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**AGREEMENT FOR THE PURCHASE AND SALE**

**OF PEAKING CAPACITY AND ENERGY**

**BETWEEN**

**THE ELECTRIC PLANT BOARD OF THE CITY OF PADUCAH, KENTUCKY  
DBA PADUCAH POWER SYSTEM**

**AND**

**THE KENTUCKY MUNICIPAL ENERGY AGENCY**

**JULY 13, 2016**

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OF PEAKING CAPACITY AND ENERGY  
BETWEEN  
ELECTRIC PLANT BOARD OF THE CITY OF PADUCAH, KENTUCKY  
DBA PADUCAH POWER SYSTEM AND  
KENTUCKY MUNICIPAL ENERGY AGENCY**

This AGREEMENT FOR THE PURCHASE AND SALE OF PEAKING CAPACITY AND ENERGY (this "Agreement") is made and entered into as of this 13th day of July, 2016 ("Effective Date"), between **Electric Plant Board of the City of Paducah, Kentucky dba Paducah Power System** (hereinafter referred to as "Seller"), a municipal electric corporation organized and existing under the laws of the Commonwealth of Kentucky and **Kentucky Municipal Energy Agency**, an inter-local agency organized and existing under the laws of the Commonwealth of Kentucky (hereinafter referred to as "Buyer").

WHEREAS, Seller owns and operates a gas-fired peaking generation facility located on Schneidman Road in the City of Paducah, Kentucky, with a total net winter generating capacity of approximately 120 megawatts (the "Facility"); and

WHEREAS, Buyer wishes to purchase from Seller, and Seller wishes to sell to Buyer, Peaking Capacity and Peaking Energy sourced from the Facility, as set forth herein;

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

**ARTICLE I**

**DEFINITIONS**

Section 1.1. Definitions. When used in this Agreement, including any Exhibits hereto, the following terms, whether used in the singular or plural, shall have the following definitions.

"AAA" has the meaning set forth in Section 15.3(a).

"Affiliate" means, with respect to any Person, any other Person that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person. For this purpose, "control" means the direct or indirect ownership of a majority of the outstanding capital stock or other equity interests having ordinary voting power, or otherwise having the power, directly or indirectly, to direct or cause the direction of the management and policies of a Person.

"Agreement" has the meaning set forth in the preamble.

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“Balancing Authority” means the entity that integrates resource plans ahead of time, maintains load-interchange-generation balance within a Balancing Authority Area and supports interconnection frequency in real time.

“Balancing Authority Area” means an electric power system or combination of electric power systems to which a common automatic generation control scheme is applied in order to, among other things, match at all times the power output of the generators within the electric power system(s) and capacity and energy purchased from entities outside the electric power system(s) with the load within the electric power system(s).

“Bankruptcy Proceeding” means with respect to a Person, such Person (i) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due, (ii) makes a general assignment, arrangement or composition with or for the benefit of its creditors, (iii) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency Law or other similar Law affecting creditors’ rights, or a petition is presented for its winding-up or liquidation, and solely with respect to any such proceeding or petition that is instituted or presented by a party other than the Party with respect to which such petition or proceeding relates is not dismissed within fifteen (15) days after the filing thereof, (iv) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger), (v) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets, (vi) causes or is subject to any event with respect to it which, under applicable Law, has an analogous effect to any of the events specified in clauses (i) through (v), or (vii) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

“Bulk Electric System” means the electrical generation resources, transmission lines, interconnections with neighboring systems, and associated equipment, generally operated at voltages of 100 kV or higher.

“Business Day” means a day that is not a Saturday, a Sunday or a day on which banking institutions are not required to be open, or are authorized or required to close, in the Commonwealth of Kentucky.

“Buyer” has the meaning set forth in the preamble.

“Buyer Event of Default” has the meaning set forth in Section 11.2.

“Capacity” means the ability of generating equipment to produce Energy, measured in megawatts.

“Claim Notice” has the meaning set forth in Section 12.4.

“Clean Power Plan” means the “Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units” Final Rule issued by the U.S. Environmental Protection Agency, 80 FR 64,661 (2015).

“Contract Term” has the meaning set forth in Section 2.1.

“Credit Rating” means with respect to an entity providing a Qualifying Letter of Credit or Additional Qualifying Letter of Credit, on the relevant date of determination, the respective ratings then assigned to such entity’s unsecured, senior long-term debt, or deposit obligations (not supported by third party credit enhancement) by a Rating Agency. If no rating is assigned to such entity’s unsecured, senior long-term debt or deposit obligations by any Rating Agency, then “Credit Rating” shall mean the general corporate credit rating or long-term issuer rating assigned by a Rating Agency, as the case may be.

“Day-Ahead Schedule” has the meaning set forth in Section 5.2(b).

“Day-Ahead Schedule Revision” has the meaning set forth in Section 5.3(a).

“Default Interest Rate” means, for any date, the lesser of (i) the highest rate permitted by Law or (ii) the Interest Rate plus an annual rate of 2% converted to a daily rate.

“Delivered Peaking Energy” means the quantity of Peaking Energy, Scheduled by Buyer and delivered by Seller to Buyer at the Delivery Point in the relevant time period, expressed in MWh.

“Delivery Point” means Seller’s primary 161 kV interconnection with the LGE/KU transmission system.

“Demand” has the meaning set forth in Section 15.3(a).

“Effective Date” has the meaning set forth in the preamble.

“Energy” means real (not reactive) electric energy in the form of three-phase alternating current having a nominal frequency of approximately sixty (60) cycles per second, a harmonic content consistent with the requirements of the Institute of Electrical and Electronic Engineers Standard no. 519, and a voltage content consistent with the guidelines applied by the Balancing Authority Area in which the applicable generating resource resides (measured in kilowatt-hours or megawatt-hours, as the case may be).

“Facility” has the meaning set forth in the recitals.

“Facility Operational Limits” means the limits set forth in Exhibit A, as it may be revised from time to time by the Operating Committee pursuant to Section 5.6.

“Fitch” means Fitch Ratings, Inc., or its successor.

“Force Majeure” has the meaning set forth in Section 14.1.

“Forced Outage” means any of U1, U2, U3, D1, D2 or D3 as defined in the NERC Generating Availability Data System Data Reporting Instructions (or any replacement terminology adopted in successor Data Reporting Instructions adopted by NERC).

“Indemnitee” has the meaning set forth in Section 12.3.

“Indemnitor” has the meaning set forth in Section 12.3(a).

“Interest Rate” means, for any date, the prime rate reported in *The Wall Street Journal's* “Money Rates” column (or any similar column published in *The Wall Street Journal* in replacement thereof) for the immediately preceding Business Day, converted to a daily rate. In the event *The Wall Street Journal* ceases to report the prime rate, the prime rate for purposes of this Agreement shall be the prevailing prime rate (or base rate) charged by major banks in the United States of America.

“Investment Grade Rating” means any rating of a Party’s general credit, or of a Party’s long-term bonds, of at least BBB- from Fitch, BBB- from S&P, or Baa3 from Moody’s.

“kW” means kilowatt (a unit of Capacity).

“kWh” means kilowatt-hour (a unit of Energy).

“KyMEA Member” means any municipal electric utility member of Buyer.

“KyMEA Member AR Agreement” has the meaning set forth in Section 3.2.

“Law” means any law, rule, regulation, order, writ, judgment, decree or other legal or regulatory determination by a court, regulatory agency or governmental authority of competent jurisdiction.

“Letter of Credit Default” means the occurrence of any of the following events with respect to any Qualifying Letter of Credit:

- (a) The issuer of the Qualifying Letter of Credit fails to maintain a Credit Rating of at least “A-” by S&P and “A3” by Moody’s and total assets of at least \$10,000,000,000 (Ten Billion Dollars);
- (b) The issuer of the Qualifying Letter of Credit fails to comply with or perform its obligations under the Qualifying Letter of Credit;
- (c) The issuer of the Qualifying Letter of Credit disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Qualifying Letter of Credit;
- (d) The issuer of the Qualifying Letter of Credit fails to honor the beneficiary Party’s properly documented request to draw on such Qualifying Letter of Credit;
- (e) Such Qualifying Letter of Credit fails or ceases to be in full force and effect at any time; or
- (f) The issuer of the Qualifying Letter of Credit becomes subject to a Bankruptcy Proceeding;



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Provided, however, no Letter of Credit Default shall occur or be continuing in any event with respect to a Qualifying Letter of Credit after the time such Qualifying Letter of Credit is canceled or returned.

“LGE/KU” means Louisville Gas and Electric Company and Kentucky Utilities Company.

“LGE/KU Tariff” means the LGE and KU Joint Pro Forma Open Access Transmission Tariff, as it may be amended from time to time and posted on the LGE/KU Open Access Same-time Information System.

“Losses” has the meaning set forth in Section 12.1.

“Monthly Energy Charge” means Buyer’s monthly payment obligation for Delivered Peaking Energy in accordance with Exhibit C.

“Monthly Reservation Charge” means Buyer’s monthly payment obligation for Peaking Capacity in accordance with Section 7.1 and Exhibit B.

“Moody’s” means Moody’s Investor Services, Inc., or its successor.

“MW” means megawatt (one (1) MW equals 1,000 kW).

“MWh” means megawatt-hour (one (1) MWh equals 1,000 kWh).

“NERC” means the North American Electric Reliability Corporation or such successor organization.

“NERC Holidays” means New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

“Network Resource” has the meaning set forth in the LGE/KU Tariff.

“NITS” means Network Integration Transmission Service as defined in the LGE/KU Tariff.

“Operating Committee” has the meaning set forth in Section 5.6.

“Party” or “Parties” means one of Seller or Buyer, or both Seller and Buyer, or their permitted assigns and transferees, as the context requires.

“Peaking Capacity” means the quantity of capacity set forth in Section 4.2, as such may have been modified by Buyer’s notice provided pursuant to Section 3.1(b), Section 3.2, or Section 3.4.

“Peaking Energy” means Energy associated with the Peaking Capacity.

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“Person” means any natural person, corporation, partnership, limited liability company, firm, association, trust, governmental authority or any other entity, whether acting in an individual, fiduciary or other capacity.

“Prudent Utility Practices” shall mean the practices, methods and acts including but not limited to the generally accepted practices, methods and acts engaged in or approved by the operators of similar electric generating facilities which at the time such practice, method or act is employed, and in the exercise of reasonable judgment in light of the facts known at such time, would be expected to accomplish the desired result in a workmanlike manner, consistent with (a) applicable Laws and governmental requirements, (b) commercially reasonable reliability, safety and environmental protection, and (c) reasonably consistent with manufacturer’s technical advisory recommendations. Prudent Utility Practices shall not require the use of the optimum practice, method or act, but only requires the use of acceptable practices, methods or acts generally accepted in the independent power industry in the United States.

“Qualifying Letter of Credit” means an irrevocable standby letter of credit with an initial term of at least one year for the benefit of a Party, issued by a U.S. commercial bank or a U.S. branch of a foreign bank with such bank having (a) a Credit Rating of at least “A-” from S&P and “A3” from Moody’s, and (b) total assets (determined in accordance with generally accepted accounting principles in the United States of America as in effect from time to time) of at least \$10,000,000,000 (ten billion dollars), and which letter of credit (i) is substantially in the form of Exhibit F or another form of letter of credit reasonably satisfactory to the beneficiary Party, (ii) permits automatic renewal of the relevant Qualifying Letter of Credit (which may be subject to an outside stated expiration date), and (iii) may be utilized by the beneficiary Party to satisfy all present and future payment obligations of the other Party under this Agreement when due.

“Rating Agency” means S&P, Moody’s, Fitch or any other rating agency agreed to by the Parties in writing.

“Regional Reliability Council” shall mean one or more of the member councils of the NERC whose purpose is to preserve and enhance service reliability and economy of operation among electric utilities within the member council, and to assess the adequacy and ensure the reliability of the interconnected Bulk Electric System for the benefit of all end-users of electricity and all entities engaged in providing electric services, with due regard for safety, environmental protection and economy of service, through coordination of planning, construction, maintenance and operation of generation and transmission facilities on a regional basis. The current Regional Reliability Council applicable to Seller is SERC Reliability Corporation.

“Reliability Coordinator” means the entity that is the highest level of authority, which is responsible for the reliable operation of the Bulk Electric System, has the wide area view of the Bulk Electric System, and has the operating tools, processes and procedures, including the authority to prevent or mitigate emergency operating situations in both next-day analysis and real-time operations. The current Reliability Coordinator applicable to Seller is Tennessee Valley Authority.

“Replacement Price” means the price at which Buyer, acting in a commercially reasonable manner, purchases a replacement for any Scheduled Peaking Energy not delivered by

Seller, plus (i) costs reasonably incurred by Buyer in purchasing such replacement product and (ii) additional transmission charges, if any, reasonably incurred by Buyer to deliver such replacement product to an interconnection point with the transmission system of LGE/KU, or its successor in interest, or, absent a purchase, the energy imbalance service charges assessed by the applicable Transmission Provider under its tariff for under-supply resulting from the failure to deliver Scheduled Peaking Energy; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, but will include any penalties incurred under any open access transmission tariff(s) utilized by Buyer.

“Required Coverage” has the meaning set forth in Section 5.11(a).

“Resource Adequacy Program” means any resource adequacy requirement or other form of capacity demonstration obligation applicable in the Balancing Authority Area(s) where Buyer’s load is located, pursuant to tariffs, regulatory requirements, or other binding criteria applicable to Buyer.

“Sales Price” means the price at which Seller, acting in a commercially reasonable manner, resells any Scheduled Peaking Energy not received by Buyer, deducting from the proceeds received from such resale any (i) costs reasonably incurred by Seller in reselling such Peaking Energy and (ii) additional transmission charges, if any, reasonably incurred by Seller in delivering such Peaking Energy to the third-party purchasers, or absent a sale, the energy imbalance service payments made to Seller by the applicable Transmission Provider under its tariff for over-supply resulting from Buyer’s failure to receive Scheduled Peaking Energy; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, but will include any penalties incurred under any open access transmission tariff utilized by Seller. For purposes of this definition, Seller shall be considered to have resold such product to the extent Seller shall have entered into one or more arrangements in a commercially reasonable manner whereby Seller repurchases its obligation to purchase and receive the product from another party at the Delivery Point.

“Schedule” or “Scheduling” or “Scheduled” means Buyer communicating to Seller that a particular amount of Peaking Energy is to be delivered to the Delivery Point.

“Scheduling Day” means Monday through Friday, excluding NERC Holidays.

“Seller” has the meaning set forth in the preamble.

“Seller Event of Default” has the meaning set forth in Section 11.1.

“Service Commencement Date” means 00:00:00 Eastern Standard Time on June 1, 2019, or such later date as may be determined in accordance with Section 3.1(b).

“Service Month” has the meaning set forth in Section 7.1.

“S&P” means S&P Global Ratings, a business division of Standard & Poor’s Financial Services, LLC, or its successor.

“Third Party Claims” has the meaning set forth in Section 12.3(a).

“Total Facility Capacity” means the net capacity of all four units at the Facility, which will vary by month as agreed upon by the Operating Committee based on seasonal ratings reported to NERC, periodic capability tests that comply with criteria established by the applicable Regional Reliability Coordinator or pursuant to an applicable Resource Adequacy Program. As of the Effective Date, the estimated Total Facility Capacity for summer months is 104 MW and the estimated Total Facility Capacity for winter months is 120 MW.

“Transmission Provider” means the Person or Persons transmitting Scheduled Firm Energy on behalf of Buyer from the Delivery Point.

## ARTICLE II

### TERM

Section 2.1. Initial Term. The term of this Agreement shall commence on the Effective Date, and shall continue in effect through May 31, 2029 (the “Contract Term”), unless earlier terminated or extended in accordance with the terms of this Agreement. The Capacity and Energy transactions provided for by this Agreement shall begin on the Service Commencement Date and continue in effect through the end of the Contract Term, unless the Agreement is terminated early in accordance with the terms of this Agreement.

Section 2.2. Extension of Term. On or before January 1, 2027, Seller shall provide notice to Buyer with specific pricing for Peaking Capacity and Peaking Energy at which Seller is willing to extend the Contract Term to May 31, 2039. Seller’s offered pricing for Peaking Capacity and Peaking Energy shall not exceed the totals yielded by the pricing caps in Exhibit G. Upon receipt of Seller’s proposed pricing, the Parties shall enter into good-faith negotiations regarding the pricing for Peaking Capacity and Peaking Energy for the extension period. If the Parties have not reached agreement by May 1, 2027, Buyer may accept Seller’s offered pricing by providing notice of such acceptance no later than June 1, 2027; in such event, Buyer’s notice shall state the quantity of Peaking Capacity to be applicable during the extension period, which shall not be less than ■ MW and may be as much as the Total Facility Capacity. In the event of either successful negotiations or Buyer’s acceptance of Seller’s offered pricing, the Parties shall promptly execute an amendment to this Agreement reflecting the pricing provisions (and, if different from the existing Peaking Capacity amount, the quantity of Peaking Capacity) for the extension period. Unless otherwise mutually agreed, all other terms of this Agreement shall remain unchanged for the extension period. If, by June 1, 2027, Buyer has not provided notice of acceptance of Seller’s tendered extension pricing and the Parties have not agreed on negotiated pricing for the extension period, Buyer shall have no entitlement to Peaking Capacity and Peaking Energy, and this Agreement shall terminate, as of May 31, 2029, unless earlier terminated in accordance with the terms of this Agreement. For the avoidance of doubt, unless the Parties have agreed on negotiated pricing for the extension period or Buyer has provided notice of acceptance of Seller’s tendered extension pricing on or before June 1, 2027, Seller shall be free thereafter to offer the peaking capacity and energy from the Facility to third parties for the period after termination of this Agreement.

## ARTICLE III

## CONTINGENCIES; CAPACITY ADJUSTMENTS

Section 3.1. Transmission Contingency.

(a) The obligations of the Parties pertaining to scheduling, delivery, sale, purchase, and payment for Peaking Capacity and Peaking Energy under this Agreement are conditioned on Buyer obtaining firm transmission service to support delivery of Peaking Energy purchased hereunder from the Delivery Point to Buyer's loads. No later than thirty (30) days after the Effective Date, Buyer shall submit to LGE/KU an application for NITS on the LGE/KU transmission system (or, if such an application has already been submitted, an application to include this Agreement as a new Network Resource).

(b) Buyer is obligated to utilize commercially reasonable efforts to secure NITS required to support delivery of Peaking Energy from the Delivery Point to Buyer's loads located within the LGE/KU transmission system. If Buyer has not been able to make arrangements reasonably satisfactory to Buyer to ensure firm delivery service from the Delivery Point to Buyer's loads located within the LGE/KU transmission system, then Buyer may terminate this Agreement by providing written notice to that effect to the Seller no later than June 30, 2017. Such termination shall be without penalty or further liability on the part of Seller or Buyer. Alternatively, (i) if by June 30, 2017 Buyer has been notified in writing by the Transmission Provider that firm transmission service would be made available at a date later than the Service Commencement Date in an amount sufficient to allow the Peaking Capacity to be delivered to Buyer (without requiring Buyer to pay for upgrade costs), Buyer may elect to postpone the Service Commencement Date for up to three hundred sixty five (365) days, or to the date as of which firm transmission sufficient to deliver the Peaking Capacity can be provided, whichever is earlier; or (ii) if by June 30, 2017 Buyer has been notified in writing by the Transmission Provider that firm transmission service would be available for a quantity less than the full Peaking Capacity (without requiring Buyer to pay for upgrade costs), Buyer may elect to reduce the Peaking Capacity to the quantity of available transmission service, but not less than thirty megawatts (30 MW). If Buyer elects to reduce the Peaking Capacity pursuant to Section 3.1(b)(ii), Buyer may specify in its notice to Seller that such reduction is being made on a temporary basis, only for the period of construction of necessary transmission upgrades; in such event, Buyer shall keep Seller informed of progress regarding the construction of the upgrades as Buyer receives such information from the Transmission Provider, and the Peaking Capacity reduction hereunder shall cease as of the first day of the month following the completion of the upgrades (or such other date to which the Parties may agree). Unless Buyer's notice specifies that the Peaking Capacity reduction will be only for the period until the upgrades are completed, the effect of Buyer's notice shall be a permanent reduction in the Peaking Capacity.

Section 3.2. Buyer's Sales to Members. The obligations of the Parties pertaining to scheduling, delivery, sale, purchase, and payment for Peaking Capacity and Peaking Energy under this Agreement are conditioned on the execution, by Buyer and KyMEA Members, of agreements pursuant to which Buyer will sell, and the KyMEA Members will purchase, the full capacity and energy requirements of such KyMEA Members ("KyMEA Member AR

Agreements”), where the reasonably projected collective annual peak demand of the KyMEA Members under such executed agreements for calendar year 2019 is at least three hundred megawatts (300 MW). If, within one hundred eighty (180) days after the Effective Date, KyMEA Member AR Agreements sufficient to satisfy the foregoing condition have not been entered into by Buyer and KyMEA Members, Buyer shall provide notice to Seller of the failure of this condition. In such event, Buyer may elect to reduce the Peaking Capacity to an amount specified in the notice (which shall not be less than 30 MW). Buyer’s notice shall have the effect of automatically amending this Agreement solely in respect of the Peaking Capacity as specified in the notice.

Section 3.3. Deadline for Satisfaction or Waiver of Contingencies. Buyer will deliver written notice to Seller by October 1, 2017, listing each contingency and the extent to which the contingency has been satisfied, not satisfied, or not satisfied but waived. If all contingencies set forth in this ARTICLE III have not been satisfied or waived by Buyer by October 1, 2017, this Agreement may be terminated by either Party providing notice to the other Party on or before October 31, 2017, without penalty or obligation on the part of Seller or Buyer.

Section 3.4. Buyer’s Right to Adjust Peaking Capacity.

(a) By written notice given no later than December 31, 2017, Buyer may exercise a one-time election to increase the Peaking Capacity to (i) a stated amount (applicable in all months of a year) specified in its notice (which shall not exceed 104 MW), or (ii) the Total Facility Capacity. The increase in the Peaking Capacity shall be contingent upon Buyer’s receipt of notification from the Transmission Provider by December 31, 2018 that transmission service to support such additional purchase will be available. If the transmission contingency is satisfied or waived by Buyer, such increase shall be effective June 1, 2022 and shall continue through the end of the Contract Term. Upon Buyer’s provision of notice that such transmission contingency has been satisfied or waived, this Agreement shall be automatically amended solely in respect of the amount of Peaking Capacity to be purchased by Buyer.

(b) By written notice given no later than May 31, 2019, Buyer may exercise a one-time election to decrease the Peaking Capacity to an amount stated in the notice, which shall not be less than thirty megawatts (30 MW), effective June 1, 2022 through the end of the Contract Term. Buyer’s notice provided under this Section 3.4(b) shall have the effect of automatically amending this Agreement solely in respect of the amount of Peaking Capacity to be purchased by Buyer starting as of June 1, 2022.

## ARTICLE IV

### PURCHASE AND SALE

Section 4.1. Product. Subject to and in accordance with the terms and conditions of this Agreement, during the period from the Service Commencement Date to the end of the Contract Term, Seller shall sell and make available to Buyer at the Delivery Point, and Buyer shall purchase and pay for, Peaking Capacity and Peaking Energy in amounts Scheduled by Buyer from time to time pursuant to ARTICLE V. The product purchased and sold hereunder

shall include all related attributes of the Peaking Capacity, including without limitation any and all ancillary services available from the Peaking Capacity.

Section 4.2. Peaking Capacity. Subject to adjustments under Section 3.1(b), Section 3.2 or Section 3.4, the Peaking Capacity shall be ninety megawatts (90 MW). The Peaking Capacity shall at all times be stated in megawatts (MW). Seller shall not commit Peaking Capacity reserved by Buyer hereunder to any party other than Buyer for any portion of the period from the Service Commencement Date to the end of the Contract Term.

Section 4.3. Source of Peaking Energy; Reliability of Supply. Peaking Energy provided hereunder will be sourced from the Facility. It is expressly recognized that Buyer has first call on the Peaking Capacity, which (to the extent of the Peaking Capacity) shall take priority over any other use of the Facility by Seller, including the use of the capacity of the Facility to meet any obligations of Seller under a resource adequacy program applicable to its own load, as well as the use of energy from the Facility to meet Seller's own load or make sales to third parties. Deliveries of Scheduled Peaking Energy are not dependent on the operating status of any particular unit of the Facility, and Buyer's Peaking Energy Schedules shall be honored as long as the Scheduled Peaking Energy can be supplied from any one or more of the unit(s) of the Facility. Seller's obligation to deliver Peaking Energy consistent with the Schedules provided by Buyer in accordance with ARTICLE V shall be excused only (i) to the extent caused by any action or inaction of Buyer, including a material failure to perform Buyer's obligations under this Agreement (provided, however, that where Seller's failure to deliver Scheduled Peaking Energy results from Buyer's failure to supply a sufficient quantity of gas needed to generate the Scheduled Peaking Energy during a month in which Buyer has elected to self-supply gas pursuant to Section 5.8, such failure is excused only to the extent of Buyer's under-supply of gas), (ii) to the extent necessary to preserve the integrity of, or prevent or limit any instability of, the Facility, (iii) to the extent a Balancing Authority, Regional Reliability Council, or Reliability Coordinator declares an emergency condition that prevents or limits Seller from delivering the Scheduled Peaking Energy, (iv) by the interruption or curtailment of transmission from the Facility to the Delivery Point other than interruption or curtailment directly resulting from any action or inaction of Seller, or (v) by Force Majeure. For the avoidance of doubt, startup failure shall not excuse Seller's failure to deliver Peaking Energy.

Section 4.4. Designated Capacity; Designated Network Resources.

(a) If Buyer is subject to a Resource Adequacy Program, Buyer shall be permitted to designate Capacity from the Facility, up to an amount equal to the Peaking Capacity for any period on or after the Service Commencement Date and for the duration of the Contract Term. Seller shall provide such supporting information regarding the characteristics of the Facility that Buyer needs in connection with its designation of such Capacity pursuant to the terms of the Resource Adequacy Program, at least sixty (60) days prior to the deadline for Buyer's submission of such information in accordance with the Resource Adequacy Program.

(b) If, at any time, additional information regarding the Facility is required by the Transmission Provider in order for this Agreement to qualify as a designated Network Resource or is otherwise required in connection with the obligations of Buyer under an

applicable transmission tariff, Seller shall reasonably cooperate with and assist Buyer in providing the required information.

Section 4.5. Title and Risk of Loss. Title to and risk of loss related to Scheduled Peaking Energy shall transfer from Seller to Buyer at the Delivery Point. Seller warrants that it will deliver to Buyer the Peaking Energy Scheduled by Buyer free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to delivery at the Delivery Point.

## ARTICLE V

### SCHEDULING; OPERATING COMMITTEE; OPERATIONS

Section 5.1. Contract Entitlement. Buyer shall have the right to Schedule Peaking Energy, up to the total Peaking Capacity, for delivery by Seller to the Delivery Point on and after the Service Commencement Date, in accordance with the provisions of this ARTICLE V.

Section 5.2. Day-Ahead Dispatch.

(a) Seller shall inform Buyer when one (1) or more Facility units are expected to be derated and/or out of service (due to a maintenance outage and/or continuation of a known Forced Outage).

(b) Consistent with the information supplied by Seller to Buyer under Section 5.2(a), Buyer shall submit an energy schedule to Seller in an agreed-to format the Scheduling Day prior to the day of delivery, in whole megawatts, via email or other mutually agreeable method, no later than 0800 Central Prevailing Time, specifying for each hour of the applicable day the amounts of Peaking Energy Buyer will purchase from Seller (the "Day-Ahead Schedule"). The Day-Ahead Schedule shall be binding on Seller and Buyer, except as modified pursuant to Section 5.3. The Parties may agree, in writing, to a different day-ahead Scheduling procedure at any time.

(c) The Day-Ahead Schedule for Peaking Energy in any given hour shall be consistent with the Facility Operational Limits then reflected in Exhibit A. Seller may reject any Day-Ahead Schedule that is inconsistent with the Facility Operational Limits.

Section 5.3. Operating Information and Intraday Scheduling Changes.

(a) During each operating day, Buyer shall have the right to revise the quantities specified in the Day-Ahead Schedule ("Day-Ahead Schedule Revision") in accordance with the following criteria:

(i) Buyer shall submit a Day-Ahead Schedule Revision to Seller in an agreed-to format, in whole megawatts, via email or other mutually agreeable method, no later than twenty (20) minutes prior to the hour for which Buyer is requesting a change in the Day-Ahead Schedule for a period during which operating staff are scheduled to be present at the Facility (except for the first such hour in an operating day), or one-hundred twenty (120) minutes prior to the hour



for which Buyer is requesting a change in the Day-Ahead Schedule for a period during which operating staff are not scheduled to be present at the Facility or for the first hour of scheduled staffing for an operating day. The Operating Committee will determine the normal operating and staffing hours of the Facility for each season or month, and shall keep the Parties' scheduling representatives apprised of any changes that would affect Buyer's rights to make (and Seller's ability to accommodate) Day-Ahead Schedule Revisions.

(ii) Buyer's Day-Ahead Schedule Revision shall state the quantities of Peaking Energy for all remaining hours of the operating day. For each hour in the Day-Ahead Schedule Revision, the Scheduled quantity of Peaking Energy may be higher than, lower than, or equal to the Day-Ahead Schedule; provided, however, such Day-Ahead Schedule Revision shall not increase or decrease Scheduled Peaking Energy in any hour in a manner inconsistent with the Facility Operational Limits specified in Exhibit A as it is then in effect. Upon request, Seller shall inform Buyer of the expected operational status of each of the units of the Facility for each hour of the operating day. Seller shall accept all Day-Ahead Schedule Revisions that can be accommodated through increasing or decreasing output (consistent with the Facility Operational Limits) of one or more units of the Facility that are operating or scheduled to be operating.

(b) Seller shall, as soon as reasonably practicable after the occurrence thereof, report to Buyer the existence of (and the nature of and expected duration of) any Forced Outage of the Facility or any portion thereof. After being informed of a Forced Outage, Buyer may, by notice to Seller to be given as soon as reasonably practicable, but in no event later than two (2) hours after being so informed of such Forced Outage, reduce the Schedule for any or all remaining hours of the operating day(s) for which Buyer submitted a Day-Ahead Schedule ("Forced Outage Schedule Reductions"). Subject to the Facility Operational Limits, Seller shall honor all such Forced Outage Schedule Reductions, which shall commence as soon as reasonably practicable. For the avoidance of doubt, (i) Buyer shall have the right to reduce its Day-Ahead Schedule or Day-Ahead Schedule Revision pursuant to this Section 5.3(b) irrespective of whether it has exercised or exhausted its rights under Section 5.3(a), and (ii) the Scheduling restrictions set forth in Section 5.2 shall not apply with respect to Day-Ahead Schedule or Day-Ahead Schedule Revision reductions submitted pursuant to this Section 5.3(b).

Section 5.4. Transmission Scheduling. The Parties acknowledge and agree that the provisions of this ARTICLE V do not govern transmission scheduling obligations and practices associated with the Peaking Energy beyond the Delivery Point. Such activities, including the timing of providing any notifications to the applicable Transmission Provider, will be governed by the applicable transmission tariff. For the avoidance of doubt, Seller shall take all commercially reasonable actions to support Buyer's scheduling of transmission service.

Section 5.5. Recording. Buyer and Seller agree that Seller and/or Buyer or its agent may record all Scheduling-related telephone conversations between Buyer and Seller through means of tape or electronic recording (with or without the use of a warning tone). Buyer and Seller each waives any further notice of such recording, and agrees to notify its relevant officers, employees and agents of such recording and to obtain any necessary consent of such officers,

employees and agents as required by applicable Law. Any such recordings (i) shall be retained in confidence for a period of two (2) years from the date of such recording, (ii) shall be secured from access by any persons other than Buyer's and Seller's officers, employees, and agents with a need to know the contents of such recordings, and (iii) may be submitted in evidence in any proceeding or action relating to a dispute regarding Scheduling under this Agreement.

Section 5.6. Operating Committee. As soon as possible after the Effective Date, the Parties shall form a committee to exchange information and coordinate with respect to matters relating to the performance of the Facility and this Agreement ("Operating Committee"). Each Party shall appoint one representative to serve on the Operating Committee. The Parties shall notify each other in writing of such appointments and any changes thereto. The Operating Committee shall have no authority to modify the terms or conditions of this Agreement, except as provided herein with respect to Exhibit A. Meetings of the Operating Committee shall be as scheduled by mutual agreement of the representatives. Matters to be reviewed by the Operating Committee shall include, without limitation, (i) Seller's schedules for planned maintenance of the Facility, and forced or scheduled maintenance outages or deratings of any units of the Facility, (ii) known changes to Facility conditions and/or Seller's plans for changes to the Facility or its operations, that in any such case are expected to significantly affect the Facility's heat rate, (iii) Facility staffing plans (as provided for in Section 5.3(a)(i)), (iv) matters relating to fuel procurement and transportation (including means of implementing Buyer's elections pursuant to Section 5.8 and the coordination of gas scheduling activities between the Parties), and (v) revisions or updates to the Facility Operational Limits reflected in Exhibit A. Notwithstanding Section 18.10, Exhibit A may be revised or updated by agreement of the Operating Committee without the need for formal amendment to this Agreement; however, at all times the Facility Operational Limits shall be based on Prudent Utility Practices and shall include any limitation that is either defined by the manufacturer(s) of the equipment in the equipment operations manuals provided with such equipment, technical information letters communicated by the manufacturer(s) of the equipment to Seller concerning an operational limitation that has been determined, recommended operational procedures as to which non-compliance is likely to cause an equipment failure or major damage to the Facility or associated ancillary equipment, or any normal operational limitation not associated with the derating of the Facility. Meetings of the Operating Committee may be conducted in person or by telephone, and each Party may elect to have one or more individuals attend any such meeting on behalf of the Party, in addition to the Party's appointed representative. Within a reasonable time after the conclusion of each meeting of the Operating Committee, the representatives of the Parties shall agree upon a written summary of such meeting, including a description of issues discussed and decisions agreed upon by the Parties, unless the Parties mutually agree to waive such summary.

Section 5.7. Standard of Care. Seller shall at all times during the Contract Term operate and maintain the Facility (or cause the Facility to be operated and maintained) in accordance with Prudent Utility Practices and without adverse distinction to Buyer. Seller shall not schedule planned maintenance outages to occur during the peak months of December through March and June through September. When testing of the Facility is required (e.g., for purposes of establishing its capacity and/or operability for a Resource Adequacy Program or compliance with environmental Law, or upon resumption of operations following repairs), the Parties shall coordinate with respect to the scheduling of such testing to avoid undue burden on Buyer.

Section 5.8. Gas Supply and Transportation. No less than five (5) days before the beginning of any Service Month, Buyer may provide notice to Seller of Buyer's election to self-supply the natural gas required for the generation of all Peaking Energy that Buyer will Schedule in that Service Month. For any Service Month for which (i) Buyer has provided notice of such self-supply and (ii) Seller has firm gas transportation available, Buyer shall specify in its notice whether it chooses to utilize Seller's firm gas transportation (in which case Buyer shall pay for such use in accordance with Section II of Exhibit C) or make arrangements for gas transportation directly with the gas pipeline at Buyer's own expense (in which case the Energy pricing under Section III of Exhibit C shall apply). All gas self-supplied by Buyer hereunder shall comply with all pressure and quality requirements applicable under the tariff of the delivering pipeline. If Buyer fails to provide timely notice of its election to self-supply natural gas pursuant to this Section 5.8 with respect to any Service Month, Seller shall be required to provide all delivered gas necessary to generate the Peaking Energy to be Scheduled by Buyer in such Service Month, and Buyer's charges for Delivered Peaking Energy in such Service Month shall be determined as provided for in Section I of Exhibit C.

Section 5.9. Metering.

(a) Seller shall, at its own expense, provide, install, own, operate, and maintain revenue-quality meters that measure the Delivered Peaking Energy at the Delivery Point, and associated telecommunications equipment necessary for accurately determining the Peaking Energy delivered under this Agreement. Except as provided in Section 5.9(b) and Section 5.9(c), Seller's meters shall be used for quantity measurements and billing under this Agreement. Buyer, at its sole expense, may install and maintain check meters and all associated measuring equipment necessary to permit an accurate determination of the quantities of Peaking Energy delivered under this Agreement; provided, however, that such equipment shall be operated and maintained in a manner that does not interfere with the installation, maintenance, and operation of Seller's meters. Buyer and Seller shall each provide to the other (a) real-time power generation data obtained from Buyer's and Seller's metering equipment; and (b) consistent with Section 5.9(c), reasonable access to test the other Party's metering equipment.

(b) Readings of Seller's meters made by Seller shall be conclusive as to the amount of Peaking Energy delivered to Buyer hereunder; provided, however, that if any of Seller's meters is out of service or is determined, pursuant to Section 5.9(c) hereof, to be registering inaccurately, measurement of Delivered Peaking Energy hereunder shall be determined by, in the following order: (i) Buyer's check meter at the Delivery Point, if installed, annually tested and registering accurately; or (ii) in the absence of an installed, annually tested and accurately registering check meter belonging to Buyer, making a mathematical calculation if, upon a calibration test of Seller's meter, a percentage error is ascertainable; or (iii) in the absence of an installed, annually tested and properly registering check meter belonging to the Buyer, and an ascertainable percentage of error in Seller's meter, estimating by reference to quantities measured during periods of similar conditions when Seller's meter was registering accurately. If no reliable information exists as to the period over which Seller's meter was registering inaccurately, it shall be assumed for correction purposes hereunder that such inaccuracy began at a point in time midway between the testing date and the

last previous date on which such meter was tested and found to be accurate; provided, however, that the deemed period of the inaccuracy shall not exceed one hundred eighty (180) days.

(c) The accuracy of Seller's meters shall be tested and verified by Seller annually. Buyer and Seller shall each have the right, at its own expense, to test and verify the other's meters upon reasonable notice, provided such testing shall not exceed one test of the meter(s) for the Facility during a calendar year, or more frequently if there is just cause. If Buyer has installed check meters in accordance with Section 5.9(a) hereof, Buyer shall test and verify such meters annually. Each Party shall bear the cost of the annual testing of its own meters. Each meter shall be accurate within a one-percent (1%) variance. If either Party disputes a meter's accuracy or condition, it shall so advise the meter's owner in writing. The meter's owner shall, within fifteen (15) days after receiving such notice, advise the other Party in writing as to its position concerning the meter's accuracy and reasons for taking such position. If the Parties are unable to resolve their disagreement through reasonable negotiations, either Party may submit such dispute to an unaffiliated third-party engineering company mutually acceptable to the Parties to test the meter. Should the meter be found to be registering within the permitted one-percent (1%) variance, the Party contesting the meter's accuracy shall bear the cost of inspection; otherwise, the cost shall be borne by the meter's owner. Any repair or replacement of such a meter found to be operating beyond the permitted variance shall be made at the expense of the owner of that meter as soon as practicable, based on the third-party engineer's report. If, upon testing, any meter is found to be in error by an amount exceeding the permitted one-percent (1%) variance, such meter shall be promptly adjusted to record properly, any previous recordings by such meter shall be adjusted in accordance with Section 5.9(b), and any prior payments made for Peaking Energy and/or invoices for payments not yet made shall be adjusted to reflect the corrected measurements determined pursuant to Section 5.9(b). If the difference of the payments actually made by Buyer minus the payment based upon the corrected measurements is a positive number, Seller shall pay the difference to Buyer; if the difference is a negative number, Buyer shall pay the difference to Seller. For the avoidance of doubt, Seller's meter shall not be considered to be registering inaccurately the measurement of Delivered Peaking Energy under Section 5.9(b) to the extent such meter is accurate within a one-percent (1%) variance.

Section 5.10. AGC. Upon request of Buyer, Seller shall install or implement automatic generation control equipment on one or more units of the Facility. Buyer shall bear the costs of such installation and associated testing and commissioning.

Section 5.11. Insurance.

(a) Seller shall at all times during the Contract Term maintain in full force and effect the types and amounts of insurance coverage described in Exhibit H (the "Required Coverage"). From and after the Effective Date, Buyer shall be included as an additional insured as its interests may appear on all policies providing the Required Coverage (to the extent permitted under the terms of each policy).

(b) On or prior to the Service Commencement Date, and on an annual basis thereafter, Seller shall provide Buyer with certificates of insurance evidencing the Required Coverage. Such certificates shall provide for a minimum of thirty (30) days' advance notice to

Buyer of cancellation or material change in coverage. Failure by Seller to obtain the Required Coverage or certificates of insurance required pursuant to this Agreement shall not relieve Seller of the insurance requirements set forth herein or in any way relieve or limit Seller's obligations and liabilities under any other provisions of this Agreement.

(c) Seller shall arrange to have its insurance carriers send Buyer written notice of any cancellation or termination of the Required Coverage at the same time any such notice is sent to Seller.

## ARTICLE VI

### FAILURE TO DELIVER OR RECEIVE

Section 6.1. Seller's Failure. Seller's obligations to sell and deliver shall be excused only as provided in Section 4.3. If Seller fails to deliver to Buyer all or part of the Peaking Energy Scheduled by Buyer and such failure is not excused under Section 4.3, then:

(a) Following receipt from Buyer of the information reasonably necessary to make this calculation, Seller shall either pay, or credit Buyer on Seller's next invoice, an amount equal to the positive difference, if any, obtained by subtracting (i) the sum of the Peaking Energy charges that would have been payable pursuant to Section 7.2 with respect to the undelivered Peaking Energy from (ii) the Replacement Price;

(b) Seller's failure to deliver all or part of the Peaking Energy as Scheduled by Buyer will be taken into account in the determination of the Monthly Reservation Charge pursuant to Exhibit B; and

(c) Buyer shall not be required to utilize or change its utilization of its owned or controlled assets or market positions to minimize Seller's liability.

Section 6.2. Buyer's Failure. Buyer's obligation to receive and pay for Scheduled Peaking Energy shall be excused only to the extent that, and for the period during which (i) such performance is prevented by Force Majeure, or (ii) there is a failure to deliver Peaking Energy in accordance with the terms of this Agreement by Seller. In the event of any unexcused failure to receive Scheduled Peaking Energy, Buyer shall, on the date payment would otherwise be due in respect of the Service Month in which the failure occurred, pay an amount equal to the positive difference, if any, obtained by subtracting (a) the Sales Price from (b) the sum of the Peaking Energy charges that would have been payable pursuant to Section 7.2 with respect to the amount not received. Seller shall not be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize Buyer's liability.

## ARTICLE VII

## CHARGES; CHANGE IN LAW

Section 7.1. Monthly Reservation Charge. For each calendar month of the Contract Term beginning with the Service Commencement Date (each, a "Service Month"), Buyer's Monthly Reservation Charge shall be determined in accordance with Exhibit B. In accordance with ARTICLE VIII, the Monthly Reservation Charge (and all other monthly charges described herein) shall be invoiced in the month immediately following the Service Month, with any corrections thereto made as soon as practicable. Notwithstanding the foregoing, if the Agreement is terminated at a time other than at the end of a calendar month, the Monthly Reservation Charge for the final Service Month shall be pro-rated accordingly.

Section 7.2. Monthly Energy Charge. The Monthly Energy Charge shall be determined in accordance with Exhibit C.

Section 7.3. Peaking Capacity and Energy Prices. Irrespective of any change in Law or market conditions affecting Seller or Buyer, and notwithstanding any assertion by Seller that certain costs are not covered, or any assertion by Buyer that the charges payable by Buyer hereunder do not reflect Seller's actual cost of providing Peaking Capacity, the Capacity prices set forth in Exhibit B and the Energy prices set forth in Exhibit C shall not change during the term of this Agreement as a result of such conditions or events, except as provided for in Section 7.4. Without limiting the foregoing, the Parties acknowledge that the Capacity prices and Energy prices will not be subject to any increase to reflect costs associated with environmental Laws currently in place as of the Effective Date, including final rules issued by the U.S. Environmental Protection Agency, the Commonwealth of Kentucky, or any applicable local jurisdiction. For the avoidance of doubt, the Parties acknowledge and agree that the Clean Power Plan, the implementation of which has been stayed by the United States Supreme Court as of the Effective Date, shall not be considered an environmental Law currently in place as of the Effective Date such that any additional fixed and/or variable costs of owning and operating the Facility incurred by Seller as a result of any eventual implementation of the Clean Power Plan, as same may be modified by ruling of a court of competent jurisdiction, shall be governed by the provisions of Section 7.4 of this Agreement.

Section 7.4. Change in Environmental Law. In the event that Seller (a) incurs additional fixed and/or variable costs of owning and operating the Facility or (b) experiences a reduction in its fixed and/or variable costs of owning and operating the Facility, in either case as a result of environmental Laws adopted or amended after the Effective Date, Seller shall provide notice to Buyer of such event, which notice shall identify the event and include Seller's good faith estimate of the impact of such event on Seller's fixed and/or variable costs of owning and operating the Facility, and Seller's proposed changes to this Agreement to reflect an appropriate share of such cost impacts, taking into account (i) the proportion of the Peaking Capacity purchased by Buyer hereunder as compared to the Total Facility Capacity, (ii) the duration of Buyer's purchase of Peaking Capacity as compared to any investment or other fixed costs incurred to comply with the new environmental Law(s), and (iii) the fact that the Capacity prices set forth in Exhibit B and the Energy prices set forth in Exhibit C are negotiated prices that were not intended or expected to necessarily allow Seller to recover its full monthly costs related to

the Peaking Capacity during the Contract Term ending May 31, 2029. Within thirty (30) days of receipt of any such notice, Buyer and Seller shall meet and attempt in good faith to negotiate modifications to this Agreement to maintain the intended allocation of burdens and benefits of the original transaction. If Buyer does not agree that Seller's proposed modifications comply with the criteria set forth in this Section 7.4 and the Parties are not able to resolve the dispute through negotiations, either Party may seek resolution of the dispute pursuant to ARTICLE XV. Notwithstanding anything to the contrary in ARTICLE XV, the sole means for resolution of disputes under this Section 7.4 shall be mandatory binding arbitration.

Section 7.5. Other Changes in Law. If a change in Law other than a change in environmental Law as provided in Section 7.4 materially impairs a Party's ability to perform its obligations under this Agreement or materially changes the balance of risks and benefits hereunder adversely to such Party, the affected Party may provide notice to the other Party of such event. In addition, if Seller, Buyer, and/or the Facility become part of a regional transmission organization, the affected Party shall provide notice to the other Party of such event. The Parties recognize that a key element of the economic bargain for Buyer hereunder will be lost if the Delivery Point is not located within either the transmission system of LGE/KU or any regional transmission organization encompassing the LGE/KU transmission system, with the result that Buyer is required to obtain and pay for transmission service on an additional transmission system. In any such case, the affected Party will propose modifications to this Agreement that seek to retain the intended balance of risks and benefits to the Parties. Within thirty (30) days of receipt of any such notice, Buyer and Seller shall meet and attempt in good faith to negotiate modifications to this Agreement to maintain the intended allocation of burdens and benefits of the original transaction; provided, that in no event shall either Party be required to agree to any change in the pricing of Capacity or Energy hereunder. If the Parties are not able to reach agreement on appropriate amendments through negotiations, either Party may seek resolution of the dispute pursuant to ARTICLE XV. Notwithstanding anything to the contrary in ARTICLE XV, the sole means for resolution of disputes under this Section 7.5 shall be mandatory binding arbitration.

## ARTICLE VIII

### BILLING AND PAYMENT

Section 8.1. Billing. On or before the twentieth (20<sup>th</sup>) day following the end of each Service Month, Seller shall deliver to Buyer an invoice, via electronic mail or other mutually agreeable method, detailing the total Delivered Peaking Energy, measured in MWh, for each day of the Service Month, and the total charges and credits to be paid by Buyer for the Monthly Reservation Charge, the Monthly Energy Charge, and any other charges properly assessed and credits owed to Buyer pursuant to this Agreement, for such Service Month. For any month in which charges for unexcused failure to receive apply pursuant to Section 6.2, Seller shall also provide with the invoice documentation reasonably supporting the Sales Price for each applicable hour. In each invoice, any amounts owed by Seller to Buyer (including, without limitation, amounts owed pursuant to Section 6.1) shall be netted against the amounts owed by Buyer to Seller.

Section 8.2. Payment. Buyer shall make payment of the invoice to Seller by the later of (i) ten (10) days after Buyer's receipt of the invoice, or (ii) the last calendar day of the month in which Buyer received the invoice; provided, however, that if the later of these two dates is not a Business Day, payment shall be due on the next Business Day. Payment of the invoice shall be made by means of wire transfer of immediately available funds to the account specified in Exhibit D, or other acceptable method agreed to, in writing, by Seller and Buyer.

Section 8.3. Late Payments by Buyer. If for any reason other than as permitted by and in accordance with Section 8.4 below, Buyer pays less than the full amount of the invoice, interest on the unpaid amount shall accrue at the Default Interest Rate for each day from the due date to the date paid.

Section 8.4. Disputes. If Buyer, in good faith, disputes the amount of any invoice, it shall promptly notify Seller of the disputed amount and the reason therefor and shall pay the undisputed amount of such invoice. Buyer may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement within twenty-four (24) months of the date of the invoice or adjustment to an invoice. Any disputes resulting from this Section 8.4 shall be settled in accordance with the provisions of ARTICLE XV. This Section 8.4 shall survive termination of this Agreement for a period of two (2) years from the date on which the last invoice is rendered to Buyer pursuant to this Agreement.

Section 8.5. Adjustments. Any adjustments to amounts invoiced and paid for a given Service Month (e.g., to reflect resolution of any dispute and/or billing corrections) shall be made on the next monthly invoice following the event giving rise to such adjustment. Where the adjustment is to rectify an overpayment, Seller shall provide a credit that includes interest accrued from the original payment date to the date of the credit, at the Interest Rate. If any credit exceeds the amount that would otherwise be due for the current Service Month, or if any credit would be due following Buyer's payment of the final invoice, Seller shall pay the net refund to Buyer no later than when the invoice would otherwise be due for such Service Month (or, if Buyer has paid the final invoice, no later than fifteen (15) days of calculation of the adjustment).

Section 8.6. Audit. Buyer has the right with reasonable prior notice, at the sole expense of Buyer, to examine the records of Seller during regular business hours to the extent reasonably necessary to verify the accuracy of any invoice, or calculations provided with or supporting such invoice, rendered pursuant to this Agreement. If any such examination reveals any inaccuracy in any invoice, or calculations provided with or supporting such invoice, the necessary adjustments in such invoice, or calculations provided with or supporting such invoice, and the payments made pursuant to such inaccurate invoice, or calculations provided with or supporting such invoice, shall be adjusted in the next invoice, provided that Buyer brought it to the attention of Seller within twenty four (24) months after issuance of the inaccurate invoice. This Section 8.6 shall survive termination of this Agreement for a period of two (2) years from the date on which the last invoice is rendered to Buyer pursuant to this Agreement.

Section 8.7. Records. The Parties shall develop, maintain and keep originals or copies of all accounting records, statistical information, and supporting documents relating to the performance of each Party's obligations hereunder in accordance with the longest of the applicable record-retention requirements of the Parties; provided that all such applicable



accounting records shall be retained for a period of at least two (2) years and, in any event, for as long as any dispute exists regarding such information or payments due under this Agreement. All such records shall be available for inspection by the other Party during regular business hours, and the Parties shall have the right (at Buyer's or Seller's expense, as applicable) to make copies thereof.

## ARTICLE IX

### CREDITWORTHINESS

Section 9.1. Financial Information. Seller may require Buyer to provide financial information reasonably needed to ascertain Buyer's ability to perform under this Agreement. Buyer may require Seller to provide financial information reasonably needed to ascertain Seller's ability to perform under this Agreement.

Section 9.2. Credit Support.

(a) Buyer's Obligations. Seller shall have no right to require Buyer to provide and/or maintain any form of security in favor of Seller in connection with the service provided under this Agreement during any period in which Buyer has an Investment Grade Rating. On or after March 31, 2017, for any period in which Buyer does not have an Investment Grade Rating, Seller may request that Buyer provide a Qualifying Letter of Credit for the benefit of Seller in an amount equal to Seller's two (2) largest anticipated monthly invoices to Buyer for the current calendar year (or for 2019, if Seller's request is made prior to the Service Commencement Date), as reasonably calculated by Seller and stated in the written request for the Qualifying Letter of Credit, which amount shall in no event exceed five million dollars (\$5,000,000.00). Upon receipt of such written notice, Buyer shall have ten (10) Business Days to provide the Qualified Letter of Credit to Seller. In the event that Buyer fails to provide the Qualified Letter of Credit within the time period stated herein, such failure shall be a Letter of Credit Default under Section 11.2(f). If, subsequent to the provision of a Qualified Letter of Credit, Buyer has (or again has) an Investment Grade Rating, Buyer shall have the right to terminate the Qualified Letter of Credit, and such termination shall not be a Letter of Credit Default under Section 11.2(f).

(b) Seller's Obligations. Buyer shall have no right to require Seller to provide and/or maintain any form of security in favor of Buyer in connection with the service provided under this Agreement during any period in which Seller has an Investment Grade Rating. On or after March 31, 2017, for any period in which Seller does not have an Investment Grade Rating, Buyer may request that Seller provide a Qualifying Letter of Credit for the benefit of Buyer in an amount equal to five million dollars (\$5,000,000.00). Upon receipt of such written notice, Seller shall have ten (10) Business Days to provide the Qualified Letter of Credit to Seller. In the event that Seller fails to provide the Qualified Letter of Credit within the time period stated herein, such failure shall be a Letter of Credit Default under Section 11.1(f). If, subsequent to the provision of a Qualified Letter of Credit, Seller has (or again has) an Investment Grade Rating, Seller shall have the right to terminate the Qualified Letter of Credit, and such termination shall not be a Letter of Credit Default under Section 11.1(f).

(c) No Margining. No collateral posting will be required for Buyer or Seller for margining on the mark-to-market value of this Agreement. Further, and notwithstanding anything herein to the contrary, Buyer and Seller each hereby irrevocably and unconditionally waives any rights it may have under applicable Law, other than Title 11 of the United States Code, to request "adequate assurances" or other performance assurance or security for the other Party's obligations hereunder other than as provided for in Sections 9.2(a) and 9.2(b).

## ARTICLE X

### TRANSMISSION ARRANGEMENTS

Section 10.1. Seller's Obligations. Seller shall arrange and be responsible for transmission service to the Delivery Point, shall schedule or arrange for scheduling services with any applicable Transmission Providers to deliver Firm Energy to the Delivery Point, and shall be responsible for all costs or charges imposed on or associated with the transmission service to the Delivery Point. In addition, Seller shall be responsible for all generator-related charges assessed by the Transmission Provider related to the Facility or any Peaking Energy delivered to the Delivery Point. Seller shall take all actions required by any Transmission Provider to facilitate Buyer's receipt of Peaking Energy at the Delivery Point and transmission thereof from the Delivery Point.

Section 10.2. Buyer's Obligations. Buyer shall arrange and be responsible for transmission service at and after the Delivery Point, shall schedule or arrange for scheduling services with all applicable Transmission Providers to accept Peaking Energy at the Delivery Point, and shall be responsible for all costs or charges imposed on or associated with the transmission service at and after the Delivery Point. Notwithstanding Buyer's obligations "at" the Delivery Point as specified in this Section 10.2 (or any other provision of this Agreement), Buyer shall have no obligation to pay Seller or any other Transmission Provider for the use of transmission facilities associated with the Facility that are needed to deliver Peaking Energy at the Delivery Point, and it is the Parties' intention that the only transmission service Buyer shall be required to obtain and pay for is service under the LGE/KU Tariff.

## ARTICLE XI

### DEFAULT AND REMEDIES

Section 11.1. Seller Event of Default. The following shall constitute events of default on the part of Seller ("Seller Event of Default"):

- (a) Seller fails to pay or credit any amount due to Buyer under this Agreement and such failure continues for ten (10) days following receipt of written notice thereof from Buyer.
- (b) Seller becomes subject to a Bankruptcy Proceeding.
- (c) Any representation or warranty made by the Seller herein is false or misleading in any material respect when made or when deemed made or repeated.

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(d) Seller 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 (i) fails to assume all the obligations of the Seller hereunder by operation of Law or pursuant to an agreement reasonably satisfactory to Buyer, absent Buyer's consent permitting Seller to retain the Agreement pursuant to Section 13.2(b) or Section 13.2(c), or (ii) is not at least as creditworthy as Seller.

(e) Seller commits a breach of its material covenants or obligations under this Agreement not otherwise excused by Force Majeure, other than a payment default as set forth in Section 11.1(a), unless:

(i) Seller commences and diligently proceeds to cure such breach upon delivery of written notice of such breach from Buyer; and

(ii) the breach is cured within ten (10) days of delivery of such written notice; provided, however, that if (1) such breach is not, by its nature, capable of being cured within such ten (10) day period, and (2) Seller is diligently and in good faith proceeding to attempt to cure such breach, Seller shall be allowed such additional time, which shall in no event exceed an additional twenty (20) days, as may reasonably be required to cure such breach.

(f) The occurrence of a Letter of Credit Default where such Letter of Credit Default is not cured within ten (10) Business Days after its occurrence by Seller providing to Buyer a valid Qualifying Letter of Credit.

Section 11.2. Buyer Event of Default. The following shall constitute an event of default on the part of Buyer ("Buyer Event of Default"):

(a) Buyer fails to pay any amount due to Seller under this Agreement and such failure continues for ten (10) days following receipt of written notice thereof from Seller.

(b) Buyer becomes subject to a Bankruptcy Proceeding.

(c) Any representation or warranty made by Buyer is false or misleading in any material respect when made or when deemed made or repeated.

(d) Buyer 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 (i) fails to assume all the obligations of Buyer under this Agreement by operation of Law or pursuant to an agreement reasonably satisfactory to the Seller, or (ii) is not at least as creditworthy as Buyer.

(e) Buyer commits a breach of its obligations under this Agreement not otherwise excused by Force Majeure, other than a payment default as set forth in Section 11.2(a), unless:

(i) Buyer commences and diligently proceeds to cure such breach upon delivery of written notice of such breach from Seller; and

(ii) the breach is cured within ten (10) days of delivery of such written notice; provided, however, that if (1) such breach is not, by its nature, capable of being cured within such ten (10) day period, and (2) Buyer is diligently and in good faith proceeding to attempt to cure such breach, Buyer shall be allowed such additional time, which shall in no event exceed an additional twenty (20) days, as may reasonably be required to cure such breach.

(f) The occurrence of a Letter of Credit Default where such Letter of Credit Default is not cured within ten (10) Business Days after its occurrence by Buyer providing to Seller a valid Qualifying Letter of Credit.

### Section 11.3. Procedure and Remedies.

(a) Upon the occurrence and during the continuance of a Seller Event of Default, Buyer shall have the right, in its sole and absolute discretion, to do any or all of the following: (i) terminate this Agreement effective upon the provision of written notice to Seller (or upon such later date as may be specified in such notice); (ii) suspend performance during the notice period specified in the notice; and/or (iii) pursue any and all other remedies available at Law or in equity, subject to the dispute resolution procedures set forth in ARTICLE XV and the other limitations set forth in this Agreement.

(b) Upon the occurrence and during the continuance of a Buyer Event of Default, Seller shall have the right, in its sole and absolute discretion, to do any or all of the following: (i) terminate this Agreement, effective upon the provision of at least thirty (30) days' written notice to Buyer; (ii) if (and only if) the Buyer Event of Default occurs under Section 11.2(a), suspend performance during such notice period; and/or (iii) pursue any and all other remedies against Buyer available at Law or in equity, subject to the dispute resolution procedures set forth in ARTICLE XV and the other limitations set forth in this Agreement.

Section 11.4. Rights of Specific Performance. In addition to the remedies specified hereunder, upon the occurrence of a Seller Event of Default or a Buyer Event of Default, which does not arise from the failure to make a payment of money hereunder, the non-defaulting Party shall have a right to obtain equitable relief, including specific performance of the defaulting Party's obligations hereunder.

## ARTICLE XII

### INDEMNIFICATION

Section 12.1. Indemnity by Seller. Subject to the terms and conditions set forth in this ARTICLE XII and except to the extent caused by the fraud, gross negligence or the willful misconduct or willful breach of the obligation(s) under this Agreement of any Indemnitee, Seller shall indemnify and hold Buyer and its Affiliates, members, directors, officers, attorneys, employees, subcontractors, agents and assigns harmless for, from and against any and all Third Party Claims, including reasonable attorneys' fees and costs of investigation, litigation,

settlement and judgment (collectively "Losses"), which any of them may sustain or suffer as a result of the nonperformance or breach of any covenant or agreement made or undertaken by Seller in this Agreement. For the avoidance of doubt, the Seller will indemnify the Buyer against any and all Third Party Claims related to issues that originate prior to the Delivery Point.

Section 12.2. Indemnity by Buyer. Subject to the terms and conditions set forth in this ARTICLE XII and except to the extent caused by the fraud, gross negligence or the willful misconduct or willful breach of the obligation(s) under this Agreement of any Indemnitee, Buyer shall indemnify and hold Seller and its Affiliates, members, directors, officers, attorneys, employees, subcontractors, agents and assigns harmless for, from and against any and all Losses which any of them may sustain or suffer as a result of the nonperformance or breach of any covenant or agreement made or undertaken by Buyer in this Agreement. For the avoidance of doubt, the Buyer will indemnify the Seller against any and all Third Party Claims related to issues that originate at or after the Delivery Point.

Section 12.3. Further Qualifications Respecting Indemnification. The right of a Person listed as being entitled to indemnification in Section 12.1 or Section 12.2 (an "Indemnitee") to be indemnified hereunder shall be subject to the following further qualifications:

(a) Upon receipt of notice of any demand, assertion, claim, action or proceeding, judicial, governmental or otherwise, from any third party (such third party actions being collectively referred to herein as "Third Party Claims"), the Indemnitee shall give written notice thereof to the indemnifying Party (the "Indemnitor") as soon as reasonably practicable, but not later than thirty (30) days after the date the Indemnitee obtains actual knowledge of the Third Party Claim;

(b) In computing Losses, such amounts shall be computed net of any related recoveries to which the Indemnitee is entitled under insurance policies, or other related payments received from third parties, and net of any tax benefits actually received by the Indemnitee or for which it is eligible, taking into account the income tax treatment of such indemnification; and

(c) The Indemnitee shall use commercially reasonable efforts to mitigate all Losses for which indemnification may be available hereunder, including availing itself of any defenses, limitations, rights of contribution, claims against third parties and other rights at Law or equity. The Indemnitee's commercially reasonable efforts shall include the reasonable expenditure of money to mitigate or otherwise reduce or eliminate any Loss for which indemnification would otherwise be due, such expenditures being included in indemnified Losses hereunder.

Section 12.4. Procedures Respecting Third Party Claims. In notifying the Indemnitor of any Third Party Claim (the "Claim Notice"), the Indemnitee shall provide the Indemnitor with a copy of such Third Party Claim or other documents received and shall otherwise make available to the Indemnitor all relevant information material to the defense of such claim and within the Indemnitee's possession. The Indemnitor shall have the right, by written notice given to the Indemnitee within fifteen (15) days after the date of the Claim Notice, to assume and control the defense of the Third Party Claim that is the subject of such Claim Notice, including the

employment of counsel selected by the Indemnitor after consultation with the Indemnitee, and the Indemnitor shall pay all expenses of, and the Indemnitee shall cooperate fully with the Indemnitor in connection with, the conduct of such defense. The Indemnitee shall have the right to employ separate counsel in any such proceeding and to participate in (but not control) the defense of such Third Party Claim, but the fees and expenses of such counsel shall be borne by the Indemnitee unless the Indemnitor shall otherwise agree in writing; provided, however, if the named parties to any such proceeding (including any impleaded parties) include both the Indemnitee and the Indemnitor, the Indemnitor requires that the same counsel represent both the Indemnitee and the Indemnitor, and representation of both Parties by the same counsel would be inappropriate due to actual or potential differing interests between them, then the Indemnitee shall have the right to retain its own counsel at the cost and expense of the Indemnitor. If the Indemnitor shall have failed to assume the defense of any Third Party Claim in accordance with the provisions of this Section 12.4, then, as among the Parties, the Indemnitee shall have the absolute right to control the defense of such Third Party Claim, and, if and when it is finally determined that the Indemnitee is entitled to indemnification from the Indemnitor hereunder, the fees and expenses of the Indemnitee's counsel shall be borne by the Indemnitor; provided that the Indemnitor shall be entitled, at its expense, to participate in (but not control) such defense. The Indemnitor shall have the right to settle or compromise any such Third Party Claim for which it is providing indemnity so long as such settlement does not impose any obligations on the Indemnitee (except with respect to (a) obligations to pay money (which amounts, if payable by the Indemnitee, shall constitute Losses) and (b) providing releases of the third party). The Indemnitor shall be liable for any settlement effected by the Indemnitee without the Indemnitor's consent only if the Indemnitee has assumed the defense because the Indemnitor has failed or refused to do so.

### ARTICLE XIII

#### ASSIGNMENT

##### Section 13.1. Assignment by Buyer.

(a) Buyer may, with prompt notice to but without the need for consent of Seller, assign all of its rights and obligations hereunder to any entity that (i) acquires all or substantially all of Buyer's business and/or assumes Buyer's obligations to provide service under the KyMEA Member AR Agreements, (ii) is of at least equal creditworthiness, and (iii) assumes, in writing, all of Buyer's obligations hereunder, which assumption shall be materially in the form attached as Exhibit E hereto or otherwise in form and substance reasonably acceptable to Seller.

(b) Unless Seller consents, in writing, to Buyer retaining this Agreement, if Buyer transfers all or substantially all of its business to another party, Buyer shall assign all of its rights and obligations hereunder to the entity that acquires such business.

Section 13.2. Assignment by Seller.

(a) Seller may, with prompt prior notice to, but without the need for consent of Buyer, assign, transfer, pledge or otherwise dispose of its rights and interest under this Agreement to one or more lenders solely for the purposes of financing.

(b) Seller may, with prompt notice to, but without the need for consent of Buyer, assign all of its rights and obligations hereunder to any entity that (i) acquires all or substantially all of Seller's business, (ii) is of at least equal creditworthiness as Seller, and (iii) assumes, in writing, all of Seller's obligations hereunder, which assumption shall be materially in the form attached as Exhibit E hereto or otherwise in form and substance reasonably acceptable to Buyer.

(c) If the Facility is transferred to another Person, Seller shall, with prompt notice to, but without the need for consent of Buyer, cause the transferee of the Facility to assume, in writing, all obligations of Seller under this Agreement, which assumption shall be materially in the form attached as Exhibit E hereto or otherwise in form and substance reasonably acceptable to Buyer.

Section 13.3. Other Assignments. Except as provided in Section 13.1 and Section 13.2, any proposed assignment by Buyer shall require the prior written consent of Seller, and any proposed assignment by Seller shall require the prior written consent of Buyer. In each case, consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that it shall be reasonable for Buyer to require as condition(s) to its consent to an assignment of this Agreement to a Person by Seller that such Person has creditworthiness, as reasonably determined by Buyer, at least equal to Seller's, and/or that the Person either will own the Facility or have sufficient rights to the capacity and output of the Facility and other information and rights with respect to the Facility to permit the Person to perform all obligations of Seller hereunder on and after the date of the assignment of this Agreement by Seller to the Person.

Section 13.4. Notice. Irrespective of whether consent is required, notice of any proposed assignment shall be given to the other Party at least sixty (60) days prior to the date of the assignment. Any purported assignment made without complying with the requirements of this ARTICLE XIII shall be null and void.

Section 13.5. Effect of Assignment on Party Status. No assignment shall relieve the assignor of its obligations hereunder in the event the assignee fails to perform, unless the other Party agrees, in writing, in advance to waive the assignor's continuing obligations pursuant to this Agreement. If (i) an assignment occurs in accordance with the terms of this ARTICLE XIII other than Section 13.2(a), (ii) the assignee's creditworthiness and ability to perform this Agreement are at least equal to that of the assignor, and (iii) the assignee expressly agrees, in writing, to assume all of the assignor's rights and obligations so assigned, the other Party shall release the assignor from any further liability in respect of the rights and obligations so assigned.

ARTICLE XIV

FORCE MAJEURE

Section 14.1. Force Majeure. The term "Force Majeure" shall mean causes beyond the reasonable control of, and not resulting from the fault or negligence (including failure to comply with Prudent Utility Practices) of, the Party claiming Force Majeure, including, but not limited to, acts of God; earthquake; storm; fire; lightning; epidemic; war (declared or undeclared); riot, terrorism or civil disturbance; or sabotage. Notwithstanding the foregoing, under no circumstances shall Force Majeure include any of the following: (i) changes in market conditions that affect the cost of or demand for power; (ii) change in Law; (iii) any lack of profitability to a Party or other financial consideration of a Party; (iv) unavailability of the Facility, except when such unavailability is due to an event of Force Majeure, or (v) Seller becoming subject to resource adequacy requirements.

Section 14.2. Effect on Performance.

(a) If a Party is rendered wholly or partly unable to perform its obligations under this Agreement because of Force Majeure, that Party shall be excused from whatever performance it is unable to perform due to the Force Majeure to the extent so affected, provided that:

(i) the Party affected by such Force Majeure, as soon as reasonably practical after the commencement of such effect, gives the other Party prompt oral notice, followed by a written notice within forty-eight (48) hours after such oral notice, fully describing the particulars of the occurrence;

(ii) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure;

(iii) the Party whose performance is affected by such Force Majeure uses its commercially reasonable efforts to overcome and remedy its inability to perform as soon as possible; and

(iv) the event of Force Majeure must not have been caused by or contributed to by any negligent or intentional act, error or omission of the affected Party or any of its Affiliates, and must not be caused by or contributed to by any failure to comply with any Law by the affected Party or any of its Affiliates, or by any breach or default of this Agreement by the affected Party or any of its Affiliates.

(b) Notwithstanding anything in this ARTICLE XIV to the contrary, no payment obligation arising under this Agreement prior to the date of an event of Force Majeure shall be excused by such event of Force Majeure.



## ARTICLE XV

## DISPUTE RESOLUTION

Section 15.1. Attempts to Resolve Dispute. Any controversy between Seller and Buyer, arising out of or relating to this Agreement, or any breach hereof or default hereunder may be submitted to binding arbitration upon written agreement of the Parties, or otherwise may be resolved in a court of competent jurisdiction as specified in Section 18.3; provided, however, that neither Party shall seek to arbitrate or litigate a controversy between the Parties without the Party's appropriate senior executive first attempting, in good faith, to resolve the dispute with the appropriate senior executive of the other Party. Such appropriate senior executives shall decide, within ten (10) Business Days of a written notice of the dispute, the negotiation period during which they will attempt to resolve the dispute before a Party may initiate arbitration or litigation. If such appropriate senior executives fail, for any reason, to agree upon a negotiation period during which they will attempt to resolve the controversy, then the negotiation period shall end forty-five (45) days after the written notice of dispute.

Section 15.2. Jurisdiction. Each of the Parties irrevocably waives, to the fullest extent permitted by Law, any objection it may now or hereafter have to the exclusive jurisdiction of the courts as specified in Section 18.3 or the laying of the venue of any such proceeding brought as specified in such a court and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum. Each of the Parties hereby agrees that its submission to jurisdiction is made for the express benefit of the other Party.

Section 15.3. Voluntary Binding Arbitration. If, following failure of negotiations pursuant to Section 15.1, the Parties agree to binding arbitration of a dispute, the following procedures will be used (absent agreement of the Parties to different procedures):

(a) The dispute shall be finally settled by binding arbitration before a panel of three arbitrators in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA") then in effect, except as modified herein. The Party seeking relief from the other Party shall prepare and submit a request for arbitration (the "Demand"), which will include statements of the facts and circumstances surrounding the dispute, the legal obligation breached by the other Party, the amount in controversy and the requested relief. The Demand shall be accompanied by all relevant supporting documents.

(b) Arbitration shall be held in Louisville, Kentucky. The arbitration shall be governed by the United States Arbitration Act, 9 U.S.C. §§ 1 et seq.

(c) Each Party shall select one arbitrator within ten (10) days of the receipt of the Demand, or if a Party fails to make such selection within ten (10) days from the receipt of the Demand, the AAA shall make such appointment upon the written request of the other Party. The two arbitrators thus appointed shall select the third arbitrator, who shall act as the chairman of the panel. If the two arbitrators fail to agree on a third arbitrator within thirty (30) days of the selection of the second arbitrator, the AAA shall make such appointment. Neither the Parties nor the Party-appointed arbitrators shall be limited to selecting arbitrators named on any list of

arbitrators provided by AAA. All arbitrators shall be knowledgeable in the subject area of the dispute and recently active by employment or otherwise in the subject area of the dispute.

(d) The award shall be in writing (stating the award and the reasons therefor) and shall be final and binding upon the Parties, and shall be the sole and exclusive remedy regarding any claims, counterclaims, issues, or accountings presented to the arbitration panel. The arbitration panel shall be authorized in its discretion to grant pre-award and post-award interest at commercial rates. Judgment upon any award may be entered in any court having jurisdiction as specified in Section 18.3.

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

(f) Unless otherwise ordered by the arbitrators, each Party shall bear its own costs and fees, including attorneys' fees and expenses. The Parties expressly agree that the arbitrators shall have no power to consider or award any form of damages barred by Section 18.1, or any other multiple or enhanced damages, whether statutory or common law.

(g) Each Party understands that, to the extent it agrees to arbitration pursuant to this Section, it will not be able to bring a lawsuit concerning the affected dispute, except as necessary to enforce this Section 15.3 or an arbitration award.

## ARTICLE XVI

### REPRESENTATIONS AND WARRANTIES

Section 16.1. Mutual Representations. Each Party represents and warrants to the other Party that, as of the Effective Date:

(i) it is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its organization or incorporation;

(ii) it has the power to execute and deliver this Agreement and to perform its obligations under this Agreement and has taken all necessary corporate, company, partnership, governmental and/or other actions to authorize such execution and delivery and performance of such obligations;

(iii) its execution and delivery of this Agreement and its performance of its obligations under this Agreement do not violate or conflict with any Law applicable to it; with any provision of its charter or bylaws (or comparable constituent documents); with any order or judgment of any court or other agency of government applicable to it or any of its assets; or with any contractual restriction binding on or affecting it or any of its assets;

(iv) except as otherwise permitted herein, it has neither initiated nor received written notice of any action, proceeding or investigation pending, nor to its knowledge is any such action, proceeding or investigation threatened (or any basis therefor known to it) that questions the validity of this Agreement, or that would materially or adversely affect its rights or obligations as a Party;

(v) all authorizations of and exemptions, actions or approvals by, and all notices to or filings with, any governmental authority that are required to have been obtained or made by it at the time this representation with respect to this Agreement have been obtained or made and are in full force and effect, and all conditions of any such authorizations, exemptions, actions or approvals have been complied with; and

(vi) this Agreement constitutes the Party's legal, valid and binding obligation, enforceable against it in accordance with its terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application, regardless of whether enforcement is sought in a proceeding in equity or at Law).

(b) Each Party represents and warrants that with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from: (i) suit, (ii) jurisdiction of court (including a court located outside the jurisdiction of its organization), (iii) relief by way of injunction, order for specific performance, or recovery of property, (iv) attachment of assets, or (v) execution or enforcement of any judgment.

Section 16.2. Exclusivity of Seller Representations. The representations and warranties made by Seller in this Agreement are in lieu of and are exclusive of all other representations and warranties, including any implied warranties of merchantability, suitability or fitness for any particular purpose or any other implied warranty. Seller hereby disclaims any such other or implied representations or warranties, notwithstanding the delivery or disclosure to Buyer or its directors, officers, employees, agents or representatives of any documentation or other information.

## ARTICLE XVII

### NOTICES

Except as otherwise specified in this Agreement, any notice, request, demand, statement or other communication provided for in this Agreement shall be in writing and shall be sufficiently given upon delivery thereof if (a) delivered by overnight mail, overnight courier or hand delivered against written receipt, (b) transmitted and received by electronic transmission and confirmed by hard copy delivered by one of the methods specified in part (a), or (c) delivery by one of the specified methods is refused by the receiving Party; and in all cases addressed as set forth in Exhibit D or to such other address as may be designated by a Party from time to time by notice to the other Party in accordance with this ARTICLE XVII.

## ARTICLE XVIII

### MISCELLANEOUS

Section 18.1. No Consequential Damages. Except to the extent (i) awarded to a third party as a result of a Third Party Claim or (ii) arising out of fraud or criminal conduct, in the event of a Party's breach of this Agreement, such Party shall be liable hereunder solely for direct

and actual damages and under no circumstances shall a Party be liable hereunder for any consequential (including, but not limited to, lost profits and business interruption), incidental, special, punitive, exemplary, indirect or other similar damages.

Section 18.2. Entire Agreement. This Agreement, including the exhibits hereto, and any amendments hereof, contain the complete agreement among the Parties with respect to the matters contained herein and supersedes all prior communications, negotiations or agreements, whether written or oral, with respect to the subject matter hereof.

Section 18.3. Governing Law; Venue and Jurisdiction.

(a) This Agreement shall be governed by, construed, interpreted and applied in accordance with the Laws of the Commonwealth of Kentucky, without giving effect to any principle regarding conflict of laws that would result in the application of the laws of any other jurisdiction.

(b) For the purposes of any cause of action arising out of or based upon this Agreement or relating to the subject matter hereof or for the enforcement of any arbitration award hereunder, the Parties hereby irrevocably submit to the exclusive venue of the Circuit Court of Franklin County, Kentucky, for any legal action filed by Seller and to the exclusive venue of the Circuit Court of McCracken County, Kentucky, for any legal action filed by Buyer. The Parties voluntarily consent to the jurisdiction of the respective courts designated in the foregoing exclusive venue selection provision. Once a Party has initiated a legal proceeding in the proper venue as set forth above, any claims, counterclaims, or causes of action of the other Party arising out of or relating to this Agreement, any provision or breach hereof, or in any way relating to the subject matter of this Agreement of the other Party shall be litigated in the same legal forum.

Section 18.4. Non-Waiver. No delay or failure by a Party to exercise any of its rights, powers or remedies under this Agreement following any breach or default by the other Party shall be construed to be a waiver of any such breach or default, or any acquiescence therein, or of or in any similar breach or default thereafter occurring, nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind on the part of a Party of any breach or default, or any waiver on the part of a Party of any provision or condition of this Agreement, shall be effective only if specifically set forth in a writing signed by the waiving or consenting Party .

Section 18.5. Severability. If an arbitration panel, court or regulatory agency having jurisdiction over the Parties or over this Agreement determines that any of the provisions of this Agreement, or any part thereof, is invalid, void, illegal or unenforceable, the remainder of this Agreement, or the application of such provision to Persons or circumstances other than those as to which it is held invalid, will nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated is not affected in any manner materially adverse to either Party. Upon any such determination of invalidity, the Parties shall, within ten (10) days of such determination, commence to negotiate in good faith new provisions to restore this Agreement as nearly as possible to its original intent and effect.

Section 18.6. Interpretation; Headings; Presumption; Reference to Account Numbers. In this Agreement, unless a different intention clearly appears:

- (i) all pronouns and any variations thereof refer to the masculine, feminine or neuter, singular or plural, as the context may require;
- (ii) unless otherwise expressly provided, the words "include," "includes" and "including" do not limit the preceding words or terms and shall be deemed to be followed by the words "without limitation";
- (iii) the headings herein are for convenience and reference purposes only and shall in no way affect the meaning or interpretation of the provisions of this Agreement;
- (iv) reference to any Section or Exhibit means such Section of this Agreement or such Exhibit to this Agreement, as the case may be, and references in any Section or definition to any clause or paragraph means such clause or paragraph of such Section or definition;
- (v) "hereunder", "hereof", "hereto" and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Section or other provision hereof;
- (vi) all terms defined and/or used in this Agreement shall be interpreted without regard for how such terms may be defined and/or used in other agreements between the Parties and/or their Affiliates; and
- (vii) the Parties have jointly participated in the drafting of this Agreement and have had the opportunity to engage counsel of their own choosing in connection therewith. Any rule of construction or interpretation requiring this Agreement to be construed or interpreted for or against any Party shall not apply to the construction or interpretation hereof.

Section 18.7. No Partnership or Joint Venture. This Agreement does not establish and should not be construed as establishing any partnership or joint venture by and between the Parties, and neither of the Parties shall have any duties, obligations or liabilities arising under such a relationship.

Section 18.8. Confidentiality.

(a) Without prior written consent, which shall not be unreasonably withheld or delayed, neither Party shall disclose the terms of this Agreement to a third party (other than such Party's and its employees, officers, directors, members, partners, lenders, potential lenders, potential equity investors, counsel, accountants, financial advisors or consultants) except in order to comply with any applicable Law; provided, however, that, except in connection with disclosures required under applicable public records Laws, each Party shall notify the other Party of any proceeding of which it is aware that may result in such disclosure, and the Party subject to such proceeding shall use reasonable best efforts to prevent or limit the disclosure.

(b) The Parties shall be entitled to all remedies available at Law or in equity to enforce, or seek relief in connection with, the confidentiality obligations set forth in this Section 18.8; provided, however, that all monetary damages shall be limited to actual direct damages and shall not include consequential damages.

Section 18.9. No Third-Party Benefits. This Agreement shall not impart any rights enforceable by any third party (other than permitted successors or assignees bound by this Agreement). Nothing in this Agreement, express or implied, shall be construed to create any interest, beneficial or otherwise, for any third party.

Section 18.10. Amendment. This Agreement may not be amended or modified except by a written instrument signed by Seller and Buyer.

Section 18.11. Further Assurances. Each Party agrees to execute and deliver all further instruments and documents, and take any further action that may be reasonably necessary to effect the purpose and intent of this Agreement.

Section 18.12. Counterparts; Electronic Copies. This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Any electronic copies hereof or signature hereon shall, for all purposes, be deemed originals.

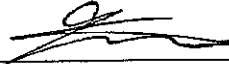
Section 18.13. Expenses. Each Party shall pay its own costs and expenses, including the fees and expenses of its agents, representatives, advisors, counsel and accountants, necessary for the negotiation, preparation, execution and delivery of this Agreement.

[Signatures begin on next page]


EXECUTION COPY

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date first above written.


**ELECTRIC PLANT BOARD OF THE CITY OF PADUCAH, KENTUCKY DBA  
PADUCAH POWER SYSTEM**

By:   
Name: Gary Zheng  
Title: General Manager

ATTEST:

By:   
Name: Hardy Roberts  
Title: Board Chairman

**KENTUCKY MUNICIPAL ENERGY AGENCY**

By:   
Name: RONALD W. HERB  
Title: CHAIRMAN

**FACILITY OPERATIONAL LIMITS**

All Day-Ahead Schedules and Day-Ahead Schedule Revisions must be consistent with the Facility units' minimum run time of at least two (2) consecutive hours.

For any calendar day in which the Facility is called on to run for a total of more than [REDACTED] hours, each hour of service during such calendar day will be billed to Buyer at twice the applicable VOM<sub>m</sub> rate set forth in Exhibit C.

Minimum Hourly Schedule	15 MW
Maximum Hourly Schedule	contracted Peaking Capacity

If the cumulative hours of operation of the Facility on behalf of Buyer exceed [REDACTED] during any transmission planning year (i.e., June 1 through May 31), Buyer will be billed at twice the applicable VOM<sub>m</sub> rate set forth in Exhibit C for each hour of operation in excess of [REDACTED] hours during such transmission planning year.

Seller shall have no obligation to provide service under the Agreement and will have no liability under the Agreement to the extent that the Facility would be in violation of the 10,360 maximum hours permitted for it operate under its air permit.

During any period in which Buyer has not elected to self-supply gas and/or gas transportation pursuant to Section 5.8, and thus Buyer is relying on Seller's provision of gas supply and/or transportation, Seller's obligations to provide service under the Agreement shall be subject to any limits on the operation of the Facility necessary for Seller to comply with the terms and conditions of its contracts for purchase and transportation of natural gas. Seller shall negotiate and implement all such contracts in good faith and without adverse distinction against Buyer.

The Operating Committee will work in good faith to develop and agree to such additional operational limits for the Facility consistent with Prudent Utility Practices as may be deemed necessary or advisable.



**MONTHLY RESERVATION CHARGE****Definitions**

ADF means the annual delivery factor for the preceding transmission planning year (i.e., June 1 through May 31), which shall be equal to the total megawatt-hours of Scheduled Peaking Energy delivered by Seller to Buyer in such preceding planning year divided by the total megawatt-hours of Peaking Energy Scheduled by Buyer in such preceding planning year. The ADF calculation shall exclude all periods for which Buyer did not submit Schedules due to outage of the Facility and for which the Monthly Reservation Charge has already been adjusted pursuant to Section IV or V below (including any relevant portions of Service Months for which the Monthly Reservation Charge was pro-rated). In addition, if (i) the Contract Term has been extended pursuant to Section 2.2, and (ii) during such extension term Seller conducts a major maintenance outage upon the recommendation of the original equipment manufacturer or an independent engineering firm, the period of such major maintenance outage (which shall not exceed a period of 45 consecutive days) shall be excluded from the ADF calculation for the transmission planning year in which the outage occurred.

MCP means the monthly capacity price for the applicable Service Month.

For the first 36 Service Months, the MCP shall be:

- [REDACTED] per MW-month (i) during any period in which the Peaking Capacity is 90 MW or more, and (ii) during any period (not to extend beyond May 31, 2022) in which the Peaking Capacity is temporarily reduced below 90 MW pursuant to Section 3.1(b)(ii).
- [REDACTED] per MW-month during any period in which the Peaking Capacity is less than 90 MW for any reason other than temporary application of [REDACTED] per MW-month as the MCP due to Buyer's election to proceed pursuant to Section 3.1(b)(ii) as provided in part (ii) of the preceding bullet point.

For the remaining Service Months of the Term, MCP shall be equal to the MCP that was in effect during the first 36 Service Months, escalated as described under "CPI Escalation" below.

SR means "Starting Reliability" as calculated pursuant to the formula set forth for "SR" in Appendix F to the NERC Generating Availability Data System Data Reporting Instructions, taking into account the total attempted and actual starts of all of the units of the Facility over the course of the preceding transmission planning year (i.e., June 1 through May 31).

### Calculation of Monthly Reservation Charge

For each Service Month, the Monthly Reservation Charge shall be calculated as follows.

I. For each Service Month in a planning year that immediately follows a planning year in which the ADF was greater than or equal to [REDACTED] and the SR was greater than or equal to [REDACTED], the Monthly Reservation Charge shall be equal to the Peaking Capacity multiplied by the MCP, as represented by the following formula:

$$\text{Monthly Reservation Charge} = (\text{Peaking Capacity} \times \text{MCP})$$

II. For each Service Month in a planning year that immediately follows a planning year in which the ADF was greater than or equal to [REDACTED] but the SR was less than [REDACTED], the Monthly Reservation Charge shall be equal to the Peaking Capacity multiplied by the MCP multiplied by the SR, as represented by the following formula:

$$\text{Monthly Reservation Charge} = (\text{Peaking Capacity} \times \text{MCP} \times \text{SR})$$

III. For each Service Month in a planning year that immediately follows a planning year in which the ADF was less than [REDACTED] (irrespective of whether the SR was above or below [REDACTED]), the Monthly Reservation Charge shall be equal to the Peaking Capacity multiplied by the MCP multiplied by the ADF, as represented by the following formula:

$$\text{Monthly Reservation Charge} = (\text{Peaking Capacity} \times \text{MCP} \times \text{ADF})$$

IV. If an event of Force Majeure occurs and is continuing that prevents Seller from providing Peaking Capacity and/or Peaking Energy for a period of ninety (90) days or longer, then (a) the Monthly Reservation Charge for the Service Month in which the ninety-day period ends shall be pro-rated, (b) for each full Service Month thereafter in which the Force Majeure remains in effect, the Monthly Reservation Charge shall be zero dollars (\$0), and (c) the Monthly Reservation Charge for the Service Month in which the event of Force Majeure ends shall be pro-rated. The pro-rated Monthly Reservation Charge under clause (a) shall be the product of the Peaking Capacity, the applicable monthly capacity price as set forth under "MCP" above, and the ratio of the number of days within the Service Month that fell within the ninety-day period to the total number of days in the Service Month. The pro-rated Monthly Reservation Charge under clause (c) shall be the product of the Peaking Capacity, the applicable monthly capacity price as set forth under "MCP" above and the ratio of the number of days within the Service Month following the end of the Force Majeure event and in which Facility Firm Capacity and Facility Firm Energy were again made available to the total number of days in the Service Month.

V. In the event of a Forced Outage affecting all or part of the Facility that is not due to Force Majeure and causes Seller to be unable to deliver the full amount of Peaking Energy, the Operating Committee shall meet as soon as practicable to discuss Seller's plans for repair and the degree to which the Facility is still capable of providing the Peaking Capacity and Peaking Energy. The Parties may agree that Buyer will modify its Schedules to be limited to the reduced Capacity available from the Facility or, if the entire Facility is unavailable due to the Forced Outage, to suspend submitting Schedules for the duration of the Forced Outage. In such event,

(a) for each Service Month in which the Forced Outage occurred throughout the full Service Month, the Monthly Reservation Charge shall be zero dollars (\$0), and (b) the Monthly Reservation Charge for any Service Month in which the Forced Outage occurred for less than the full month shall be pro-rated as follows: the pro-rated Monthly Reservation Charge shall be the sum of (i) the product of the Peaking Capacity, the applicable capacity price as set forth under "MCP" above converted to a rate per MW-day, and the number of days within the Service Month that were not affected by the Forced Outage, and (ii) the product of the amount of Peaking Capacity (if any) available during the Forced Outage, the applicable capacity price as set forth under "MCP" above converted to a rate per MW-day, and the number of days within the Service Month during which the Forced Outage was in effect.

### **CPI Escalation of MCP**

Commencing on June 1, 2022, and as of each June 1 thereafter during the remainder of the Contract Term, the MCP shall be adjusted by the percentage by which the final published "CPI-U Index" as of December 31 of the preceding year is greater than or less than the final published "CPI-U Index" as of December 31, 2020. In 2022 and each following year, after publication of the final "CPI-U Index" for December 31 of the preceding calendar year, Seller shall calculate an updated MCP using such "CPI-U Index" and shall provide notice of the updated MCP to Buyer with supporting documentation. Seller shall provide notice of such updated rate to Buyer with supporting documentation within 10 Business Days of publication of the final "CPI-U Index."

For purposes of calculating the MCP, the "CPI-U Index" shall be that index identified as Consumer Price Index All Urban Consumers determined and reported monthly by the Bureau of Labor Statistics of the U.S. Department of Labor. The "CPI-U Index" shall be determined to the nearest three decimal places. If the next succeeding place is five or more, the preceding decimal place shall be raised to the next higher figure. The adjustment of the MCP shall be calculated to the nearest one-tenth of one percent.

**MONTHLY ENERGY CHARGE**

**Definitions**

DEC<sub>d</sub> means the energy charge for a given day under Section I of this Exhibit C.

DPE<sub>d</sub> means the quantity of Delivered Peaking Energy in a given day as measured in MWh.

DPE<sub>m</sub> means the quantity of Delivered Peaking Energy in a given Service Month as measured in MWh.

FCC<sub>d</sub> means the total fuel commodity costs actually incurred by Seller pursuant to its arrangements with its supplier(s) of natural gas fuel as necessary to generate the Delivered Peaking Energy in a given day, expressed in dollars.

FIC<sub>m</sub> means any fuel imbalance charges for the applicable Service Month that are attributable to Buyer, as determined in accordance with criteria established by the Operating Committee.

FTC<sub>d</sub> means the total fuel transportation costs actually incurred by Seller pursuant to its arrangements with its supplier(s) of natural gas fuel as necessary to generate the Delivered Peaking Energy in a given day, expressed in dollars. FTC<sub>d</sub> shall be calculated by multiplying the total MCF of fuel required to generate the Delivered Peaking Energy in the day by the rate (in \$/MCF) paid by Seller.

FTC<sub>m</sub> means the fuel transportation costs actually incurred by Seller pursuant to its arrangements with the pipeline(s) delivering natural gas fuel as necessary to generate the Delivered Peaking Energy in the Service Month, expressed in dollars. FTC<sub>m</sub> shall be calculated by multiplying the total MCF of fuel required to generate the Delivered Peaking Energy in the Service Month by the rate (in \$/MCF) paid by Seller.

KEPA<sub>m</sub> means the total administration charges Seller is obligated to pay to the Kentucky Environmental Protection Agency for a given month that are properly allocable to the Facility, divided by the total MWh of net output produced by the Facility in the given month.

VOM<sub>m</sub> means the variable O&M rate for the applicable Service Month, as set forth in the table at the end of this Exhibit C.

**Monthly Energy Charge Calculations**

The Monthly Energy Charge for a given Service Month will be determined pursuant to Section I, II or III below, depending on the fuel commodity and transportation arrangements in place for such Service Month pursuant to Section 5.8 of the Agreement.

- I. For each Service Month in which Buyer does not self-supply either gas commodity or gas transportation, the Monthly Energy Charge shall be the sum of the energy charges determined for each day of the Service Month as follows:

$$DEC_d = (DPE_d * (VOM_m + KEPA_m)) + FCC_d + FTC_d$$

- II. For each Service Month in which Buyer self-supplies gas commodity for its Delivered Peaking Energy but uses Seller's gas transportation rights, the Monthly Energy Charge shall be determined as follows:

$$[DPE_m * (VOM_m + KEPA_m)] + FTC_m + FIC_m$$

- III. For each Service Month in which Buyer self-supplies gas using Buyer's own transportation rights, the Monthly Energy Charge shall be determined as follows:

$$[DPE_m * (VOM_m + KEPA_m)] + FIC_m$$

**VOM Table**

Service Months	VOM rate (\$/MWh)
June 2019 through May 2020	██████
June 2020 through May 2021	██████
June 2021 through May 2022	██████
June 2022 through May 2023	██████
June 2023 through May 2024	██████
June 2024 through May 2025	██████
June 2025 through May 2026	██████
June 2026 through May 2027	██████
June 2027 through May 2028	██████
June 2028 through May 2029	██████

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For the avoidance of doubt, the variable O&M rates set forth in this table include costs of reagent and all emission allowances required under the environmental Laws in effect as of the Effective Date and all startup-related costs associated with Buyer's use of the Facility.

**PARTY CONTACT INFORMATION**

**TO SELLER:**

General Manager  
Paducah Power System  
P.O. Box 180  
1500 Broadway  
Paducah, KY 42002-0180  
[for courier delivery use 42001]  
270.575.4027 (facsimile)  
[gzheng@paducahpower.com](mailto:gzheng@paducahpower.com)

For notices pursuant to Sections 5.8  
(self-supply of gas), 5.9 (meter issues),  
and 14.2 (Force Majeure), a copy of the  
notice should also be sent to:

Director of Engineering and Operations  
Paducah Power System  
P.O. Box 180  
1500 Broadway  
Paducah, KY 42002-0180  
[for courier delivery use 42001]  
270.575.4027 (facsimile)  
[rwindhorst@paducahpower.com](mailto:rwindhorst@paducahpower.com)

Wire transfers to Seller should be sent to an account in the name of Paducah Power  
System:

Regions Bank  
Routing 081001387  
Account 0153983637

**TO BUYER:**

Kentucky Municipal Energy Agency  
c/o Rubin & Hays  
450 South Third Street  
Louisville, KY 40202

With copies to:

Rubin & Hays  
450 South Third Street  
Louisville, KY 40202  
Email: [csmusson@rubinhays.com](mailto:csmusson@rubinhays.com)

nFront Consulting LLC  
2465 Southern Hills Ct  
Oviedo, FL 32765  
Email:  
[johnpainter@nFrontConsulting.com](mailto:johnpainter@nFrontConsulting.com)

Exhibit E

**FORM OF INSTRUMENT OF ASSIGNMENT AND ASSUMPTION**

This Instrument of Assignment and Assumption (this "Assignment"), dated as of [\_\_\_\_], 20[\_\_\_\_] (the "Effective Date"), is entered into by and between [*Assignor*], a [\_\_\_\_] ("Assignor"), and [*Assignee*], a [\_\_\_\_] ("Assignee").

WHEREAS, Assignor and [*Buyer/Seller*] are parties to that certain Power Purchase Agreement, dated as of [\_\_\_\_] (as amended through the date hereof, the "PPA").

WHEREAS, in accordance with Section [\_\_\_\_] of the PPA, Assignor intends to assign to Assignee all of Assignor's rights and interests under the PPA, and Assignee intends to assume all of Assignor's obligations arising from and after the Effective Date, and the parties intend Assignor to be released from any further liability thereunder to the extent arising from and after the Effective Date.

WHEREAS, the parties hereto desire to execute and deliver this Assignment for the purpose of effecting the assignment and transfer by Assignor to Assignee, and the acceptance and assumption by Assignee, of the PPA and all rights, liabilities and obligations of "[*Seller/Buyer*]" (as defined in the PPA) thereunder.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee, intending to be legally bound, agree and covenant as follows:

1. Assignor hereby assigns and transfers to Assignee, and Assignee hereby accepts and assumes and agrees to perform the PPA, and all of Assignor's rights, liabilities and obligations thereunder, to the extent arising from and after the Effective Date. Assignee hereby assumes and agrees to pay, discharge, perform and be responsible for all liabilities and obligations arising or accruing under or in respect of the PPA to the extent arising from and after the Effective Date.
2. Nothing in this Assignment, express or implied, is intended or shall be construed to confer upon or give to any Person, other than Assignor and Assignee, and their respective successors and assigns, any remedy or claim under or by reason of this Assignment or any term, covenant, condition, promise or agreement hereof, and all of the terms, covenants, conditions, promises and agreements contained in this Assignment shall be for the sole and exclusive benefit of Assignor and Assignee, and their respective successors and assigns.
3. This Assignment shall be governed by and construed and enforced in accordance with, and this Assignment and all matters arising out of or relating in any way whatsoever (whether in contract, tort or otherwise) to this Assignment shall be governed by, the laws of the Commonwealth of Kentucky.
4. This Assignment may be executed in two or more counterparts, each of which shall be deemed an original and all of which shall, taken together, be considered one and the



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same agreement. Delivery of an executed signature page of this Assignment by facsimile or other electronic image scan transmission shall be effective as delivery of a manually executed counterpart of this Assignment.

IN WITNESS WHEREOF, the parties hereto have executed this Instrument of Assignment and Assumption as of the date first written above.

\_\_\_\_\_ [Assignor]

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

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

Title:

\_\_\_\_\_ [Assignee]

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

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

Title:

FORM OF QUALIFYING LETTER OF CREDIT

[Date]

[Issuing Bank Letterhead]

Irrevocable Standby Letter of Credit No. \_\_\_\_\_

Issue Date: \_\_\_\_\_, 20\_\_

Initial Expiry Date: \_\_\_\_\_, 20\_\_

Beneficiary:

Ladies and Gentlemen:

At the request of and based on instructions from our customer, [\_\_\_\_], a [\_\_\_\_] ("Account Party"), we hereby establish this Irrevocable Standby Letter of Credit ("Letter of Credit") in your favor as [Buyer/Seller] under the Power Purchase Agreement dated as of [\_\_\_\_], between the Electric Plant Board of the City of Paducah, Kentucky DBA Paducah Power System, as Seller, and Kentucky Municipal Energy Agency as Buyer (as heretofore or hereafter amended and/or restated at any relevant time the "PPA") for drawings up to a total of [\_\_\_\_] Dollars (US\$[\_\_\_\_]).

As used in this Letter of Credit: (a) each of "Dollars" and "US\$" mean lawful currency of the United States of America; (b) "ISP98" means the International Standby Practices, International Chamber of Commerce Publication No. 590; and (c) "Business Day" means a day that is not a Saturday, a Sunday or any other day on which banking institutions are not required to be open, or are authorized or required to close, in the State of our office location set forth below.

Drawings may be made by you from time to time by presentation of your certificate in the form of *Appendix A* hereto appropriately completed (a "Certificate") to us at our office in the United States located at:

[\_\_\_\_]  
[\_\_\_\_]  
[\_\_\_\_]  
[\_\_\_\_]

Attn: [\_\_\_\_\_]

Telephone No: [\_\_\_\_\_]

Telecopy No: [\_\_\_\_\_]

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or at another office in the United States designated by us with at least fifteen (15) Business Days prior written notice to and received by you.

In the alternative, presentation of any Certificate may be transmitted to us: (a) by telecopy to our telecopy number set forth above; or (b) in another electronic medium pursuant to any written permission which has been provided by us to you in our sole discretion. To the extent a presentation is made by telecopy transmission or in another permitted electronic medium, you must: (a) provide telephone notice thereof to us at our telephone number set forth above prior to or substantially simultaneously with such transmission; and (b) send the original Certificate by overnight courier to us at our office address set forth above. However, our receipt of such telephone notice or original Certificate will not be a condition to payment of the drawing described in the Certificate. Items delivered by telecopy transmission or in another permitted electronic medium will be the equivalent of originals of such items for purposes of this Letter of Credit.

We will honor each drawing made in compliance with this Letter of Credit by wire transfer of immediately available funds in the amount specified in the Certificate provided to us in connection with such drawing to the account specified in that Certificate. If any such drawing is presented by you on a Business Day at or before 12:00 noon local time at our address or telecopy number set forth above, such payment will be made not later than the close of business on the first Business Day after such presentation; drawings presented after 12:00 noon will be paid not later than close of business on the second Business Day after such presentation.

This Letter of Credit is effective immediately and will expire on the first to occur of the: (a) above Initial Expiry Date, subject to extension as described below (as so extended the "Expiry Date"); or (b) surrender by you to us of the original of this Letter of Credit, with any amendment(s) hereto, with your written consent to cancellation thereof (a "Cancellation Date"). The earliest to occur of the final extended Expiry Date or a Cancellation Date will be the "Termination Date." The Initial Expiry Date and each subsequent Expiry Date will be automatically extended for an additional consecutive period of one year unless we notify you in writing by nationally recognized overnight courier service, at least sixty (60) days prior to the then applicable Expiry Date, of our decision that the then applicable Expiry Date will not be automatically extended. Subject to the provisions herein, we authorize you to make drawings hereunder in an aggregate sum not in excess of the above amount from the date hereof through our close of business on the Termination Date. If this Letter of Credit expires during an interruption of business as described in Rule 3.14 of ISP98, we specifically agree to effect payment if you draw on this Letter of Credit within thirty (30) days after the resumption of business.

Communications with respect to this Letter of Credit, including delivery of Certificates, shall, except as otherwise expressly provided above, be in writing and provided to you and us at our respective addresses and numbers set forth above by delivery in person or facsimile transmission at such address, as provided in this Letter of Credit, or as and in the medium otherwise permitted in writing by the recipient.

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This Letter of Credit, except as otherwise expressly stated herein, is subject to ISP98, and as to matters not addressed by ISP98 the Laws of the [State/Commonwealth of \_\_\_\_\_], including the Uniform Commercial Code as in effect in such State, will control.

This Letter of Credit sets forth in full our undertaking, which will not in any way be amended, amplified or limited by reference to any document, instrument or agreement referred to herein, except for the preceding paragraph and appendices hereto, and any such reference will not incorporate herein by reference any document, instrument or agreement except as set forth above. Our obligations under this Letter of Credit are our individual obligations and not contingent on any reimbursement of us with respect thereto. Any drawing under this Letter of Credit will be paid from our general funds and not directly or indirectly from funds or collateral deposited with us or for our account by the Account Party or any other person or entity.

Very truly yours,

By .....  
Authorized Signator

Appendix A to Qualifying Letter of Credit

[Beneficiary Letterhead]

**DRAWING CERTIFICATE**  
**LETTER OF CREDIT NO. \_\_\_\_\_**

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

[\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_]

Attn: [\_\_\_\_\_]
Telephone No: [\_\_\_\_\_]
Telecopy No: [\_\_\_\_\_]

The undersigned authorized signator of \_\_\_\_\_, as [Buyer/Seller] ("Beneficiary"), hereby certifies to \_\_\_\_\_ Bank ("Issuing Bank"), with reference to Irrevocable Standby Letter of Credit No. \_\_\_\_\_ (the "Letter of Credit") issued by Issuing Bank and now in favor of Beneficiary (except as otherwise set forth herein, capitalized terms used and not defined herein have the meanings set forth in the Letter of Credit or, if not defined therein, in the PPA), that:

- 1. Beneficiary is making this drawing under the Letter of Credit in the amount of \_\_\_\_\_ Dollars (US\$ \_\_\_\_\_) (the "Drawing Amount").
- 2. The Drawing Amount does not exceed US\$[insert face amount of letter of credit] minus the amount of all payments of any previous drawings made under the Letter of Credit.
- 3. Beneficiary is entitled to make this drawing because [Check one]:

[ ] [Seller/Buyer] has failed to pay one or more amounts due and payable to one or more Buyer under the PPA ("Required Payments"), all applicable grace periods for the Required Payments have expired, and the sum of such unpaid Required Payments is not now less than the sum of (a) the Drawing Amount plus (b) any amounts that are being drawn from one or more other Qualifying Letters of Credit in respect of such Required Payments; or

[ ] The Letter of Credit is not now a Qualifying Letter of Credit and has not been replaced with a Qualifying Letter of Credit for a period of ten (10) consecutive Business Days (as defined in the PPA) after the Letter of Credit no longer constituted a Qualifying Letter of Credit; or

[ ] The now effective Expiry Date of the Letter of Credit is less than thirty (30) days after the date of this Certificate.

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4. You are hereby directed to make payment of the requested Drawing Amount to \_\_\_\_\_ Bank, at \_\_\_\_\_ ABA No. \_\_\_\_\_ for further credit to \_\_\_\_\_ Account No. \_\_\_\_\_ Re: [\_\_\_\_\_] , Attention: \_\_\_\_\_.

IN WITNESS WHEREOF, Beneficiary has executed and delivered this Certificate.

*[Beneficiary]*

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

**PRICING METHODOLOGY FOR EXTENSION PERIOD**

The MCP proposed by Seller for the second 10-year term will not exceed the rate determined according to the following formula:

[REDACTED]

➤ [REDACTED]

➤ [REDACTED]

➤ [REDACTED]

[REDACTED]

**VOM Table**

Service Months	VOM rate (\$/MWh)
June 2029 through May 2030	[REDACTED]
June 2030 through May 2031	[REDACTED]
June 2031 through May 2032	[REDACTED]
June 2032 through May 2033	[REDACTED]

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June 2033 through May 2034	██████
June 2034 through May 2035	██████
June 2035 through May 2036	██████
June 2036 through May 2037	██████
June 2037 through May 2038	██████
June 2038 through May 2039	██████



## INSURANCE COVERAGE

Seller shall at its sole expense purchase from and maintain in a company or companies lawfully authorized to conduct business in the jurisdiction where the Facility is located the insurance described in this Exhibit H. Such insurers shall maintain an A.M. Best's rating of A-X or better. These policies shall not be materially changed or cancelled except with thirty (30) days written notice to Buyer.

**All Risk Property Insurance** – Seller will procure and maintain all risk property insurance including coverage for physical damage, machinery and extra expense during the operation of the Facility. Coverage valuation shall be the actual repair or replacement costs.

**Commercial General Liability** – Seller will carry commercial general liability coverage to a limit of at least \$1,000,000 per occurrence, \$3,000,000 in aggregate. The insurance will cover claims brought against Seller for third party bodily injury (including death), personal injury and property damage.

**Excess Liability/Umbrella Coverage** – Seller will carry excess liability/umbrella coverage insurance of at least \$5,000,000 per occurrence so that the total coverage for Commercial General Liability and Excess Liability/Umbrella Coverage shall be at least \$6,000,000 per occurrence.

**Workers Compensation** – Seller will carry workers compensation insurance covering statutory workers compensation obligations as required by state law. The coverage will also include at least \$1,000,000 in Employers Liability coverage insuring claims brought by employees brought outside the workers' compensation statute.