***Appendix C***

***MUCPA - Schedulable Flexible Intermediate Unit Tolling Agreement - 750 MW Max Product***

***For***

***2011***

***Request For Proposals (RFP)***

***For***

Transition Plan Resources

Entergy Arkansas, Inc.

June 10, 2011

The following bid submission term sheet template (this “Term Sheet Template”) describes the primary terms and conditions of a potential agreement between Entergy Arkansas, Inc. (“EAI” or “Buyer”) and the seller of power proposed by bidder (“Bidder”) in its proposal (“Seller” and, together with Buyer, the “Parties”) for the purchase by Buyer of capacity and other capacity-related benefits, energy, ancillary services and fuel-conversion services for a multi-year term to provide incremental supply resources to EAI to meet the operational requirements for EAI’s transition plan to post-System Agreement operations. Red font sections of this Term Sheet Template require Bidder to insert information corresponding to its proposal. The terms and conditions set forth in this Term Sheet Template will be binding on Bidder (but not Buyer) and establish the basis for the negotiation and execution of an agreement between Buyer and each Seller whose proposal is selected by Buyer (the “Definitive Agreement”), with necessary changes to accurately reflect any exceptions set forth in Bidder’s proposal that are accepted by Buyer. If Bidder is not able to accept any of the terms and conditions set forth in this Term Sheet Template, Bidder should so indicate in the “Special Exceptions” section of this Term Sheet Template and describe with specificity any terms and conditions that Bidder is able to offer in place of the terms and conditions to which Bidder takes exception.

This Term Sheet Template and any other information provided to Bidder relating to the potential agreement contemplated by this Term Sheet Template is provided to Bidder with the understanding that neither it nor its substance will be disclosed publicly or privately by Bidder to any other person, except (i) on a need to know basis, to affiliates, consultants and advisors that are in a confidential relationship with Bidder or its affiliates (such as legal counsel) and the respective employees of Bidder or any of the foregoing or (ii) to the extent disclosure is required by applicable law. Any disclosure made by Bidder pursuant to clause (i) above may be made only on the basis that it not be further disclosed (with Bidder being responsible for any further disclosure as if it were made directly by Bidder). Further, any disclosure made directly to Bidder’s affiliates, its or their respective consultants and advisors or any employees of Bidder or any of the foregoing will be treated for purposes of this paragraph as if made by Bidder to such person pursuant to clause (i) above.

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| **ID** | **Proposal Term** |  | **Description of Proposal Term** |
| **1** | **Product Description:** |  | The product described in this Term Sheet Template is designated as **“MUCPA - Schedulable Flexible Intermediate Unit Tolling Agreement – 750 MW Max.”** This product provides for unit-specific schedulable generation capacity of up to 750 MW, but not less than 300 MW, of nameplate capacity from a designated “intermediate” generating resource (such as a CCGT) (the “Facility”) that has a minimum schedulable operating range going from 50% of the Dependable Capacity allocated to Buyer (as defined in item 10 below) corresponding to the Base Capacity (as defined in item 9 below) to 100% of the Dependable Capacity allocated to Buyer. Buyer will be entitled to all capacity and other capacity-related benefits, energy and ancillary services from the Facility (or, in the event Bidder proposes to allocate to Buyer a portion of the nameplate capacity of the Facility, the corresponding portion thereof).  *{If Bidder wishes to submit multiple “MUCPA - Schedulable Flexible Intermediate Unit Tolling Agreement – 750 MW Max” product proposals from the same Facility, Bidder must submit a separate Term Sheet for each such proposal.}* |
| **2** | **Buyer:** |  | Entergy Arkansas, Inc. |
| **3** | **Seller:** |  | *{insert name of proposed Seller}* |
| **4** | **Facility:** |  | The Facility is *{insert name or description of generation resource supplying transaction}* located *{describe location}*. The Facility has a nameplate capacity of *{insert nameplate capacity}*MW and consists of *{insert description of major equipment of Facility, including all generating units}*.  ***{The Facility must be a generation resource already in operation (i.e., not a new generation resource to be constructed) and must be a single resource (i.e., cannot be a schedulable flexible intermediate profile created by a combination of resources, such as a combination of intermittent and dispatchable resources).}*** |
| **5** | **Energy Delivery Point:** |  | *{Describe the Energy Delivery Point at which power from the Facility will be delivered to Buyer.* ***The Energy Delivery Point must be located on the EAI Transmission System.****}* For purposes of this Term Sheet Template, the term “EAI Transmission System” is limited to the interconnected group of transmission lines and substations owned or leased by EAI that are used to transfer bulk electricity between supply and delivery points, notwithstanding that there may be a balancing authority (including any regional transmission organization or independent system operator) applicable thereto that covers a system broader than such interconnected group of transmission lines and substations.  ***{Please note that any proposal conditioned on a change in or transition of the EAI Transmission System to an alternative arrangement for central planning and coordinated dispatch, including a regional transmission organization, independent system operator or other comparable arrangement, will be rejected as non-conforming.}*** |
| **6** | **Transmission:** |  | Seller will be responsible for the transmission or transfer of power dispatched by Buyer to the Energy Delivery Point located on the EAI Transmission System. Without limiting the foregoing, (i) all costs of any transmission service and of any transmission system additions or modifications (which could include additions or modifications beyond the Energy Delivery Point) required for the transmission or transfer of power to the Energy Delivery Point will be borne by Seller and (ii) if the Energy Delivery Point is not the Facility’s point of interconnection, then, to the extent applicable, Seller will be responsible for any basis differential between the Facility’s point of interconnection and the Energy Delivery Point. All proposals involving Facilities that are not directly interconnected to the EAI Transmission System (or otherwise will have an Energy Delivery Point that is beyond the Facility’s point of interconnection) must provide for the firm transmission or transfer of power to the Energy Delivery Point.  *{Bidder should describe the point at which the Facility is electrically interconnected and, in the case of facilities that are not directly interconnected to the EAI Transmission System (or otherwise will have an Energy Delivery Point that is beyond the Facility’s point of interconnection), how firm transmission or transfer of power to the Energy Delivery Point will be achieved.}*  Buyer will be responsible for the transmission or transfer beyond the Energy Delivery Point of any power dispatched by Buyer and delivered to Buyer from the Facility at the Energy Delivery Point (*i.e.,* after Buyer’s receipt on the EAI Transmission System). In this regard, Buyer will be responsible for the costs of transmission system additions and/or modifications beyond the Energy Delivery Point that are required solely to obtain firm transmission or transfer of such power beyond the Energy Delivery Point (*i.e.,* excluding those that are required to allow the Facility to interconnect or for the firm transmission or transfer of power to the Energy Delivery Point), and Bidder should not include any such costs in the pricing offered by Bidder. |
| **7** | **Delivery Term:** |  | Subject to item 35 below and to the last paragraph of this item 7, from the start of hour ending 0100 Central Prevailing Time (“CPT”) on January 1, 2014 through the end of hour ending 2400 CPT on December 31, 2016 (three years). *{If Bidder is willing to offer an extended Delivery Term beyond December 31, 2016, Bidder should so indicate and describe any modifications to the nameplate capacity allocated to Buyer and/or to the Capacity Rate that apply during such extended term; Bidder may not modify any other terms or conditions of the Definitive Agreement for purposes of the extended term. In addition, any offer for an extended term must allow EAI to accept Bidder’s proposal for the base Delivery Term without accepting the offer for the extended term and must allow Buyer to terminate the extended term on no more than 36 months’ notice (with no liability arising out of such termination). Bidder may include terms that allow Seller to terminate the extended term or reduce the nameplate capacity allocated to Buyer for any year or years of the extended term with specified notice and/or the occurrence of specified conditional events, provided that Buyer is allowed to terminate or reduce the nameplate capacity allocated to Buyer on the same terms (or on terms more favorable to Buyer) and that such terms require at least 12 months’ notice for reductions of up to 25% of the nameplate capacity allocated to Buyer in effect for the applicable year of the extended term immediately prior to such reduction, 24 months’ notice for reductions of up to 50% of the nameplate capacity allocated to Buyer in effect for the applicable year of the extended term immediately prior to such reduction and 36 months’ notice for termination or reductions of up to 100% of the nameplate capacity allocated to Buyer in effect for the applicable year of the extended term immediately prior to such reduction.}*  Notwithstanding the foregoing, unless Buyer otherwise elects, the Delivery Term will not commence at the time it would otherwise commence if, at such time, (1) the Facility is experiencing an outage or other limitation, including a Force Majeure (as defined in item 30 below), that reduces the amount of capacity allocated to Buyer actually available at the Energy Delivery Point by fifty (50) MW or more below the Dependable Capacity allocated to Buyer or (2) there exists a default (or event or circumstance that with the passage of time or the giving of notice or both would constitute a default) of Seller under the Definitive Agreement (in either case, a “Delivery Delay Condition”). |
| **8** | **Pricing:** |  | Pricing for this product will be composed of (i) a Capacity Rate expressed in $/kW-year specified in item 11 below; (ii) a Variable O&M Rate expressed in $/MWh specified in item 19 below; and (iii) a Start-up Charge expressed in $ per Completed Start specified in item 21 below.  Except to the extent otherwise expressly provided in this Term Sheet Template, Buyer will not be required to pay any amounts to Seller other than the Capacity Payment (equal to the Capacity Rate multiplied by the Dependable Capacity allocated to Buyer), the Variable Payment (equal to the Variable O&M Rate multiplied by the energy that is dispatched by Buyer and delivered to Buyer from the Facility at the Energy Delivery Point) and the Start-up Payment (equal to the Start-up Charge multiplied by the number of Completed Starts), so the Capacity Rate, Variable O&M Rate and Start-up Charge proposed by Bidder should take into account all costs of generating and delivering capacity and capacity-related benefits, energy and ancillary services to the Energy Delivery Point, all costs of performing fuel-conversion services and all other costs that Bidder would like to recover from Buyer, including the costs of cyclical, major and other maintenance, any applicable start-up costs and any applicable ancillary services and other balancing authority services, penalties, settlements and other charges and fees.  All payments will be monthly in arrears. |
| **9** | **Nameplate Capacity Allocated to Buyer:** |  | The **nameplate capacity** of the Facility allocated to Buyer (expressed in MW) is *{insert quantity in MW for each year, subject to a* ***minimum of 300 MW, and a maximum of 750 MW, in each year****; proposals that offer a constant amount of nameplate capacity over the Delivery Term are preferred, but proposals offering amounts that vary each year are acceptable}*:  Year Nameplate Capacity Allocated to Buyer  2014 *{insert quantity in MW}*  2015 *{insert quantity in MW}*  2016 *{insert quantity in MW}*  *{If Bidder proposes to allocate to Buyer less than all of the nameplate capacity of the Facility, please describe in detail how Bidder intends to sub-divide the capacity (e.g., by dedicating to Buyer certain generating units at the Facility), including proposed procedures for metering (of both gas and energy); tagging/scheduling with the balancing authority or similar action (if applicable); and settlement (including settlement of internal gas imbalances between offtakers).* ***EAI will consider proposals offering to allocate to Buyer less than all of the nameplate capacity of the Facility, provided that the portion of the nameplate capacity of the Facility must represent one or more complete CCGT trains (e.g., one entire 2x1 CCGT train or multiple 1x1 CCGT trains).****}*  Of this nameplate capacity, the quantity of nameplate capacity (expressed in MW) specified below for each year will be available to Buyer at a Marginal Heat Rate (as defined in item 18 below) not to exceed 8.000 MMBtu/MWh (for all dispatch levels in the operating range) and a Guaranteed Heat Rate (as defined in item 18 below) not to exceed 8.000 MMBtu/MWh for the dispatch level corresponding to dispatch of the full Dependable Capacity allocated to Buyer associated with such nameplate capacity (the “Base Capacity”), and the quantity of nameplate capacity (expressed in MW) specified below for each year will be available to Buyer at a Marginal Heat Rate higher than 8.000 MMBtu/MWh but not to exceed 12.000 MMBtu/MWh and a Guaranteed Heat Rate not to exceed 12.000 MMBtu/MWh (in each case, for all dispatch levels in the operating range) (the “Peaking Capacity”). *{The Peaking Capacity may be 0 MW, but, if Bidder requires EAI to accept Bidder’s proposal for the Peaking Capacity if EAI accepts Bidder’s proposal for the Base Capacity, may not exceed 20% of the total nameplate capacity allocated to Buyer.}* The Base Capacity and Peaking Capacity may be referred to herein as “Capacity Products” or individually as a “Capacity Product.”  Year Base Capacity Peaking Capacity  2014 *{insert quantity in MW} {insert quantity in MW}*  2015 *{insert quantity in MW} {insert quantity in MW}*  2016 *{insert quantity in MW} {insert quantity in MW}*  The Peaking Capacity corresponds to operation by *{describe mode of operation (such as duct firing or power augmentation) that gives rise to the Peaking Capacity}*.  *{If Bidder offers Peaking Capacity in addition to Base Capacity, Bidder must indicate whether EAI must accept Bidder’s proposal for the Peaking Capacity if it accepts Bidder’s proposal for the Base Capacity or may accept Bidder’s proposal for the Base Capacity without accepting Bidder’s proposal for the Peaking Capacity. EAI strongly encourages Bidders to allow EAI to accept Bidder’s proposal for the Base Capacity without accepting Bidder’s proposal for the Peaking Capacity.}* |
| **10** | **Dependable Capacity:** |  | Capacity Payments and availability calculations will use the Dependable Capacity allocated to Buyer. The “Dependable Capacity allocated to Buyer” means the net MW that the Facility (or, in the event Bidder proposes to allocate to Buyer a portion of the nameplate capacity of the Facility, the corresponding portion thereof) is capable of delivering reliably to Buyer at the Energy Delivery Point from each Capacity Product at reference conditions of 97o Fahrenheit and 56% relative humidity, as established and adjusted according to the following paragraph:  The Dependable Capacity allocated to Buyer will be established and adjusted according to (i) capacity demonstration tests conducted (unless waived by Buyer) semi-annually or as part of, or shortly after, the completion of extraordinary repairs to the Facility, at Seller’s expense for the independent tester, and (ii) additional capacity demonstration tests conducted at the request of Buyer from time to time, at Buyer’s expense for the independent tester; provided, however, that in no event will the Dependable Capacity allocated to Buyer be increased above the lesser of (i) the maximum MW capable of being delivered to Buyer at the Energy Delivery Point (*i.e.,* upper end of the operating range) specified by Bidder in item 20 below for the summer season of the applicable year of the Delivery Term (under the operating configuration that generates the highest maximum MW) or (ii) the amount of firm transmission from the Energy Delivery Point that Buyer obtains in connection with the Definitive Agreement (for this purpose, Buyer typically seeks to obtain an amount of firm transmission from the Energy Delivery Point equal to the Dependable Capacity allocated to Buyer expected by Buyer in each year of the Delivery Term). The semi-annual capacity demonstration tests will occur during the months of December or January and June or July of each year, except to the extent waived by Buyer. Each capacity demonstration test will be performed in accordance with standard industry practices and testing protocols to be set forth in the Definitive Agreement. Buyer will purchase the power delivered pursuant to any capacity demonstration tests. |
| **11** | **Capacity Rate:** |  | The Capacity Rate (expressed in $/kW-year) for the Dependable Capacity allocated to Buyer corresponding to each Capacity Product in each year is:  Year Capacity Rate  Base Capacity Peaking Capacity  2014 *{insert rate in $/kW-year} {insert rate in $/kW-year}*  2015 *{insert rate in $/kW-year} {insert rate in $/kW-year}*  2016 *{insert rate in $/kW-year} {insert rate in $/kW-year}*  *{In lieu of a specific Capacity Rate for each Capacity Product for each year, Bidder may propose (a) a base Capacity Rate for each Capacity Product expressed as $/kW-year applicable to the entire Delivery Term and (b) an annual escalator, which will be either CPI or PPI and will be applied on each anniversary of the start of the Delivery Term. The Capacity Rate will be the base Capacity Rate multiplied by the percentage change in the escalator from the start of the Delivery Term through the applicable anniversary of the start of the Delivery Term on which the annual escalator is applied. If Bidder chooses this option, Bidder should specify its proposed base Capacity Rate (in $/kW-year) for each Capacity Product and whether it elects the CPI or PPI escalator. For this purpose, “CPI” means the Consumer Price Index for All Urban Consumers; US City Average; All Items: Not Seasonally Adjusted (base index year 1982-1984 = 100), as published by the United States Department of Labor, Bureau of Labor Statistics, from time to time; and “PPI” means the Producer Price Index for All commodities – WPU00000000, as published by the United States Department of Labor, Bureau of Labor Statistics, from time to time.}*  The Capacity Rate, **expressed in $/kW-year**, will be allocated to each month according to the schedule below. The Capacity Payment for each Capacity Product (equal to the Capacity Rate for the applicable month for such Capacity Product multiplied by the Dependable Capacity allocated to Buyer corresponding to such Capacity Product as determined according to item 10 above) will be payable monthly in arrears. The Capacity Payment will be subject to a Capacity Payment discount based on Monthly Availability as described in item item 12 below.  Month % of annual Capacity Rate  January 7%  February 7%  March 4%  April 4%  May 9%  June 15%  July 15%  August 15%  September 9%  October 4%  November 4%  December 7% |
| **12** | **Monthly Availability Requirement:** |  | The “Monthly Availability Requirement” for each Capacity Product will be 98% for each summer month (June through August) and each winter month (December through February) and 96% for each other month.  The “Monthly Availability” will be calculated separately for each Capacity Product for each month as follows:    where:  MAm = Monthly Availability for the applicable Capacity Product for the applicable month;  n = total number of hours in the applicable month;  i = each hour in the applicable month;  ACi = the lowest of (a) the amount of capacity corresponding to the applicable Capacity Product actually available during hour *i* (which, for the avoidance of doubt, means taken over the course of the entire hour *i* as a whole) at the Energy Delivery Point (whether or not dispatched by Buyer), (b) the amount of capacity corresponding to the applicable Capacity Product set forth, or deemed to be set forth, as available in the availability notice for hour *i* provided by Seller to Buyer (but excluding any increases in availability of the Facility notified to Buyer after the day-ahead availability notice provided by Seller, unless Buyer dispatches the energy associated with the increased capacity) or (c) DCi for hour *i*; provided that (i) if the amount in clause (a) above would otherwise be less than the minimum permitted dispatch level for any of the operating configuration(s) of the applicable Capacity Product, the amount in clause (a) above will be deemed to be the amount of capacity corresponding to the applicable Capacity Product actually available during hour *i* at the Energy Delivery Point, excluding such configuration(s), and (ii) if, during hour *i*, the Facility is not capable of going down to the minimum permitted dispatch level for the Base Capacity specified by Bidder in item 20 below (even if it can achieve higher dispatch levels and whether or not dispatched by Buyer), ACi will be deemed to be 0 MW for hour *i* for both Capacity Products; for the avoidance of doubt, capacity will be considered unavailable to the extent it is unavailable due to Force Majeure or to any curtailment or other limitation or shortcoming on, or other circumstance relating to, electric transmission occurring outside of the EAI Transmission System or otherwise at or before the Energy Delivery Point; and  DCi = the Dependable Capacity allocated to Buyer during hour *i* corresponding to the applicable Capacity Product minus the Affected Capacity (as defined below) during hour *i*; provided that the Affected Capacity resulting from Planned Maintenance (as defined in item 29 below) will be disregarded to the extent the Equivalent Planned Maintenance Hours (as defined in item 29 below) in the applicable contract year constitute Excess Equivalent Planned Maintenance Hours (as defined in item 29 below), where “Affected Capacity” means the portion of the Dependable Capacity allocated to Buyer corresponding to the applicable Capacity Product, if any, that is unavailable or limited during any hour due solely to (i) Planned Maintenance, (ii) a lack of available transmission service occurring beyond the Energy Delivery Point within the EAI Transmission System or (iii) an interruption of gas transportation, except (in the case of clause (ii) or (iii), as applicable) to the extent the lack of available transmission service or interruption of gas transportation is due to Force Majeure or an act or omission of Seller or its affiliates or its direct and indirect contractors, subcontractors and suppliers or any of their respective agents or representatives (including any failure to comply with applicable laws, accepted electrical practices, the electric interconnection agreement, any gas interconnection arrangements, any other project documents or the Definitive Agreement).  For all purposes of the Definitive Agreement, the capacity allocated to Buyer that is available shall be deemed available in the following order of priority: first, as Dependable Capacity allocated to Buyer corresponding to the Base Capacity; second, as Dependable Capacity allocated to Buyer corresponding to the Peaking Capacity; and third, as capacity in excess of the Dependable Capacity allocated to Buyer.  If the Monthly Availability for either Capacity Product is below the applicable Monthly Availability Requirement for any month, a Capacity Payment discount will apply to the Capacity Payment corresponding to such Capacity Product. The Capacity Payment discount will be two percent (2%) for each one percent (1%) shortfall to the Monthly Availability Requirement; provided, however, that (a) to the extent of unavailability due solely to Force Majeure, the Capacity Payment discount will be one percent (1%) for each one percent (1%) shortfall to the Monthly Availability Requirement and (b) in no event will the Capacity Payment be reduced below zero (0). |
| **13** | **Capacity-Related Benefits:** |  | Any benefit associated with the capacity of the Facility (or, in the event Bidder proposes to allocate to Buyer a portion of the nameplate capacity of the Facility, the corresponding portion thereof), including any capacity credit or similar right or benefit, will exclusively and solely accrue to and be owned by Buyer. Seller will be required, at its own expense, to timely execute and file all documents (including any applicable request for qualification as a capacity resource) and take all other actions necessary to obtain and transfer to Buyer capacity-related benefits, provided that Seller will not be required to pay for any system additions and/or modifications beyond the Energy Delivery Point that are required solely to obtain such capacity-related benefits (*i.e.,* that would not otherwise be required to allow the Facility to electrically interconnect or for the firm transmission or transfer of power to the Energy Delivery Point). Except as otherwise provided in the foregoing proviso, all costs required for any capacity qualification or otherwise to obtain and transfer to Buyer capacity-related benefits will be borne by Seller and should be considered in the Capacity Rate offered by Bidder.  *{Bidder should indicate whether the Facility is or will be eligible for capacity credits or other capacity-related benefits and, if so, which ones and the basis of that belief. Bidder should describe any studies or other actions needed to qualify the Facility for capacity-related benefits. Bidder should also describe the status and any results of any such actions.}* |
| **14** | **Additional Testing/ Required Data:** |  | Without limiting item 13 above, to the extent Buyer is required by applicable laws (including balancing authority rules) to demonstrate the capability of the Facility for purposes of capacity qualification or otherwise test the Facility (including to meet requirements imposed by Buyer’s participation in a reliability group or regional transmission organization) beyond the capacity demonstration tests contemplated by item 10 above, Seller will perform such tests according to applicable requirements. In such event, Buyer will purchase the power delivered pursuant to any such tests and provide the gas required to perform such tests. In addition, Seller will provide to Buyer (in the form and timeframe reasonably requested by Buyer) all data and other information relating to the Facility, or the delivery of capacity and other capacity-related benefits, energy, ancillary services and fuel-conversion services under the Definitive Agreement, necessary or advisable for Buyer to participate fully in any markets (including any marketplace administered by the balancing authority) in which Buyer is participating, otherwise exercise its rights or perform its obligations set forth in item 6 above and item 17 below or otherwise comply with applicable laws. |
| **15** | **Ancillary Services:** |  | Seller will be required to qualify the Facility for, and (upon Buyer’s dispatch pursuant to the Definitive Agreement) provide for Buyer’s account at Seller’s own expense, any ancillary services, including quick start or contingency response capability, capable of being provided by the Facility (or, in the event Bidder proposes to allocate to Buyer a portion of the nameplate capacity of the Facility, the corresponding portion thereof) at the applicable time. All costs required to provide any ancillary services dispatched by Buyer will be borne by Seller and should be considered in the Capacity Rate offered by Bidder.  *{Bidder should indicate whether the Facility is or will be capable of providing any ancillary services and, if so, which ones and the basis of that belief.}* |
| **16** | **Dispatch Rights:** |  | Throughout the Delivery Term, Buyer will have the right to dispatch the capacity and other capacity-related benefits, energy and ancillary services from the Facility (or, in the event Bidder proposes to allocate to Buyer a portion of the nameplate capacity of the Facility, the corresponding portion thereof), including modifying any existing dispatch notice, from time to time as it deems appropriate in its sole and absolute discretion on a day-ahead and intra-day basis, subject to Buyer’s observance of any operating restrictions (*i.e.,* minimum permitted dispatch levels, minimum run time and downtime, maximum number of Completed Starts, start times and ramp rates) set forth in this Term Sheet Template and according to the following:   * Buyer may provide the initial dispatch notice or modify an existing dispatch notice for any day on a “day-ahead basis” until 8:30 a.m. CPT on the business day immediately prior to such day; and * Buyer may provide the initial dispatch notice or modify an existing dispatch notice after the day-ahead dispatch deadline for any day (*i.e.,* on an “intra-day basis”), provided that such intra-day dispatch notice complies with the maximum ramp rates and start times set forth in this Term Sheet Template.   Seller will make available to Buyer all capacity of the Facility (or, in the event Bidder proposes to allocate to Buyer a portion of the nameplate capacity of the Facility, the corresponding portion thereof) and will deliver to Buyer all associated capacity-related benefits, energy and ancillary services at the Energy Delivery Point in accordance with Buyer’s dispatch notices. Without limiting the foregoing, Seller will be required to make available to Buyer, for delivery to Buyer at the Energy Delivery Point, any capacity of the Facility (or, in the event Bidder proposes to allocate to Buyer a portion of the nameplate capacity of the Facility, the corresponding portion thereof) in excess of the Dependable Capacity allocated to Buyer that the Facility is capable of delivering (as a result of prevailing ambient conditions or otherwise) to the Energy Delivery Point at any time, and, to the extent dispatched by Buyer (in its sole and absolute discretion), Seller will deliver to Buyer at the Energy Delivery Point the capacity-related benefits, energy and ancillary services associated with such excess capacity. Except to the extent required by a unit contingency, Seller will not interrupt, curtail or otherwise reduce the availability or deliveries of the capacity allocated to Buyer or any associated capacity-related benefits, energy and ancillary services, even if Seller is otherwise above the availability requirements of the Definitive Agreement. In addition, to the extent the Facility is capable, from time to time, of reduced operating restrictions (including reduced minimum permitted dispatch levels and start times and increased ramp rates) and, as a result, allows Buyer greater dispatch flexibility, Seller will make available such capability to Buyer.  Buyer’s rights to the capacity and other capacity-related benefits, energy and ancillary services from, and to the performance of fuel-conversion services by, the Facility (or, in the event Bidder proposes to allocate to Buyer a portion of the nameplate capacity of the Facility, the corresponding portion thereof) are exclusive, and Seller may not offer, sell, deliver or make available during the Delivery Term any of such capacity, other capacity-related benefits, energy or ancillary services or fuel-conversion services to any person other than Buyer (whether or not Buyer dispatches the same). |
| **17** | **Tagging:** |  | If (a) the balancing authority area that includes the Energy Delivery Point becomes subject to a regional transmission organization or independent system operator or (b) “tagging,” scheduling, offering and/or bidding of capacity or capacity-related benefits, energy or ancillary services with the balancing authority (including into a marketplace administered by the balancing authority) is otherwise permitted or required, then:   * Buyer will be entitled to “tag,” schedule, offer and/or bid (on an exclusive basis) the capacity and capacity-related benefits, energy and ancillary services at the Energy Delivery Point in its sole and absolute discretion, provided that Buyer dispatches the capacity and capacity-related benefits, energy and ancillary services that are expressly “tagged,” scheduled, offered and/or bid by Buyer in a manner that complies with any balancing authority requirement to generate (or not generate) each such product that is triggered solely by Buyer’s “tags,” schedules, offers and/or bids; and * To the maximum extent permitted by applicable balancing authority rules, procedures and protocols and other laws, Seller will continue to perform all other functions with respect to the Facility before the applicable balancing authority (including any applicable regional transmission organization or independent system operator), including, to the extent applicable, transmitting to the applicable balancing authority (including any applicable regional transmission organization or independent system operator) operational data or information and coordinating outages and, if the Energy Delivery Point is not the Facility’s point of interconnection, “tagging,” scheduling, offering and/or bidding the capacity and capacity-related benefits, energy and ancillary services at the Facility’s point of interconnection for purposes of meeting Buyer’s dispatch; provided, however, that, to the extent that, under applicable balancing authority rules, procedures and protocols and other laws, such functions cannot be performed by a different person than the person that performs the functions described in the first bullet point above, Buyer will perform such functions at Seller’s expense and with full release and indemnification from Seller.   Buyer will be entitled to any payments from the balancing authority or any other person for capacity and capacity-related benefits, energy and ancillary services and to any other payments from the balancing authority in respect of the Facility (including the curtailment thereof), and, if any such payments are received by Seller, Seller will pay (or cause to be paid) any such payments promptly over to Buyer. Notwithstanding the foregoing, Seller will be entitled to any payments for (and will be responsible for any settlement at negative prices of or other settlement charge for) capacity and capacity-related benefits, energy and ancillary services (i) required by the balancing authority or other governmental authority or the interconnection agreement or applicable law to be provided from the Facility that were not dispatched by Buyer or expressly “tagged,” scheduled, offered and/or bid by Buyer pursuant to this item 17 and dispatched by the balancing authority solely as a result of such “tags,” schedules, offers and/or bids or (ii) to the extent applicable, if the Energy Delivery Point is not the Facility’s point of interconnection, “tagged,” scheduled, offered and/or bid by Seller at the Facility’s point of interconnection for purposes of meeting Buyer’s dispatch, provided that, in furtherance of Seller’s obligations pursuant to item 6 above, if the balancing authority at the Energy Delivery Point does not recognize physical delivery at the Energy Delivery Point (*e.g.*, because there is neither a generation resource nor a point of importation into such balancing authority at the Energy Delivery Point), Seller will be required to pay to Buyer the real-time price at the Energy Delivery Point for each MWh dispatched by Buyer. For the avoidance of doubt, any settlement at negative prices of, and other imbalance charges for, positive imbalance energy will be allocated according to item 28 below. |
| **18** | **Guaranteed Heat Rate:** |  | The “Guaranteed Heat Rate” (expressed in MMBtu/MWh) will be the heat rate set forth in the table below corresponding to Buyer’s dispatch level and the season in which such dispatch occurs, provided that if, as a result of a unit contingency or other limitation, Buyer’s dispatch level was limited and such limitation would result in a higher applicable Guaranteed Heat Rate, the Guaranteed Heat Rate will be the heat rate set forth in the table below corresponding to Buyer’s dispatch that would have occurred absent such limitation. The Guaranteed Heat Rate is a blended heat rate for all MW included in the corresponding dispatch level. For example, if, for a dispatch level of 300 MW, the first 250 MW have a Marginal Heat Rate of 7.000 MMBtu/MWh and the other 50 MW have a Marginal Heat Rate of 10.000 MMBtu/MWh, the Guaranteed Heat Rate for the dispatch level of 300 MW is 7.500 MMBtu/MWh = [(250 x 7.000) + (50 x 10.000)] / (250 + 50), and the associated gas consumption will be 2,250 MMBtu of gas = 300 x 7.500.  *{Insert heat rate curve for each season specified below. Each heat rate curve should plot the Guaranteed Heat Rate for each potential dispatch level of the capacity of the Facility allocated to Buyer included in the operating range specified by Bidder in item 20 below (i.e., for each MW of such operating range, other than deadbands between configurations within the operating range). For example, if the operating range specified by Bidder in item 20 below is from 180 MW to 600 MW for the summer season with a deadband between 300 MW and 360 MW representing the gap between maximum in 1x1 configuration and minimum in 2x1 configuration, the heat rate curve for the summer season should plot the Guaranteed Heat Rate for the following dispatch levels: 180 MW, 181 MW, 182 MW...298 MW, 299 MW, 300 MW, 360 MW, 361 MW, 362 MW…598 MW, 599 MW, 600 MW. In addition, for each such dispatch level, Bidder should indicate the heat rate associated with the incremental MW added to the next lower dispatch level (the “Marginal Heat Rate”). For example, if, for a dispatch level of 250 MW, the Guaranteed Heat Rate is 7.000 MMBtu/MWh and, for a dispatch level of 251 MW, the Guaranteed Heat Rate is 7.012 MMBtu/MWh, the Marginal Heat Rate for a dispatch level of 251 MW is 10.012 MMBtu/MWh = (251 x 7.012) – (250 x 7.000), meaning that 10.012 MMBtu is the guaranteed level of additional gas consumption in each hour for the 251st MW when compared to a 250 MW dispatch level. For dispatch levels associated with the Base Capacity, the Marginal Heat Rate may not exceed 8.000 MMBtu/MWh and, for the dispatch level corresponding to dispatch of the full Dependable Capacity allocated to Buyer associated with the Base Capacity, the Guaranteed Heat Rate may not exceed 8.000 MMBtu/MWh. In addition, for dispatch levels associated with the Peaking Capacity, neither the Marginal Heat Rate nor the Guaranteed Heat Rate may exceed 12.000 MMBtu/MWh. Further, for dispatch levels that, depending on ambient conditions, may be achieved from the Base Capacity or may require the Peaking Capacity, Bidder should provide both potential heat rates. The higher Peaking Capacity heat rate will apply only if Seller has indicated in its availability notice to Buyer that the Peaking Capacity will be required to achieve such dispatch level and Seller actually deploys the Peaking Capacity to achieve such dispatch level.}*  **Summer Season (May through September)**  Guaranteed Marginal  Dispatch Level Heat Rate Heat Rate  (MW) (MMBtu/MWh) (MMBtu/MWh)  *{insert Summer Season heat rate curve}*  **Winter Season (December through February)**  Guaranteed Marginal  Dispatch Level Heat Rate Heat Rate  (MW) (MMBtu/MWh) (MMBtu/MWh)  *{insert Winter Season heat rate curve}*  **Shoulder Season (April, May, October, November)**  Guaranteed Marginal  Dispatch Level Heat Rate Heat Rate  (MW) (MMBtu/MWh) (MMBtu/MWh)  *{insert Shoulder Season heat rate curve}*  If, in any hour, the Facility’s (or, in the event Bidder proposes to allocate to Buyer a portion of the nameplate capacity of the Facility, the corresponding portion thereof) actual operating performance in such hour with respect to the energy deliveries at the Energy Delivery Point during such hour, expressed in actual MMBtu of gas consumed per MWh of delivered energy (HHV) at the Energy Delivery Point, is at a heat rate that is:   * greater than 103.00% of the Guaranteed Heat Rate, Seller will pay to Buyer an amount equal to the product of (A) the quantity of gas (expressed in MMBtu) consumed in such hour as a result of the operation of the Facility (or allocated portion) at a heat rate above 103.00% of the Guaranteed Heat Rate and (B) the Daily Price of Gas (as defined below) for the gas day in which such hour occurs; or * lower than 97.00% of the Guaranteed Heat Rate, Buyer will pay to Seller an amount equal to the product of (A) the quantity of gas (expressed in MMBtu) not consumed in such hour as a result of the operation of the Facility (or allocated portion) at a heat rate below 97.00% of the Guaranteed Heat Rate and (B) the Daily Price of Gas for the gas day in which such hour occurs.   “Daily Price of Gas” means, in respect of each gas day, the index published by Platts *Gas Daily* (in the internet publication currently accessed through *www.platts.com)* in the table entitled “Daily Price Survey” under the column heading “Midpoint” for gas to flow at *{insert flow point}* on the gas day of delivery of the applicable energy (expressed in $/MMBtu). |
| **19** | **Variable O&M Rate:** |  | For each MWh of energy dispatched by Buyer and delivered to Buyer from the Facility at the Energy Delivery Point, Buyer will pay the “Variable O&M Rate.” The Variable O&M Rate (expressed in $/MWh) for energy corresponding to each of the Base Capacity and Peaking Capacity in each year is:  Year Variable O&M Rate  Base Capacity Peaking Capacity  2014 *{insert rate in $/MWh} {insert rate in $/ MWh}*  2015 *{insert rate in $/MWh} {insert rate in $/ MWh}*  2016 *{insert rate in $/MWh} {insert rate in $/ MWh}*  *{In lieu of a specific Variable O&M Rate for each year, Bidder may propose (a) a base Variable O&M Rate expressed as $/MWh applicable to the entire Delivery Term and (b) an annual escalator, which will be either CPI or PPI and will be applied on each anniversary of the start of the Delivery Term. The Variable O&M Rate will be the base Variable O&M Rate multiplied by the percentage change in the escalator from the start of the Delivery Term through the applicable anniversary of the start of the Delivery Term on which the annual escalator is applied. If Bidder chooses this option, Bidder should specify its proposed base Variable O&M Rate (in $/MWh) and whether it elects the CPI or PPI escalator. For this purpose, CPI and PPI have the same meanings as specified in item 11 above.}*  To the extent that the Variable O&M Rate for Peaking Capacity is higher than for Base Capacity, the higher Variable O&M Rate will apply only if Seller has indicated in its availability notice to Buyer that the Peaking Capacity will be required to achieve Buyer’s requested dispatch level and Seller actually deploys the Peaking Capacity to achieve such dispatch level.  The Variable O&M Rate will not apply to ramp energy delivered by Seller to Buyer during any start-up. |
| **20** | **Operating Range:** |  | ***{Operating range (i.e., the range between the lowest minimum permitted dispatch level for the capacity allocated to Buyer and the maximum MW capable of being delivered to Buyer at the Energy Delivery Point from such capacity) will be a significant determinant in the value of Bidder’s proposal; a proposal that offers greater than the minimum operating range (and few deadbands, if any, between configurations within the operating range) will receive credit for increased operating range in the bid evaluation process. Bidder may not include any deadbands within the operating range other than to reflect gaps, if any, between the maximum in one operating configuration and the minimum in the next operating configuration.}***  The minimum permitted dispatch level(s) (expressed in MW delivered to Buyer at the Energy Delivery Point) for the operating configuration(s) corresponding to the capacity allocated to Buyer in each year are as follows:  *{Insert each potential configuration for the capacity allocated to Buyer in each year and its associated minimum permitted dispatch level, if any. The lowest minimum permitted dispatch level for each year (i.e., the bottom end of the operating range for each year) must be no more than 50% of the Dependable Capacity allocated to Buyer (as determined according to item 10 above) corresponding to the Base Capacity and will be used for purposes of clause (ii) of the proviso to the definition of ACi in the calculation of Monthly Availability in item 12 above.}*  Year Configuration Minimum Dispatch Level  2014 *{describe configuration} {insert quantity in MW}*  *{describe configuration} {insert quantity in MW}*  *{describe configuration} {insert quantity in MW}*  *{repeat for additional configurations}*  2015 *{describe configuration} {insert quantity in MW}*  *{describe configuration} {insert quantity in MW}*  *{describe configuration} {insert quantity in MW}*  *{repeat for additional configurations}*  2016 *{describe configuration} {insert quantity in MW}*  *{describe configuration} {insert quantity in MW}*  *{describe configuration} {insert quantity in MW}*  *{repeat for additional configurations}*  For the avoidance of doubt, the above minimum permitted dispatch level(s) apply only if Buyer elects, in its sole and absolution discretion, to dispatch the capacity allocated to Buyer; Buyer may elect, in its sole and absolution discretion, not to dispatch any of the capacity allocated to Buyer (*i.e.,* 0 MW).  Based on the operating history of the Facility and Bidder’s experience with the Facility, the maximum MW capable of being delivered to Buyer at the Energy Delivery Point (*i.e.,* upper end of the operating range) for the operating configuration(s) corresponding to the capacity allocated to Buyer in each year are as follows during each of the following seasons at the reference conditions specified below for each such season:  *{Insert each potential configuration for the capacity allocated to Buyer in each year and its associated maximum MW capable of being delivered to Buyer at the Energy Delivery Point.}*  **Summer Season**  **(Reference Conditions: 97o F and 56% relative humidity)**  Year Configuration Maximum MW  2014 *{describe configuration} {insert quantity in MW}*  *{describe configuration} {insert quantity in MW}*  *{describe configuration} {insert quantity in MW}*  *{repeat for additional configurations}*  2015 *{describe configuration} {insert quantity in MW}*  *{describe configuration} {insert quantity in MW}*  *{describe configuration} {insert quantity in MW}*  *{repeat for additional configurations}*  2016 *{describe configuration} {insert quantity in MW}*  *{describe configuration} {insert quantity in MW}*  *{describe configuration} {insert quantity in MW}*  *{repeat for additional configurations}*  **Winter Season**  **(Reference Conditions: 68o F and 74% relative humidity)**  Year Configuration Maximum MW  2014 *{describe configuration} {insert quantity in MW}*  *{describe configuration} {insert quantity in MW}*  *{describe configuration} {insert quantity in MW}*  *{repeat for additional configurations}*  2015 *{describe configuration} {insert quantity in MW}*  *{describe configuration} {insert quantity in MW}*  *{describe configuration} {insert quantity in MW}*  *{repeat for additional configurations}*  2016 *{describe configuration} {insert quantity in MW}*  *{describe configuration} {insert quantity in MW}*  *{describe configuration} {insert quantity in MW}*  *{repeat for additional configurations}*  **Shoulder Season**  **(Reference Conditions: 82o F and 65% relative humidity)**  Year Configuration Maximum MW  2014 *{describe configuration} {insert quantity in MW}*  *{describe configuration} {insert quantity in MW}*  *{describe configuration} {insert quantity in MW}*  *{repeat for additional configurations}*  2015 *{describe configuration} {insert quantity in MW}*  *{describe configuration} {insert quantity in MW}*  *{describe configuration} {insert quantity in MW}*  *{repeat for additional configurations}*  2016 *{describe configuration} {insert quantity in MW}*  *{describe configuration} {insert quantity in MW}*  *{describe configuration} {insert quantity in MW}*  *{repeat for additional configurations}* |
| **21** | **Start-up Charge:** |  | For each Completed Start, Buyer will pay the “Start-up Charge.” The Start-up Charge (expressed in $ per Completed Start) for each year of the Delivery Term is:  Year Start-up Charge  2014  *{insert charge in $ per Completed Start}*  2015  *{insert charge in $ per Completed Start}*  2016  *{insert charge in $ per Completed Start}*  *{In lieu of a specific Start-up Charge for each year, Bidder may propose (a) a base Start-up Charge expressed as $ per Completed Start applicable to the entire Delivery Term and (b) an annual escalator, which will be either CPI or PPI and will be applied on each anniversary of the start of the Delivery Term. The Start-up Charge will be the base Start-up Charge multiplied by the percentage change in the escalator from the start of the Delivery Term through the applicable anniversary of the start of the Delivery Term on which the annual escalator is applied. If Bidder chooses this option, Bidder should specify its proposed base Start-up Charge (in $ per Completed Start) and whether it elects the CPI or PPI escalator. For this purpose, CPI and PPI have the same meanings as specified in item 11 above.}*  *{The Start-up Charge proposed by Bidder should reflect no more than the actual start charge payable by Seller under any applicable long-term services agreement(s) or other comparable maintenance contract(s) for the combustion turbines at the Facility.}*  *{For dispatch periods greater than 24 hours after a Completed Start, Bidder may, but is not required to, propose an hourly charge (expressed in $ per additional run hour) for each additional hour of run time in excess of 24 hours (or other applicable run-hours based charge in addition to, or in lieu of, the Start-up Charge set forth above) that reflects no more than Seller’s actual cost under any applicable long-term services agreement(s) or other comparable maintenance contract(s) for the combustion turbines at the Facility.}*  “Completed Start” means a start-up of a combustion turbine at the Facility required to be undertaken solely as a result of an increase in dispatch by Buyer either from 0 MW to positive MW or from less than the minimum permitted dispatch level for a multiple combustion turbine operating configuration to greater than or equal to the minimum permitted dispatch level for such multiple combustion turbine operating configuration, during which start-up (i) an output level to Buyer at the Energy Delivery Point equal to the minimum permitted dispatch level for the dispatched operating configuration is achieved for at least thirty (30) consecutive minutes and (ii) the Facility is released unconditionally for ramping to, and the attainment of, any higher output level dispatched by Buyer, but excluding any such start-up that follows any shutdown that is not scheduled by Buyer (such as a shutdown resulting from a unit contingency or other limitation on the availability of the capacity of the Facility). |
| **22** | **Maximum Completed Starts:** |  | Buyer will have (a) a maximum number of Completed Starts per day equal to *{insert number; EAI prefers proposals that offer at least two Completed Starts here}* Completed Starts multiplied by the number of combustion turbines included in the capacity of the Facility allocated to Buyer and (b) a maximum number of Completed Starts per contract year equal to *{insert number}* Completed Starts multiplied by the number of combustion turbines included in the capacity of the Facility allocated to Buyer. |
| **23** | **Minimum Run Time:** |  | Buyer may schedule a shutdown of a combustion turbine following a Completed Start of such combustion turbine only after such combustion turbine has run at least *{insert number}* hours (excluding start-up time) since such Completed Start. |
| **24** | **Minimum Downtime:** |  | Buyer may schedule a Completed Start of a combustion turbine following a shutdown of such combustion turbine scheduled by Buyer only after such combustion turbine has been down at least *{insert number}* hours since such scheduled shutdown. |
| **25** | **Start-up Times and Start-up Gas Requirements:** |  | Seller requires the following amount of time to achieve a Completed Start (measured from the mechanical commencement of such Completed Start until achieved):  Type of Start Start-up Time  *{insert type of start} {insert start-up time}*  *{insert type of start} {insert start-up time}*  *{insert type of start} {insert start-up time}*  *{Please define with specificity each applicable type of start.}*  Seller estimates the following amount of gas required to achieve a Completed Start (measured from the mechanical commencement of such Completed Start until achieved):  Type of Start Estimated Start-up Gas  *{insert type of start} {insert start-up gas}*  *{insert type of start} {insert start-up gas}*  *{insert type of start} {insert start-up gas}* |
| **26** | **Maximum  Ramp Rates:** |  | The maximum ramp rate in each operating configuration corresponding to the capacity allocated to Buyer is as follows:  Configuration Maximum Ramp Rate  *{describe configuration} {insert quantity in MW/minute}*  *{describe configuration} {insert quantity in MW/minute}*  *{describe configuration} {insert quantity in MW/minute}*  These maximum ramp rates apply after the minimum permitted dispatch level for the applicable operating configuration has been achieved (*i.e.,* after the start-up period). |
| **27** | **Fuel Supply and Transport:** |  | Subject to the terms and conditions of the Definitive Agreement, Buyer will have responsibility for and bear the full costs (including any applicable gas taxes) of the arrangement, procurement, transportation, nomination and delivery of fuel up to the Gas Delivery Point(s) for the performance of fuel-conversion Services by Seller under the Definitive Agreement (“Contract Gas”). The Gas Delivery Point(s) are *{describe the location of the Gas Delivery Point(s) at which Contract Gas will be delivered to Seller and measured}*.  The supplier(s) and transporter(s) of Contract Gas and other persons providing services with respect to Contract Gas will be selected by Buyer, and the terms of service with such supplier(s), transporter(s) or persons will be as agreed to by Buyer, in each case, in its sole and absolute discretion. Contract Gas will be delivered by Buyer to each Gas Delivery Point at the pressure then in effect in the pipeline of the transporter immediately upstream of or at such Gas Delivery Point.  Seller will (i) cooperate and timely provide all materials and information requested by Buyer to facilitate Buyer’s ability to make timely arrangements for and to arrange, procure, transport, nominate and deliver Contract Gas to the Gas Delivery Point in connection with the Definitive Agreement, (ii) operate and maintain the gas-interconnection facilities in accordance with the requirements of the Facility’s gas interconnection arrangements, and (iii) otherwise comply with Seller’s obligations under the gas interconnection arrangements.  Seller will be responsible for and bear the full costs of (i) the transportation and delivery of Contract Gas from and after the Gas Delivery Point(s) to the generating units at the Facility and (ii) the procurement, transportation, storage, use, loss or disposition of gas other than Contract Gas. Seller covenants that, throughout the Delivery Term, all Contract Gas delivered to the Gas Delivery Point(s) will be used and consumed exclusively by the capacity of the Facility allocated to Buyer.  Buyer’s sole and exclusive liability to Seller for any failure of Buyer to deliver Contract Gas to the Gas Delivery Point(s) as required by the Definitive Agreement will be the payment of related imbalance charges to the extent provided in item 28 below.  *{Seller should describe the fuel supply and fuel transportation arrangements currently in place, including identifying the associated pipelines and interconnection points and indicating whether firm or interruptible and whether they include swing capability. In addition, Seller should describe its historical fuel costs. Finally, Seller should describe any additional fuel supply and fuel transportation that are available to support the Definitive Agreement, including whether firm fuel transportation is available on any pipeline(s) to which the Facility is interconnected, and any other fuel considerations.}* |
| **28** | **Operation and Maintenance Costs/ Imbalances:** |  | Without limiting Buyer’s Capacity Payment, Variable Payment and Start-up Payment obligations provided in this Term Sheet Template and except to the extent otherwise expressly provided in this Term Sheet Template, Seller will bear all costs and expenses of any kind or character incurred in connection with the ownership, leasing, financing, operation, maintenance, use, testing, repair or replacement of the Facility (or any part thereof), including the real property interests related thereto, or the conduct of business by Seller, including the provision or delivery of capacity and capacity-related benefits, energy and ancillary services, and the performance of fuel-conversion services, under the Definitive Agreement. Without limiting the foregoing, Seller will be responsible for any balancing authority (including applicable regional transmission organization or independent system operator) membership, transaction or other fees or charges; penalties, fees, assessments or other costs or charges for failure to satisfy any policy, rule, guideline, procedure, protocol, standard, criterion or requirement of the transmission provider, any market monitor, the independent coordinator of transmission or the balancing authority (including any applicable regional transmission organization or independent system operator) (“BA Penalties”); gas and electric imbalance charges; integration charges; ancillary services and other balancing authority (including any applicable regional transmission organization or independent system operator) services (including regulation); and similar costs and charges associated with the ownership, leasing, financing, operation, maintenance, use, testing, repair or replacement of the Facility (or any part thereof), including the real property interests related thereto, or the conduct of business by Seller, including the provision or delivery of capacity and capacity-related benefits, energy and ancillary services, and the performance of fuel-conversion services, under the Definitive Agreement (including costs or charges associated with any offer or bid made by Buyer at the Energy Delivery Point and, if the balancing authority at the Energy Delivery Point does not recognize physical delivery at the Energy Delivery Point (*e.g.*, because there is neither a generation resource nor a point of importation into such balancing authority at the Energy Delivery Point), costs or charges associated with any virtual offer or bid made by Buyer at the Energy Delivery Point to synthetically create such physical delivery), in each case as now or in the future assessed (including, if applicable, after the balancing authority area that includes the Energy Delivery Point becomes subject to a regional transmission organization or independent system operator or any other implementation of a marketplace), but in each case excluding imbalance charges payable by Buyer pursuant to the immediately following paragraph and BA Penalties incurred by Seller solely as a result of (i) compliance by Seller with a dispatch notice issued by Buyer that requires Seller to violate (A) a directive or other instruction communicated by the balancing authority to Buyer in its role as market participant pursuant to item 17 above that has not been communicated to Seller or (B) a balancing authority requirement to generate (or not generate) a product expressly “tagged,” scheduled, offered and/or bid by Buyer pursuant to item 17 above that is triggered solely by Buyer’s “tags,” schedules, offers and/or bids or (ii) Buyer “tagging,” scheduling, offering and/or bidding the capacity and capacity-related benefits, energy and ancillary services in a manner that violates balancing authority requirements. If Buyer is invoiced for or otherwise assessed any amounts that are the responsibility of Seller under this or the following paragraph, Seller will promptly pay such amounts to Buyer.  Without limiting the immediately preceding paragraph, Seller will be responsible and pay for all gas and electric imbalance charges (regardless of whether assessed against Seller or Buyer) arising out of or in connection with the Definitive Agreement, except that Buyer will be responsible for (i) any electric imbalance charges resulting solely from Buyer submitting a “tag” or schedule to the balancing authority pursuant to item 17 above that is inconsistent with Buyer’s dispatch notice to Seller and (ii) any gas imbalance charges resulting solely from Buyer submitting nominations to the gas transporters pursuant to item 27 above that are inconsistent with Buyer’s dispatch notice to Seller and the associated Guaranteed Heat Rate (ignoring, for this purpose only, the proviso to the definition of Guaranteed Heat Rate as it relates to limitations known to Buyer at the time of nomination). |
| **29** | **Planned Maintenance:** |  | “Planned Maintenance” refers to maintenance of the Facility (or any portion thereof) that (i) is scheduled in advance with Buyer in accordance with the terms of the Definitive Agreement and has a predetermined start date and duration (*e.g*., annual overhaul, inspections, testing) and (ii) includes a reduction in the availability of the capacity or operation of the Facility.  All maintenance of the Facility (or any portion thereof) that has a predetermined start date and duration and includes a reduction in the availability of the capacity or operation of the Facility is required to be coordinated and scheduled in accordance with the Definitive Agreement as Planned Maintenance. Seller will have the right to schedule and conduct Planned Maintenance only during a March/April maintenance period and an October/ November maintenance period.  During the Delivery Term, Seller will deliver to Buyer its proposed schedule for Planned Maintenance on or before (i) in respect of the March/April maintenance period, September 1 of the preceding year, and (ii) in respect of a October/November maintenance period, February 1 of the calendar year in which such maintenance period will occur. The Parties will then finalize a mutually acceptable schedule for Planned Maintenance.  Affected Capacity resulting from Planned Maintenance will be excluded in determining DCi for purposes of the calculating Monthly Availability, except to the extent of Equivalent Planned Maintenance Hours exceeding a maximum number of Equivalent Planned Maintenance Hours per contract year (“Excess Equivalent Planned Maintenance Hours”), all as set forth in item 12 above.  “Equivalent Planned Maintenance Hours” means (i) the product of (a) the Dependable Capacity allocated to Buyer unavailable or limited due to Planned Maintenance, expressed in MW, multiplied by (b) the period of such Planned Maintenance, expressed in hours (or any portion thereof), divided by (ii) the Dependable Capacity allocated to Buyer.  The maximum number of Equivalent Planned Maintenance Hours in each contract year will be calculated as follows for purposes of determining Excess Equivalent Planned Maintenance Hours:  (i) one combustion inspection may be performed for each combustion turbine providing the Dependable Capacity after every *{insert number of run hours}* run hours of such combustion turbine for up to *{insert number of EPMHs}* Equivalent Planned Maintenance Hours for each inspection; provided, however, that this clause (i) will not apply during multipliers of run hours when clause (ii) or clause (iii) below applies;  (ii) one hot gas inspection may be performed for each combustion turbine providing the Dependable Capacity after every *{insert number of run hours}* run hours of such combustion turbine for up to *{insert number of EPMHs}* Equivalent Planned Maintenance Hours for each inspection; provided, however, that this clause (ii) will not apply during multipliers of run hours when clause (iii) below applies;  (iii) one “major” inspection may be performed for each combustion turbine providing the Dependable Capacity after every *{insert number of run hours}* run hours of such combustion turbine for up to *{insert number of EPMHs}* Equivalent Planned Maintenance Hours for each inspection;  (iv) a steam turbine “minor” inspection may be performed for each steam turbine providing the Dependable Capacity after every *{insert number of run hours}* run hours of such steam turbine for up to *{insert number of EPMHs}* Equivalent Planned Maintenance Hours for each “minor” inspection; provided, however, that this clause (iv) will not apply during multipliers of run hours when clause (v) below applies; and  (v) a steam turbine “major” inspection may be performed for t each steam turbine providing the Dependable Capacity after every *{insert number of run hours}* run hours of such steam turbine for up to *{insert number of EPMHs}* Equivalent Planned Maintenance Hours for each “major” inspection;  provided, however, that, if the number of run hours indicated above are expected by Seller to occur during periods other than the March/April maintenance period or October/November maintenance period, Seller will schedule any performance of the applicable inspection during the March/April maintenance period or October/November maintenance period immediately preceding their occurrence, notwithstanding the foregoing limitations; and provided, further, that, in the event that two or more of a major inspection under clause (iii) above or a steam turbine “minor” inspection or “major” inspection under clause (iv) or clause (v) above are expected to occur within the same twelve (12)-month period according to the parameters set forth above, Seller will use commercially reasonable efforts to schedule the outages related thereto to occur during the same period, and, in order to do so, may perform the affected outages earlier than would apply according to the foregoing limitations. For the avoidance of doubt, the obligations of Seller described in the foregoing provisos will not apply when the latter of the two maintenance periods referenced will occur after the expiration of the Delivery Term (or extended Delivery Term).  *{The run-hour intervals and maximum Equivalent Planned Maintenance Hours per inspection proposed by Bidder in clauses (i)-(v) above should be reasonable and should track the original equipment manufacturer requirements. Seller will be required to provide and certify the applicable run hours of the generating unit(s) providing the Dependable Capacity (since first operation of such generating unit and since the most recent inspection of each applicable type described in clauses (i)-(v) above) as of the execution of any Definitive Agreement arising herefrom, the commencement of the Delivery Term and at periodic intervals thereafter. Bidder must provide with its proposal the applicable run hours of the generating unit(s) providing the Dependable Capacity (since first operation of such generating unit and since the most recent inspection of each applicable type described in clauses (i)-(v) above) as of the time of such proposal.}* |
| **30** | **Force Majeure:** |  | “Force Majeure” means any event that meets all of the following criteria: (i) the event occurs after the execution of the Definitive Agreement; (ii) the event and its effects are not within the reasonable control, directly or indirectly, of the Party claiming Force Majeure (including its direct and indirect contractors, subcontractors and suppliers); (iii) the event and its effects are unavoidable or could not be prevented, overcome or removed by the reasonable efforts and diligence of the Party claiming Force Majeure (including its direct and indirect contractors, subcontractors and suppliers); (iv) the event and its effects do not result from such party’s negligence or fault (including any breach by such party of the Definitive Agreement) or the negligence or fault of its direct or indirect contractors, subcontractors or suppliers; and (v) the event causes the Party claiming Force Majeure, despite such party’s (including its direct and indirect contractors, subcontractors and suppliers) use of reasonable efforts and diligence, to be actually delayed in performing, or unable to perform, its obligations under the Definitive Agreement, in whole or in part (for reasons other than economic hardship, including lack of money). Provided the event meets all of the criteria described above, Force Majeure will include: natural disasters; landslides; drought; fire; flood; earthquake; hurricanes; tornados; tsunamis; hail and ice and ice storms that are abnormally severe for the period of time when, and the area where, such weather event or condition occurs; epidemic; war (whether declared or undeclared) or other armed conflict; riot; explosions; civil disturbance; sabotage; vandalism; terrorism; documented threats of terrorism; and blockades.  Force Majeure will not include: (a) mechanical failure or other breakdown, flaw, defect, or failure of equipment or systems not the direct or proximate result of acts of God (which acts of God will include floods, earthquakes, hurricanes, tornadoes and lightning); epidemics; war; riots; civil disturbances; and, subject to clause (b) of this sentence, sabotage; (b) sabotage by employees, agents, representatives, or direct or indirect contractors, subcontractors or suppliers of the Party claiming Force Majeure; (c) delay in obtaining, or failure to obtain or revocation of, a permit, consent, license or other authorization; (d) any event stated in the technical specifications of the Facility to be within the tolerance of the Facility; (e) the failure or other act or omission of employees, agents, representatives, or direct or indirect contractors, subcontractors or suppliers of the Party claiming Force Majeure (including the failure of a direct or indirect contractor, subcontractor or supplier to furnish machinery, spare parts, materials, consumables (including fuel), labor, equipment or services in accordance with its contractual obligations) or any non-delivery, delayed delivery, shortages or other unavailability of machinery, spare parts, materials, consumables (including fuel), labor, equipment or services (including any interruption or curtailment of fuel transportation or electric transmission), unless (A) the Party claiming Force Majeure has a firm contract for the applicable service or item and (B) the provider, if it were a party to the Definitive Agreement, would be able to claim Force Majeure for the same; (f) any weather event or condition that is not abnormally severe for the period of time when, and the area where, such weather event or condition occurs; (g) Seller’s ability to sell the capacity and capacity-related benefits, energy and/or ancillary services at a price greater than provided for in the Definitive Agreement; (h) a party’s financial inability to perform; (i) events that affect the cost of equipment or materials or other costs of owning, operating, or maintaining the Facility or changes in market conditions affecting the economics of either party (including a change in commodity prices or increased inflation) or any other economic hardship (including lack of money); or (j) labor strikes, slowdowns or stoppages.  If Buyer is the Party claiming Force Majeure and does not overcome the Force Majeure and resume performance of its obligations under this Agreement within six (6) months after the inception of such Force Majeure, then Buyer may, at any time following the end of such six (6)-month period, and for so long as performance continues to be delayed or prevented by Force Majeure, terminate the Definitive Agreement upon notice to Seller. Neither Party will have any liability arising out of a termination effectuated in accordance with this paragraph. |
| **31** | **Replacement Products:** |  | When Seller is not capable of providing the full availability of capacity and capacity-related benefits, energy and/or ancillary services from the Facility, Seller may, but will not be obligated to, offer to provide and deliver replacement capacity and capacity-related benefits, energy and/or ancillary services. In such event, Buyer will, in its sole and absolute discretion, have the right to accept or reject the offer of replacement. If Buyer receives such an offer and Buyer, in its sole and absolute discretion, accepts such offer in writing, such replacement product(s) will be treated the same as if Seller provided the product(s) from the Facility for the period for which Buyer has agreed that Seller may provide such replacement product(s), except to the extent the parties have agreed otherwise in writing (including in the agreement(s) permitting Seller to provide such replacement product(s)). Without limiting and subject to the foregoing, replacement capacity will be treated as Dependable Capacity for all purposes under the Definitive Agreement, including the availability calculations. |
| **32** | **No QF Put:** |  | Notwithstanding any other provision of the Definitive Agreement, Seller waives any and all rights to deliver “qualifying facility” energy from the Facility (or, in the event Bidder proposes to allocate to Buyer a portion of the nameplate capacity of the Facility, the corresponding portion thereof) to the host utility (or Buyer) at any time during the Delivery Term and expressly agrees not to deliver “qualifying facility” energy from the Facility (or, in the event Bidder proposes to allocate to Buyer a portion of the nameplate capacity of the Facility, the corresponding portion thereof) to the host utility (or Buyer) at any time during the Delivery Term. |
| **33** | **Change in Law:** |  | The Parties acknowledge the possibility that a change in law may occur that requires or will require one or both of the Parties to incur additional costs (including environmental costs) during the Delivery Term beyond those projected to be incurred by such Party as of the date of execution of the Definitive Agreement. Notwithstanding the foregoing, if such a change in law occurs, the other Party will not be required to share in, reimburse or otherwise pay all or any portion of such additional costs[, except as otherwise expressly provided below] *{include bracketed language only if Bidder makes a proposal as outlined below}*.  *{EAI is willing to consider proposals for Buyer to share in the risk of Environmental Changes in Law, but makes no commitment, and is under no obligation, to accept any such proposal or agree to assume any such risk. Any such proposal will be the subject of negotiation only if, in EAI’s sole and absolute discretion, the proposal is part of a bid that merits further consideration. EAI’s acceptance of sharing in the risk of Environmental Changes in Law will be predicated on, among other things, full regulatory recovery of associated Environmental Change in Law costs and the inclusion of deductibles and caps on Buyer’s sharing of Environmental Change in Law costs. Buyer will not share in the risk of any change in law that is not an Environmental Change in Law. For purposes of this item 33:*   * *“Environmental Change in Law” means (i) the enactment, promulgation, issuance or adoption by a governmental authority with jurisdiction of new environmental legislation, rules or regulations or (ii) the amendment by a governmental authority with jurisdiction of existing environmental legislation, rules or regulations, in the case of each of clause (i) and (ii), that occurs after the date of execution of the Definitive Agreement, is binding upon Seller, applies to or in respect of the Facility, modifies the requirements in respect of the Facility with respect to Carbon Matters, and is of general applicability to electric power generation facilities located in the state where the Facility is located (or the owners thereof); provided, however, that “Environmental Change In Law” excludes, without limitation, any enactment, promulgation, issuance, adoption, or amendment described in clause (i) or (ii) above that (A) results from any action or omission of (1) Seller, its affiliates, or any of their respective contractors or subcontractors of any tier (including the operator of the Facility), employees, agents or representatives or (2) any steam host or other customer (other than Buyer) of the Facility, including any violation of law or permit or modification of the Facility by any such person, (B) was not beyond the reasonable control of any such person or, with the exercise of due diligence, could reasonably have been prevented, avoided, overcome or removed by such person, or (C) was enacted, promulgated, issued, adopted, or amended, or was pending or officially proposed, as of the date of execution of the Definitive Agreement but takes effect after the date of execution of the Definitive Agreement; and* * *“Carbon Matters” means (i) taxes imposed by a governmental authority with jurisdiction the payment of which is based specifically on the carbon content of natural gas used as fuel for, or of emissions into the atmosphere from, an electric power generation facility and (ii) allowances by a governmental authority with jurisdiction under a mandatory federal, regional or state cap and trade program to emit up to a specific quantity of CO2 during a specified period.*   *If Bidder proposes for Buyer to share in the risk of Environmental Changes in Law, Bidder should describe the terms of its proposal, including the following features:*   * *the basis for allocating Environmental Change in Law costs to Buyer (e.g., pro rata share based on energy taken by Buyer);* * *deductibles (i.e., the amounts of Environmental Change in Law costs that would otherwise be allocated to Buyer that will be exclusively for Seller’s account before Buyer’s obligation to share in such costs) on a per occurrence and/or on an aggregate basis;* * *a cap and/or termination threshold (i.e., the amount or percentage increase in Buyer’s costs or other event that will trigger Buyer’s right to terminate the Definitive Agreement or its participation in any further sharing of Environmental Change in Law costs), and whether such amount is calculated on an aggregate, per occurrence, percent increase in monthly costs or other basis; and* * *a “dead zone” period, if any, after the start of the Delivery Term during which no Environmental Change in Law costs will be borne by Buyer.*   *In its proposal, Bidder may not propose for Buyer to pay more than the net increase or decrease (as the case may be) in the reasonable, actual, direct, and verifiable out-of-pocket costs (without mark-up) that Seller incurs in the provision to Buyer of, and only to the extent incurred in the provision to Buyer of, Dependable Capacity allocated to Buyer or associated energy and ancillary services as a direct and proximate result of, and only to the extent required by, the Environmental Change In Law. In addition, if more than one commercially reasonable option is available to comply with an Environmental Change In Law, Buyer’s share of the costs associated with such Environmental Change in Law may not exceed Buyer’s share that would apply if the least cost commercially reasonable option (as measured over the remaining Delivery Term) was selected (irrespective of the option actually selected). Any proposed mechanism/formula for sharing in the risk of Environmental Changes in Law should be transparent and capable of verification by Buyer. Further, the projected result of any such proposed mechanism/formula may not exceed the projected amount of the net increase or decrease (as the case may be) in the reasonable, actual, direct, and verifiable out-of-pocket costs (without mark-up) described above.*  *EAI prefers that Bidders provide a proposal to share in the risk of Environmental Changes in Law rather than assuming this risk and incorporating the uncertainty in the proposal pricing.}* |
| **34** | **Credit Support:** |  | EAI will apply its own internal procedures to determine an internal EAI credit rating for each Bidder. These procedures include, among other things, a credit analysis of financial statements with a focus placed on appropriate leverage, liquidity and profitability metrics. If the Bidder has a published credit rating, the internal EAI credit rating will, in most cases, be equivalent to such published credit rating.  Based on the Bidder’s internal EAI credit rating, EAI will determine whether the Bidder will initially be required to provide credit support under the Definitive Agreement. For rough guidance, a Bidder with an internal EAI credit rating equivalent to BB+ or below from S&P or Ba1 or below from Moody’s will initially be required to provide credit support. Bidders that are required to provide credit support will be required to provide an amount of credit support commensurate with net exposure to that Bidder, as determined by EAI. A Bidder not initially required to provide credit support under the Definitive Agreement will be required to provide credit support during the Delivery Term if such Bidder’s credit rating falls below BBB- from S&P or Baa3 from Moody’s. Required credit support could take the form of:   * a parent guaranty * a letter of credit from a bank acceptable to EAI * cash collateral * other forms of credit support suggested by Bidder * combinations of the foregoing,   provided that any form of credit support provided by Bidder is subject to EAI’s satisfaction with the form and substance of such credit support. EAI will undertake a similar process with respect to a credit support provider as described above for the Bidder in order to determine an internal EAI credit rating for such credit support provider. Bidder will get credit toward its credit support requirements for the credit support provided by such credit support provider if and only if the internal EAI credit rating for such credit support provider meets the requirements for such type of credit support. For rough guidance, a credit support provider with an internal EAI credit rating equivalent to BBB- or higher from S&P and Baa3 or higher from Moody’s that is the direct or indirect parent of Seller will be eligible to provide a parent guaranty. The internal EAI credit rating requirements are higher for a bank providing a letter of credit or holding cash collateral. If the internal EAI credit rating assigned to a credit support provider is sufficiently reduced at any time during the term of the Definitive Agreement, Buyer will be required to replace the credit support being provided by such credit support provider. |
| **35** | **Conditions Precedent:** |  | Buyer’s obligations under the Definitive Agreement will be conditioned upon the fulfillment or express waiver, by Buyer, of all of the following conditions:   1. Buyer has obtained from FERC and/or each of the state or local governmental authorities having jurisdiction over Buyer or Buyer’s operations (i) regulatory approval of the Definitive Agreement and the transaction thereunder or contemplated thereby, including approval of the full recovery of all Buyer costs associated with the Definitive Agreement (through base rates, fuel adjustment charges, and/or such other rates or charges as may be applied pursuant to a rider or otherwise) pursuant to a finding that the participation by Buyer in the Definitive Agreement is prudent and in the public interest, and/or (ii) any other regulatory treatment in connection with the Definitive Agreement and any transaction contemplated thereby desired by Buyer, including with respect to timing, scope, means of recovery, and any certificate of convenience and necessity, which approvals are, in each case, final and non-appealable and on terms and conditions acceptable to Buyer in its sole and absolute discretion; 2. Buyer has obtained the governmental approvals and other third-party consents necessary or prudent for Buyer to enter into the Definitive Agreement or to perform its obligations thereunder, which approvals and consents are, in each case, on terms and conditions acceptable to Buyer in its sole and absolute discretion; 3. Buyer has obtained the consents, approvals and authorizations contemplated by item 36 below on terms and conditions acceptable to Buyer in its sole and absolute discretion; 4. the Facility (or, in the event Bidder proposes to allocate to Buyer a portion of the nameplate capacity of the Facility, the corresponding portion thereof) to the host utility (or Buyer) has qualified as a firm network resource with deliverability on a firm network resource basis to Buyer’s load served from the EAI Transmission System and Buyer has otherwise obtained transmission service from the Energy Delivery Point in respect of the capacity and capacity-related benefits, energy and ancillary services to be provided under the Definitive Agreement on terms and conditions acceptable to Buyer in its sole and absolute discretion, including terms and conditions (i) concerning the timing, installation, location, cost, or cost recovery of transmission upgrades or other transmission improvements, (ii) relating to deliverability, re-dispatch or outages of any generation resource of any of the Entergy operating companies (including any resource under contract), or (iii) that may, if accepted or given effect, adversely affect reliability or operation of the EAI Transmission System or resources therein; 5. if the Facility is not directly interconnected to the EAI Transmission System (or otherwise has an Energy Delivery Point that is beyond the Facility’s point of interconnection), Seller has obtained firm transmission service to the Energy Delivery Point in respect of the capacity and capacity-related benefits, energy and ancillary services to be provided under the Definitive Agreement; 6. Buyer has obtained fuel supply and transportation service in respect of the Contract Gas on terms and conditions acceptable to Buyer in its sole and absolute discretion; 7. if required, credit support meeting the requirements of the Definitive Agreement has been posted by Seller; and 8. certificates of insurance evidencing the coverages required by the Definitive Agreement have been obtained and submitted to Seller.   In addition, other Buyer conditions precedent may be required, depending on the transmission path, other operational aspects of the specific proposed generating units, the status of applicable laws, rules and regulations and other factors as Buyer deems relevant in its sole and absolute discretion. |
| **36** | **Management Approval:** |  | The Definitive Agreement is subject to review and approval by, and will be contingent upon the consents, approvals and authorizations from, the Entergy Corporate Risk office, the Board of Directors and such other governing bodies as Buyer deems necessary or advisable in its sole and absolute discretion. |
| **37** | **Select Contract Terms and Conditions:** |  | The Definitive Agreement will also include, among others, the following covenants, terms and/or conditions:   * Seller will operate, maintain, replace, repair and test the Facility in accordance with (i) accepted electrical practices, (ii) applicable permits, consents and laws, (iii) the electric interconnection agreement, gas interconnection arrangements and other project documents and (iv) the Definitive Agreement; * Seller will maintain adequate reserves for, and schedule and perform according to the Definitive Agreement, required maintenance; and * Seller will insure against all insurable risks with coverage in an amount not less than full replacement cost and on terms specified in the Definitive Agreement. |
| **38** | **Events of Default:** |  | The Definitive Agreement will include the following events of default of Seller:   * failure to pay amounts due; * breach of representations and warranties; * breach of covenants; * the average of the Monthly Availabilities during any Rolling 12 Month Period is less than the Rolling 12 Month Availability Requirement of eighty-five percent (85%), where “Rolling 12 Month Period” means, as of the end of any month during the Delivery Term, the twelve (12)-month period that includes such month and the preceding eleven (11) months that occurred during the Delivery Term, provided that, for the first contract year, the measurement of the Rolling 12 Month Period will begin at the end of the sixth (6th) month of such contract year, at which time and thereafter for the remainder of the first contract year, the Rolling 12 Month Period will be determined using the months then elapsed in the Delivery Term; * bankruptcy, dissolution or liquidation of Seller; * failure to provide or maintain required credit support; * failure of the resulting, surviving or transferee entity in a merger or sale of all or substantially all of the assets of Seller to assume such party’s obligations under the Definitive Agreement; * assignment by Seller of the Definitive Agreement, including by merger, consolidation or sale of all or substantially all of its assets, except as permitted by the Definitive Agreement; * Seller sells, assigns or otherwise transfers, or commits to sell, assign or otherwise transfer, the capacity, capacity-related benefits, energy or ancillary services that are subject to the Definitive Agreement, or any portion thereof, to any person other than Buyer; * Seller makes any material misrepresentation or material omission in any availability report, metering report or invoice required to be made or furnished by Seller pursuant to the Definitive Agreement or Seller’s actual fraud, tampering with Buyer-owned facilities or material intentional misrepresentation or misconduct in connection with the Definitive Agreement or operation of the Facility; * default of Seller under any agreements relating to indebtedness for borrowed money in excess of a specified aggregate amount; * default of Seller under, or failure to maintain in effect, any project document (including the electric interconnection agreement, any transmission service agreement and the gas interconnection arrangements); * Seller’s abandonment of operation of the Facility (or any portion thereof affecting its obligations under the Definitive Agreement); * the commencement of the Delivery Term is delayed as a result of the occurrence of one or more Delivery Delay Conditions for a period of six (6) months or more from the date that the Delivery Term would have commenced without the occurrence thereof; and * Seller’s failure to maintain in effect any agreement required to deliver energy to the Energy Delivery Point. |
| **39** | **Termination Rights:** |  | The Definitive Agreement will contain provisions entitling a Party the right to terminate the Definitive Agreement upon the occurrence and continuation of an event of default by the other Party and to calculate termination damages based on the costs, gains or losses incurred by the non-defaulting Party arising out of termination of the Definitive Agreement. If the termination damages are negative, the non-defaulting Party will not be obligated to pay such amount to the defaulting Party. |
| **40** | **Audit Rights:** |  | Buyer will have the right to examine the books and records of Seller and any affiliates of Seller involved, directly or indirectly, in the transactions or actions contemplated by the Definitive Agreement, including the records for the Facility, which records will include (x) actual generating records for the Facility and (y) copies of contracts evidencing Seller’s gas interconnection arrangements, in each case to the extent reasonably necessary or appropriate to verify, among other things, (a) the accuracy of any statement, charge or computation made pursuant to the provisions of the Definitive Agreement or (b) Seller’s performance under or compliance with the terms and provisions of the Definitive Agreement. Seller will be responsible for ensuring that all first-tier and lower-tier suppliers, vendors, agents, contractors and representatives of Seller or its affiliates performing work or providing services relating to the Facility (and, to the extent that Seller is not the owner of the Facility, the owner(s)) commit to supply to Seller, and allow Seller to freely provide to Buyer, the records supporting any cost or charge paid by Seller and passed on to Buyer according to the terms of the Definitive Agreement. Any information obtained by Buyer under its audit rights will be required to be kept confidential pursuant to the confidentiality section of the Definitive Agreement. As a condition precedent to the Definitive Agreement becoming effective, to the extent that Seller is not the owner of the Facility, Seller will provide to Buyer evidence satisfactory to Buyer of its ability and rights to facilitate Buyer’s access to the books and records of such owner pursuant to the provisions of the audit section of the Definitive Agreement. |
| **41** | **Seller’s Use of Real-time Information:** |  | Seller will limit the availability of real-time generation, dispatch and outage information related to the Facility to its designated asset management personnel primarily responsible for operation and management of the Facility. Seller and such personnel may use all such real-time information only for the limited purpose of operating the Facility and otherwise performing its obligations under the Definitive Agreement. Seller and such personnel will not use such real-time generation, dispatch and outage information to enable Seller to engage in any other activity. |
| **42** | **AGC Capability:** |  | *{Is the Facility capable of, and is Bidder willing to offer, automatic generation control (AGC)?* *If so, please describe such capability and any operating limitations or other terms and conditions that apply to operation under AGC that differ from those otherwise specified in this Term Sheet Template.}* |
| **43** | **Availability for “Pseudo Tie” to EAI Balancing Authority:** |  | *{For Facilities located outside the EAI balancing authority, please describe capability for or modifications required to establish at the interconnection point a non-physical electrical interface point (a “pseudo tie”) between the balancing authority in which the interconnection point is located and the EAI balancing authority, so that the Facility can be treated as a resource within the EAI balancing authority.}* |
| **44** | **Special Exceptions:** |  | *{If Bidder is not able to accept any of the terms and conditions set forth in this Term Sheet Template, Bidder should so indicate here and describe with specificity any terms and conditions that Bidder is able to offer in place of the terms and conditions to which Bidder takes exception.}* |