its rights under this Agreement. Any such Financing Party may operate the Facility pursuant to such assignment upon and after the exercise of such Financing Party's rights and enforcement of its remedies against the Supplier or the Facility under any deed of trust or other security instrument, creating a lien in its favor, in each case with notice to, but without the consent of, the Buyer, provided that the Supplier has demonstrated to the satisfaction of the MDPSC that any such Financing Party (or the security agent acting on behalf of all the Financing Parties, where there are more than one) or its designee or transferee has entered into an agreement with the Buyer under which each Financing Party or its designee or transferee agrees to be fully bound by all the terms and conditions of this Agreement as if it had been substituted by the Supplier. In order for a collateral assignment to occur as contemplated in this Section 12.1(d), there must be a single entity designated as trustee on behalf of all Financing Parties and the trustee or agent, on behalf of all Financing Parties, must agree to comply with all provisions in this Section 12.1.

12.2 Notice of Deterioration of Financial Indicators

The Parties shall provide notice to the MDPSC and each other of any deterioration of any of their respective Credit Ratings, or any other financial indicators agreed upon in writing between the Buyer and the Supplier at the Execution Date. If the Supplier is not a publicly rated entity, then the Supplier shall provide written notice to the MDPSC and the Buyer of any material deterioration in the Supplier's financial condition immediately upon becoming aware of such deterioration.

12.3 Subcontracting

The Supplier may subcontract its duties or obligations under this Agreement without the prior written approval of MDPSC or the Buyer, provided that no such subcontract shall relieve the Supplier of liability for performing any of its duties and obligations hereunder.

12.4 Taxes

(a) Each Party shall be responsible for all federal, state, and local Taxes incurred by it as a result of entering into this Agreement; provided, however, that the Supplier shall be responsible for all Taxes imposed on, or assessed to, the Facility

and the Site, all payments obtained by the Supplier pursuant to this Agreement and all payments obtained by the Supplier resulting from participation in any of the PJM Markets.

(b) Each Party shall use reasonable efforts to implement the provisions of and to administer this Agreement in accordance with the intent of the Parties to minimize all Taxes, so long as neither Party is materially adversely affected by such efforts.

12.5 Governing Law

(a) The Parties agree that any and all disputes and issues regarding this Agreement must be brought first to the MDPSC for resolution. The Parties waive any right to present any disputes or issues in any other forums except as provided in the Maryland Annotated Code, State Government Article, Section 10-101 et seq.

(b) The interpretation and performance of this Agreement shall be governed by the Laws of the State of Maryland without resort to any conflicts of laws principles that will result in the applications of Laws other than the Laws of the State of Maryland.

(c) To the fullest extent permitted by applicable law, each Party, for itself and its successors and assigns, hereby also expressly and irrevocably waives any rights it can or may have, now or in the future, whether under Sections 205 and/or 206 of the Federal Power Act or otherwise, to seek to obtain from FERC, or to support another in obtaining, by any means, directly or indirectly (through complaint, investigation or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, or support another in obtaining, an order from FERC changing any section of this Agreement specifying the pricing, charges, classifications or other economic terms and conditions agreed to by the Parties. In the event it were to be finally determined that applicable law precludes one or both Parties from waiving its rights to seek changes from FERC to this Agreement (including entering into covenants not to do so) then this section shall not apply, provided that neither Party shall seek any such changes except under the “public interest” standard of review as 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 (the “Mobile-Sierra” Doctrine.)

12.6 Relationship of Parties

The Parties acknowledge that as between the Supplier and the Buyer there is an independent contractor relationship, and that nothing in this Agreement shall create any joint venture, partnership, or principal/agent relationship between the Parties. Neither Supplier nor Buyer shall have any right, power, or authority to enter into any agreement or commitment, act on behalf of, or otherwise bind the other Party in any way.

12.7 Complete and Full Agreement; Amendments; Severability; Waiver

(a) This Agreement (including the Exhibits, Schedules and any written supplements hereto) and the MDPSC's decisions and orders relating hereto constitute the entire agreement between the Parties relating to the subject matter of this agreement.

(b) This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. Except to the extent herein provided for, no amendment or modification to this Agreement shall be enforceable unless reduced to writing, approved by the MDPSC, and executed by both Parties.

(c) The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions hereof. If any provision of this Agreement is held to be invalid, such provision shall not be severed from this Agreement; instead, the scope of the rights and duties created thereby shall be reduced by the smallest extent necessary to conform such provision to the applicable Law, preserving to the greatest extent the intent of the Parties to create such rights and duties as set out herein. If necessary to preserve the intent of the Parties hereto and the prevailing economic balance between the Buyer and the Supplier at the Execution Date, the Parties shall negotiate in good faith to amend this Agreement, adopting a substitute provision that is legally binding and enforceable for the one deemed invalid or unenforceable.

(d) Any number of counterparts of this Agreement may be executed and each shall have the same force and effect as the original, but all of which shall together constitute one and the same instrument.

(e) The captions to Articles and Sections throughout this Agreement are intended solely to facilitate reading and reference to all Articles, Sections and provisions of

this Agreement. Such captions shall not affect the meaning or interpretation of this Agreement.

(f) Except as provided in Article 6.4(d) and 11.1 of this Agreement, a Party's failure to timely enforce compliance with any term or provision of this Agreement shall not be deemed to be a waiver of any said Party's rights under this Agreement.

12.8 Indemnification

(a) General. Each Party (each, an "Indemnifying Party") shall indemnify, defend and hold harmless the other Party, its parents and affiliates and its and their respective officers, directors, lenders, trustees, employees, contractors, subcontractors, and agents (each an "Indemnified Party"), from and against any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demands, suits, recoveries, costs and expenses, court costs, attorneys' fees, and all other obligations by or to third parties arising out of or resulting from the Indemnifying Party's (including its affiliates' officers', directors', lenders', trustees', employees', contractors' and subcontractors', and agents') negligence or actions or omissions under, in connection with, or arising out of, this Agreement; provided, however, that the Indemnifying Party shall not be liable for damages or losses arising out of gross negligence or intentional misconduct by the Indemnified Party, its affiliates and its and their respective officers, directors, lenders, trustees, employees, contractors, subcontractors, or agents.

(b) Indemnification Procedures. A Party seeking indemnification from another Party under this Section 12.8 shall give the other Party notice of such claim as soon as reasonably practical after the commencement of or actual knowledge of such claim or action. Such notice shall describe the claim in reasonable detail, and shall indicate the amount (estimated if necessary) of the claim that has been or may be asserted against or sustained by such Party. To the extent that the other Party is reasonably determined to be materially prejudiced as a result of failure to provide such notice, such notice shall be a condition precedent to liability of the other Party under the indemnification provisions of this Agreement. Neither Party may settle or compromise any claim for which indemnification is sought without the prior written consent of the other Party, provided, however, such consent shall not be unreasonably withheld, delayed or conditioned. The indemnification obligations of each Party shall continue in full force and effect regardless of whether this Agreement has expired or terminated, and shall not be limited in any way by any limitation on insurance, on the

amount or types of damages (including any such limitations on damages set forth in this Agreement), or by any compensation or benefits payable by the Parties under worker's compensation acts, disability benefit acts or other employee acts.

12.9 Dispute Resolution

Except as otherwise expressly set forth herein, for any and all disputed issues, the Parties shall refer to this Section 12.9. A Party must respond to the other Party's notice concerning a disputed issue within ten (10) Business Days of first notification unless otherwise specified in this Agreement.

(a) Negotiation between Executives. The Parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation between executives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. Any Party may give the other Party written notice of any dispute not resolved in the normal course of business ("Initial Notice"). A copy of the Initial Notice shall also be given to the MDPSC. Such Initial Notice shall include: (a) a statement of that Party's position and a summary of arguments supporting that position; and (b) the name and title of the executive or counsel who will be negotiating on behalf of that Party and of any other person who will accompany the executive. Within five (5) Business Days after the effective date of the Initial Notice, the receiving Party shall respond with: (a) a statement of that Party's position and a summary of arguments supporting that position; and (b) the name and title of the executive or counsel who will negotiate on behalf of that Party and of any other person who will accompany the executive. Within fifteen (15) Business Days after delivery of the Initial Notice, the executives or counsels of both Parties and a representative from the MDPSC shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to attempt to resolve the dispute. All reasonable requests for information made by one Party to the other will be honored. All negotiations pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence. If the Parties are unable to resolve the dispute within sixty (60) Business Days after the delivery of the Initial Notice, a Party may petition the MDPSC to initiate a proceeding to resolve the dispute. The Parties should report to the MDPSC any resolution of disputes agreed to by the Parties within five (5) Business Days of said agreement.

(b) The Parties agree that all disputes or issues arising out of this Agreement shall be brought first to the MDPSC for resolution of the dispute or issues. The Parties waive their right to bring disputes or issues to any other forum except as

provided in the Md. Ann. Code, SG Section 10-101 et seq. To the fullest extent permitted by applicable law, each Party, for itself and its successors and assigns, hereby also expressly and irrevocably waives any rights it can or may have, now or in the future, whether under Section 205 and/or 206 of the Federal Power Act or otherwise, to seek to obtain from FERC, or to support another in obtaining, by any means, directly or indirectly (through complaint, investigation or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, or support another in obtaining, an order from FERC changing any section of this Agreement specifying the pricing, charges, classifications or other economic terms and conditions agreed to by the Parties. In the event it were to be finally determined that applicable law precludes one or both Parties from waiving its rights to seek changes from FERC to this Agreement (including entering into covenants not to do so) then this Section shall not apply, provided that neither Party shall seek any such changes except under the “public interest” standard of review as set forth in the Mobile-Sierra Doctrine.

12.10 Confidentiality

In accordance with the terms of the Confidentiality/Non-disclosure Agreement (Appendix 11 of the Request for Proposals For Generation Capacity Resources Under Long-term Contract:)

(a) The contents of this Contract Agreement and all other documents relating to the Contract Agreement and any information made available by a Party (“Disclosing Party”) to the other Party (“Non-Disclosing Party”) with respect to this Agreement are presumed to be public, unless the MDPSC has granted a request for confidential treatment pursuant to Section 12.10(b). To obtain confidential treatment, Parties should file information that they seek to treat as confidential under seal along with a motion for a protective order requesting that the MDPSC grant confidential treatment for specific data or information that they deem to be proprietary and confidential. The information filed under seal should clearly be marked “confidential” on the top of each page. The motion should indicate the basis in federal or state law for keeping the information confidential.

(b) Parties requesting confidential treatment from the MDPSC must clearly specify exactly which information they seek to treat as confidential, for how long such confidential treatment shall last, and whether or not the information for which confidential treatment is being sought will be provided on a regular basis and whether it shall be protected each time. Once the MDPSC has ruled that such information is confidential, the ruling will be valid for the duration of the Term of this Agreement, unless such information has become non-confidential according to Section 12.10(c) of this Agreement.

(c) All information is automatically non-confidential if such information (i) has become generally available to the public other than as a result of a disclosure by the Non-Disclosing Party or its Representatives, or (ii) may be obtained from a non-confidential source that disclosed such information in a manner that is not known by the Non-Disclosing Party to have violated such entity's obligations to the Disclosing Party, if any, in making such disclosure.

(d) In addition, confidentiality status of information does not preclude it from being released to a third party (i) as may be required in response to any summons or subpoena from a regulatory body, or otherwise required in connection with any litigation or to comply with any applicable Law, order, regulation, ruling, regulatory request, accounting disclosure rule or standard or any exchange, control area or independent system operator rule (provided that the Non-Disclosing Party shall promptly and in advance, in possible, notify the Disclosing Party of the requested disclosure so that Disclosing Party may seek a protective order or other appropriate remedy, or, in its sole discretion, waive compliance with the terms of this Section 12.10), or (ii) being furnished to the Non-Disclosing Party's Affiliates, and to the Non-Disclosing party's auditors, attorneys, advisors, lenders, investors, potential acquirers, directors or trustees (collectively, "Representatives") who were not entering into or performing under this Agreement; provided, however, that any Representatives to whom the Non-Disclosing Party discloses the information shall be required to observe the terms of this Section 12.10.

12.11 MDPSC Options to Extend Contract

(a) The MDPSC can at any time three hundred and sixty-five days before the end of the ___ year term of this Agreement notify the Supplier and Buyer in writing that the MDPSC elects to extend this Agreement for a term not to exceed ten years unless the Supplier consents to a longer term.

(b) The Buyer shall notify the MDPSC in writing seven hundred and thirty days before the end of the ___ year term that the MDPSC has three hundred and sixty five days to exercise the option afforded under Section 12.11(a)

(c) All of the terms and conditions of this Agreement will apply to any extended contract term.

- (d) If the MDPSC extends the term of this Agreement, the Supplier must submit pricing terms. The Supplier can also propose amendments to the Agreement as part of its new pricing proposal for the extended contract term.

IN WITNESS WHEREOF, the undersigned Parties have caused this Agreement to be executed in their names by their respective duly authorized officials.

[Corporate Name of Buyer]

By: _____

[Buyer Representative's Name]

[Buyer Representative's Title]

[Corporate Name of Supplier]

By: _____

[Supplier Representative's Name]

[Supplier Representative's Title]

Article 13

Exhibits

The MDPSC reserves the right to add additional information to the Exhibits from the Supplier's Proposal at the time of selection of winning projects.

13.1 Exhibit A: Facility Description and Site Map

This information will be taken from the Supplier's Proposal to the Buyer's competitive solicitation process, supplemented from time to time with revised data as permitted required in this Agreement. All information submitted in the Proposal is binding at the date of Proposal's Financial Offer submission.

Legal name of supplier:

Summer capacity (MW):

Winter capacity (MW):

Description of facility location:

U.S. Geological Survey (USGS) scale map showing Facility Location:

Facility site layout drawing:

Facility water process mass balance drawing:

Facility heat process mass balance drawing:

Facility piping and instrumentation drawing:

Facility electrical one-line diagram:

Facility control relay, telemetry, Supervisory Control and Data Acquisition (SCADA), Generating Availability Data System (GADS), telecommunications and protective relay equipment drawing(s):

Facility fire protection system drawing:

Type of generator:

Generator busbar voltage:

Generator excitation system:

Generator cooling system description:

Generator capacity:

Standard summer generator capacity:

Emergency short duration summer generator capacity:

Standard winter generator capacity:

Emergency short duration winter generator capacity:

Description of key equipment:

Description of electric generator(s) and generator ancillary equipment:

Description of steam process major equipment (if any):

Description of fuel handling equipment major components:

Description of Generator Step Up (GSU) Transformer(s)

Description of GSU cooling system:

GSU interconnection "high side" voltage:

Manufacturer of GSU transformer(s):

Capacity of each GSU transformer

Summer normal:

Summer emergency short duration:

Winter normal:

Winter emergency short duration:

Quantity of GSU transformers to be installed:

Description of major balance of plant components (as applicable):

Air preparation, separation and handling equipment:

Water purification system:

Bus bar and switchgear components:

Facility control system (including software and hardware components):

Steam process equipment, including boilers:

Plant cooling system:

Telecommunications, telemetry, SCADA and GADS systems:

Solid fuel handling, conditioning and delivery system:

Solid fuel storage facility:

Liquid fuel handling, conditioning and delivery system:

Liquid fuel storage facility:

Gas fuel handling, conditioning and delivery system:

Gas fuel storage facility:

Waste (includes ash and combustion solids) disposal and handling system:

Air quality emission monitoring system:

Electrical interconnection:

Description of the point of interconnection:

Interconnection voltage:

Electrical one-line diagram of interconnection:

Physical layout drawing of the interconnection:

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13.2 Exhibit B: Milestone Events and Milestone Dates for the Facility

This information will be taken from the Supplier's Proposal to the Buyer's competitive solicitation process. All information submitted in the Proposal is binding at the date of Proposal's Financial Offer submission.

Note that starred Milestone Events represent Key Milestone Events for the purpose of this Agreement.

Milestone Event Milestone Date

Permanent site control achieved*

Major permits applied for, including PJM

Interconnection study, Interconnection study, Siting Authorities, Environmental, and other studies as applicable.

Major permits obtained, including receipt of approvals from
the PJM, MDPSC, and FERC, as applicable

Engineering, equipment procurement, and construction
contract(s) executed

Financial closing*

Interconnection study completed

Equipment ordered

Major equipment delivered

Commencement of construction*

Foundations laid

Interconnection completed

Completion of major construction – ready for testing

Commercial operation*

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13.3 Exhibit C: Design Parameters of the Facility and Performance Benchmarks

This information will be taken from the Supplier's Proposal to the Buyer's competitive solicitation process, supplemented from time to time with revised data as permitted required in this Agreement. All information submitted in the Proposal is binding at the date of Proposal's Financial Offer submission.

UNIT CHARACTERISTICS

[NAME]

Unit configuration (i.e., combined cycle, single cycle, etc.)

Manufacturer and unit class (i.e., GE Frame H, etc.)

Primary fuel: _____

Secondary fuel: _____

Low Operating Limit: _____

High Operating Limit (normal): _____

High Operating Limit (emergency): _____ MW

Ramp Rate (normal): _____ MW/Minute

Ramp Rate (emergency): _____ MW/Minute

Heat Rate (Warranted Heat Rate): _____ Btu/kWh

Heat Rate for Combined Cycle Facilities:

Base Warranted Heat Rate: _____ Btu/kWh (hhv) for ___ MW

Duct Firing Heat Rate: _____ Btu/kWh (hhv) for ___ MW

Minimum Run Time: _____ hours (___ days)

Minimum Shutdown Time: ___ hours

Start Up Time (Cold Conditions)*: ___ hours

Start Up Time (Hot Conditions): ___ hours

*Cold start applies after _____ hours from shutdown

Automatic Generation Control (AGC) Equipment (Yes/No)?

Add table from Project Description Template showing annual target availability and Contract

Quantities for each Contract Year.

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13.4 Exhibit D: Financial Offer

This information will be taken from the Supplier's Proposal to the Buyer's competitive solicitation process. All information submitted in the Proposal is binding at the date of Proposal's Financial Offer submission.

[To be attached after offer selection and contract execution]

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13.5 Exhibit E Code of Conduct

Information Disclosure and Communication Protocols

1. The Buyer in this Agreement, and specifically any Parties representing the Buyer, will be obliged to sign a MDPSC Confidentiality/Non-Disclosure Agreement (Appendix 11 of the Request for Proposals For Generation Capacity Resources Under Long-term Contract) before receiving this Agreement, which will grant this Agreement the status of “Protected Materials.”
2. The Confidentiality/Non-Disclosure Agreement shall be based on a Protective Order which will be approved by the MDPSC before the distribution company receives this Agreement.
3. As per the Confidentiality/Non-Disclosure Agreement, the electric company will put in place appropriate “Firewalls” (i.e. information barriers that prevent conflicts of interest regarding the sharing of information for gain or for achieving competitive advantage) to safeguard commercially sensitive information to which the companies will have access to once they become counterparties to this Agreement.
4. The electric distribution company will treat as confidential the Protect Materials it receives as an administrator of and counterparty to this Agreement. Protected Materials will not be used except as necessary for the administration of this Agreement, nor shall they be disclosed in any manner to any person except an official “Reviewing Representative.” A Reviewing Representative is a person who is engaged in the conduct of this proceeding and who needs to know the information in order to carry out his or her responsibilities in this proceeding.

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Section 13.6 Exhibit F
Ancillary Services

[to be completed after offer selection]

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Section 13.7 Exhibit G

Pricing Mechanism for Fixed/Indexed Price Contract for Differences

A proposed mechanism for pricing of a Contract for Differences covering Capacity, Associated Energy, Ancillary Services, and RECs is defined below. The mechanism is based on a Fixed/Indexed pricing approach, subject to Supplier guarantees of capacity and heat rate.

Contract Quantities: *These quantities will be established at the time the contract is executed. The quantity may need to be modified if acceptance testing prior to Commercial Operation shows that the quantity has changed.*

CCQ = Confirmed Contract Quantity, MW

This is the quantity of unforced capacity (UCAP) that Supplier has offered to supply into the RPM BRA and that Parties will settle against, as confirmed at the Facility's Commercial Operation Date.

CUFIC = Contract Unit Fuel Input Curve, as a function of unit output, operating mode (e.g., inlet air chillers on/off, inlet air heaters on/off, duct firing, etc.), and cumulative degradation

CUSF = Contract Unit Start Fuel, MMBtu per unit start cycle

CO₂ER = CO₂ Emission Rate, lb/MMBtu

SO₂ER = SO₂ Emission Rate, lb/MMBtu

The carbon dioxide and sulfur dioxide emission rates are based on fuel composition.

FNO_xER = Full Load NO_x Emission Rate, lb/MMBtu

The full load NO_x emission rate is based on plant design rate operating at full load.

SNO_xER = Startup NO_x Emission Rate, lb/unit start cycle

The startup NO_x emission rate is based on plant design or permit rate, whichever is more restrictive.

Contract Price Provisions:

CCP = Contract Capacity Price, \$/MW_{UCAP}-day

For Generation Capacity Resources proposed on a Fixed/Indexed pricing basis, the CCP will be based on the proposed capacity pricing components.

CCP = (CP_{Firm} + CP_{Index} * EscFactor)

CP_{Firm} = Firm capacity price component, \$/MW_{UCAP}-day (as proposed, adjusted for actual cost of “pass-through” elements)

CP_{Index} = Indexed capacity price component, \$/MW_{UCAP}-day (as proposed)

EscFactor = Escalation Factor

= Current year index value / Base index value for proposed index

VOM_e = Variable Non-Fuel O&M Rate, \$ / MWh

= CPV_EFirm + CPV_EIndex * EscFactor

VOM_s = Variable Non-Fuel O&M Rate, \$ / unit start

= CPV_SIndex * EscFactor

CPV_EFirm = Firm component of energy price, \$ / MWh (as proposed)

- CPVEindex = Indexed non-fuel component of energy price base, \$/MWh
(as proposed)
- CPVSIindex = Indexed start price base, \$ / unit start (as proposed)
- CFPA = Fuel Price Adder for delivery and balancing, \$/MMBtu
(as proposed)
- CFPM = Fuel Price Multiplier for transportation losses (as proposed)
- HVCF = Heating Value Conversion Factor (Index units / MMBtu)
- RECFirm = Firm component of REC price, \$ / MWh (as proposed)
- RECIindex = Indexed component of REC price base, \$ / MWh (as proposed)
- CBSPFirm = Firm component of contract black start capacity price, \$/kW-year
- CBSPIindex = Indexed component of contract black start capacity price, \$/kW-year
- RSFPFirm = Firm component of Regulation Service Floor Price, \$/MW-hour
- RSFPIindex = Indexed component of Regulation Service Floor Price, \$/MW-hour
- SRFPFirm = Firm component of Synchronized Reserve Floor Price, \$/MW-hour
- SRFPIindex = Indexed component of Synchronized Reserve Floor Price, \$/MW-hour
- DARFPFirm = Firm component of Day-Ahead Scheduling Reserve Floor Price,
\$/MW-hour
- DARFPIindex = Indexed component of Day-Ahead Scheduling Reserve Floor Price,

\$/MW-hour

Monthly Costs and Quantities:

Calculated for each generating unit:

UMEQ = Unit Monthly Energy Quantity, MWh

= $\sum \sum UHEQ_{i,c}$ over all hours i in month and all operating modes c at or above the applicable Low Operating Limit

$UHEQ_{i,c}$ = Hourly Energy Quantity in hour i , MWh for portion of hour in which unit operates in mode c at or above the applicable Low Operating Limit

$OF_{i,c}$ = Operating Factor, hour i in mode c

= fraction of hour i in which the unit operates in mode c at or above the applicable Low Operating Limit

Calculated as aggregate for all units:

MEQ = Monthly Energy Quantity, MWh

= \sum UMEQ for all units

MStrt = Monthly unit starts

BSCQ = Black Start Capacity, MW (as accepted by PJM)

RSQ = Regulation Service Quantity Provided, MW-hour

SRQ = Synchronized Reserve Quantity Provided, MW-hours

DARQ = Day-Ahead Scheduling Reserve Quantity Provided, MW-hours

The measures above are based on actual dispatch levels.

MACO2RQ = Monthly Actual CO₂ Allowance Retirement Quantity, tons
= MACO2Q x Applicable multiplier for multiple retirements

MASO2RQ = Monthly Actual SO₂ Allowance Retirement Quantity, tons
= MASO2Q x Applicable multiplier for multiple retirements

MANOxRQ = Monthly Actual NO_x Allowance Retirement Quantity, tons
= MANOxQ x Applicable multiplier for multiple retirements

If no multiple retirement requirement is in effect for a particular emission, the “applicable multiplier” is 1.00.

MACO2E = Monthly Actual CO₂ Emission Allowance Expense, \$

MASO2E = Monthly Actual SO₂ Emission Allowance Expense, \$

MANOxE = Monthly Actual NO_x Emission Allowance Expense, \$

MAEAE = Monthly Actual Emission Allowance Expense, \$
= MACO2E + MASO2E + MANOxE

The actual emission allowance costs for CO₂, SO₂, and NO_x are calculated in accordance with generally accepted accounting principles for inventory valuation and recognition of allowance grants and deferred allowance purchases. Deferred purchases are to be accrued based on a published index, with an annual true up charge or credit to account for actual allowance purchase cost. The expense figures do NOT include any penalties that might be imposed for violation of air permit limits.

MCO2P = Monthly CO₂ Allowance Price, \$/ton of retired allowances
= MACO2E / MACO2RQ

MISO2P = Monthly SO₂ Allowance Price, \$/ton of retired allowances
= MASO2E / MASO2RQ

$$\begin{aligned} \text{MNO}_x\text{P} &= \text{Monthly NO}_x \text{ Allowance Price, \$/ton of retired allowances} \\ &= \text{MANO}_x\text{E} / \text{MANO}_x\text{RQ} \end{aligned}$$

Reference Quantities and Expenses:

Reference quantities and expenses are calculated as a function of actual output and contractual performance parameters to provide a basis for comparison of actual performance to contractual obligations. Fuel and allowance costs are reimbursed at actual prices applied to reference quantities for Generation Capacity Resources proposed on a Fixed/Indexed Pricing basis.

For each unit:

$$\begin{aligned} \text{UMRFC} &= \text{Unit Monthly Reference Fuel Consumption, MMBtu} \\ &= \sum \sum (\text{HRFC}_{i,c}) \text{ over all hours of the month and all modes } c \end{aligned}$$

HRFC_{i,c} = Hourly Reference Liquid Fuel Consumption, MMBtu, for hour i and operating mode c

$$\begin{aligned} \text{UMRFE} &= \text{Unit Monthly Reference Fuel Expense, \$} \\ &= \sum \sum (\text{HRFC}_{i,c}) * \text{DFP}_i \text{ over all hours of the month and all modes } c \end{aligned}$$

$$\begin{aligned} \text{DFP}_i &= \text{Daily Fuel Price (\$/MMBtu) applicable in hour } i \\ &= \text{FPI}_d * \text{CFPM} * \text{HVCF} + \text{CFPA} \end{aligned}$$

FPI_d = Value of Fuel Price Index on day d (which includes hour i)

For all units in aggregate:

$$\begin{aligned} \text{MRFC} &= \text{Monthly Reference Fuel Consumption, MMBtu} \\ &= \sum \{ \text{MStrt} * \text{CUSF} + \text{UMRFC} \} \text{ for all units} \end{aligned}$$

$$\begin{aligned} \text{MRFE} &= \text{Monthly Reference Fuel Expense, \$} \\ &= \sum \{ (\text{MStrt} * \text{CUSF} + \text{UMRFC}) / \text{UMRFC} * \text{UMRFE} \} \text{ for all units} \end{aligned}$$

$$\begin{aligned} \text{MRCO}_2\text{E} &= \text{Monthly Reference CO}_2 \text{ Emission Allowance Expense, \$} \\ &= \text{MRFC} * \text{CO}_2\text{ER} / 2000 * \text{Applicable multiplier for multiple retirements} \end{aligned}$$

* MCO2P

MRSO2E = Monthly Reference SO₂ Emission Allowance Expense, \$
= MRFC * SO2ERL / 2000 * Applicable multiplier for multiple retirements
* MSO2P

MRNOxE = Monthly Reference NO_x Emission Allowance Expense, \$
= [MRFC * FNOxER + MStrt * SNOxER] / 2000
* Applicable multiplier for multiple retirements * MNOxP

MREAE = Monthly Reference Emission Allowance Expense, \$
= MRCO2E + MRNOxE + MRSO2E

Monthly Reference Variable Cost:

MRVC = Monthly Reference Variable Cost, \$
= MEP * VOMe + MStrt * VOMs + MRFE + MREAE

Fuel expenses and allowance expenses are compensated based on market or actual prices, but reference quantities using contract heat input curves reflecting output level, operating mode, and cumulative degradation.

Monthly REC Payment:

MRECP = Monthly REC Payment, \$
= MEQ * (RECPFirm + RECPIndex * EscFac)

RECs are transferred from Supplier to Buyer, based on monthly energy production, where applicable.

Monthly PJM Market Revenues:

MER = Monthly Energy Revenue, \$

$$= \sum (LMP_i * [Offer and cleared net energy amount in DAM or RTM for hour i]) \text{ over all hours of the month}$$

MRR = Monthly RPM Revenue, \$

$$= CCQ * RPMP * (\text{days in month})$$

RPMP = RPM Market Price, \$/MW_{UCAP}-day

MASR = Monthly Ancillary Services Revenue, \$

$$= \text{Monthly Black Start Fixed Revenue (variable components excluded)}$$

- + Monthly Reactive Service Revenues
- + Monthly Regulation/Frequency Response Service Revenues
- + Monthly Synchronized Reserve Revenues
- + Monthly Day-Ahead Scheduling Reserve Revenues
- + Monthly Operating Reserve Revenues

Monthly RPM Payment Amount:

MRPA = Monthly RPM Payment Amount, \$

$$= (CCP - RPMP) * CCQ * (\text{days in month})$$

Monthly Energy Payment Amount:

MEPA = Monthly Energy Payment Amount, \$

$$= MRVC - MER$$

Monthly Ancillary Services Payment Amount:

MASPA = Monthly Ancillary Services Payment Amount, \$

$$= BSCQ * (CBSP_{\text{Firm}} + CBSP_{\text{Index}} * \text{EscFactor})$$

- + RSQ * (RSFPFirm + RSFPIndex * EscFactor)
- + SRQ * (SRFPFirm + SRFPIndex * EscFactor)
- + DARQ * (DARFPFirm + DARFPIndex * EscFactor)
- MASR

Monthly Payments:

$$\begin{aligned} \text{MPA} &= \text{Monthly Payment Amount, \$} \\ &= \text{MRPA} + \text{MEPA} + \text{MASPA} + \text{MRECP} \end{aligned}$$

MPA is paid by Buyer to Supplier if positive, by Supplier to Buyer if negative. If MPA is zero, then neither Party pays the other. The Supplier takes the quantity/availability risk, while Buyer takes market price risk.

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