

**THE ELECTRIC POWER SUPPLY ASSOCIATION
MODEL INTERCONNECTION AGREEMENT**

BY AND BETWEEN
TRANSMISSION OWNER
AND
GENERATOR COMPANY

[DATE]

This document represents the efforts of the competitive power supply industry to address in a reasonable manner the issues often covered in an interconnection agreement. The provisions contained herein do not, however, reflect the position of any member of the Electric Power Supply Association with respect to any particular contract provision agreement, or generation project. Distribution of this document does not constitute provision of legal advice, and this document should not be used except in consultation with an attorney familiar with the facts and circumstances of the specific interconnection and with all applicable law.

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INTERCONNECTION AGREEMENT

This INTERCONNECTION AGREEMENT is made as of the ____ day of [month] _____, [year], by and between Electric Utility Company (“Transmission Owner”), a _____ company having its principal place of business at _____, and Generator Company (“Generator”), a _____ company having its principal place of business at _____ (referred to collectively as the “Parties” or, individually, as a “Party”).

WHEREAS, Generator is developing a generation facility to be located in _____;

WHEREAS, Generator and Transmission Owner desire to interconnect such generating facility with the transmission system of Transmission Owner at _____;

WHEREAS, additions, modifications, and upgrades must be made to certain existing facilities owned by Transmission Owner in order to accommodate the interconnection; and

WHEREAS, Generator and Transmission Owner desire to provide for the interconnection of the generating facility and the addition, modifications, and upgrades to such facilities and to define the continuing responsibilities and obligations of the Parties with respect thereto under the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the mutual representations, covenants, and agreements as set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

ARTICLE 1 DEFINITIONS

- 1.1 “Air Emissions Permit” means any permit granted to Generator by any governmental or regulatory agency with competent jurisdiction which addresses Facility emissions.
- 1.2 “Abnormal or Out of Limit Operating Condition” means any condition on the Facility, Interconnection Facilities, Transmission System or the transmission system of other utilities which is outside normal operating parameters such that facilities are operating outside their normal ratings or reasonable operating limits have been exceeded but which has not resulted in an Emergency. An Abnormal or Out of Limit Operating Condition may include, but is not limited to, high or low deviations in: voltage, frequency, power flow, equipment temperature, equipment pressures, and other equipment and operating parameters.
- 1.3 “Agreement” means this Interconnection Agreement between Generator and Transmission Owner, including all attachments hereto, as the same may be amended, supplemented, or modified in accordance with its terms.
- 1.4 “Commercial Operation Date” means the date specified by the Generator as the first day of commercial operation of the Facility.

- 1.5 “Delivery Point” means the point at which the Transmission Owner-Owned Interconnection Facilities are connected to the Transmission System, as indicated on Attachment A.
- 1.6 “Effective Date” has the meaning set forth in Section 7.1.
- 1.7 “Emergency” means a condition or situation that (A) presents an imminent physical threat of danger to life or a significant threat to health or property, or (B) could cause imminent significant disruption on or significant damage to the Facility, the Interconnection Facilities, the Transmission System, or the transmission system of other utilities; provided, however, that any condition or situation that results from lack of sufficient generating capacity to meet load requirements shall not constitute an Emergency hereunder.
- 1.8 “Engineering and Design Studies” means the studies conducted in accordance with Good Utility Practice in order to determine the design and specifications for the Interconnection Facilities and/or the System Upgrades, and shall not determine the design or specifications for, or otherwise address, any additions, modifications, or upgrades to the Transmission System which may be necessary to transmit the Generation on the Transmission System, unless otherwise requested by the Generator.
- 1.9 “Environmental Laws” means all federal, state, and local statutes, regulations and ordinances relating to the protection, preservation or restoration of human health, the environment, or natural resources, including, without limitation, laws relating to the Releases, or threatened Releases, of Hazardous Substances into any media (including, without limitation, ambient air, surface water, groundwater, land, surface and subsurface strata) or otherwise relating to the manufacture, processing, distribution, use treatment, storage, Release, transport, or handling of Hazardous Substances.
- 1.10 “Facility” means the generating station located in _____ [with a maximum nameplate rating of __ megawatts], and to be constructed, owned, and operated by Generator.
- 1.11 “Facility Station Service” means all electric service requirements used in connection with the operation and maintenance of the Facility, including, but not limited to, stand-by, supplemental, back-up, maintenance and interruptible power.
- 1.12 “FERC” means the Federal Energy Regulatory Commission or any successor agency.
- 1.13 “Generation” means the capacity, energy, and/or ancillary services produced at the Facility.
- 1.14 “Generator” has the meaning set forth in the introductory paragraph of this Agreement and includes its permitted successors and assigns.
- 1.15 “Generator Capability Curve” means the production by the Facility of megawatts and MVAR up to the output range specified by the manufacturer(s) of the generating unit(s) located at the Facility.
- 1.16 “Generator-Owned Interconnection Facilities” means all those facilities or portions of facilities owned by the Generator, which, in conjunction with the Transmission Owner-Owned Interconnection Facilities, are necessary to effect the transfer of Generation

produced at the Facility to the Delivery Point and the provision of Facility Station Service, as such facilities are identified in more particularity in Attachment A to this Agreement, and shall include any modifications, additions, or upgrades made to those facilities.

- 1.17 “Good Utility Practice” means the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry in the United States during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather includes all acceptable practices, method, or acts generally accepted in the region. Good Utility Practice shall include, but not be limited to, applicable law and regulatory requirements, and the criteria, rules and standards promulgated by NERC, the applicable Regional Reliability Council, RTO, National Electric Safety Code, and National Electrical Code, as they may be amended from time to time, including the rules and guidelines and criteria of any successor organizations.
- 1.18 “Hazardous Substances” means:
- (A) any petro-chemical or petroleum products, oil or coal ash, radioactive materials, radon gas, asbestos in any form that is or could become friable, urea formaldehyde foam insulation and transformers or other equipment that contain dielectric fluid which may contain levels of polychlorinated biphenyls;
 - (B) any chemicals, materials, or substances defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “restricted hazardous materials,” “extremely hazardous substances,” “toxic substances,” “contaminants,” or “pollutants” under any Environmental Laws, or words of similar meaning and regulatory effect under any Environmental Laws; or
 - (C) any other chemical, material, or substance, exposure to which is prohibited, limited or regulated by applicable Environmental Laws.
- 1.19 “Interconnection Facilities” means the Transmission Owner-Owned Interconnection Facilities and the Generator-Owned Interconnection Facilities collectively.
- 1.20 “Interconnection Point” means the point indicated on Attachment A where the Facility is connected to the Interconnection Facilities.
- 1.21 “Maintain” means construct, reconstruct, install, inspect, test, repair, replace, operate, patrol, maintain, use, or other similar activities.
- 1.22 “Metering Point(s)” means the point(s) at which the amount of Generation delivered to the Delivery Point is measured.
- 1.23 “NERC” means the North American Electric Reliability Council or any successor organization.

- 1.24 “Party” or “Parties” has the meaning set forth in the introductory paragraph of this Agreement.
- 1.25 “Regional Reliability Council” means the applicable regional reliability council or any successor organization.
- 1.26 “Release” means release, spill, leak, discharge, dispose of, pump, pour, emit, empty, inject, leach, dump, or allow to escape into or through the environment.
- 1.27 “RTO” means any regional transmission operator, the independent system operator, transco, or any other independent system administrator that possesses operational or planning control over the Transmission System.
- 1.28 “RTO OATT” means the open access transmission tariff filed by the RTO with the FERC, as it may be amended from time to time.
- 1.29 “Shared Amount” has the meaning set forth in Section 4.3.
- 1.30 “System Upgrades” means any modifications, upgrades, and additions to the Transmission System that are required solely to interconnect the Facility to the Transmission System and to be constructed and installed under this Agreement, as identified in Attachment A, and shall not include any additions, modifications, or upgrades to the Transmission System which may be necessary to transmit the Generation on the Transmission System, unless otherwise requested by the Generator.
- 1.31 *[Include the following definition if Generator will be, or is, a qualifying cogeneration facility within the meaning of the Public Regulatory Policies Act of 1978, as amended:]*
“Thermal Energy” means the thermal energy, including heat or steam, produced at the Facility and used in a manner consistent with the Public Regulatory Policies Act of 1978, as amended, and applicable FERC rules and regulations.
- 1.32 “Transmission Owner” has the meaning set forth in the introductory paragraph of this Agreement and its permitted successors and assigns.
- 1.33 “Transmission Owner OATT” means the open access transmission tariff filed by the Transmission Owner with the FERC, as it may be amended from time to time.
- 1.34 “Transmission Owner-Owned Interconnection Facilities” means all those facilities or portions of facilities owned by Transmission Owner, if any, which, in conjunction with the Generator-Owned Interconnection Facilities, are necessary to effect the transfer of Generation produced at the Facility to the Delivery Point and the provision of Facility Station Service, as such facilities are identified in more particularity in Attachment A to this Agreement, and shall include any modifications, additions, or upgrades made to those facilities.
- 1.35 “Transmission Provider” means any provider of transmission or ancillary services over the Transmission System, including, as appropriate, Transmission Owner or RTO.

- 1.36 “Transmission System” means the transmission facilities owned, operated or controlled by Transmission Owner, and shall include any modifications, additions, or upgrades made to those facilities.

ARTICLE 2
CONSTRUCTION OF
INTERCONNECTION FACILITIES AND UPGRADES

- 2.1 Agreement to Interconnect. The Parties agree that the Facility shall be interconnected to the Transmission System by means of the Interconnection Facilities.
- 2.2 Generator Ownership of Interconnection Facilities. Generator may with prior written notice to Transmission Owner, elect to own all or a portion of the Transmission Owner-Owned Interconnection Facilities used exclusively to effect the transfer of Generation produced at the Facility to the Delivery Point (the “Transferred Facilities”). As soon as reasonably practicable after Generator makes such an election, the Parties will amend this Agreement to the extent necessary to reflect the fact that Generator will own the Transferred Facilities.
- 2.2.1 Ownership of the Transferred Facilities shall be transferred from Transmission Owner to Generator as soon as (A) Transmission Owner provides Generator final as-built drawings of the Transmission Owner-Owned Interconnection Facilities; and (B) Transmission Owner provides Generator a deed, bill of sale, or other instrument acceptable to Generator transferring title to the Transferred Facilities to Generator free and clear of all liens and encumbrances in accordance with applicable law. Transmission Owner shall provide Generator with such final as-built drawings and deed, bill of sale, or other instrument acceptable to Generator no later than forty-five (45) days, or such other time period mutually agreed upon by the Parties, after receiving Generator’s written notice of its election to own the Transferred Facilities.
- 2.2.2 Transmission Owner shall bear all risk of loss with respect to the Transferred Facilities until successful transfer of title to Generator has occurred in accordance with the terms and conditions of this Agreement and, until such transfer, Transmission Owner waives all rights of recovery against Generator regarding such risk, except to the extent that such loss is caused by or results from Generator’s negligence or intentional misconduct.
- 2.3 Construction and Installation of Generator-Owned Interconnection Facilities
- 2.3.1 Generator to Construct. The Generator-Owned Interconnection Facilities will be constructed by Generator or, at Generator’s option, a third party contractor selected by Generator. Unless otherwise agreed to by the Parties all construction work related to the Generator-Owned Interconnection Facilities that must be performed on the Transmission System shall be done by Transmission Owner or a third party contractor selected by Transmission Owner; provided, however, that, if Transmission Owner or a third party contractor selected by Transmission Owner

fails to meet any of the milestones identified in the schedule set forth in Attachment C in a timely manner, Generator may, with prior written notice to Transmission Owner, assume responsibility for said construction work.

2.3.2 Construction and Installation of Generator-Owned Interconnection Facilities. The Generator-Owned Interconnection Facilities must be designed, constructed and installed in accordance with applicable Engineering and Design Studies and Good Utility Practice, and Transmission Owner shall have no right that the Generator-Owned Interconnection Facilities be designed, constructed, or installed over and above applicable federal, state, local, and industry-accepted standards. Transmission Owner may, with prior written notice to Generator, make inspection of the Generator-Owned Interconnection Facilities prior to testing to ascertain whether the Generator-Owned Interconnection Facilities conform with applicable Engineering and Design Studies and Good Utility Practice. At its expense, Generator must correct any situations contrary to applicable Engineering and Design Studies or Good Utility Practice.

2.3.3 Procurement. At Generator's expense, Generator will procure any and all equipment necessary for Generator to construct and install the Generator-Owned Interconnection Facilities.

2.4 Construction and Installation of Transmission Owner-Owned Interconnection Facilities and Upgrades

2.4.1 Construction and Installation

(A) Unless otherwise agreed to by the Parties, the Transmission Owner-Owned Interconnection Facilities and the System Upgrades shall be constructed and installed by Transmission Owner or a third party contractor selected by Transmission Owner; provided, however, that, if Transmission Owner or a third party contractor selected by Transmission Owner fail to meet any of the milestones identified in the schedule set forth in Attachment C in a timely manner, Generator may, with prior written notice to Transmission Owner, assume responsibility for said construction and installation. The Transmission Owner shall obtain any land, permits, easements, licenses, or rights of way reasonably required for the construction and installation of the Transmission Owner-Owned Interconnection Facilities and System Upgrades; provided, however, that, if Transmission Owner fails to meet any of the milestones set forth in the schedule set forth in Attachment C in a timely manner, Generator may, with prior written notice to Transmission Owner, assume responsibility for obtaining said land, permits, easements, licenses, or rights of way.

(B) The Transmission Owner-Owned Interconnection Facilities and the System Upgrades must be designed, constructed, and installed in accordance with applicable Engineering and Design Studies and Good Utility Practice, and must be sufficient, as built and designed, to deliver the Generation to the Delivery Point and to enable the Facility to receive

Facility Station Service. Generator may, with prior written notice to Transmission Owner, make inspection of the Transmission Owner-Owned Interconnection Facilities and the System Upgrades prior to testing to ascertain whether the Transmission Owner-Owned Interconnection Facilities and the System Upgrades conform with applicable Engineering and Design Studies and Good Utility Practice. At its expense, Transmission Owner must correct any situations contrary to applicable Engineering and Design Studies or Good Utility Practice.

- 2.4.2 Procurement. Transmission Owner shall procure any and all equipment necessary for Transmission Owner to construct and install the Transmission Owner-Owned Interconnection Facilities and System Upgrades.
- 2.4.3 Notice to Proceed and Right to Suspend or Terminate Work. As soon as practicable after receiving from Generator a written notice to proceed, Transmission Owner will commence construction. Generator reserves the right, upon written notice to Transmission Owner, to suspend for a period of time or terminate at any time all work by Transmission Owner associated with the construction and installation of the Transmission Owner-Owned Interconnection Facilities and System Upgrades. Such written notice shall specify whether Generator is suspending or terminating such work. In such event, Generator shall be responsible only for the actual, reasonable costs which Transmission Owner (A) reasonably incurred prior to the suspension and (B) reasonably attributable to the suspension or termination of the work and necessary for Transmission Owner to ensure the safety of persons and property and the integrity of its Transmission System. Transmission Owner shall use its best efforts to minimize such costs. In the event Generator terminates all work by the Transmission Owner associated with the construction and installation of the Transmission Owner-Owned Interconnection Facilities or the System Upgrades, Generator may elect to own all or a portion of any facilities or equipment for which it compensates Transmission Owner under this Agreement. In the event that Generator makes such an election, the Parties will transfer ownership to Generator in accordance with the terms and conditions set forth in Section 2.2 of this Agreement.
- 2.4.4 Status Reports. Transmission Owner shall inform Generator on a [bi-weekly] [monthly] basis, and at such other times as Generator reasonably requests, of the status of the construction and installation of the Transmission Owner-Owned Interconnection Facilities and System Upgrades, including, but not limited to, the following information: progress to date; a description of upcoming scheduled activities and events; the delivery status of all equipment ordered; and the identification of any event which Transmission Owner reasonably expects may delay construction of, or increase the cost of, the Transmission Owner-Owned Interconnection Facilities and/or System Upgrades. [*Frequency of status reports to be determined by the Parties.*]

2.5 Procurement and Construction Prior to Issuance of Written Notice to Proceed or Completion of Engineering and Design Studies

- 2.5.1 Generator shall not be responsible for any procurement or construction costs incurred prior to issuance of written notice to proceed to the Transmission Owner except as specifically provided herein.
- 2.5.2 Transmission Owner acknowledges Generator's desire for construction of the Interconnection Facilities and the System Upgrades to proceed as expeditiously as possible, and Transmission Owner agrees to use its best efforts to cooperate and work with Generator to accomplish that objective in accordance with the terms of this Agreement. Accordingly, notwithstanding Section 2.5.3, Transmission Owner agrees to (A) undertake any procurement or construction activity relating to the Transmission Owner-Owned Interconnection Facilities and System Upgrades prior to the completion of Engineering and Design Studies or the issuance by Generator of a written notice to proceed, provided the Parties mutually agree in advance on the activity to be undertaken and the cost associated therewith; and (B) permit Generator to undertake any procurement or construction activity relating to the Generator-Owned Interconnection Facilities prior to the completion of Engineering and Design Studies. *[Note: Section 2.5 contemplates that Engineering and Design Studies will be performed and completed under one or more separate study agreements, and that negotiation and execution of the interconnection agreement may take place while such studies are being performed but not yet completed.]*
- 2.5.3 The Parties understand and recognize that performing procurement and construction activities relating to the Interconnection Facilities and System Upgrades prior to the completion of Engineering and Design Studies may result in the procurement of equipment and/or the construction (in whole or part) of facilities, additions, modifications, or upgrades that the Engineering and Design Studies, when completed, may indicate are not necessary to accommodate the interconnection of the Facility. Generator agrees to bear all direct costs and expenses associated therewith reasonably incurred by the Transmission Owner, including those costs associated with procuring replacement or substitute equipment, so long as such costs are not the result of Transmission Owner's negligence or intentional misconduct.

2.6 Testing of Facilities

- 2.6.1 Prior to their operation and the interconnection of the Facility with the Transmission System by means of the Interconnection Facilities, the Interconnection Facilities must be tested to ensure their safe and reliable operation in accordance with Good Utility Practice.
- 2.6.2 At its expense, Generator is responsible for making any modifications necessary to the Generator-Owned Interconnection Facilities that are necessary to assure their safe and reliable operation in accordance with Good Utility Practice. At its expense, Transmission Owner is responsible for making any modifications to the

Transmission Owner-Owned Interconnection Facilities that are necessary to assure their safe and reliable operation in accordance with Good Utility Practice. [Note: This Section 2.6.2 is intended only to address modifications required as a result of pre-operational testing.]

- 2.6.3 At Generator's request, Transmission Owner will, subject to scheduling provisions, purchase all or a portion of the test energy produced by the Facility at (A) the prevailing market rate for energy that is scheduled in a manner similar to test energy, or, (B), if no such rate exists, Generator's costs of producing such energy.

2.7 Timely Completion

- 2.7.1 The construction schedule is set forth in Attachment C hereto, and such schedule may be revised from time to time by mutual written agreement of the Parties.
- 2.7.2 Transmission Owner shall use its best efforts to procure, construct, install, and test the Transmission Owner-Owned Interconnection Facilities and System Upgrades in accordance with the schedule set forth in Attachment C.
- 2.7.3 If Transmission Owner fails to procure, construct, install, and test in accordance with Section 2.6 the Transmission Owner-Owned Interconnection Facilities and System Upgrades by the Commercial Operation Date, the Transmission Owner shall pay Generator damages calculated as follows: [To be determined by the Parties]

ALTERNATIVE A: an amount equal to the maximum nameplate rating of the Facility in megawatts multiplied by twenty-four (24) hours multiplied by twenty dollars (\$20.00) per megawatt hour, per day for each day past the Commercial Operation Date.

ALTERNATIVE B: an amount equal to fifty percent (50%) of one percent (1%) of the actual cost of the Transmission Owner-Owned Interconnection Facilities and System Upgrades, per day for each day past the Commercial Operation Date; provided, however, that the total liquidated damages shall not exceed twenty percent (20%) of the actual cost of the Transmission Owner-Owned Interconnection Facilities and System Upgrades.

ALTERNATIVE C: notwithstanding Section 21.1, all damages suffered by Generator as a result of such failure, regardless of the type or amount thereof, including, but not limited to, Generator's lost opportunity costs associated with any resulting foregone sales of Generation [or Thermal Energy].

No damages shall be paid to Generator by Transmission Owner, however, if (a) Generator was not ready to commence use of the Interconnection Facilities by the Commercial Operation Date, unless Generator would have been able to commence use of the Interconnection Facilities by the Commercial Operation

Date but for the delay caused by the Transmission Owner, or (b) Transmission Owner's failure to procure, construct, install, and test the Transmission Owner-Owned Interconnection Facilities and System Upgrades by the Commercial Operation Date was the direct result of a force majeure event.

- 2.8 Regulatory Approvals. The Parties shall cooperate in timely seeking and obtaining all regulatory approvals, certificates, licenses, and authorizations and RTO approvals necessary for each to carry out its responsibilities under this Agreement.

ARTICLE 3.0 CONTINUING OBLIGATIONS AND RESPONSIBILITIES

- 3.1 Facility Design and Final As-Built Parameters. Generator shall provide Transmission Owner with such information and data concerning the Facility's design parameters and final as-built records as is reasonably requested by Transmission Owner and necessary for reliable operation of the Transmission System.

- 3.2 Interconnection Service and Transmission Service.

3.2.1 Interconnection Service. Transmission Owner will provide such service as necessary to deliver the Generation produced by the Facility directly to the Delivery Point for the term of, and under the terms and conditions specified in, this Agreement and to enable the Facility to receive any energy or capacity necessary to satisfy Facility Station Service requirements.

- 3.2.2 Transmission and Other Services.

- (A) Transmission and Ancillary Services. Nothing in this Agreement should be construed as obligating Transmission Owner to provide Generator any transmission or ancillary service necessary to deliver the Generation produced by the Facility on the Transmission System. Transmission and ancillary services shall be provided to Generator or other transmission customer pursuant to the provisions of the Transmission Owner OATT, the RTO OATT, or any other applicable tariff.
- (B) Facility Station Service. Nothing in this Agreement should be construed as obligating (1) Transmission Owner to provide Generator Facility Station Service or (2) Generator to purchase Facility Station Service from Transmission Owner. At Generator's request, Transmission Owner shall provide Generator with all or a portion of Generator's Facility Station Service requirements under the terms and conditions of applicable tariffs. Generator may, however, self-supply, or procure from an alternative supplier of its choice, all or a portion of its Facility Station Service requirements.
- (C) Other Services. This Agreement does not obligate either Party to provide, or entitle either Party to receive, any service not expressly provided for

herein. Each Party is responsible for making the arrangements necessary for it to receive any other service that it may desire from the other Party or any third party.

3.3 Access Rights

- 3.3.1 Transmission Owner's Access Rights. Generator agrees to grant to Transmission Owner and its agents and subcontractors such access to Generator's property and facilities as is reasonably necessary and appropriate for Transmission Owner to construct, install, test, operate and Maintain the Transmission Owner-Owned Interconnection Facilities, and the System Upgrades, and operate and Maintain the Generator-Owned Interconnection Facilities if applicable pursuant to Section 3.4.2, in accordance with the terms and provisions of this Agreement and to exercise any other of its rights and carry out any other of its obligations under this Agreement; provided, however, that, when exercising such access rights, Transmission Owner (a) provides Generator with as much advance notice as is appropriate under the circumstances; (b) will not unreasonably disrupt or interfere with the normal operations of the business of Generator; (c) adheres to the safety rules and procedures established by Generator; and (d) acts consistent with Good Utility Practice. Each Party will negotiate in good faith the easements, licenses, or other instruments as may be required to enable Transmission Owner to establish further document and record such access rights. Notwithstanding the foregoing sentence, such access rights shall be effective upon the Effective Date.
- 3.3.2 Generator's Access Rights. Transmission Owner agrees to grant to Generator and its agents and subcontractors such access to Transmission Owner's property and facilities as is reasonably necessary and appropriate for Generator to construct, install, test, operate and Maintain the Generator-Owned Interconnection Facilities and the Facility in accordance with the terms and provisions of this Agreement and to exercise any other of its rights and carry out any other of its obligations under this Agreement; provided, however, that, when exercising such access rights, Generator (a) provides Transmission Owner with as much advance notice as is appropriate under the circumstances; (b) will not unreasonably disrupt or interfere with the normal operations of the business of Transmission Owner; (c) adheres to the safety rules and procedures established by Transmission Owner; and (d) acts consistent with Good Utility Practice. Each Party will negotiate in good faith the easements, licenses, or other instruments as may be required to enable Generator to establish further document and record such access rights. Notwithstanding the foregoing sentence, such access rights shall be effective upon the Effective Date.
- 3.3.3 Term. The access rights granted to Transmission Owner and Generator under Sections 3.3.1 and 3.3.2 respectively will remain in effect for so long as this Agreement is in effect. The Party granting the access rights may not unilaterally revoke or terminate them or take any action that would impede, restrict, diminish or otherwise interfere with any of the rights granted under this Section 3.3.

3.3.4 Notice. Notwithstanding the foregoing, should either Party decide to permanently abandon the use of any such access right or any portion of any of them, the Party must send the other Party prompt written notice of such decision and provide a written release of said access right or portion thereof.

3.4 Operation and Maintenance of the Facility and Generator-Owned Interconnection Facilities

3.4.1 Operation and Maintenance of the Facility. Generator will operate and Maintain the Facility in a safe and efficient manner and in accordance with Good Utility Practice.

3.4.2 Operation and Maintenance of Generator-Owned Interconnection Facilities. Generator or, upon mutual agreement of the Parties, Transmission Owner, will operate and Maintain the Generator-Owned Interconnection Facilities in a safe and efficient manner and in accordance with Good Utility Practice.

3.4.3 Change in Output Capability Notification. To the extent practicable, Generator will provide Transmission Owner advance notice of any material change in the Facility's output capability.

3.4.4 Voltage or Reactive Control Requirements.

(A) Voltage Schedule Requirements. Unless otherwise agreed to by the Parties, Generator will operate the Facility with automatic voltage regulators consistent with Good Utility Practice. The voltage regulators will control voltage at the Interconnection Point when the Facility is operating consistent with the voltage range schedule provided by Transmission Provider to Generator, as such schedule may be revised from time to time, provided such voltage schedule is within the Facility's operating limits and is consistent with Good Utility Practice, and provided further that Generator is compensated by Transmission Owner for any reactive power or VAR support provided by the Facility as a result in accordance with Sections 3.4.4(B) and 3.4.4(C). When the Facility is operating, Generator shall maintain the voltage schedule at each unit of the Facility on the high voltage side of the step-up transformer. Transmission Owner reserves the right to ask Generator, consistent with Good Utility Practice, to deviate from the voltage schedule when necessary to maintain the safety and reliability of the Transmission System. Notwithstanding anything to the contrary, provided that Generator operates the voltage control system up to the rated capability as depicted in the Generator Capability Curve when the Facility is operating, Generator shall not be required to maintain the voltage schedule or deviations to that schedule requested by Transmission Owner and shall have no liability whatsoever for such failure to comply with the voltage schedule.

(B) Compensation. Transmission Owner shall compensate Generator for any reactive power or VAR support produced by the Facility (A) at the rates

specified in any applicable Generator tariff, or (B) in the event there is no such tariff, as follows: the higher of (1) the prevailing market price, (2) the Transmission Owner's average cost of production derived from the cost of service utilized in the Transmission Provider's OATT Schedule 2, (3) the Generator's lost opportunity costs associated with any resulting foregone sales of Generation [or Thermal Energy], or (4) the amount of any payment Transmission Owner receives from any third party for such reactive power or VAR support; less whatever compensation Generator otherwise directly receives from any third party(ies) for such reactive power or VAR support.

(C) Compensation For Any Resulting Loss in Efficiency or Increased Emissions. If the Facility is subject to emissions limitations under an Air Emissions Permit and Generator's provision of reactive power or VAR support pursuant to this Section 3.4.4 results in loss of efficiency or increased emissions, Transmission Owner shall compensate Generator, in addition to compensation required under Section 3.4.4(B), as follows:

- (1) Transmission Owner shall maintain for each unit at the Facility an account of the total fired-hours of dispatch lost by Generator and the compensation paid by Transmission Owner to Generator for reactive power or VAR support during the period that such fired-hours were used in producing such reactive power or VAR support during the previous three hundred and sixty five (365) day period (the "Emissions Redispatch Account"). Any Emissions Redispatch Account fired-hours that have not been designated by Generator for additional compensation pursuant to the provisions of Section 3.4.4(C)(2) below shall be deleted from that unit's Emissions Dispatch Account on the three hundred and sixty-sixth (366th) day following their addition to the unit's Emissions Redispatch Account.
- (2) When a unit reaches the operating limits set forth in the Air Emissions Permit, Generator shall be entitled to be compensated for all or any portion of the then-current balance of the Emissions Redispatch Account for such unit designated by the Generator, in its sole discretion, up to the nominal rated electric output of the unit available for dispatch during the period specified by Generator (the "Pricing Period") at a rate per megawatt-hour equal to the greater of (a) \$100.00, (b) the prevailing market price, (c) the amount of any payment Transmission Owner receives from any third party for such reactive power or VAR support, (d) the highest amount paid by Transmission Owner or its affiliates for purchases of electric energy during the Pricing Period, or (e) the highest amount received by Transmission Owner or its affiliates for sale(s) of electric energy during the Pricing Period. Generator's designation shall be made at least thirty (30) minutes prior to the start of the Pricing Period and shall specify the duration of the

Pricing Period and the quantity of megawatt-hours to be withdrawn from the Emissions Redispatch Account for compensation pursuant to this Section 3.4.4(C).

- (3) Upon designation by Generator, Transmission Owner shall pay Generator the difference between the highest surrogate price set forth above during the Pricing Period and the price previously paid by Transmission Owner pursuant to Section 3.4.4(B).

3.4.5 Synchronization. Generator will own and maintain equipment that will synchronize the Facility to the Transmission System.

3.5 Operation and Maintenance of the Transmission Owner-Owned Interconnection Facilities, the System Upgrades and the Transmission System

3.5.1 Operation and Maintenance. Transmission Owner will operate and Maintain the Transmission Owner-Owned Interconnection Facilities and the Transmission System in a safe and efficient manner and in accordance with Good Utility Practice.

3.5.2 Notification of Limiting Conditions on Transmission System. Consistent with FERC Order 889 and to the extent practicable, Transmission Owner will notify Generator of any Transmission System condition that restricts or limits the ability of the Facility to deliver its full output of Generation to or from the Transmission System as soon as practicable.

3.5.3 Scheduled Outages and Maintenance Scheduling

- (A) Notification of Scheduled Outages. No later than May 1st of each year, or on another date mutually acceptable to the Parties, Transmission Owner shall post on the OASIS or other publicly accessible site a schedule of all scheduled outages and the anticipated maintenance to be performed on the Transmission System for the upcoming year and, updates reflecting any changes to the schedule thereafter.
- (B) Maintenance Schedule. Transmission Owner will consult with Generator regarding the timing of scheduled maintenance of the Transmission System and the Transmission Owner-Owned Interconnection Facilities that might reasonably be expected to affect the delivery of Generation from the Facility. Transmission Owner will use reasonable efforts to schedule such maintenance to coincide with the scheduled outages of the Facility. The Transmission Owner must provide Generator with advance written notice of such scheduled outage or maintenance as soon as practicable.
- (C) Requests to Revise Maintenance Schedule. If Generator desires Transmission Owner to perform maintenance during a time period other than as scheduled, Transmission Owner will use commercially reasonable

efforts to meet Generator's request, as long as it might not reasonably be expected to have a significant adverse operational impact upon Transmission Owner or the Transmission System. If Generator's request is reasonably expected to have a significant adverse operational impact upon Transmission Owner or the Transmission System, and if Generator agrees to reimburse Transmission Owner for the incremental costs incurred as a result of the rescheduling, Transmission Owner shall comply with Generator's request.

- 3.5.5 Maintenance Requests. Transmission Owner agrees to perform any maintenance upon the Generator-Owned Interconnection Facilities, Transmission Owner-Owned Interconnection Facilities or the Transmission System as requested by Generator, provided that such maintenance is consistent with Good Utility Practice. Generator shall be responsible for the costs of such maintenance to the extent that such maintenance is not recovered under Transmission Owner's OATT or any other applicable OATT. Transmission Owner will notify Generator in advance of undertaking such maintenance as to the work expected to be done and an estimate of the expected cost. Generator reserves the right to withdraw any such request any time prior to the commencement of such maintenance.

3.6 Emergency Procedures

- 3.6.1 Notification. Transmission Owner will provide Generator with prompt oral notification by telephone of any Emergency regarding the Transmission System or Interconnection Facilities which may reasonably be expected to affect Generator's operation of its facilities, and Generator will provide Transmission Owner with prompt oral notification by telephone of any Emergency regarding the Facility or the Interconnection Facilities which may reasonably be expected to affect Transmission Owner's operations. Said notification shall indicate the reasons for the Emergency, the Emergency's expected effect on the operation of Generator's or Transmission Owner's facilities and operations, the Emergency's expected duration, and the corrective action to be taken. Telephone notification will be followed by written notification by the close of the next business day.

3.6.2 Actions By Parties.

- (A) If a Party determines in its good faith judgment that an Emergency exists which endangers or could endanger life or property, such Party shall take such action as may be reasonable and necessary to prevent, avoid, or mitigate injury and danger to, or loss of, life or property.
- (B) Transmission Owner reserves the right to request, consistent with Good Utility Practice, Generator to make any operational changes at the Facility, including, but not limited to, raising or lowering voltage or electric power levels, in order to eliminate, mitigate, or control an Emergency operating condition; provided, however, with respect to any such request, that:

- (1) so long as Generator operates within the Generator Capability Curve, it shall not be liable or otherwise penalized for not complying with the request;
 - (2) the request shall be made on a non-discriminatory basis with respect to similarly-situated generators; and
 - (3) Generator need only comply with the request for so long as is reasonably necessary under Good Utility Practice.
- (C) Transmission Owner also reserves the right, consistent with Good Utility Practice, to isolate the Generation if, in its good faith judgment, it believes that continued parallel operation is creating or contributing to an Emergency operating condition on the Transmission System; provided, however, any such isolation must be made on a non-discriminatory basis with respect to similarly-situated generators. Transmission Owner agrees to use its best efforts to notify Generator prior to isolating the Generation.
- (D) In the event that Transmission Owner requests Generator to raise voltage or electric power levels at the Facility in accordance with Section 3.6.2(B), Transmission Owner will compensate Generator at the higher of (1) prevailing market rates, (2) the incremental increase in Generator's operating costs, equal to the sum of (a) Generator's fuel costs, (b) variable operation and maintenance costs, and (c) any applicable start-up costs, or (3) the rates set forth in any applicable Generator tariff.
- (E) In the event that Transmission Owner requests Generator to lower voltage or electric power levels at the Facility in accordance with Section 3.6.2(B), Transmission Owner will compensate Generator at the higher of (1) Generator's lost opportunity costs, measured as the lost revenues on any sales foregone, in whole or in part, by Generator resulting from Generator's compliance with Transmission Owner's request, or (2) the rates set forth in any applicable Generator tariff.
- (F) Generator reserves the right, consistent with Good Utility Practice, to isolate the Generation if, in its good faith judgment, it believes that continued parallel operation is creating or contributing to an Emergency operating condition at the Facility. Generator agrees to use its best efforts to notify Transmission Owner prior to isolating the Generation.
- (G) If any request pursuant to Section 3.6.2(B) or isolation of Generation pursuant to Sections 3.6.2(C) and Section 3.6.2(F) does not stabilize or mitigate the Emergency, then Transmission Owner shall use Good Utility Practice to allow the Facility to resume operating levels as existed prior to such request or to reconnect.

(H) Neither Party shall be liable to the other for any action it takes in responding to an Emergency so long as such action is made in good faith and consistent with Good Utility Practice.

3.6.3 Actions by RTO or Transmission Provider. Generator and Transmission Owner may each, consistent with Good Utility Practice, request the RTO or Transmission Provider to take whatever reasonable actions or inaction it deems necessary during an Emergency, without liability to the other Party for such actions or inaction, to: (A) preserve public safety; (B) preserve the integrity of the Transmission System or Generator's Facility or other property; (C) limit or prevent damage; or (D) expedite restoration of service.

3.7 Abnormal or Out of Limit Operating Condition Procedures

3.7.1 Notification. Transmission Owner will provide Generator with prompt oral notification by telephone of any Abnormal or Out of Limit Condition regarding the Transmission System or Interconnection Facilities which may reasonably be expected to affect Generator's operation of its facilities, and Generator will provide Transmission Owner with prompt oral notification by telephone of any Abnormal or Out of Limit Condition regarding the Facility or Interconnection Facilities which may reasonably be expected to affect Transmission Owner's operations. Said notifications shall indicate the reasons for the Abnormal or Out of Limit Operating Condition, the Abnormal or Out of Limit Operating Condition's expected effect on the operation of Generator's or Transmission Owner's facilities and operations, the Abnormal or Out of Limit Operating Condition's expected duration, and the corrective action to be taken with respect to the notifying Party's facilities. Telephone notification will be followed by written notification by the close of the next business day.

3.7.2 Mitigation or Elimination. To the extent necessary, each Party agrees to cooperate and coordinate with the other Party in taking whatever corrective measures on its facilities as are necessary to mitigate or eliminate the Abnormal or Out of Limit Operating Condition, including, to the extent necessary, adjusting operation of equipment to within its rated operating parameters, provided such measures are consistent with Good Utility Practice and do not require operation of any of the Parties' facilities outside their operating limits. In the event that excessive power flow or reactive flow, or both, exists on or near the Interconnection Point and such flow(s) is contributing to an Abnormal or Out of Limit Operating Condition, the Parties shall attempt to agree on the corrective measures necessary to eliminate or control such flow(s); provided, however, that the terms of the Transmission Provider OATT or the RTO OATT, as applicable, shall govern. Any corrective measures undertaken by the Transmission Owner shall be made in a non-discriminatory manner.

3.7.3 Compensation. If the Abnormal or Out of Limit Operating Condition was caused, in whole or in part, by Transmission Owner, Transmission Owner will compensate Generator for all costs incurred by Generator in acting to mitigate or eliminate the Abnormal or Out of Limit Operating Condition and,

notwithstanding Section 21.1, for all damages suffered by Generator as a result, regardless of the type or amount thereof, including, but not limited to, Generator's lost opportunity costs associated with any resulting foregone sales of Generation [or Thermal Energy].

- 3.8 Redispatch of Facility. Except as expressly provided for in Section 3.6.2, Transmission Owner shall not have any right to redispatch the Facility under the terms of this Agreement. Notwithstanding Section 21.1, in the event of breach by Transmission Owner of this Section 3.8, Transmission Owner shall be liable for all damages suffered by Generator as a result of such breach, regardless of the type or amount thereof, including, but not limited to, Generator's lost opportunity costs associated with any resulting foregone sales of Generation [or Thermal Energy].
- 3.9 Protective Relays. Each Party shall provide and Maintain mutually beneficial protective relay schemes on its side of the Interconnection Point. Generator agrees to have all such protective relay scheme settings reviewed and approved by Transmission Owner, which such approval shall not be unreasonably withheld or delayed, in order to ensure proper coordination with existing Transmission Owner protective relay schemes, and further agrees to operate such schemes in compliance with Transmission Owner-approved settings. Each Party agrees to test such schemes once every five (5) years or as required by applicable rules and procedures of the RTO, and such rules and procedures shall govern in the event of a conflict between this Section 3.9 and the RTO's rules and procedures, in order to ensure that they are in good operational order, properly adjusted, and consistent with Good Utility Practice. Upon completion of each test, the results of the test shall be provided to the other Party. Each Party will notify the other in writing as soon as practicable of any failures in, or any setting or design changes to, such protective relay schemes.
- 3.10 Modifications to the Transmission Owner-Owned Interconnection Facilities or the Transmission System
- 3.10.1 Modifications Not Required. Unless otherwise agreed to by the Parties or otherwise required by law, regulation, or Good Utility Practice, Transmission Owner will not be required at any time to upgrade or otherwise modify the Transmission Owner-Owned Interconnection Facilities or the Transmission System; provided, however, that Transmission Owner agrees to make any additions, modifications, or replacements to the Transmission Owner-Owned Interconnection Facilities or the Transmission System requested by Generator so long as such additions, modifications, or replacements are consistent with Good Utility Practice.
- 3.10.2 Notification of Modifications. Transmission Owner, in its reasonable discretion and at its sole cost and expense, may undertake additions, modifications, or replacements of the Transmission Owner-Owned Interconnection Facilities or the Transmission System so long as such additions, modifications, or replacements are consistent with Good Utility Practice. If such additions, modifications, or replacements might reasonably be expected to affect Generator's operation of the Facility, Transmission Owner will, except in cases of Emergency, provide ninety

(90) days' written notice to Generator prior to undertaking such additions, modifications, or replacements. In the written notice, Transmission Owner must advise Generator when such additions, modifications or replacements are expected to be made, how long such additions, modifications or replacements are expected to take, how such additions, modifications or replacements are expected to affect Generator's operation of the Facility or operation of the Interconnection Facilities, and whether such additions, modifications or replacements are expected to interrupt the flow of Generation [or Thermal Energy] from the Facility. If such additions, modifications or replacements are expected to interrupt the flow of Generation [or Thermal Energy] from the Facility, the Parties shall mutually agree in advance upon a schedule for such additions, modifications or replacements.

3.10.3 Reimbursement for Modifications. If an addition, modification, or replacement to the Transmission Owner-Owned Interconnection Facilities or the Transmission System is required because of modification of the Generator-Owned Interconnection Facilities or the Facility, Transmission Owner will notify Generator of the necessity of such addition, modification, or replacement. Generator agrees to reimburse Transmission Owner in accordance with Article 4.0 for all actual, reasonable costs and expenses it incurs in connection with the installation and construction of such additions, modifications or replacements, provided such additions, modifications or replacements are consistent with Good Utility Practice, except to the extent otherwise required by law or regulation or to the extent Transmission Owner is reimbursed by any third party(ies) for such costs and expense.

3.11 Modifications to the Facility and the Generator-Owned Interconnection Facilities

3.11.1 Modifications Permitted. Generator, in its discretion and at its sole cost and expense, may undertake additions or modifications to the Facility or the Generator-Owned Interconnection Facilities, so long as such additions and modifications are consistent with Good Utility Practice.

3.11.2 Notification of Modifications. If such additions or modifications are reasonably expected to affect Transmission Owner's ability to meet its obligations under this Agreement or any service obligations to its transmission customers, Generator will provide Transmission Owner thirty (30) days' advance written notice.

3.11.3 Cost Responsibility for Modifications Resulting From Changes to Transmission Owner-Owned Interconnection Facilities or Transmission System. If any addition, modification, or replacement to the Generator-Owned Interconnection Facilities or Facility is required because of changes to the Transmission Owner-Owned Interconnection Facilities or the Transmission System, Generator shall make such addition, modification, or replacement so long as such addition, modification, or replacements is consistent with Good Utility Practice and does not adversely limit or otherwise affect the production or delivery of Generation [or Thermal Energy] from the Facility. Transmission Owner shall be responsible for all costs and expenses related to any addition, modification, or replacement to the Generator-Owned Interconnection Facilities or Facility required because of

changes to the Transmission Owner-Owned Interconnection Facilities or the Transmission System, except to the extent otherwise required by law or regulation or to the extent that Generator is reimbursed by any third party(ies) for such costs and expenses.

3.12 Abandonment, Relocation, or Rearrangement of Transmission System.

3.12.1 Notification. In the event Transmission Owner for any reason determines to, or is required to, abandon, relocate, or rearrange the Transmission System and such abandonment, relocation, or rearrangement in any way adversely affects the interconnection of the Facility with the Transmission System or the delivery of Generation to the Transmission System, Transmission Owner must advise Generator as soon as is reasonably practicable of any such determination or requirement; the reasons therefor; the timing of any such abandonment, relocation or rearrangement; in what manner such abandonment, relocation or rearrangement is expected to affect the interconnection of the Facility with the Transmission System or the delivery of Generation to the Transmission System (including what, if any, facilities may be necessary to re-establish the interconnection and the estimated cost of procuring and installing such facilities), and whether such abandonment, relocation or rearrangement is expected to interrupt the flow of Generation over the Interconnection Facility or the Transmission System.

3.12.2 Scheduling. The Parties shall mutually agree in advance upon a schedule for such abandonment, relocation or rearrangement.

3.12.3 Mitigation and Cost Responsibility. Except to the extent otherwise required by law or regulation or to the extent Transmission Owner is reimbursed by any third party(ies) for such cost and expense, Transmission Owner will be responsible at its sole cost and expense for all actions necessary to mitigate and ameliorate the effects of such abandonment, relocation or rearrangement on the Facility's interconnection with the Transmission System or on the delivery of Generation to the Delivery Point and, if necessary, to promptly and expeditiously re-establish the connection of the Facility with the Transmission System or with any other transmission system, as appropriate, in accordance with Good Utility Practice or secure such services as are necessary to deliver the Generation to the Transmission System or any other transmission system, as circumstances warrant, in accordance with Good Utility Practice, or both. Transmission Owner will use its best efforts to prevent any interruption in the provision of Generation [or Thermal Energy] to Generator's customers.

3.13 Use of Interconnection Facilities

3.13.1 Exclusive Use of Generator. Except as may be required by law or as otherwise agreed to among the Parties, those Interconnection Facilities [to be] used exclusively to effect the transfer of Generation produced at the Delivery Point shall be dedicated to the sole purpose of interconnecting the Facility to the Transmission System and shall be used for no other purpose.

- 3.13.2 Third Party Use; Reimbursement For Capital Expenses. If required by law or if the Parties mutually agree to allow one or more third parties to use the Interconnection Facilities or any part thereof and such use decreases the capacity of the Interconnection Facilities available to the Facility or otherwise causes any detriment to the Facility or to Generator or benefits any party (including Transmission Owner) other than Generator, Generator will be entitled to compensation from the Transmission Owner based upon the pro rata use of the Interconnection Facilities by Transmission Owner, all third party users, and Generator, for the greater of (A) whatever costs Generator incurred in connection with the Interconnection Facilities, plus interest calculated in accordance with Section 4.13 of this Agreement from the date of Generator's payment of such costs, and (B) the then-current market value of the Interconnection Facilities. Notwithstanding the foregoing sentence, the Parties may use any other mutually agreed upon methodology to determine such compensation.
- 3.13.3 Third Party Use; Responsibility for Upgrades. If one or more third parties are to use the Interconnection Facilities in accordance with Section 3.13.2 and Transmission Owner determines that, as a result, Good Utility Practice requires that replacements or upgrades be made to the Interconnection Facilities, Transmission Owner must comply with notification and scheduling provisions of Section 3.10.2. Transmission Owner shall be responsible for obtaining on behalf of Generator compensation for any losses of any kind resulting from the interruption of the flow of Generation over the Interconnection Facilities while such replacements or upgrades are installed. Generator will not be responsible for the cost of designing, permitting, constructing, or installing any such replacements or upgrades.
- 3.13.4 Third Party Use; Allocation of O&M Costs. If one or more third parties are to use the Interconnection Facility in accordance with Section 3.13.2, Generator's obligation to reimburse Transmission Owner for the operation and maintenance costs incurred by Transmission Owner in connection with the Interconnection Facilities shall be based on the pro rata use of the Interconnection Facilities by Transmission Owner, all third party users, and Generator, or on some other mutually agreed upon methodology; provided, however, that, under no circumstances shall Generator's share of Transmission Owner's operation and maintenance costs be greater than its pro rata use of the Interconnection Facilities.

3.14 Inspections

3.14.1 Right to Inspect.

- (A) Transmission Owner, at its own cost and expense and upon advance written notice to Generator, has the right, but not the obligation, to inspect or observe the operation and maintenance activities, equipment tests, installation, construction, or other modifications to the Generator-Owned Interconnection Facilities which reasonably could be expected to affect Transmission Owner's operations.

- (B) Generator, at its own cost and expense and upon advance written notice to Transmission Owner, has the right, but not the obligation, to inspect or observe the operation and maintenance activities, equipment tests, installation, construction, or other modifications to the Transmission Owner-Owned Interconnection Facilities or Transmission System which reasonably could be expected to affect Generator's operations.

3.14.2 Deficiencies and Defects. If the observing Party observes any deficiencies or defects which might reasonably be expected to adversely affect its operations, it may notify the other Party and said Party will be responsible for making any corrections necessitated by Good Utility Practice. Notwithstanding the foregoing, the observing Party shall have no liability whatsoever for failure to give such notice, it being agreed that the Party owning such equipment, systems or facilities will be fully responsible and liable for all such activities, tests, installation, construction or modification.

3.15 Information and Record-keeping Obligations and Audit Rights

3.15.1 Information Obligations

- (A) Either Party may request that the other Party, and that other Party will promptly provide, at the requesting Party's sole cost and expense, such information and data that the requesting Party may reasonably require to (1) verify costs relating to the Interconnection Facilities or the System Upgrades, including, but not limited to, costs relating to procurement, construction, and operation and maintenance; (2) carry out its responsibilities and enforce its rights under this Agreement; and (3) satisfy any reporting obligations it may have to Regional Reliability Council, NERC, or the RTO.
- (B) Transmission Owner's right to request information and data under Section 3.15.1(A) shall be subject to the following limitations:
 - (1) Transmission Owner may not use information or data provided by Generator for any purpose other than to operate, Maintain, or plan the Transmission System or the regional network pursuant to Good Utility Practice or the purposes set forth in Section 3.15.1(A) .
 - (2) Transmission Owner may only request information and data from Generator on a basis that is not unduly discriminatory with respect to other generators interconnected to the Transmission System.

3.15.2 Record-keeping Obligations. Each Party shall maintain such records as required by Regional Reliability Council, NERC, and the RTO and this Agreement, and all data, documents, or other materials relating to or substantiating any charges to be paid by or to Transmission Owner or Generator, as the case may be, for a minimum period of three (3) years from the date that such records are gathered. Neither Party shall use the accounts or records of the other Party without the

express written consent of the other Party unless such use is permitted by this Agreement or required by law.

- 3.15.3 Audit Rights. Each Party shall have the right, within three (3) years following a calendar year, to audit the other Party's accounts and records pertaining to this Agreement, at that other Party's offices where such accounts and records are maintained, provided proper notice is given prior to any audit, and provided further that the audit will be limited to those portions of such accounts and records that relate to services provided under this Agreement for that calendar year.
- 3.16 Delivery and Metering. Subject to applicable law or regulation, the Parties' rights and responsibilities with respect to metering shall be governed by the terms and conditions of this Section 3.16 unless the Parties agree otherwise.
- 3.16.1 Delivery. All Generation shall be delivered to the Delivery Point in the form of three-phase sixty (60) hertz alternating current at a voltage class determined by mutual agreement of the Parties.
- 3.16.2 Metering Point(s). The Metering Point(s) shall be the _____, as identified on Attachment A.
- 3.16.3 Installation, Ownership, Operation and Maintenance. Transmission Owner will install, own, operate, and Maintain all metering and telemetry equipment. All such metering equipment shall be considered Transmission Owner-Owned Interconnection Facilities. Unless the Parties agree otherwise, Transmission Owner will use the same or comparable metering telemetry equipment as used for the Transmission Owner's generation facilities. Such metering equipment shall include standard types of electric meters, potential and current transformers, and such other appurtenances as necessary to provide instantaneous values of kilowatts and kilovars and an automatic record of kilowatt-hours for each clock hour. To the extent there is a possibility of flows of electricity in either direction, such metering equipment shall provide metering data for each direction of flow. The timing devices of all meters shall be maintained in [Eastern Standard time] and shall be synchronized as closely as practicable.
- 3.16.4 Testing and Sealing of Meters. All metering equipment installed in accordance with this Agreement shall be routinely tested and calibrated, and its accuracy of registration maintained, by Transmission Owner in accordance with Good Utility Practice and applicable RTO and Transmission Owner system operator criteria, rules and standards. All meters shall be sealed and may be broken only by Transmission Owner on such occasions when the meters are to be inspected, tested, calibrated, or adjusted. Each Party shall comply with any reasonable request of the other concerning the testing, calibration and sealing of meters, the presence of a representative of the other Party when the seals are broken and tests are made, and other matters affecting the measurement of Generation. Transmission Owner shall provide Generator with five (5) day's notice of such testing, calibration, or adjustment and shall allow Generator to witness the same.

If either Party believes that there has been a meter inaccuracy, failure, or stoppage, that Party shall immediately notify the other.

- 3.16.5 Metering and Telemetry Data. The Transmission Owner shall provide generator with all metering and telemetry data in a manner to be determined by the Generator. Generator shall be responsible for purchasing, installing, and maintaining software, hardware, or technology that may be required to receive such data and to transmit such data to Transmission Owner's energy management system ("EMS"). In the event that any metering equipment installed in accordance with this Agreement fails to register data, the delivery of Generation and any other electric power and energy shall be determined from the best available data, as mutually determined by the Parties. If metering data is not provided to Transmission Owner's EMS, Generator agrees to provide to Transmission Owner back-up replacement data.
- 3.16.6 Meter Inaccuracy. If, at any time, any metering equipment is found to be inaccurate by a margin of greater than that allowed under any applicable RTO, Regional Reliability Council, or Transmission Owner system operator criteria, rules and standards, Transmission Owner shall cause such metering equipment to be made accurate or replaced. Meter readings for the period of inaccuracy shall be adjusted so far as the same can be reasonably ascertained; provided, however, that no adjustment shall be made prior to the beginning of the preceding month except by agreement of the Parties.
- 3.16.7 Losses. If the Metering Point(s) and the Delivery Point are not at the same location, the metering equipment shall record delivery of Generation in a manner that accounts for losses occurring between the Metering Point(s) and the Delivery Point. Losses occurring between the Metering Point(s) and the Delivery Point shall be allocated pursuant to the applicable tariff governing transmission service.
- 3.17 Communications. Generator shall be responsible for providing, at its expense, all necessary communication equipment and transmission mediums such as telephone lines and any necessary protection for such equipment.
- 3.18 Safety
- 3.18.1 Responsibility for Safety of Employees, etc. Subject to Section 13.0, the Parties agree to be solely responsible for and assume all liability for the safety and supervision of their own employees, agents, representatives, and subcontractors.
- 3.18.2 Compliance with Applicable Laws. All work performed by either Party which could be expected to affect the operations of the other Party will be performed in accordance with all applicable laws, rules and regulations pertaining to the safety of persons or property, including without limitation, compliance with the safety regulations and standards adopted under the Occupational and Safety Health Act of 1970, as amended from time to time, the National Electrical Safety Code, as amended from time to time, and Good Utility Practice.

3.18.3 Switching, Tagging, Grounding, and Isolation Rules.

- (A) Compliance with Procedures. Each Party will comply with Transmission Owner's switching, tagging, grounding, and isolation rules as they may be modified by Transmission Owner from time to time. Transmission Owner will notify Generator in advance of any changes in the switching, tagging, grounding, and isolation rules.
- (B) Training. At no cost to Generator, Transmission Owner agrees to provide training on its switching, tagging, grounding, and isolation procedures to Generator personnel prior to the energizing of any Interconnection Facilities. After the energizing of any interconnection facilities, Transmission Owner agrees to provide such training to Generator personnel but only at the request of Generator and at Generator's expense. If, however, changes are made to Transmission Owner's switching, tagging, grounding, and isolation rules, Transmission Owner agrees to provide training to Generator personnel with respect to such changes prior to the effective date of such changes and at no cost to Generator.

3.19 Environmental Compliance and Procedures. The Parties agree to comply with (A) all applicable Environmental Laws which affect the ability of the Parties to meet their obligations under this Agreement; and (B) all local notification and response procedures required for all applicable environmental and safety matters which affect the ability of the Parties to meet their obligations under this Agreement.

ARTICLE 4.0
COST RESPONSIBILITY AND BILLING PROCEDURES

4.1 Estimated Costs for the Transmission Owner-Owned Interconnection Facilities and System Upgrades. Transmission Owner's good faith estimate as to the actual, reasonable costs of the Transmission Owner-Owned Interconnection Facilities and System Upgrades is ___ dollars (\$_____) and ___ dollars (\$_____), respectively, as set forth in Attachment B to this Agreement containing the itemization of projected costs. *[Remainder of this provision applies if Alternative A in Section 4.2.1 selected.]*

Transmission Owner agrees to inform Generator of the amount and reason for any increase of ten percent (10%) or more in the estimated costs of either the Interconnection Facilities or the System Upgrades as soon as practicable after Transmission Owner is aware of such cost increase. Any such increase shall be subject to Generator's consent, such consent not to be unreasonably withheld or delayed.

4.2 Generator's Cost Responsibility for the Transmission Owner-Owned Interconnection Facilities

4.2.1 Construction Costs of Transmission Owner-Owned Interconnection Facilities. Subject to Section 3.13 and 4.8.1, Generator's responsibility for the actual, reasonable costs incurred by Transmission Owner in constructing the

Transmission-Owner Interconnection Facilities required pursuant to this Agreement shall be as follows: *[To be determined by the Parties.]*

ALTERNATIVE A: Generator shall be responsible for all such actual, reasonable costs; provided, however, that unless the Parties agree otherwise, Generator shall not, under any circumstance, be responsible for any costs associated with the construction and installation of any facilities beyond the minimum necessary solely to effectuate the interconnection of the Facility to the Transmission System and to provide the services set forth in Section 3.2.1 of this Agreement. Generator will advance funds to Transmission Owner each [month] [quarter] to cover the costs and expenses which the Transmission Owner reasonably anticipates it will incur in the upcoming [month] [quarter] in accordance with the payment schedule set forth in Attachment D (as such schedule may be revised from time to time by mutual agreement of the Parties) and based upon Transmission Owner's good faith estimate set forth in Section 4.1. Actual, reasonable costs for which Transmission Owner is to be compensated include labor costs, costs of materials and equipment, and contractor costs. *[Billing frequency to be determined by the Parties.]*

ALTERNATIVE B: Generator's responsibility for all such actual, reasonable costs shall be at a fixed price mutually agreed upon by Generator and Transmission Owner and set forth in Attachment B to this Agreement. Unless the Parties agree otherwise, Generator shall not, under any circumstance, be responsible for any costs associated with the construction and installation of any facilities beyond the minimum necessary solely to effectuate the interconnection of the Facility to the Transmission System and to provide the services set forth in Section 3.2.1 of this Agreement. Until such time as Transmission Owner has received from Generator the entire amount of such fixed price, Generator will advance funds to Transmission Owner each [month] [quarter] to cover the costs and expenses which the Transmission Owner reasonably anticipates it will incur in the upcoming [month] [quarter] in accordance with the payment schedule set forth in Attachment D (as such schedule may be revised from time to time by mutual agreement of the Parties). *[Billing frequency to be determined by the Parties.]*

4.2.2 *[If Alternative A in Section 4.2.1 selected:]* Final and Actual Construction Costs. Within sixty (60) days after energization of the Transmission Owner-Owned Interconnection Facilities, Transmission Owner must issue an Interconnection Facilities Final Cost Report to Generator. The Interconnection Facilities Final Cost Report must set forth the difference between the estimated costs already paid by Generator and the final, actual construction costs Generator is obligated to pay pursuant to Section 4.2.1 of this Agreement. To the extent that the final, actual costs Generator is obligated to pay pursuant to Section 4.2.1 of this Agreement exceed the estimated costs already paid by Generator, Generator must pay Transmission Owner an amount equal to the difference within thirty (30) days of receipt of the Interconnection Facilities Final Cost Report. To the extent that the estimated costs already paid by Generator exceed final, actual costs Generator is obligated to pay pursuant to Section 4.2.1 of this Agreement, Transmission Owner must refund to Generator an amount equal to the difference within thirty (30) days

of the issuance of the Interconnection Facilities Final Cost Report, plus interest calculated in accordance with Section 4.13.

[If *Alternative B* in Section 4.2.1 selected:] Final and Actual Construction Costs. Within sixty (60) days after energization of the Transmission Owner-Owned Interconnection Facilities, Transmission Owner must issue an Interconnection Facilities Final Cost Report to Generator. The Interconnection Facilities Final Cost Report must set forth the costs already paid by Generator. To the extent that the fixed price Generator is obligated to pay pursuant to Section 4.2.1 of this Agreement exceeds the costs already paid by Generator, Generator must pay Transmission Owner an amount equal to the difference within thirty (30) days of receipt of the Interconnection Facilities Final Cost Report.

- 4.2.3 Abandonment of Facility. Subject to Section 2.4.3, if Generator abandons the Facility and any portion of the Transmission Owner-Owned Interconnection Facilities have already been constructed, Generator will be responsible for actual, reasonable costs incurred by the Transmission Owner, including costs associated with any irrevocable commitments, prior to the abandonment of the Facility; provided, however, that, upon learning of the abandonment of the Facility, Transmission Owner shall exercise all reasonable efforts to mitigate or limit its costs.
- 4.3 Generator's Cost Responsibility for the System Upgrades. Subject to Section 4.8.1 and unless otherwise agreed, Generator's responsibility for actual, reasonable costs incurred by Transmission Owner in constructing the System Upgrades, if any, required pursuant to this Agreement shall be as follows:

ALTERNATIVE A: Generator shall not be responsible for any such costs.

ALTERNATIVE B: Generator shall be responsible for fifty percent (50%) of the Shared Amount (defined below) of the capital costs incurred by Transmission Owner in constructing the System Upgrades. The "Shared Amount" shall be equal to the lesser of (1) the full actual capital cost of the System Upgrades or (2) an amount determined as follows: the actual demonstrated net capability of the Facility multiplied by Transmission Owner's transmission rate as of _____, multiplied by fifty percent (50%), divided by the weighted average carrying charge factor of Transmission Owner (used in calculating the annual revenue requirement); provided, however, that the Shared Amount shall not include any amounts in excess of the reasonable costs of the System Upgrades, as determined by [____].

ALTERNATIVE C: Generator shall be responsible for all such actual, reasonable costs, net of any benefits resulting from the construction of the System Upgrades. Such costs and benefits shall include the costs and benefits associated with accelerating, deferring, or eliminating the construction of any Transmission Owner planned upgrades or modifications to the Transmission System or the construction by the Transmission Owner of any unplanned upgrades or modifications to the Transmission System.

[The rest of Section 4.3 applies if Generator is responsible for any System Upgrade costs:] Notwithstanding the foregoing, unless the Parties agree otherwise, Generator shall not, under any circumstance, be responsible for any costs associated with the construction and installation of any upgrades or facilities beyond the minimum necessary to solely effectuate the interconnection of the Facility to the Transmission System and to provide the services set forth in Section 3.2.1 of this Agreement. Generator will advance funds to Transmission Owner each [month] [quarter] to cover Generator's share of the costs and expenses the Transmission Owner reasonably anticipates it will incur in the upcoming [month] [quarter] in accordance with the payment schedule set forth in Attachment D (as such schedule may be revised from time to time by mutual agreement of the Parties).

- 4.3.1 Final and Actual Construction Costs. Within sixty (60) days after energization of the System Upgrades, Transmission Owner must issue a System Upgrade Final Cost Report to Generator. The System Upgrade Final Cost Report must set forth the final, actual construction costs and identify Generator's final cost responsibility for the costs of the System Upgrades, determined in accordance with this Section 4.3. To the extent that the amount of Generator's final cost responsibility, as determined in accordance with Section 4.3 of this Agreement, exceeds the estimated costs already paid by Generator, Generator must pay Transmission Owner an amount equal to the difference within thirty (30) days of receipt of the System Upgrade Final Cost Report. To the extent that the estimated costs already paid by Generator exceed the amount of Generator's final cost responsibility, as determined in accordance with Section 4.3 of this Agreement, Transmission Owner must refund to Generator an amount equal to the difference, plus interest (calculated in accordance with Section 4.13), within thirty (30) days of the receipt of the System Upgrade Final Cost Report.
- 4.3.2 Abandonment of Facility. Subject to Section 2.4.3, if Generator abandons the Facility and any portion of the System Upgrades have already been constructed, Generator shall be responsible for the actual, reasonable costs incurred by Transmission Owner in constructing the System Upgrades, as determined in accordance with Section 4.3, but only to the extent that such costs are not recovered by Transmission Owner under the RTO OATT, Transmission Owner's OATT or any other tariff, or from any party other than Generator.
- 4.4 Generator's Cost Responsibility for Operation and Maintenance of the Interconnection Facilities and Metering Equipment. Subject to Section 3.13 and for the term of this Agreement, Generator will reimburse Transmission Owner for all actual, reasonable costs incurred by Transmission Owner directly for the operation and maintenance of the Transmission Owner-Owned Interconnection Facilities and Generator-Owned Interconnection Facilities, if operated and maintained pursuant to Section 3.4.2 of this Agreement, and metering equipment. Upon expiration or termination of this Agreement, each Party shall be responsible for any costs associated with the operation and maintenance of any facilities owned by it.
- 4.5 Generator's Cost Responsibility for Modifications of Facilities. Subject to Section 3.13, Generator will reimburse Transmission Owner for all actual, reasonable costs incurred by

Transmission Owner in accordance with and to the extent provided for by Section 3.10 of this Agreement, including costs of labor, material and equipment.

- 4.6 Transmission Owner's Cost Responsibility for Modifications of Facilities. Transmission Owner will reimburse Generator for all actual, reasonable costs incurred by Generator in accordance with and to the extent provided for by Section 3.11 of this Agreement, including costs of labor, material, and equipment.
- 4.7 Generator's Cost Responsibility For Transmission Service. Generator's responsibility for the costs of any transmission service is to be governed by the terms and provisions of the Transmission Owner's OATT, the RTO OATT, or any other applicable tariff.
- 4.8 Limitations on Generator's Cost Responsibility Obligations

4.8.1 To the extent that any portion of the costs for which Generator is responsible for under this Article 4.0 are now or at any time in the future to be recovered by Transmission Owner pursuant to the RTO OATT, Transmission Owner's OATT, any other Transmission Owner tariff, or from any party other than Generator, Generator will not be responsible for such costs. If Generator has already paid Transmission Owner for such costs, Transmission Owner agrees to refund to Generator such amounts no later than thirty (30) days after Transmission Owner receives final FERC approval to roll such costs in under the RTO OATT, Transmission Owner's OATT, or any other Transmission Owner tariff, or is otherwise reimbursed for such costs by a party other than Generator, plus interest calculated in accordance with Section 4.13 from the date Transmission Owner receives such final FERC approval or receives such reimbursement to the date such payments were made by Generator. Transmission Owner agrees to provide to Generator such documentation as Generator reasonably requires to determine the amounts of such refunds due to Generator.

4.8.2 Transmission Owner agrees to use its best efforts to seek to recover the entire cost of the Interconnection Facilities and the System Upgrades under the RTO OATT, Transmission Owner's OATT, or any other Transmission Owner tariff.

4.9 Taxes

4.9.1 Income Taxes.

- (A) The Parties agree that none of the payments made by Generator pursuant to this Agreement in connection with the construction and installation of the Transmission Owner-Owned Interconnection Facilities and the System Upgrades constitute taxable contributions in aid of construction under Section 118(b) of the Internal Revenue Code of 1986, as amended.
- (B) Notwithstanding Section 4.9.1(A), Generator agrees to make Transmission Owner whole in the event any federal income taxes are imposed on Transmission Owner as a result of any of the sums paid to Transmission Owner by Generator under the terms of this Agreement for the

construction and installation of the Transmission Owner-Owned Interconnection Facilities or System Upgrades. To eliminate disagreements as to the amount of such tax liability, if any, the Parties agree that such liability shall be equal to percent (%) of such sums.

- (C) Generator has the right to require Transmission Owner to seek a Private Letter Ruling (including, if applicable, a Technical Advice Memoranda) from the Internal Revenue Service as to whether any of the sums paid to Transmission Owner by Generator under the terms of this Agreement for the construction of the Transmission Owner-Owned Interconnection Facilities or System Upgrades contemplated herein are subject to taxation; and to the extent that the Private Letter Ruling concludes that such sums are not taxable to Transmission Owner, Transmission Owner will refund to Generator an amount equal to that provided by Generator to Transmission Owner, if any, for all such taxes, plus carrying charges thereon, no later than thirty (30) days after receiving the refund.

4.9.2 Other Taxes. Generator will reimburse Transmission Owner for all other federal, state, or local taxes (other than income taxes not contemplated in Section 4.9.1) paid by Transmission Owner with respect to the Interconnection Facilities or the System Upgrades or for payments made to Transmission Owner by Generator for services provided by Transmission Owner under this Agreement.

4.9.3 General.

- (A) Transmission Owner shall be solely responsible, without recourse to Generator, for payment of any applicable interest or penalty incurred as a result of Transmission Owner's delay in paying any taxes for which Generator may be required to compensate Transmission Owner under this Agreement or in seeking reimbursement from Generator for such taxes.
- (B) If Transmission Owner receives a refund from the taxing authorities of any amounts paid by Generator pursuant to Sections 4.9.1 or 4.9.2, Transmission Owner shall refund to Generator an amount equal to the amount refunded to Transmission Owner, plus carrying charges thereon, no later than thirty (30) days after receiving the refund.
- (C) Generator will not be liable to Transmission Owner for any taxes incurred after the expiration or termination of this Agreement.
- (D) Generator has the right to require Transmission Owner to contest, appeal or seek abatement of any tax, levy, or assessment against Transmission Owner for which Generator may be required to compensate Transmission Owner under this Agreement. No such payment shall be payable by Generator to Transmission Owner under this Agreement until such tax, levy, or assessment is issued by a final and non-appealable order by a court or agency of competent jurisdiction; provided, however, that, to the extent Generator has reimbursed Transmission Owner for payment of such

taxes and a court or agency of competent jurisdiction rules that Transmission Owner is not responsible for such taxes, Transmission Owner will immediately refund to Generator an amount equal to that reimbursed by Generator for all such taxes, plus carrying charges thereon.

- 4.10 Cooperation. Transmission Owner shall use best efforts to minimize its costs under this Agreement.
- 4.11 Billing Procedures
- 4.11.1 Invoices. With respect to any costs and expenses for which a Party is entitled to be compensated under this Agreement, the Party (the “invoicing Party”) must submit an invoice to the other Party at the start of each calendar [month] [quarter] for the costs for which it is to be compensated under this Agreement for that [month] [quarter]. [*Billing frequency to be determined by the Parties.*]
- 4.11.2 Invoice Details and Supporting Documentation. In each invoice, the invoicing Party must fully describe the work, equipment, or services for which the costs were or are expected to be incurred. The invoicing Party must also include with each invoice documentation supporting the costs expected to be incurred that [month] [quarter] or incurred the previous [month] [quarter]. With respect to those costs which are to be paid on an estimated basis in accordance with the payment schedule mutually agreed upon by the Parties and set forth in Attachment D, each invoice must be adjusted to reflect the differential, if any, between the estimated costs already paid and the costs actually incurred which are reflected in the invoice.
- 4.11.3 Payment. Payment of invoiced amounts will be due and payable within thirty (30) days after receipt of the invoice, or such other time as the Parties mutually agree. If the date of payment falls on a Sunday or holiday, payment shall be made on the next business day. All payments will be made in immediately available funds payable to the invoicing Party or by wire transfer to a bank named by the invoicing Party. If any undisputed portion of any invoice remains unpaid thirty (30) days after the receipt of the invoice, or such other time as the Parties mutually agree upon, the invoicing Party will apply to the unpaid balance, and the other Party shall pay an interest charge calculated in accordance with Section 4.13 of this Agreement .
- 4.11.4 Disputes. If a Party disputes any portion of an invoice, that Party shall notify Transmission Owner in writing of any such dispute and the reason therefor. No invoice may be disputed after such time as a Party’s audit rights set forth in Section 3.15.3 have expired. Any billing disputes must be resolved in accordance with Section 9.0 of this Agreement. In the event of a billing dispute, each Party agrees to continue to perform its duties and obligations under this Agreement as long as the other Party continues to make all payments not in dispute and adheres to the dispute resolution procedures set forth in Section 9.0, pending resolution of such dispute. If a Party fails to meet the requirements set forth in the previous sentence and fails to correct or cure such failure within thirty (30) days after

receiving written notice from the other Party, then the other Party may, at its option, proceed in accordance with Section 7.5.

- 4.12 Payment Not a Waiver. Payment of invoices by Generator will not relieve Generator from any responsibilities or obligations it has under this Agreement, nor will it constitute a waiver of any claims Generator may have under this Agreement.
- 4.13 Interest. Interest shall be calculated using an interest rate equal to one and one-half percent (1.5%) per month. Interest on delinquent payments shall be calculated from the due date of the invoice to the date of payment. Payments made by mail shall be considered as having been paid on the date of receipt by the invoicing Party.

ARTICLE 5.0 CONFIDENTIALITY

- 5.1 General. Unless compelled to disclose by judicial or administrative process or other provisions of law or as otherwise provided for in this Agreement, each Party will hold in confidence any and all documents and information furnished by the other Party in connection with this Agreement; provided, however, that to the extent it is necessary for either Party to release or disclose such information to a third party in order to perform that Party's obligations herein, such Party shall advise said third party of the confidentiality provisions of this Agreement and use its best efforts to require said third party to agree in writing to comply with such provisions. Notwithstanding the foregoing sentence, Transmission Owner expressly agrees that information regarding the Facility's output, markets for or purchase of that output, and any projected outage or maintenance schedule for the Facility or Interconnection Facilities shall be considered confidential and shall under no circumstances be shared with the personnel of the Transmission Owner, or any other entity, involved directly or indirectly in negotiating or effectuating power trading, purchases or sales of electricity, or trading futures.
- 5.2 Exempt Information and Documents. The Parties' confidentiality obligations set forth in Section 5.1 shall not apply to information or documents that are (A) generally available to the public other than as a result of disclosure by a Party (the "disclosing Party") to the other Party; (B) available to a Party on non-confidential basis prior to disclosure by the disclosing Party; or (C) available to a Party on a non-confidential basis from a source other than the disclosing Party, provided that the source is not known and, by reasonable effort, could not be known by the Party receiving such information or documents to be bound by a confidentiality agreement with the disclosing Party or otherwise prohibited from transmitting the information to the Party receiving such information or documents by a contractual, legal or fiduciary obligation.
- 5.3 Notification. Each Party will promptly notify the other Party if it receives notice or otherwise concludes that the production of any confidential information or documentation furnished by the disclosing Party and subject to Section 5.1 is being sought under any provision of law or regulation, but the notifying Party shall have no obligation to oppose or object to any attempt to obtain such production except to the extent requested to do so by the disclosing Party and at the disclosing Party's expense. If either Party desires to

object or oppose such production, it must do so at its own expense. The disclosing Party may request a protective order to prevent any confidential information from being made public.

- 5.4 Use of Information or Documentation. Each Party may utilize information or documentation furnished by the disclosing Party and subject to Section 5.1 in any proceeding under Section 9.0 or in an administrative agency or court of competent jurisdiction addressing any dispute arising under this Agreement, subject to a confidentiality agreement with all participants (including, if applicable, any arbitrator) or a protective order.
- 5.5 Remedies Regarding Confidentiality. The Parties agree that monetary damages by themselves will be inadequate to compensate a Party for the other Party's breach of its obligations under Section 5.0. Each party accordingly agrees that the other Party is entitled to equitable relief, by way of injunction or otherwise, if it breaches or threatens to breach its obligations under Section 5.0.

ARTICLE 6.0 DAMAGE TO EQUIPMENT, FACILITIES, AND PROPERTY

- 6.1 Generator's Responsibility. Except to the extent caused by Transmission Owner's negligence, intentional misconduct, or failure to act in a manner consistent with Good Utility Practice, Generator will be responsible for all physical damage to or destruction of property, equipment, or facilities owned by Generator or its affiliates regardless of who brings the claim and regardless of who caused the damage, and Generator will not seek recovery or reimbursement from Transmission Owner for such damage or destruction.
- 6.2 Transmission Owner's Responsibility. Except to the extent caused by Generator's negligence, intentional misconduct, or failure to act in a manner consistent with Good Utility Practice, Transmission Owner will be responsible for all physical damage to or destruction of property, equipment, or facilities owned by Transmission Owner or its affiliates regardless of who brings the claim and regardless of who caused the damage, and Transmission Owner will not seek recovery or reimbursement from Generator for such damage or destruction.

ARTICLE 7.0 TERM, TERMINATION, AND DEFAULT

- 7.1 Term. This Agreement shall be effective upon the date designated by the FERC when this Agreement is approved or accepted for filing by the FERC (the "Effective Date") and shall remain in full force and effect for _____ years [*equivalent to the expected life of the Facility*], unless (A) the Parties mutually agree to extend the term of this Agreement; (B) earlier termination is permitted under this Agreement or mutually agreed to by the Parties; or (C) Generator terminates the Agreement after providing Transmission Owner thirty (30) days' written notice. Any termination under this Section 7.1 shall not take effect until FERC either authorizes any request by a Party seeking

termination of this Agreement in accordance with its terms or accepts a written notice of termination.

- 7.2 Effect of Expiration or Termination of Agreement on Liabilities and Obligations. Expiration or termination of this Agreement shall not relieve Generator or Transmission Owner of any of its liabilities and obligations arising hereunder prior to the date expiration or termination becomes effective.
- 7.3 Effectiveness of Certain Provisions After Expiration, Cancellation, or Termination of Agreement. The applicable provisions of this Agreement will continue in effect after expiration, cancellation, or early termination hereof to the extent necessary to provide for final billings, billing adjustments and the determination and enforcement of liability and indemnification obligations arising from acts or events that occurred while this Agreement was in effect. These provisions include, without limitation, Section 10 (“Insurance”), Section 13 (“Indemnification”), and Section 21 (“Limitation of Liability”).
- 7.4 Removal of Interconnection Facilities After Expiration or Termination of Agreement. Upon expiration or termination of this Agreement, either Party may remove the Interconnection Facilities owned by it at no cost to the other Party. Neither Party shall have any responsibility for any costs associated with the removal, relocation or other disposition or retirement of the Interconnection Facilities owned by the other Party.
- 7.5 Default. A Party will be in default under this Agreement if, at any time:
- (A) the Party fails to make any payment due the other Party in accordance with this Agreement and does not make such payment to the other Party within thirty (30) calendar days after receiving written notice from the other Party of such failure; or
 - (B) (1)(a) the Party fails in any material respect to comply with, observe or perform any term or condition of this Agreement; (b) any representation or warranty made herein by the Party fails to be true and correct in all material respects; or (c) the Party fails to provide to the other Party reasonable written assurance of its ability to perform fully and completely any of its material duties and responsibilities under this Agreement within thirty (30) days after receiving any reasonable request for such assurances from the other Party; and
 - (2)(a) the Party fails to correct or cure the situation within thirty (30) calendar days after receiving written notice from the other Party, or, (b), if the situation cannot be completely corrected or cured within such thirty-day period, the Party fails to either (i) commence diligent efforts to correct or cure the situation within such thirty-day period or (ii) completely correct or cure the situation within ninety (90) days after receiving written notice from the other Party.
- 7.6 Remedies Upon Default. Subject to Article 9.0, if a Party defaults under this Agreement in accordance with Section 7.5, the other Party may (A) act to terminate this Agreement by providing written notice of termination to the defaulting Party, and/or (B) take whatever action at law or in equity as may appear necessary or desirable to enforce the

performance or observance of any rights, remedies, obligations, agreements, or covenants under this Agreement. Any termination sought under this Section 7.6 shall not take effect until FERC either authorizes any request by either Party seeking termination of this Agreement or accepts any written notice of termination.

- 7.7 Performance of Other Party's Obligations. If either Party (the "defaulting Party") fails to carry out its obligations under this Agreement and such failure could reasonably be expected to have a material adverse impact on the Transmission System, the Interconnection Facility, the Facility, or the regional network, the other Party, following ten (10) days' prior written notice (except in cases of Emergencies, in which case only such notice as is reasonably practicable in the circumstances is required), may, but will not be obligated to, perform the obligations of the defaulting Party (including, without limitation, maintenance obligations), in which case the defaulting Party will, upon presentation of an invoice therefor, reimburse the other Party for all actual and reasonable costs and expenses incurred by it in performing said obligations of the defaulting Party (including, without limitation, costs associated with its employees and the costs of appraisers, engineers, environmental consultants and other experts retained by said Party in connection with performance of the defaulting Party's obligations), together with interest calculated in accordance with Section 4.13.
- 7.8 Remedies Cumulative. Subject to Article 9.0, no remedy conferred by any of the provisions of this Agreement is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies shall not constitute a waiver of the right to pursue other available remedies.

ARTICLE 8.0 REPRESENTATIONS

- 8.1 Representations of Transmission Owner. Transmission Owner represents and warrants the following:
- 8.1.1 Transmission Owner is a corporation duly organized, validly existing and in good standing under the laws of the State of _____, and Transmission Owner has the requisite corporate power and authority to own its properties, and to carry on its business as now being conducted.
- 8.1.2 Transmission Owner has the requisite corporate power and authority to execute and deliver this Agreement and to carry out the actions required of it by this Agreement. The execution and delivery of this Agreement and the actions it contemplates have been duly and validly authorized by Transmission Owner, and no other corporate proceedings on the part of Transmission Owner are necessary to authorize this Agreement or to consummate the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by Transmission Owner and constitutes a legal, valid and binding agreement of Transmission Owner enforceable against it in accordance with its terms, except as

limited by any applicable reorganization, insolvency, liquidation, readjustment of debt, moratorium, or other similar laws affecting the enforcement of rights of creditors generally as such laws may be applied in the event of reorganization, insolvency, liquidation, readjustment of debt or other similar proceeding of or moratorium applicable to Transmission Owner and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or law).

- 8.1.3 Transmission Owner has obtained or will obtain all approvals of, and has given or will give all notices to, any public authority that are required for Transmission Owner to execute, deliver and perform its obligations under this Agreement.
- 8.1.4 To the best of Transmission Owner's knowledge, it is not in violation of any applicable law, statute, order, rule or regulation promulgated by, or judgment, decree, writ, injunction, or award rendered by, any federal, state, or local governmental court or agency which, individually or in the aggregate, would adversely affect Transmission Owner's entering into or performance of its obligations under this Agreement. Transmission Owner is not aware of any pending or threatened litigation, suit, or claim which would adversely affect Transmission Owner's entering into or performance of its obligations under this Agreement. Transmission Owner's entering into and performance of its obligations under this Agreement will not give rise to any default under any agreement to which it is a party.
- 8.1.5 Transmission Owner will comply with all applicable laws, rules, regulations, codes, and standards of all federal, state, and local governmental agencies having jurisdiction over Transmission Owner or the transactions under this Agreement and with which failure to comply could reasonably be expected to have a material adverse effect on either Party.

8.2 Representations of Generator. Generator represents and warrants the following:

- 8.2.1 Generator is a _____ [company] [partnership] duly organized, validly existing, and in good standing under the laws of the State of _____, and Generator has the requisite [corporate] power and authority to own its properties, and to carry on its business as now being conducted.
- 8.2.2 Generator has the requisite [corporate] [partnership] power and authority to execute and deliver this Agreement and to carry out the actions required of it by this Agreement. The execution and delivery of this Agreement and the actions it contemplates have been duly and validly authorized by Generator, and no other [corporate] [partnership] proceedings on the part of Generator are necessary to authorize this Agreement or to consummate the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by Generator and constitutes a legal, valid and binding agreement of Generator enforceable against it in accordance with its terms, except as limited by any applicable reorganization, insolvency, liquidation, readjustment of debt, moratorium, or other similar laws affecting the enforcement of rights of creditors generally as

such laws may be applied in the event of reorganization, insolvency, liquidation, readjustment of debt or other similar proceeding of or moratorium applicable to Generator and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or law).

- 8.2.3 Generator has obtained or will obtain all approvals of, and has given or will give all notices to, any public authority that are required for Generator to execute, deliver and perform its obligations under this Agreement.
- 8.2.4 To the best of Generator's knowledge, it is not in violation of any applicable law, statute, order, rule, or regulation promulgated by, or judgment, decree, writ, injunction, or award rendered by, any federal, state, or local governmental court or agency which, individually or in the aggregate, would adversely affect Generator's entering into or performance of its obligations under this Agreement. Generator is not aware of any pending or threatened litigation, suit, or claim which would adversely affect Generator's entering into or performance of its obligations under this Agreement. Generator's entering into and performance of its obligations under this Agreement will not give rise to any default under any agreement to which it is a party.
- 8.2.5 Generator will comply with all applicable laws, rules, regulations, codes, and standards of all federal, state, and local governmental agencies having jurisdiction over Generator or the transactions under this Agreement and with which failure to comply could reasonably be expected to have a material adverse effect on either Party.
- 8.3 Representations of Both Parties. The representations in Sections 8.1 and 8.2 shall continue in full force and effect for the term of this Agreement.

ARTICLE 9.0 DISPUTE RESOLUTION

- 9.1 Actions Prior to Arbitration.
- 9.1.1 Parties To Address First. Any dispute, disagreement, or claim arising out of or concerning this Agreement must first be addressed by the Parties.
- 9.1.2 Notice of Dispute. When a Party believes that there is such a dispute, disagreement or claim, that Party may initiate the dispute resolution procedures by giving the other Party written notice of the dispute, disagreement or claim. Such notice shall describe the nature and substance of the dispute, disagreement or claim and propose a resolution.
- 9.1.3 Good Faith Negotiations; Applicability of Arbitration. Representatives of the Parties must attempt to negotiate in good faith to resolve such dispute, disagreement or claim within ten (10) days after notice of the dispute has been given. If such representatives are unable to satisfactorily resolve such dispute,

disagreement or claim, they must refer the matter to senior representatives of each Party with the authority to settle the dispute, disagreement or claim, which such senior representatives shall meet at a mutually acceptable time and place to attempt to resolve the dispute. If the senior representatives have not resolved such dispute, disagreement or claim within thirty (30) days after notice of the dispute has been given, then, subject to Section 9.9 of this Agreement, either Party may submit such dispute, disagreement or claim to binding arbitration pursuant to the terms of this Agreement.

- 9.2 Notice of Arbitration. A Party may initiate arbitration by providing a written notice demanding arbitration to the other Party. Such notice shall specify the issue or issues to be arbitrated and summarize the Party's claim(s) with respect thereto.
- 9.3 Arbitration Procedures. Arbitration shall be conducted by a single neutral arbitrator appointed by the Parties. If the Parties fail to agree upon a single arbitrator within seven (7) days of the referral of the dispute to arbitration, each Party shall choose an arbitrator, both of which shall sit on a three-member arbitration panel. The two arbitrators so chosen shall, within ten (10) days of being chosen, select a third arbitrator to chair the arbitration panel. Any arbitrator selected pursuant to this Section 9.3 must be knowledgeable in matters that are the subject of the dispute. The arbitrator(s) shall conduct the arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("Arbitration Rules") in effect at the time a notice of arbitration is made; provided, however, that, in the event of a conflict between the Arbitration Rules and the terms and provisions of this Article 9.0, the terms and provisions of this Article 9.0 shall govern.
- 9.4 Authority of Arbitrator(s)
- 9.4.1 No Authority to Modify Agreement. The arbitrator(s) shall have the authority only to interpret and apply the terms and conditions of this Agreement and shall have no power to modify or change any such terms or conditions.
- 9.4.2 Compliance with Law. The arbitrator(s) shall be required to follow any and all applicable federal, state, or local laws and regulations.
- 9.4.3 Remedies. Any award of damages must be determined, limited and controlled by applicable provisions of this Agreement. The arbitrator(s) may, in his or her discretion, award pre-award and post-award interest on any damages awarded; provided, however that the rate of interest may not exceed a rate equal to one and one-half percent (1.5%) per month.
- 9.5 Timing and Nature of Decision
- 9.5.1 Timing. Unless otherwise agreed upon by the Parties, the arbitrator(s) must render a decision within ninety (90) days of appointment.
- 9.5.2 Binding on Parties; Challenges. The decision must be in writing and contain the reasons for the decision. Subject to Section 9.5.3, the decision and award of the

arbitrator(s) shall be final and binding upon the Parties, their successors, and permitted assigns; provided, however, that such decision and award may be challenged solely on the grounds that the conduct of the arbitrator, or the decision and award itself, violated the standards set forth in the Federal Arbitration Act. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.

- 9.5.3 Filing With FERC. The decision must also be filed with FERC if it affects FERC-jurisdictional rates, terms and conditions of service or facilities.
- 9.6 Location of Arbitration. Any arbitration conducted hereunder must be conducted in _____, unless the Parties mutually agree upon another location.
- 9.7 Costs. Each Party shall be responsible for its own costs and expenses, including attorneys' fees, incurred during the arbitration and for fifty percent (50%) of the costs of the arbitrator(s).
- 9.8 Confidentiality. The existence, contents, or results of any arbitration proceeding conducted under this Article 9.0 may not be disclosed without the prior written consent of both Parties; provided, however, that either Party may (A) make such disclosures as may be necessary to (1) satisfy regulatory obligations to any regulatory authority having jurisdiction or (2) seek or obtain from a court of competent jurisdiction judgment on, confirmation or vacation of an arbitration award; (B) inform its lenders, affiliates, auditors, and insurers, as necessary, under pledge of confidentiality; and (C) consult with experts as required in connection with the arbitration proceeding under pledge of confidentiality. If either Party seeks preliminary injunctive relief from any court to preserve the status quo or avoid irreparable harm pending arbitration, the Parties agree to use commercially reasonable efforts to keep the court proceedings confidential, to the maximum extent permitted by the law.
- 9.9 FERC Jurisdiction Over Certain Disputes
- 9.9.1 Each Party may file a petition or complaint with the FERC with respect to any arbitrable claim over which the FERC has jurisdiction.
- 9.9.2 If the FERC determines that it has no jurisdiction or declines to resolve all or a portion of a claim, that portion of the claim may be resolved through arbitration as provided for in this Article 9.0. To the extent the FERC asserts jurisdiction over the claim, any arbitration proceeding that may have commenced prior to the assertion of jurisdiction by the FERC shall be stayed, pending the outcome of the FERC proceeding, and the decision, finding of fact, or order of the FERC shall be final and binding, subject to judicial review provided for under the Federal Power Act.
- 9.9.3 The arbitrator(s) shall have no authority to modify, and shall be conclusively bound by, any decision, finding of fact, or order of the FERC; provided, however, that, to the extent that a decision, finding of fact or order of the FERC does not provide a final or complete remedy to the Party seeking relief, such Party may

proceed to arbitration under this Article 9.0, subject to the FERC decision, finding of fact, or order.

- 9.10 Preliminary Injunctive Relief. Nothing in this Article 9.0 precludes, or is to be construed as precluding, either Party from resorting to a court of competent jurisdiction for the purpose of securing a temporary or preliminary injunction to preserve the status quo or avoid irreparable harm pending the resolution of a dispute pursuant to this Article 9.0.

ARTICLE 10.0 INSURANCE

- 10.1 General. Each Party agrees to maintain, at its own cost and expense, in full force and effect throughout the term of this Agreement the types of and minimum dollar amounts of insurance coverage set forth below relating to its own property and facilities:
- 10.1.1 workers compensation insurance in accordance with the State of _____ requirements
 - 10.1.2 employer's liability insurance with limits of not less than _____ dollars (\$_____).
 - 10.1.3 commercial general liability insurance, including automobile liability coverage, with limits of not less than _____ dollars (\$_____)
- 10.2 Claims Made or Occurrence Coverage. The coverages required under this Agreement must be maintained on an "occurrence" or "claims made" basis. Each Party may require the other to maintain tail coverage for six (6) years on all policies written on a "claims made" basis.
- 10.3 Certificates of Insurance; Copies of Policies. Each Party agrees to provide the other with certificates of insurance evidencing the insurance coverage set forth in Section 10.1 and additional insured status. Each Party agrees to provide the other copies of all policies upon request.
- 10.4 Negotiation of Policy Limits. The Parties agree to negotiate in good faith the minimum policy limits for these coverages every five (5) years to take account of changes in inflation.
- 10.5 Additional Insureds; Notice of Cancellation. The general liability insurance policy or policies entered into pursuant to this Agreement by each Party must name the other Party as additional insureds, and must require thirty (30) days prior written notice to be given to such named additional insureds of cancellation, non-renewal, termination, and/or any material change in the policy or policies. Each Party waives its rights of recovery against the other for any loss or damage covered by such policy or policies to the extent that such loss or damage is reimbursed under such policy or policies.

- 10.6 Waiver of Subrogation. Each Party waives any right to subrogation under its respective insurance policies for any liability each has agreed to assume under this Agreement. Evidence of this requirement shall be noted on all certificates of insurance.
- 10.7 Failure to Comply. Failure of either Party to comply with the above insurance terms and conditions, or the complete or partial failure of an insurance carrier to fully protect and indemnify the other Party or its affiliates, or the inadequacy of the insurance shall not in any way lessen or affect the obligations or liabilities of each Party to the other.

ARTICLE 11.0 NOTICES

- 11.1 General. Unless otherwise expressly provided elsewhere in this Agreement, all notices, demands, requests, or communications required or permitted to be given by either Party under this Agreement, or any instrument or documentation required or permitted to be delivered by either Party to the other, shall be delivered either by (A) hand; (B) registered or certified first class mail, postage prepaid, return receipt requested; (C) facsimile transmission; or (D) an overnight courier which provides evidence of delivery or refusal. All such notices shall be addressed as follows:

To Transmission Owner: [name/address]

with a copy to: [name/address]

To Generator: [name/address]

with a copy to: [name/address]

- 11.2 Changes. Either Party may change its address for notices or the person(s) to whom notices should be given by notice to the other in the manner provided above.
- 11.3 Emergencies. Notwithstanding Section 11.1, any notice concerning an Emergency or other occurrence requiring prompt attention may be made by telephone, provided that such notice is confirmed in writing promptly thereafter in accordance with Section 11.1.
- 11.4 Authority of Party Representatives. The representatives identified in Section 11.1, or their designees (including points of contact), shall be authorized to act on behalf of the Parties, and their instructions, requests, and decisions will be binding upon the Parties as to all matters pertaining to this Agreement and the performance of the Parties hereunder. The representatives shall be responsible for tracking work, costs, schedules and all other matters related to this Agreement, and for the performance of any third parties.
- 11.5 Points of Contact. Each Party representative identified in Section 11.1 shall designate a person to act as a twenty-four (24) hour point of contact, which such person shall have knowledge and control of that Party's facilities. The point of contact shall be the day-to-day method of communicating any and all changes in operational status and operational issues and concerns relating to each Party's facilities.

ARTICLE 12.0
FORCE MAJEURE

- 12.1 General. Neither Party shall be considered to be in default or breach of this Agreement or liable in damages or otherwise responsible to the other Party for any delay in or failure to carry out any of its obligations under this Agreement if, and only to the extent that, the Party is unable to perform or is prevented from performing by an event of force majeure. Notwithstanding the foregoing sentence, neither Party may claim force majeure for any delay or failure to perform or carry out any provision of this Agreement to the extent that such Party has been negligent or engaged in intentional misconduct or failed to exercise reasonable foresight and such negligence or intentional misconduct or failure to exercise reasonable foresight contributed to that Party's delay or failure to perform or carry out its duties and obligations under this Agreement. All performance obligations affected by the event of force majeure will be extended for a period equal to the length of the resulting delay.
- 12.2 Force Majeure Defined. The term "force majeure" means those events beyond the reasonable control of the Party claiming force majeure which, through the exercise of due foresight and Good Utility Practice, that Party could not have avoided and which, by exercise of due diligence, that Party is unable to overcome. Such events include, but are not limited to, the following, to the extent they conform to the foregoing criteria: flood; lightning strikes; earthquake; fire; epidemic; war; invasion; riot; civil disturbance; sabotage; explosion; insurrection; military or usurped power; strike; labor dispute; action of any court or governmental authority, or any civil or military authority de facto or de jure; act of God or the public enemy; or any other event or cause of a similar nature beyond a Party's reasonable control.
- 12.3 Procedures. A Party claiming force majeure must:
- (A) give written notice to the other Party of the occurrence of a force majeure event no later than three (3) business days after learning of the occurrence of such an event;
 - (B) use due diligence to resume performance or the provision of service hereunder as soon as practicable;
 - (C) take all commercially reasonable actions to correct or cure the force majeure event, provided, however, that settlement of strikes or other labor disputes are completely within the sole discretion of the Party affected by such strike or labor dispute;
 - (D) exercise all reasonable efforts to mitigate or limit damages to the other Party; and
 - (E) provide prompt written notice to the other Party of the cessation of the adverse effect of the force majeure event on its ability to perform its obligations under this Agreement.

ARTICLE 13.0 INDEMNIFICATION

13.1 Indemnification

PROVISION A (Third Party Indemnification Only):

Subject to Article 21 and to the extent not covered by insurance, each Party shall indemnify and hold the other Party and its affiliates, trustees, officers, directors, agents, and employees (collectively, the “Indemnitees”) harmless from and against any and all damages, costs (including attorneys’ fees), losses, claims, demands, actions, expenses, suits, cause of action, fines, penalties or liabilities of any kind and nature whatsoever which may be imposed on or asserted at any time against an Indemnatee by a third party, including but not limited to expenses arising from damage to, or injury or death to, any person (collectively, “Liabilities”), and which arise from, or are claimed to have arisen from as a result of, the indemnifying Party’s performance or breach of this Agreement, except to the extent that such Liabilities resulted from the negligence, or intentional wrongdoing of any Indemnatee.

PROVISION B (Indemnification For Damages Resulting From Construction/Use/Operation/Maintenance of Facilities):

- (A) Generator shall fully indemnify and hold Transmission Owner, its members, its shareholders, directors, officers, agents, representatives, employees, servants, its affiliated and associated companies, their respective shareholders and/or its assigns, harmless from and against any and all claims, demands, liability, losses, damage, costs or expenses (including attorneys' fees and other costs of defense) of any nature or kind whatsoever, including, but not limited to, claims, demands and/or liability for personal injury to (including death of) any person whomever (including payments and awards made to Generator's employees or others under any workers' compensation law or under any plan for employees' disability and death benefits) and for damage to any property whatsoever (including the Generator-Owned Interconnection Facilities, the Facility, the Transmission Owner-Owned Interconnection Facilities, the System Upgrades and Transmission Owner's Transmission System) arising out of or otherwise resulting from the construction, use, ownership, maintenance, or operation of the Facility or the Generator-Owned Interconnection Facilities; provided however, that the provisions of this Section 13.1(A) shall not apply to the extent that any such personal injury or property damage is held to have been caused by the negligence or the willful misconduct of Transmission Owner, its agents or employees.
- (B) Transmission Owner shall fully indemnify and hold Generator, its members, shareholders, directors, officers, agents, representatives, employees, servants, its affiliated and associated companies, their respective shareholders and/or its assigns, harmless from and against any and all claims, demands, liability, losses, damage, costs or expenses (including attorneys' fees and other costs of defense) of any nature or kind whatsoever, including, but not limited to, claims, demands and/or liability for personal injury to (including death of) any person whomever (including

payments and awards made to Transmission Owner's employees or others under any workers' compensation law or under any plan for employees' disability and death benefits) and for damage to any property whatsoever (including the Generator-Owned Interconnection Facilities, the Facility, the Transmission Owner-Owned Interconnection Facilities, the System Upgrades and Transmission Owner's Transmission System) arising out of or otherwise resulting from the construction, use, ownership, maintenance, or operation of the Transmission Owner-Owned Interconnection Facilities, System Upgrades and/or Transmission Owner's Transmission System; provided, however, that the provisions of this Section 13.1(B) shall not apply to the extent such personal injury or property damage is held to have been caused by the negligence or the willful misconduct of Generator, its agents or employees.

13.2 Conditions. Each Party's obligations with respect to claims and suits covered by this Article 13.0 are subject to the conditions that (A) the Party seeking indemnification must give the indemnifying Party reasonably prompt notice of any such claim or suit; (B) the Party seeking indemnification must cooperate in the defense of any such claim or suit, the costs of which are to be borne by the indemnifying Party; and (C) the indemnifying Party has sole control of the defense of such claim or suit to the extent of the indemnifying Party's liability for any such claim or suit.

13.3 Settlement.

(A) Rights to Settle. The indemnifying Party has the right to settle, compromise, decline to appeal or otherwise dispose of any action, proceeding, or claim with respect to which indemnification is sought without the consent of, but with prior written notice to, the Party seeking indemnification. If the Party seeking indemnification disagrees with the indemnifying Party's decision to settle, compromise, decline to appeal or otherwise dispose of any such action, proceeding or claim, the Party seeking indemnification may, at its option, take over control of the defense of such action, proceeding or claim at its own expense. In such event, the liability of the indemnifying Party shall be limited to the amount for which it was willing to settle or compromise or the amount of any judgment it had determined to not appeal.

(B) Confidentiality. In the event that any claim is settled, each Party agrees to not publicize the settlement and to use best efforts to ensure that any settlement agreement contains a non-disclosure provision; provided, however, that, if required by law, either Party may disclose the existence or content of the settlement agreement.

13.4 Survival. Each Party's indemnification obligation will survive expiration, cancellation or early termination of this Agreement.

**ARTICLE 14.0
INTEGRATION**

- 14.1 Entire Agreement. This Agreement sets forth the entire agreement and understanding of Generator and Transmission Owner with respect to the specific subject matter covered herein and supersedes all prior oral and written understandings and agreements, oral or written, between Generator and Transmission Owner with respect to the matters addressed herein.

**ARTICLE 15.0
RELATIONSHIP OF PARTIES**

- 15.1 Relationship of Parties. Nothing in this Agreement is to be construed or deemed to cause, create, constitute, give effect to, or otherwise recognize Transmission Owner and Generator to be partners, joint venturers, employer and employee, principal and agent, or any other business association, with respect to any matter.
- 15.2 No Authority to Act for Other Party. Unless otherwise agreed to in writing signed by both Parties, neither Party shall have any authority to create or assume in the other Party's name or on its behalf any obligation, express or implied, or to act or purport to act as the other Party's agent or legally empowered representative for any purpose whatsoever.
- 15.3 No Liability for Acts of Other Party. Neither Party shall be liable to any third party in any way for any engagement, obligation, contract, representation, or any negligent act or omission of the other Party, except as expressly provided for herein.

**ARTICLE 16.0
WAIVER**

- 16.1 Waiver Permitted. Except as otherwise provided for in this Agreement, the failure of either Party to comply with any obligation, duty, agreement, or condition herein may be waived by the Party entitled to the benefits thereof only by a written instrument signed by the Party granting such waiver.
- 16.2 Limited Nature of Waivers. Any waiver granted by a Party shall not be deemed a waiver with respect to any other failure of the Party granted a waiver to comply with any obligation, duty, agreement, or condition herein.

**ARTICLE 17.0
AMENDMENT**

- 17.1 Transmission Owner Section 205 Rights. Notwithstanding any provision in this Agreement to the contrary, Transmission Owner may unilaterally make application to the FERC under Section 205 of the Federal Power Act and pursuant to FERC's rules and

regulations promulgated thereunder for a change in any rate, term, condition, charge, classification of service, rule or regulation under or related to this Agreement.

- 17.2 Generator Section 205 and 206 Rights. Notwithstanding any provision in this Agreement to the contrary, Generator may exercise its rights under Sections 205 and 206 of the Federal Power Act and pursuant to FERC's rules and regulations promulgated thereunder with respect to any rate, term, condition, charge, classification of service, rule or regulation for any services provided under this Agreement over which the FERC has jurisdiction.
- 17.3 Amendments. Except as provided for in Sections 17.1 and 17.2, this Agreement and the attachments hereto may only be modified, amended, changed, or supplemented in writing signed by Generator and Transmission Owner.

**ARTICLE 18.0
SUCCESSORS, ASSIGNS,
AND THIRD PARTY BENEFICIARIES**

- 18.1 Binding On Parties, Successors, and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their successors and permitted assigns. No person or party shall have any rights, benefits or interests, direct or indirect, arising from this Agreement except the Parties hereto, their successors and permitted assigns. The Parties expressly disclaim any intent to create any rights in any person or party as a third party beneficiary to this Agreement.
- 18.2 Transmission Owner Assignment Rights.
- 18.2.1 Except as provided for in this Section 18.2, Transmission Owner may not assign this Agreement or any of its rights, interests or obligations hereunder without the prior written consent of Generator, which consent shall not be unreasonably withheld or delayed.
- 18.2.2 Transmission Owner may, with only prior written notice to Generator, assign this Agreement to any entity(ies) that acquires ownership or control of all, or substantially all, of the Transmission System and agrees in writing to be bound by all of the obligations and duties of Transmission Owner provided for in this Agreement; provided, however, that any such assignment may only be made upon FERC approval or acceptance of such assignment, and provided further that any such assignment to an RTO may only be made upon FERC approval or acceptance of such RTO.
- 18.2.3 Any assignment by Transmission Owner in violation of this Section 18.2 shall be, at Generator's option, null and void from its inception.
- 18.3 Generator Assignment Rights.

- 18.3.1 Except as provided for in this Section 18.3, Generator may not assign this Agreement or any of its rights, interests or obligations hereunder without the prior written consent of Transmission Owner, which consent shall not be unreasonably withheld or delayed.
- 18.3.2 Generator may, with only prior written notice to Transmission Owner, assign, transfer, pledge or otherwise dispose of its rights and interests under this Agreement to (A) any lender or any financial institution in connection with a collateral assignment of this Agreement for financing or refinancing purposes, (B) any affiliate of Generator, (C) any entity(ies) that acquires all, or substantially all, of Generator's rights or interests in the Facility and agrees in writing to be bound by all of the obligations and duties of Generator provided for in this Agreement, or (D) any entity that operates the Facility. Transmission Owner agrees to execute and deliver such documents as may be reasonably necessary to accomplish any such assignment, transfer, pledge or disposition of rights.
- 18.3.3. Any assignment by Generator in violation of this Section 18.3 shall be, at Transmission Owner's option, null and void from its inception.
- 18.4 Assigning Party to Remain Responsible. Any assignments authorized by Sections 18.2 and 18.3 shall not operate to relieve the Party assigning this Agreement or any of its rights, interests or obligations hereunder of the responsibility of full compliance with the requirements of this Agreement unless (A) the other Party consents, such consent not to be unreasonably withheld or delayed, and (B) the assignee agrees in writing to be bound by all of the obligations and duties of the assigning Party provided for in this Agreement.

ARTICLE 19.0 SUBCONTRACTORS

- 19.1 Use of Subcontractors Permitted. Nothing in this Agreement will prevent either Party from utilizing the services of subcontractors as it deems appropriate; provided, however, that all such subcontractors comply with the terms and conditions of this Agreement.
- 19.2 Retaining Party to Remain Responsible. The creation of any subcontract relationship shall not relieve the retaining Party of any of its obligations under this Agreement. Each Party shall be fully responsible to the other Party for the acts or omissions of any subcontractor it hires as if no subcontract had been made. Any obligation imposed by this Agreement upon either Party, where applicable, shall be equally binding upon and construed as having application to any subcontractor.
- 19.3 Liability for Subcontractors. Each Party will be liable for, indemnify, and hold harmless the other Party, its affiliates, and their officers, directors, employees, agents, and assigns from and against any all claims, demands, or actions from its subcontractors; and will be responsible for all costs, expenses, and legal fees associated therewith and all judgments, decrees, and awards rendered therein.

- 19.4 No Third Party Beneficiary. No subcontractor is intended to be or will be deemed a third party beneficiary of this Agreement.
- 19.5 No Limitation by Insurance. The obligations under this Article 19.0 are not limited in any way by any limitation on subcontractor's insurance.

**ARTICLE 20.0
LABOR DISPUTES**

- 20.1 Notice. Each Party agrees to promptly notify the other, orally and then in writing, of any labor dispute or anticipated labor dispute which may reasonably be expected to affect the operations of the other Party.

**ARTICLE 21.0
LIMITATION OF LIABILITY**

- 21.1 No Consequential Damages. Except as expressly provided for in this Agreement, neither Party shall be liable to the other Party or its parent, subsidiaries, affiliates, officers, directors, agents, employees, successors, or assigns for incidental, punitive, special, indirect, multiple, or consequential damages (including attorneys' fees, litigation costs, and claims for lost profits) connected with or resulting from performance or non-performance of this Agreement.
- 21.2 Application; Survival. The limitation of liability provided for in Section 21.1 will apply regardless of fault and will survive expiration, cancellation or early termination of this Agreement.

**ARTICLE 22.0
GOVERNING LAW AND INTERPRETATION**

- 22.1 Applicable Law. This Agreement and all rights, obligations, and performances hereunder are subject to all applicable federal and state laws and to all duly promulgated orders and other duly authorized action of any governmental authority with competent jurisdiction.
- 22.2 Governing Law. This Agreement is to be governed by federal law where applicable, and when not in conflict with or preempted by federal law, this Agreement shall be governed by and construed in accordance with the laws of the State of _____ without regard to its conflict of laws principles. Except for those matters which must be brought to the FERC or which are resolved through arbitration, any action arising out of or concerning this Agreement must be brought in the courts of the State of _____.
- 22.3 Conflicts Between Main Body of Agreement and Attachments. In the event of a conflict between the main body of this Agreement and any attachment hereto, the terms of the main body of this Agreement shall govern.

**ARTICLE 23.0
HEADINGS AND CAPTIONS**

- 23.1 No Effect on Interpretation. The headings and captions contained in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

**ARTICLE 24.0
COUNTERPARTS**

- 24.1 Counterpart Execution Permitted. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

**ARTICLE 25.0
SEVERABILITY**

- 25.1 Severable Nature of Agreement. If any provision of this Agreement or the application thereof to any person or circumstances is, to any extent, held to be invalid 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 to be invalid or unenforceable, will not be affected thereby, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

**ARTICLE 26.0
OTHER CONDITIONS**

- 26.1 Filing of Agreement for Regulatory Approval. Promptly upon execution of this Agreement by the Parties, Transmission Owner shall file this Agreement with (A) the FERC and take such steps as are reasonably necessary to obtain FERC acceptance or approval of this Agreement under Section 205 of the Federal Power Act, and (B) any other appropriate regulatory agency. Generator agrees to support such filing(s), to reasonably cooperate with Transmission Owner with respect to the filing(s), and to provide any information, including the filing of testimony, reasonably required by Transmission Owner to comply with applicable filing requirements.
- 26.2 Filing of Amendments. Promptly upon execution of any amendment to this Agreement by the Parties pursuant to Sections 17.3 or 26.3, Transmission Owner shall, if necessary, file such amendment with FERC and with any other appropriate regulatory agency. Generator agrees to support such filing(s), to reasonably cooperate with Transmission Owner with respect to such filing(s), and to provide any information, including the filing of testimony, reasonably required by Transmission Owner to comply with applicable filing requirements. Upon satisfaction of all applicable regulatory requirements, said amendment shall become effective and part of this Agreement.

- 26.3 Good Faith Negotiations Upon Occurrence of Certain Events. If one of the following events (an “Event”) take place, the Parties agree to re-negotiate in good faith an amendment or amendments to this Agreement or to take other appropriate action so as to put each Party in effectively the same position as the Parties would have been had the Event not occurred:
- (A) this Agreement is not approved or accepted for filing by FERC without modification or condition;
 - (B) the RTO prevents, in whole or in part, the Parties from performing any provision of this Agreement in accordance with its terms;
 - (C) FERC, the United States Congress, any state or state regulatory commission, or the RTO implements any change in any law, regulation, rule or practice which materially affects or is reasonably expected to materially affect either Party’s ability to perform under this Agreement; or
 - (D) any provision of this Agreement is held, to any extent, to be invalid or unenforceable by a court or agency of competent jurisdiction.
- 26.3.1 Amendments. Any amendment the Parties negotiate pursuant to Section 26.3 must be executed by the Parties in writing in accordance with Section 17.3 and, if necessary, filed with the FERC or any other appropriate regulatory agency in accordance with Section 26.2.
- 26.3.2 Failure to Agree. If, within sixty (60) days after the occurrence of an Event or some other time period mutually agreed upon by the Parties, the Parties (A) are unable to reach agreement as to what, if any, amendments are necessary, and (B) fail to take other appropriate action so as to put each Party in effectively the same position as the Parties would have been had the Event not occurred, each Party shall continue to perform under this Agreement to the maximum extent possible, taking all reasonable steps to mitigate any adverse effect on each other resulting from the Event. Either Party shall also have the right to unilaterally file with the FERC, pursuant to Section 205 or 206 of the Federal Power Act as appropriate, proposed revisions to this Agreement which the Party deems reasonably necessary to put each Party in effectively the same position in which the Parties would have been had the Event not occurred. Either Party may contest any such unilateral filing pursuant to applicable FERC procedures.
- 26.3.3 No Actions Necessary to Affect EWG or QF Status. Nothing in this Agreement shall require Generator to take any action that could result in its inability to qualify, obtain, or maintain its status as an exempt wholesale generator within the meaning of the Public Utility Holding Company Act of 1935, as amended, or as a qualifying facility within the meaning of the Public Utility Regulatory Policies Act of 1978, as amended.

- 26.4 Implementation of RTO. The Parties recognize that, as of the date of this Agreement, the RTO has not yet commenced operations. It is the Parties' intent that, once the RTO commences operations, they will be obligated to comply with RTO rules, regulations and criteria to the extent provided for in this Agreement.]
- 26.5 Further Acts. Each Party agrees to furnish to each other such further information, to do such other and further acts, and to execute and/or deliver such instruments and documents, as the other Party may reasonably request from time to time in furtherance of the purposes of this Agreement.

(The remainder of this page intentionally left blank.)

IN WITNESS HEREOF, this Agreement has been duly executed by the Parties
hereto.

Generator

Transmission Owner

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

ATTACHMENT A

Description of Interconnection Facilities and System Upgrades

ATTACHMENT B

Project Cost Itemization

ATTACHMENT C

Project Schedule

[To be developed by the Parties.]

<u>Activity</u>	<u>Commencement</u>	<u>Completion</u>
[Engineering and design of facilities]		
[Permitting]		
[Land acquisition]		
[Easements, licenses, rights of way, and other access rights]		
[Procurement of equipment]		
[Construction of facilities]		
[Energization of facilities]		
[Testing of facilities]		
[Etc.]		

ATTACHMENT D

Payment Schedule