

# BALCH

& BINGHAM LLP

BEN H. STONE  
t: (228) 214-0402  
f: (888) 201-0157  
e: bstone@balch.com

June 9, 2017

Katherine Collier, Esq.  
Mississippi Public Service Commission  
501 North West Street, Suite 201A  
Jackson, MS 39201

**Re: Joint Petition of Mississippi Power Company and SR Meridian III, LLC for a Certificate of Public Convenience and Necessity Authorizing the Construction, Operation and Maintenance of Solar Energy Generating Facilities and Related Facilities in Lauderdale County, Mississippi**

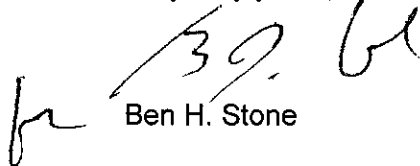
Dear Katherine:

On behalf of Mississippi Power Company and SR Meridian III, LLC, I have enclosed the original and twelve (12) copies of the Joint Petition of Mississippi Power Company and SR Meridian III, LLC for a Certificate of Public Convenience and Necessity Authorizing the Construction, Operation and Maintenance of Solar Energy Generating Facilities and Related Facilities in Lauderdale County, Mississippi. Also enclosed is a copy of this letter, which I will appreciate your file-stamping and returning to me. Please let me know if you have any questions regarding this matter.

Certain exhibits to the Joint Petition contain confidential and proprietary commercial and financial information and trade secret information of MPC, its agents and/or its vendors under Sections 25-61-9, 25-61-11, 75-26-3 and 79-23-1, as applicable, of the Mississippi Code of 1972, as amended, which we are filing with the Commission, Staff and their respective consultants under separate confidential cover pursuant to the Commission's Public Utilities Rules of Practice and Procedure.

Thank you for your assistance with this matter.

Very truly yours,



Ben H. Stone

BHS:hr

Enclosures

Katherine Collier, Esq.  
June 9, 2017  
Page 2

---

cc: Mr. Virden Jones  
Shawn Shurden, Esq.  
Frank Farmer, Esq.  
Chad Reynolds, Esq.  
Mr. Billy Thornton  
Mr. Stephen Stiglets  
Mr. Ben Vance  
Mr. Matthew H. Kisber  
Mr. Richard Johnson  
Mr. Matt Brown  
Mr. Reagan Farr  
Rod Clement, Esq.  
Kate Margolis, Esq.

**BEFORE THE MISSISSIPPI PUBLIC SERVICE COMMISSION**

**MISSISSIPPI POWER COMPANY  
EC-120-0097-00**

**SR MERIDIAN III, LLC**

**DOCKET NO. \_\_\_\_\_**

**IN RE:           JOINT PETITION OF MISSISSIPPI POWER COMPANY  
AND SR MERIDIAN III, LLC FOR A CERTIFICATE OF  
PUBLIC CONVENIENCE AND NECESSITY  
AUTHORIZING THE CONSTRUCTION, OPERATION  
AND MAINTENANCE OF SOLAR ENERGY  
GENERATING FACILITIES AND RELATED FACILITIES  
IN LAUDERDALE COUNTY, MISSISSIPPI**

**JOINT PETITION FOR CERTIFICATE  
OF PUBLIC CONVENIENCE AND NECESSITY**

COMES NOW, the Petitioners Mississippi Power Company ("MPC" or the "Company") and SR Meridian III, LLC ("Silicon Ranch"), by and through their undersigned counsel and pursuant to RP 7 of the Commission's Public Utilities Rules of Practice and Procedure, to jointly file with the Mississippi Public Service Commission (the "Commission") this their Joint Petition for Certificate of Public Convenience and Necessity (the "Petition") and for approval of a power purchase agreement for renewable solar energy, and would show unto the Commission the following:

**INTRODUCTION**

1.       MPC is a public utility as defined in Section 77-3-3(d)(i) of the *Mississippi Code of 1972, as amended*, and is engaged in the business of providing electric service to and for the public for compensation in the twenty three (23) counties of southeastern Mississippi, having its principal place of business at Gulfport, Mississippi. MPC's mailing address is Post Office Box 4079, Gulfport, Mississippi, 39502-4079.

2. MPC holds a Certificate of Public Convenience and Necessity issued in Docket No. U-99, as supplemented from time to time, authorizing its operations in certain areas in the twenty three (23) counties of southeastern Mississippi and is rendering service in accordance with its service rules and regulations and in accordance with schedules of rates and charges, all of which are a part of its tariff that has been previously approved by order of this Commission.

3. MPC is a Mississippi corporation. A copy of its corporate charter, articles of incorporation, the names and addresses of its board of directors and officers, the names of all persons owning fifteen percent (15%) or more of its stock, and a copy of its current balance sheet and income statement are on file with the Commission and are hereby incorporated by reference.

4. SR Meridian III, LLC, a Delaware limited liability company with a principal office address at 150 3<sup>rd</sup> Ave S, Suite 2000, Nashville, TN 37201 and registered agent office address at c/o C.T. Corporation System, 645 Lakeland East Drive, Suite 101, Flowood, MS 39232, is a special purpose entity created only for the purpose of owning and operating the solar generation facilities that the Petitioners request the Commission certify in this proceeding. The single member of SR Meridian III, LLC is Silicon Ranch Corporation, a Delaware corporation. Silicon Ranch Corporation is a full service certified solar energy integrator that provides engineering, design, construction, installation and operational services for solar power projects. Silicon Ranch is not, and does not intend to become, a public utility under the laws of the State of Mississippi. Silicon Ranch is, however, an "other person" within the meaning of Miss. Code Ann. § 77-3-14.

5. Because Silicon Ranch is not a public utility, any required documentation or information relating to its financial profile is provided as an attachment to Silicon Ranch's testimony filed herewith.

### **SOLAR PROJECT DESCRIPTION AND CERTIFICATE REQUEST**

6. MPC and Silicon Ranch are jointly seeking Commission approvals related to an approximately 52.5 MW AC (73 MW DC) solar photovoltaic energy generating facility located at a site situated in Lauderdale County, Mississippi ("the Project").

7. Silicon Ranch hereby requests a certificate of public convenience and necessity to construct, own, operate, and maintain the Project, which will be comprised of a solar array including approximately 570,000 solar panels. The Project is currently in the engineering phase, and the Project's commercial operation date is scheduled on or before December 31, 2019.

8. The Project is being constructed pursuant to a Power Purchase Agreement ("PPA") negotiated between MPC and Silicon Ranch. The Project's estimated construction cost ranges from \$90 million to \$110 million, inclusive of the required interconnection facilities. The cost of the Project will be funded entirely by Silicon Ranch, and Silicon Ranch will be responsible for the cost of all facilities and system upgrades that are required to interconnect the Project to the electric system (without reimbursements, refunds, or credits to Silicon Ranch). Furthermore, the parties are in the process of evaluating the feasibility of the interconnection of the facility to MPC's system, but they do not currently anticipate that any upgrades to MPC's transmission would be required. Therefore, the Project will not have a significant impact on MPC's rate base.

### **POWER PURCHASE AGREEMENT**

9. MPC hereby seeks Commission approval to include in rates the cost of the PPA with Silicon Ranch. Pursuant to the proposed PPA, beginning on the later of (i) the Day after the Commercial Operation Date or (2) the Day after all DNR Upgrades (if any) are completed and operational (as such capitalized terms are defined in the PPA), which Silicon Ranch anticipates

will be no later than January 1, 2020, MPC will take the entire output of solar energy produced by the Project as it is generated and will pay Silicon Ranch a rate per megawatt hour of energy delivered according to a levelized, fixed price schedule. The PPA will have a twenty-five (25) year service term, commencing upon commercial operation of the Project, and will deliver affordable energy to MPC below the Company's solar-weighted avoided cost of energy over the term of the PPA.

10. If the Commission timely certifies the Project, MPC expects that the Project will put downward pressure on MPC's rates over the term of the PPA, while providing MPC with the ability to: (1) serve its customers (at-large) with the renewable energy generated; or (2) use the renewable energy generated for any future program wherein MPC provides renewable energy to a customer(s) interested in purchasing the same; or (3) resell the renewable energy (or the associated and unbundled renewable energy credits) to third parties.

11. As with other purchased energy, the costs of the PPA would be included in and recovered through MPC's Fuel Cost Recovery Clause (FCR-1), as amended. Moreover, since the PPA does not include a capacity payment for which MPC could request a return on capacity, approvals under Miss. Code Ann. Sections 77-3-91 through -95 are not required.

12. The Project economics are based upon the eligibility of the Project for the thirty percent (30%) Federal Investment Tax Credit ("30% Federal ITC") incentive under Section 48 of the Internal Revenue Code. If the Project is placed in service before January 1, 2024, the Project will qualify for the 30% Federal ITC. The economic benefits associated with the Project are discussed in greater detail in the Petitioners' testimony filed herewith.

**SUPPORTING DOCUMENTATION AND INFORMATION**

13. In support of this Joint Petition, the Petitioners hereby submit the following information on which they will rely at any hearing on this request, all of which is incorporated herein by reference as if fully set forth herein:

- a. The sworn pre-filed direct testimony and exhibits of Mr. P.A. (Tony) Smith, Air Quality Programs Manager, Mississippi Power Company; and
- b. The sworn pre-filed direct testimony and exhibits of Matt Brown, Director, Utility Development and Strategy, Silicon Ranch Corporation.

14. The Petitioners further submit the following information and data pursuant to RP 7.102(2) and in satisfaction of the filing requirements listed in Schedule 3 of Appendix A of the Commission's Rules:

- a. Exhibit A to the Joint Petition, which is a list of the names and addresses of all interested persons as defined in RP 2.115.
- b. In addition, MPC is providing notice of this filing to each of its retail customers.

15. Pursuant to Mississippi law and the Rules, the Petitioners are only attaching the non-confidential portions of the Exhibits for filing in the public records of the Commission. Copies of such exhibits that contain confidential, commercial and financial information or information in the nature of a trade secret have been appropriately marked and are being filing under separate cover in accordance with RP 4.100(3) and 4.101(3) of the Commission's Rules. The Petitioners request that the Commission and Staff maintain this information as confidential and that, to the fullest extent permitted by law, it not be disclosed to any third parties.

16. Approval from health or pollution control authorities as is required in connection with the construction, acquisition, extension and operation of the facilities will be secured.

17. The name, address and telephone number of the MPC employee responsible for the Joint Petition and from whom information may be obtained is:

Mr. Billy F. Thornton  
Vice President, External Affairs  
Mississippi Power Company  
2992 West Beach Boulevard  
Post Office Box 4079  
Gulfport, MS 39502-4079  
Phone: (228) 865-5295  
[bfthornt@southernco.com](mailto:bfthornt@southernco.com)

with a copy to:

Ben H. Stone, Esq.  
Balch & Bingham LLP  
1310 25<sup>th</sup> Avenue  
Post Office Box 130  
Gulfport, MS 39501  
Phone: (228) 214-0402  
[bstone@balch.com](mailto:bstone@balch.com)

18. The name, address and telephone number of the Silicon Ranch employee responsible for the Joint Petition and from whom information may be obtained is:

President and CEO  
Matthew Kisber  
Silicon Ranch Corporation  
150 3<sup>rd</sup> Ave S, Suite 2000  
Nashville, TN 37201

with a copy to:

Vice Chairman and CFO  
Reagan Farr  
Silicon Ranch Corporation  
150 3<sup>rd</sup> Ave S, Suite 2000  
Nashville, TN 37201

19. The Petitioners have provided herewith all the information relevant to the Joint Petition and, therefore, request a waiver of each and every other filing requirement that may be prescribed by the Commission's Rules. The Petitioners seek expedited review, approval and certification of the Project by the Commission so that the Project can be constructed and placed in service on schedule.

WHEREFORE, PREMISES CONSIDERED, Mississippi Power Company and SR Meridian III, LLC pray that this Joint Petition be received and filed; that notice thereof be given by the Commission in the manner and form prescribed by law, returnable to a date certain; that this Commission consider the same as soon after that date as reasonably possible; and that after having fully considered all the relevant evidence, this Commission enter an order granting the Certificate of Public Convenience and Necessity to SR Meridian III, LLC and approving Mississippi Power Company's Power Purchase Agreement as requested in this Joint Petition.

RESPECTFULLY SUBMITTED, this the 9<sup>th</sup> day of June 2017.

MISSISSIPPI POWER COMPANY

BY: BALCH & BINGHAM LLP

BY:   
BEN H. STONE

SR MERIDIAN III, LLC

BY: BRADLEY ARANT BOULT CUMMINGS LLP

BY:   
KATE MARGOLIS

BEN H. STONE  
Mississippi Bar No. 7934  
RICKY J. COX  
Mississippi Bar No. 9606  
LEO E. MANUEL  
Mississippi Bar No. 101985

MICHAEL P. MALENFANT  
Mississippi Bar No. 104590  
BALCH & BINGHAM LLP  
1310 25th Avenue  
P. O. Box 130  
Gulfport, MS 39502-0130  
Telephone: (228) 864-9900  
Facsimile: (228) 864-8221

ROD CLEMENT  
Mississippi Bar No. 6294  
KATE MARGOLIS  
Mississippi Bar No. 99625  
BRADLEY ARANT BOULT CUMMINGS LLP  
One Jackson Place  
188 E. Capitol Street, Suite 400  
Jackson, MS 39201  
Phone: 601-948-8000  
rclement@bradley.com  
kmargolis@bradley.com

STATE OF MISSISSIPPI

COUNTY OF HARRISON

PERSONALLY appeared before me, the undersigned authority in and for the said County and State, within my jurisdiction, the within named RICKY J. COX, who after being duly sworn on oath acknowledged that he is Attorney for MISSISSIPPI POWER COMPANY, and that for and on behalf of the said MISSISSIPPI POWER COMPANY, and as its act and deed, he signed and delivered the above and foregoing instrument of writing for the purposes mentioned on the day and year therein mentioned, after first having been duly authorized by said so to do, and that the MISSISSIPPI POWER COMPANY statements contained in the foregoing instrument are true and correct to the best of his knowledge, information and belief.

  
\_\_\_\_\_  
RICKY J. COX

SWORN TO AND SUBSCRIBED BEFORE ME, this the 9<sup>th</sup> day of June 2017.



  
\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires \_\_\_\_\_

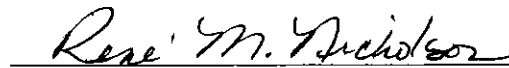
STATE OF MISSISSIPPI

COUNTY OF HINDS

PERSONALLY appeared before me, the undersigned authority in and for the said County and State, within my jurisdiction, the within named KATE MARGOLIS, who after being duly sworn on oath acknowledged that he is Attorney for SR Meridian III, LLC, and that for and on behalf of the said SR Meridian III, LLC, and as its act and deed, he signed and delivered the above and foregoing instrument of writing for the purposes mentioned on the day and year therein mentioned, after first having been duly authorized by said so to do, and that the SR Meridian III, LLC statements contained in the foregoing instrument are true and correct to the best of his knowledge, information and belief.

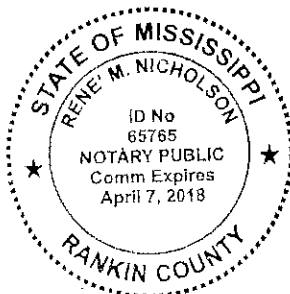
  
KATE MARGOLIS

SWORN TO AND SUBSCRIBED BEFORE ME, this the 9<sup>th</sup> day of June 2017.

  
NOTARY PUBLIC

My Commission Expires:

April 7, 2018



**CERTIFICATE OF SERVICE**

I, RICKY J. COX, counsel for Mississippi Power Company in the Joint Petition filed with the Mississippi Public Service Commission (the "Commission") of even date herewith do hereby certify that in compliance with Rule 6 of the Commission's Public Utilities Rules of Practice and Procedure (the "Rules"):

(1) An original and twelve (12) copies of the filing have been filed with the Commission by U.S. Mail to:

Ms. Katherine Collier  
Executive Secretary  
Mississippi Public Service Commission  
501 North West Street, Suite 201A  
Jackson, MS 39201

(2) An electronic copy of the filing has been filed with the Commission via e-mail to the following address:

efile.psc@psc.state.ms.us

(3) A copy of the Notice of Filing has been served upon each "interested person" listed in Exhibit B to this Petition via U.S. Mail, postage prepaid.

(4) The Petitioners have complied with or requested a waiver of all other requirements of this Commission's Rules.

THIS, the 9<sup>th</sup> day of June 2017.

  
\_\_\_\_\_  
Ricky J. Cox

**EXHIBIT A**

**RULE 2.115 INTERESTED PERSONS**

Randy Carroll  
East Mississippi EPA  
Chief Executive Officer  
P.O. Box 5517  
Meridian, MS 39302-5517

## DIRECT TESTIMONY

**OF**

**P. A. (TONY) SMITH**

**On Behalf of**

# MISSISSIPPI POWER COMPANY

**BEFORE THE MISSISSIPPI PUBLIC SERVICE COMMISSION**

DOCKET NO. \_\_\_\_\_

**Q. Would you please state your name, position and business?**

**A.** My name is P. A. (Tony) Smith. I am the Air Quality Programs Manager for Mississippi Power Company (MPC or the Company). My business address is P. O. Box 4079, Gulfport, MS, 39501.

**Q. Please describe your education and professional experience.**

A. I've been employed by MPC for over 35 years and have held positions in several areas of the Company including Generation, Marketing, and Compliance. Prior to my current position as Air Quality Programs Manager in our Environmental Affairs department, I managed two of the smaller generating plants in the MPC fleet. I've been involved in the assessment of renewable energy opportunities since 2009 and received a Renewable Energy Professional certification from the Association of Energy Engineers in 2011. I'm a graduate of the University of Southern Mississippi with a BSBA and have an associate's degree from Jones Junior College in Forestry.



1    **Q.    Were these exhibits prepared under your supervision and control?**

2    **A.    Yes, they were.**

3    **Q.    Do any of these exhibits contain information that is confidential in nature?**

4    **A.    Yes.    Exhibit\_\_\_\_(PAS-1), Exhibit\_\_\_\_(PAS-3), Exhibit\_\_\_\_(PAS-5), and**  
5           Exhibit\_\_\_\_(PAS-7) contain confidential commercial and financial information or  
6           information in the nature of a trade secret that are confidential and proprietary and  
7           that have commercial value and would place the Company and Silicon Ranch at a  
8           competitive disadvantage if publicly known. Additionally, MPC and Silicon  
9           Ranch have reciprocal contractual commitments to protect each party's  
10          confidential information. These Exhibits have been appropriately marked  
11          "confidential" and filed under separate confidential cover with the Commission  
12          and Mississippi Public Utilities Staff (Staff) pursuant to Mississippi law and the  
13          Commission's Rules.

14   **Q.    Why is MPC pursuing renewable resources, particularly in the context of**  
15   **this Project?**

16   **A.    The Company recognizes that renewable facilities like those currently before the**  
17          Commission present numerous potential benefits to MPC and its customers. MPC  
18          has taken great care to identify projects where energy will be provided below the  
19          Company's projected avoided cost over the term of the PPA, and, because the  
20          Company is paying only for energy received, no capital investment or fixed cost  
21          will be required. Furthermore, purchasing renewable energy allows the Company  
22          to mitigate the risk of future costly environmental regulations and provides

1 additional fuel diversity to the Company's generation portfolio. These factors all  
2 provide direct benefits to MPC's customers.

3 **Q. Please describe the structure of the PPA.**

4 **A.** MPC will take the entire output of solar energy as it is generated and will pay a  
5 rate per megawatt-hour of energy delivered according to a levelized, fixed price  
6 schedule. The term of the PPA is 25 years, commencing by January 1, 2020.  
7 MPC will receive title to all renewable energy credits (REC's) associated with the  
8 energy received, which it may use to serve its customers with renewable energy or  
9 resell, either bundled with energy or separately, to third parties. A copy of the  
10 PPA is provided in confidential Exhibit\_\_\_\_(PAS-1).

11 **Q. Will MPC make any capacity payments under the proposed PPA?**

12 **A.** No, MPC will not. As stated above, the Company is paying only for energy  
13 received; the proposed PPA will not provide capacity, but will provide energy at a  
14 price that is below MPC's projected solar-weighted avoided energy cost over the  
15 term of the PPA, and which, therefore, will benefit our customers.

16 **Q. Who will construct, own, operate, and maintain the solar facility?**

17 **A.** Silicon Ranch will construct, own, operate and maintain the solar facility.

18 **Q. Will MPC have to make a capital investment or pay any fixed costs?**

19 **A.** No. This PPA requires no capital investment by MPC, nor any fixed cost  
20 payment. The construction of all generating facilities associated with this PPA  
21 will be funded and owned entirely by Silicon Ranch. While it is currently  
22 anticipated that no additional transmission facilities will be required to

1 interconnect Silicon Ranch's project with MPC's system, feasibility studies are  
2 being performed to confirm what, if any, additional facilities will be required.

3 **Q. How did you evaluate this PPA?**

4 **A.** The PPA was evaluated based upon its expected energy benefits to customers  
5 relative to MPC's expected avoided energy cost throughout the PPA term. To  
6 determine this expected benefit, MPC multiplied the hourly expected output of the  
7 facility (MWh) by the PPA price (\$/MWh) to determine the hourly expected cost  
8 of the PPA. We then took the same hourly expected output of the facility and  
9 multiplied it by the hourly avoided energy cost (\$/MWh). The difference between  
10 the hourly avoided energy cost and the price, as calculated above is the expected  
11 benefit to customers. The term "solar-weighted" avoided energy cost is a way to  
12 express this hourly analysis on an annualized basis.

13 **Q. Did your economic evaluation indicate that the PPA is in the public interest?**

14 **A.** Yes. The primary test related to customer benefit analyzes whether the economic  
15 value of the contract to MPC is greater than or equal to the associated incremental  
16 contract costs. The PPA is within the public interest. A summary of MPC's  
17 economic analysis is presented in confidential Exhibit\_\_\_\_(PAS-3).

18 **Q. What are the risks associated with this PPA?**

19 **A.** There are two potential risks associated with this PPA. One risk is that the fuel  
20 prices assumed in MPC's avoided cost calculations do not materialize exactly as  
21 projected. If future gas prices turn out to be lower, over the entire term of the  
22 contract, than our current fuel forecast, the Project would be less attractive. There  
23 is also a risk that the counterparty Silicon Ranch defaults during the PPA term.

1 Both risks, and the steps taken to mitigate each, are discussed in greater detail  
2 below.

3 **Q. How did you address the fuel risk in your economic evaluation?**

4 **A.** To address the fuel price risk, MPC also evaluated this PPA under a range of  
5 reasonably possible fuel views that include assumptions regarding shale gas  
6 recoverable reserves, production costs, and exports. The result of the economic  
7 evaluation of this PPA over the range of fuel views is summarized in confidential  
8 Exhibit\_\_\_\_(PAS-3).

9 **Q. How does your gas price forecast compare to the Energy Information**  
10 **Administration's (EIA) Reference case forecast?**

11 **A.** The EIA annually produces an Annual Energy Outlook (AEO), which includes a  
12 Reference case scenario. The assumptions, modeling analysis and purpose behind  
13 the AEO Reference case differ from the assumptions and modeling analysis that  
14 produce the Company's forecasts but, nevertheless, the AEO 2016 Reference case  
15 natural gas price forecast is similar to the Company's B2017 moderate forecast, as  
16 shown in confidential Exhibit \_\_\_\_ (PAS-5).

17 **Q. Does the PPA benefit customers assuming EIA's gas price forecast?**

18 **A.** Although—for the reasons stated above—the EIA's Reference case is not a  
19 reliable utility tool for utility planning, the PPA would provide a net present value  
20 benefit to customers over the term of the contract if analyzed under the EIA's  
21 Reference case gas prices.

22 **Q. How does this PPA align with MPC's efforts to maintain fuel diversity that**  
23 **protects customers from fuel price swings?**

1    **A.**     This PPA provides a known price for a certain amount of energy for 25 years.  
2           This energy will not be subject to price fluctuations that we have seen for natural  
3           gas in the past, and expect to see again in the future. So this PPA would provide  
4           some measure of protection to customers from gas price fluctuations.

5    **Q.     How did you address the counterparty risk in your economic evaluation?**

6    **A.**     We addressed this risk by requiring both pre- and post-commercial collateral from  
7           Silicon Ranch. Such collateral may, subject to the terms of the PPA, be in the  
8           form of cash provided pursuant to a pledge agreement and a control agreement, a  
9           letter of credit or a parent guaranty.

10   **Q.     Is Silicon Ranch a reliable counterparty for a long term PPA?**

11   **A.**     Yes, we believe that Silicon Ranch is a reliable counterparty for the reasons  
12           explained in Silicon Ranch's testimony. Nevertheless, to ensure that MPC's  
13           customers remain adequately protected, Silicon Ranch is also required to post  
14           collateral under the PPA, thereby reducing the credit risk exposure.

15   **Q.     Is MPC taking any financial risk associated with the government subsidies**  
16           **assumed in the proposed PPA's pricing?**

17   **A.**     No, MPC is not. Although MPC and Silicon Ranch are jointly requesting that the  
18           Commission conduct a timely review of this filing due to the deadlines associated  
19           with the Project's Investment Tax Credits (ITC), MPC is not taking any financial  
20           risk related to the expiration of these credits. The relevant deadlines and  
21           expiration dates associated with ITC's are discussed in greater detail in Silicon  
22           Ranch's testimony.

1    **Q.     Will MPC have to bear the costs of any of the installation, operation, and/or**  
2       **maintenance of the interconnection facilities for this solar facility?**

3    **A.**    No. Silicon Ranch is responsible for all costs and expenses incurred by MPC that  
4       are associated with the facilities and transmission system upgrades required in  
5       order to interconnect the solar facility to the MPC electric system (without  
6       reimbursements, refunds or credits to Silicon Ranch).

7    **Q.     What transmission improvements will be required to accommodate this PPA,**  
8       **and who will pay for them?**

9    **A.**    A formal study to answer this question is being performed which identifies this  
10       PPA as a designated network resource under the Southern Open Access Tariff. If  
11       the study does identify necessary improvements, MPC has the right to either pay  
12       for such improvements, request that the developer pay for such improvements, or  
13       terminate the agreement.

14   **Q.     How does MPC propose to recover the PPA payments?**

15   **A.**    MPC proposes to treat the PPA payments for the Silicon Ranch project in the  
16       same manner as other purchased power payments and include these costs in the  
17       Company's annual Fuel Cost Recovery (FCR) filing.

18   **Q.     What impact will this PPA have on customers' rates?**

19   **A.**    The price to be paid for energy delivered to the Company from the Silicon Ranch  
20       project is a fixed levelized price for the entire term of the PPA. As shown in  
21       confidential Exhibit\_\_\_\_(PAS-7), the Company's projected solar-weighted  
22       avoided energy cost is projected to be below the levelized price at the beginning  
23       of the contract term. By the end of the term, the solar-weighted avoided energy

1 cost is projected to be well above the levelized price, such that the overall Project  
2 economics offer a positive net present value for customers. In other words,  
3 customers will see overall energy and fuel cost savings on a net present value  
4 basis over the life of the contract. In 2020, the first year of the Project's  
5 commercial operation, the bill impact is estimated to be an increase of 12¢ per  
6 1,000 kWh. That bill impact will decrease annually, until 2027, when the cost of  
7 the PPA is less than the Company's projected solar-weighted avoided energy cost,  
8 which, based on these avoided cost projections, is expected to put downward  
9 pressure on rates over the remaining term of the contract.

10 **Q. Do you believe that issuing a Certificate of Public Convenience of Necessity**  
11 **for the contemplated solar facilities and approving the Company's proposed**  
12 **PPA with Silicon Ranch is in the public interest and will benefit MPC's**  
13 **customers?**

14 **A.** Yes, the Project will deliver affordable and reliable energy that is expected to  
15 provide needed fuel diversity benefits to MPC's customers and, therefore, is in the  
16 public interest.

17 **Q. Does this conclude your testimony?**

18 **A.** Yes, it does.

BEFORE THE MISSISSIPPI PUBLIC SERVICE COMMISSION

MISSISSIPPI POWER COMPANY  
EC-120-0097-00

SR MERIDIAN III, LLC

DOCKET NO. \_\_\_\_\_

IN RE: JOINT PETITION OF MISSISSIPPI POWER COMPANY AND SR  
MERIDIAN III, LLC FOR A CERTIFICATE OF PUBLIC  
CONVENIENCE AND NECESSITY AUTHORIZING THE  
CONSTRUCTION, OPERATION AND MAINTENANCE OF  
SOLAR ENERGY GENERATING FACILITIES AND RELATED  
FACILITIES IN LAUDERDALE COUNTY, MISSISSIPPI

AFFIDAVIT OF P.A. (TONY) SMITH

PERSONALLY appeared before the undersigned officer authorized to administer oaths, P.A.  
(Tony) Smith, who being duly sworn, deposes and says; that the foregoing testimony was  
prepared by him or under his supervision; that said testimony was prepared for use on behalf of  
Mississippi Power Company in the captioned proceeding; that the facts stated therein are true the  
best of his knowledge, information and belief; and that if asked the questions appearing therein,  
his answers, under oath, would be the same.

This the 9th day of June, 2017.

P.A. Tony Smith  
P.A. (Tony) Smith

Sworn to and subscribed before me this the 9th day of June, 2017.

Jenni Street  
Notary Public

My Commission Expires:

11/24/18

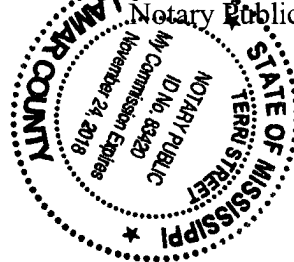


Exhibit PAS-1  
Filed Confidentially

**CONFIDENTIAL**

**EXECUTION VERSION**

**ENERGY PURCHASE AGREEMENT**

**between**

**SR MERIDIAN III, LLC**

**and**

**MISSISSIPPI POWER COMPANY**

**Dated as of May 26, 2017**

**CONFIDENTIAL****TABLE OF CONTENTS**

<b>ARTICLE 1 - DEFINITIONS AND INTERPRETATION .....</b>	<b>2</b>
1.1 Definitions .....	2
1.2 Interpretation .....	27
<b>ARTICLE 2 - FACILITY DESIGN, CONSTRUCTION AND OWNERSHIP .....</b>	<b>28</b>
2.1 Consents .....	28
2.2 Design and Construction of the Facility .....	28
2.3 Inspections .....	29
2.4 Failure to Achieve Commercial Operation by Required Commercial Operation Date .....	29
2.5 Failure to Complete Interconnection Provider Installed Facilities and Upgrades .....	31
2.6 Ownership of the Facility and the Site .....	32
2.7 Seller Conditions Precedent .....	33
<b>ARTICLE 3 - TERM AND TERMINATION .....</b>	<b>34</b>
3.1 Term .....	34
3.2 Survival .....	34
3.3 Effect of Termination .....	35
3.4 Limitations after Seller Termination Event .....	35
3.5 MPSC Approval .....	37
3.6 Early Termination Due to Variable Interest Entity .....	38
<b>ARTICLE 4 - OPERATION AND MAINTENANCE OF THE FACILITY .....</b>	<b>39</b>
4.1 General Standards .....	39
4.2 Access to the Facility .....	40
4.3 Availability of Records .....	40
4.4 Scheduled Outages .....	41
4.5 Station Service .....	42
4.6 Unplanned Outages .....	42
4.7 Availability Forecasts .....	43
4.8 Data and Installation and Maintenance of Weather Station and other Equipment .....	44
4.9 Disclaimer .....	46
4.10 Refurbishment of Facility .....	46
4.11 Expansion of Facility .....	46
<b>ARTICLE 5 - PERFORMANCE SECURITY .....</b>	<b>47</b>
5.1 Seller's Provision of Performance Security .....	47
5.2 Compliance .....	49
5.3 Use of Performance Security .....	49
5.4 Return of Performance Security .....	50
<b>ARTICLE 6 - INTERCONNECTION AND METERING .....</b>	<b>50</b>
6.1 Interconnection .....	50
6.2 Metering .....	54
6.3 Inspection and Testing of Meters .....	54
6.4 Inaccuracies .....	54
6.5 Electrical Loss Factor Adjustment to Interconnection Point .....	55

**CONFIDENTIAL**

<b>ARTICLE 7 - PRE-SERVICE COMMENCEMENT ACTIVITIES .....</b>	<b>56</b>
7.1 Initial Operation .....	56
7.2 Deliveries Prior to the Service Commencement Date .....	56
7.3 Notice .....	57
<b>ARTICLE 8 - SALE AND PURCHASE OF ENERGY .....</b>	<b>57</b>
8.1 Sale and Purchase of Energy .....	57
8.2 Provision of Electrical Products .....	57
8.3 Exclusivity .....	58
8.4 Characteristics of Energy .....	58
8.5 Point of Delivery; Title .....	58
8.6 Source of Products .....	58
<b>ARTICLE 9 - TRANSMISSION, DELIVERY OF ENERGY; CURTAILMENTS .....</b>	<b>59</b>
9.1 Transmission Responsibilities of Seller .....	59
9.2 Transmission Responsibilities of Buyer .....	60
9.3 Buyer Curtailment .....	63
9.4 Curtailments under the Interconnection Agreement .....	64
9.5 Other Curtailments at Buyer's Sole Discretion .....	65
9.6 No Economic Curtailment .....	65
<b>ARTICLE 10 - ENVIRONMENTAL ATTRIBUTES .....</b>	<b>66</b>
10.1 Provision of Environmental Attributes .....	66
10.2 Exclusivity .....	69
10.3 Further Action by Seller .....	69
10.4 Effect .....	71
<b>ARTICLE 11 - INSURANCE AND INDEMNIFICATION .....</b>	<b>71</b>
11.1 Insurance Required of Seller .....	71
11.2 Indemnification .....	73
<b>ARTICLE 12 - PAYMENTS .....</b>	<b>76</b>
12.1 Energy Payment .....	76
12.2 Additional Payments .....	76
<b>ARTICLE 13 - PAYMENT PROCEDURE .....</b>	<b>76</b>
13.1 Billing and Payment .....	76
13.2 Billing Disputes and Final Accounting .....	77
<b>ARTICLE 14 - REPRESENTATIONS AND WARRANTIES .....</b>	<b>78</b>
14.1 Execution .....	78
14.2 Binding Obligations .....	78
14.3 Execution and Consummation .....	79
14.4 Actions and Proceedings .....	79
14.5 Absence of Certain Events .....	79
14.6 Capital Lease and Variable Interest Entity .....	80
<b>ARTICLE 15 - EVENTS OF DEFAULT; REMEDIES .....</b>	<b>83</b>
15.1 Events of Default .....	83
15.2 Remedies for Events of Default .....	88
15.3 Exclusive Remedy .....	92
15.4 Survival of Indemnity Obligations .....	92
15.5 Performance Security .....	93
15.6 Limitation of Remedies, Liability and Damages .....	93

**CONFIDENTIAL****ARTICLE 16 - COMPLIANCE WITH LAWS; ENVIRONMENTAL EMISSIONS;  
REGULATORY**

16.1	Compliance .....	95
16.2	Change In Law .....	95
16.3	Environmental Emissions .....	96
16.4	Preservation of Terms .....	96
16.5	Qualifying Facility Status .....	97
16.6	General Services Administration Flow-Down Provisions .....	97

**ARTICLE 17 - FORCE MAJEURE**

17.1	Definition of Force Majeure Event .....	97
17.2	No Breach or Liability .....	99
17.3	Mitigation .....	99
17.4	Suspension of Performance .....	99
17.5	Effect on Payments .....	100
17.6	Extended Force Majeure Event .....	100

**ARTICLE 18 - DISPUTE RESOLUTION**

18.1	Dispute Resolution Generally .....	101
18.2	Initiation of Dispute Resolution .....	101
18.3	Initiation of Arbitration; Selection of Arbitrators .....	102
18.4	Discovery, Hearing .....	103
18.5	Arbitrator Decisions .....	104
18.6	Location of Arbitration .....	105
18.7	Injunctive Relief .....	105
18.8	Continued Performance .....	105

**ARTICLE 19 - MISCELLANEOUS**

19.1	Assignment; Change in Control .....	106
19.2	Taxes .....	108
19.3	No Partnership .....	109
19.4	Binding Effect Upon Successors and Assigns .....	109
19.5	No Third Party Benefit .....	109
19.6	No Buyer Affiliate Liability .....	109
19.7	Time of Essence; No Waiver .....	109
19.8	Amendments .....	110
19.9	Notice .....	110
19.10	Counterparts; Electronic Copies .....	111
19.11	Cross-References .....	111
19.12	Article and Section Headings .....	111
19.13	Entire Agreement .....	111
19.14	Reliance .....	111
19.15	Governing Law; Forum for Disputes .....	111
19.16	Confidentiality .....	112
19.17	Construction .....	113
19.18	Transfer of Information Acknowledgement .....	114
19.19	Accommodation of Lender .....	114
19.20	Costs of Buyer .....	115
19.21	Forward Contract .....	115

**APPENDIX A            MONTHLY ENERGY PAYMENT CALCULATION AND  
PRODUCTION PERFORMANCE ADJUSTMENT**

**CONFIDENTIAL**

APPENDIX B	ANNUAL EXPECTED ENERGY
APPENDIX C	LETTER OF CREDIT
APPENDIX D	GUARANTY AGREEMENT
APPENDIX E	SELLER INSURANCE REQUIREMENTS
APPENDIX F	CERTIFICATION OF WHETHER THE AGREEMENT WILL REQUIRE DECONSOLIDATION BY SELLER WITH RESPECT TO VARIABLE INTEREST ENTITY
APPENDIX G	CERTIFICATION AS TO CERTAIN FACTUAL STATEMENTS RELATED TO THE AGREEMENT WITH RESPECT TO CAPITAL LEASE TREATMENT
APPENDIX H	INTERCONNECTION DIAGRAM
APPENDIX I	GENERAL SERVICES ADMINISTRATION FLOW-DOWN PROVISIONS
APPENDIX J	SITE
APPENDIX K	TRANSFER OF INFORMATION ACKNOWLEDGEMENT

**CONFIDENTIAL****ENERGY PURCHASE AGREEMENT**

This Energy Purchase Agreement (“Agreement”) is entered into this 26th day of May, 2017 (“Effective Date”) by and between **SR MERIDIAN III, LLC**, a limited liability company organized and existing under the laws of the State of Delaware (“Seller”), and **MISSISSIPPI POWER COMPANY**, a corporation organized and existing under the laws of the State of Mississippi (“Mississippi Power” or “Buyer”). Seller and Buyer may be hereinafter referred to individually as a “Party” and collectively as the “Parties.”

**W I T N E S S E T H:**

**WHEREAS**, Seller is planning to construct, own, and operate a solar photovoltaic electric generation facility on a site located in Lauderdale County near the City of Meridian, Mississippi;

**WHEREAS**, Seller will certify such facility as a Qualifying Facility under PURPA;

**WHEREAS**, Seller desires to sell, and Buyer desires to purchase, the energy to be generated by such facility, subject to the terms and conditions of this Agreement;

**WHEREAS**, in connection with such sale and purchase, the Parties also desire for Seller to provide to Buyer all Environmental Attributes and Electrical Products (as such terms are defined herein); and

**WHEREAS**, the Parties desire to set forth the terms and conditions upon which the sale of electric energy, and the provision of Electrical Products and Environmental Attributes, shall be conducted between the Parties.

**NOW, THEREFORE**, in consideration of the premises and of the mutual covenants set forth herein and other good and valuable consideration, the receipt, sufficiency and adequacy of

**CONFIDENTIAL**

which are hereby acknowledged, Buyer and Seller, each intending to be legally bound, hereby agree as follows:

**ARTICLE 1**

**DEFINITIONS AND INTERPRETATION**

1.1 **Definitions.** All capitalized terms used herein and not otherwise defined, whether singular or plural, shall have the respective meanings set forth below.

“**AAA**” has the meaning set forth in Section 18.1.

“**AC**” means alternating current.

“**Act of God**” means a casualty of property that is directly, immediately and exclusively caused by forces of nature without any human control, intervention or influence, and which casualty could not have been prevented by any reasonable degree of care or diligence, including lightening, tornado, and earthquake; provided, however, the term Act of God shall not include the lack of or inadequate solar irradiance.

“**Adjustment Period**” has the meaning set forth in Section 6.4.

“**Affiliate**” means, for any specified Person, any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, “control” when used with respect to any Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“**After-Tax Basis**” means, with respect to a given payment required to be made to any Person, the amount of such payment (“Base Payment”) supplemented by a further payment (“Additional Payment”) to that Person so that the sum of the Base Payment plus the Additional

**CONFIDENTIAL**

Payment shall, after deduction of the amount of all federal, state and local income taxes required to be paid by such Person in respect of the receipt or accrual of the Base Payment and the Additional Payment (taking into account the net present value of any reduction in such income taxes resulting from tax benefits realized by the recipient as a result of the payment or the event giving rise to the payment), be equal to the amount required to be received. Such calculations shall be made on the basis of the highest generally applicable federal, state and local income tax rates applicable to the Person for whom the calculation is being made for all relevant periods, and shall take into account the deductibility of state and local income taxes for federal income tax purposes.

“**AIER**” means the Associated Interchange Energy Rate as defined in the IIC, including any successor term.

“**Annual Energy Threshold**” means, for any given Service Year, [REDACTED] of the Annual Expected Energy for such Service Year. The Annual Energy Threshold quantities shall not be reduced for any reason (including forced outages at the Facility, Scheduled Outages, lack of or inadequate solar irradiance or Force Majeure Events).

“**Annual Expected Energy**” means, for any given Service Year, the amount set forth in **Appendix B** for such Service Year.

“**ASC**” means Accounting Standards Codification.

“**Below Investment Grade Rating**” means, with respect to any Person, that: (i) such Person (or its senior unsecured long-term debt, not supported by third party credit enhancements, as applicable) has an issuer rating or senior unsecured rating below Baa3 (or future equivalent) by Moody’s; (ii) such Person (or its senior unsecured long-term debt, not supported by third party credit enhancements, as applicable) has an issuer credit rating or senior unsecured rating

**CONFIDENTIAL**

below BBB– (or future equivalent) by S&P; (iii) such Person (or its senior unsecured long-term debt, not supported by third party credit enhancements, as applicable) has an issuer rating or senior unsecured rating below BBB– (or future equivalent) by Fitch; or (iv) neither such Person nor its senior unsecured long-term debt not supported by third party credit enhancements, as applicable, is rated by at least two of Moody’s, S&P and Fitch.

“**Best’s**” means A.M. Best Company or its successor. If Best’s ceases to exist or publish ratings, Best’s shall mean a nationally recognized rating agency mutually agreed upon by the Parties, which agreement will not be unreasonably withheld or delayed.

“**Billing Dispute Notice**” has the meaning set forth in Section 13.2.2.

“**Business Day**” means any Day excluding Saturday and Sunday and excluding any Day on which banking institutions in Gulfport, Mississippi are closed because of a federal holiday.

“**Buyer**” means Mississippi Power Company and its permitted successors and assigns.

“**Buyer Curtailment Event**” means a condition or situation whereby the Buyer Transmission Service is curtailed, interrupted, or unavailable consistent with the Southern OATT, including Section 33 thereof or the transmission loading relief procedures of NERC referenced in Attachment P to the Southern OATT (including any successor provisions or procedures thereto). For purposes of this definition, a Buyer Curtailment Event shall include any such curtailment, interruption or unavailability of Buyer Transmission Service (consistent with the Southern OATT or the transmission loading relief procedures of NERC referenced in Attachment P to the Southern OATT) that affects the ability of Buyer to receive energy at the Point of Delivery or that affects the ability of Buyer to deliver energy from the Point of Delivery to Buyer’s load.

**CONFIDENTIAL**

**“Buyer Interconnection Cost Threshold”** means [REDACTED]

**“Buyer Transmission Service”** means the network transmission service that Buyer requests and obtains, by designating the Facility as a Network Resource under Section 9.2.2, in order to deliver energy from the Point of Delivery to its customers.

**“Capital Lease”** has the meaning set forth in ASC Topic 840, formerly FASB Statement 13, or any successor definition thereto.

**“Cash Security”** means cash security, free and clear of any adverse lien or interest, provided pursuant to a pledge agreement and a control agreement, each in form and substance acceptable to Buyer.

**“Central Prevailing Time”** or **“CPT”** means the local time at any point in Birmingham, Alabama.

**“Change in Control”** has the meaning set forth in Section 19.1.3.

**“Change In Law”** means any change to a Legal Requirement or interpretation thereof, including changes to laws or regulations regulating or imposing a Tax on discharges, emissions, effluents or disposals from the Facility.

**“Claim”** or **“Claims”** has the meaning set forth in Section 18.1.

**“COD Criteria”** has the meaning set forth in Section 2.5.

**“Commercial Operation”** means the fulfillment, to Buyer’s reasonable satisfaction, of all of the following criteria:

- (i) Seller shall have demonstrated that: (a) the construction and installation of solar photovoltaic modules and inverters and all other equipment and facilities comprising the Facility (as opposed to only a portion thereof), representing a total

**CONFIDENTIAL**

completed and installed nameplate capacity equal to (and not greater than) the Planned Facility Capacity, is complete; and (b) such modules and inverters are capable of reliably producing electric energy and reliably delivering such electric energy to the Southern Companies Electric System through the Interconnection Point, which demonstration shall include the delivery to Buyer of either (1) commissioning certificates executed by an independent engineer or the applicable inverter manufacturer for all such inverters, in form and substance reasonably satisfactory to Buyer, or (2) data from the metering equipment installed by Buyer that evidences the delivery of electrical energy produced by the Facility to the Interconnection Point;

(ii) the Facility has been interconnected to the Southern Companies Electric System pursuant to the Interconnection Agreement, the Interconnection Agreement is in full force and effect, and Seller and the Facility are in compliance with the Interconnection Agreement;

(iii) Seller shall have delivered to Buyer a certificate from a responsible officer of Seller certifying that Seller has obtained all authorizations necessary to deliver energy from the Facility under this Agreement to the Southern Companies Electric System;

(iv) Seller shall have provided Buyer a certificate from an independent, professional engineer registered in the State of Mississippi, reasonably acceptable to Buyer, stating that the Facility has been designed, engineered, constructed and tested in accordance with Prudent Industry Practices and the terms of this Agreement;

(v) Seller shall have delivered to Buyer a certificate from a responsible officer of Seller certifying that Seller has obtained and is in compliance with all Consents; and

**CONFIDENTIAL**

(vi) Seller shall have delivered to Buyer a certificate from a responsible officer of Seller certifying that Seller is in compliance with all of the provisions of this Agreement as of the Day that all of the foregoing criteria in (i) through (v) are satisfied.

**“Commercial Operation Date”** means the Day on which Commercial Operation is achieved.

**“Confidential Information”** means business or technical information rightfully in the possession of either Party provided to the other Party in connection with this Agreement, which information derives actual or potential commercial value from not being generally known or readily ascertainable through independent development or reverse engineering by Persons who can obtain economic value from its disclosure and use, and includes the contents of this Agreement and all information furnished or disclosed to the other Party in connection with discussions leading up to execution of this Agreement. For purposes of this definition, “Disclosing Party” refers to the Party disclosing information to the other Party, and the term “Receiving Party” refers to the Party receiving information from the other Party. Confidential Information does not include information which: (i) is or becomes publicly available other than as a result of a violation of this Agreement; (ii) was, at the time of the disclosure, already in the Receiving Party’s possession; (iii) is disclosed to the Receiving Party by a third Party who, to the Receiving Party’s knowledge, is not prohibited from disclosing the information pursuant to any agreement with the Disclosing Party; or (iv) the Receiving Party develops or derives without the aid, application or use of the privileged or proprietary information.

**“Consents”** means all approvals, consents, permits, licenses, decrees, orders, judgments, certificates, zoning and other variances, waivers, exceptions, exemptions, franchises, rulings, authorizations or similar orders from, or filings or registrations with or notices to, any

**CONFIDENTIAL**

Governmental Authority that are required to own, develop, site, construct, operate, use, test, modify, and/or maintain the Facility and the Site, including all applicable siting and environmental certificates, licenses, permits and approvals, and for Seller to perform its obligations under this Agreement.

**“Consolidation Determination”** has the meaning set forth in Section 14.6.4.

**“Consolidation Notice”** has the meaning set forth in Section 14.6.4.

**“Costs”** has the meaning set forth in Section 15.2.3.

**“Cover Damages”** has the meaning set forth in Section 15.2.3.

**“Curtailed Energy”** means, for any Hour, the amount of energy (expressed in MWh) that would have been produced by the Facility and delivered by Seller to Buyer at the Point of Delivery pursuant to this Agreement but that was not produced by the Facility and delivered to the Point of Delivery pursuant to this Agreement due to: (i) a curtailment or cessation of deliveries of energy as a result of Buyer’s direction pursuant to Section 9.3 or Section 9.5 (including all Deemed Delivered Energy); (ii) a curtailment or cessation of deliveries under Section 9.4 that is not due to a condition or circumstance existing with respect to Seller’s facilities or equipment; or (iii) a Force Majeure Event affecting the Facility (provided that Seller has complied with the requirements of Article 17, including providing Buyer with notice of such Force Majeure Event as required thereunder). The amount of Curtailed Energy shall be determined using Facility availability information, relevant weather conditions and other pertinent Facility data for such Hour, as agreed to by the Parties and incorporated into the Operating Procedures.

**“Daily LDs”** has the meaning set forth in Section 2.4.1.

**CONFIDENTIAL**

**“Day”** means a calendar day, commencing at one (1) minute prior to 12:01 a.m. CPT of such calendar day and ending at one (1) minute after 11:59 p.m. CPT of such calendar day.

**“Daylight Period”** means the period of time during each Day that commences at sixty (60) minutes prior to the time of sunrise on such Day, and ends sixty (60) minutes after the time of sunset on such Day; provided that the time of “sunrise” and “sunset” hereunder shall be as determined for Meridian, Mississippi for such Day by the National Weather Service.

**“Deemed Delivered Energy”** means, for any Hour, (i) the amount of “Deemed Delivered Energy” determined under Section 9.5.3 for an excess Operational Curtailment Hour (as applicable); and (ii) any amounts of energy delivered by Seller under this Agreement that Buyer is required to receive under this Agreement, but does not receive in violation of Buyer’s obligations under this Agreement, which amounts of energy in the foregoing (i) and (ii) shall be determined using Facility availability information, relevant weather conditions and other pertinent Facility data for such Hour, as agreed to by the Parties and incorporated into the Operating Procedures; provided, however, that: (i) Deemed Delivered Energy shall not include any amounts of energy not delivered due to a required cessation or reduction of deliveries as a result of Buyer’s directive(s) under Section 9.3 or Section 9.4; (ii) Deemed Delivered Energy shall not include any amounts of energy not delivered due to a required cessation or reduction of deliveries as a result of Buyer’s directive(s) under Section 9.5.1 for the first [REDACTED] Operational Curtailment Hours of a given Service Year; and (iii) for any Hour, the sum of Deemed Delivered Energy, Curtailed Energy (other than Deemed Delivered Energy), and Delivered Energy shall not exceed the Planned Facility Capacity.

**“Defaulting Party”** has the meaning set forth in Article 15.

**CONFIDENTIAL**

**“Delivered Energy”** means, for any Hour, the amount of energy (expressed in MWh) that is produced by the Facility and delivered by Seller to Buyer at the Point of Delivery (as measured by Buyer’s metering equipment) pursuant to this Agreement; provided that: Delivered Energy shall not include (i) Electrical Losses; or (ii) the applicable amounts of energy to be excluded as set forth in Section 9.1, Section 9.3, Section 9.4 and Section 9.5; provided further, that Delivered Energy at any given time shall not exceed the Planned Facility Capacity.

**“Dispute Response”** has the meaning set forth in 18.2.1.

**“Disputing Party”** has the meaning set forth in 18.2.1.

**“DNR Upgrades”** means transmission facilities and upgrades, including upgrades to the Southern Companies Electric System, that are required to be constructed or installed in order for the Facility to be designated as a Network Resource as contemplated by Section 9.2.2; provided, however, that DNR Upgrades do not include any facilities or upgrades that constitute Interconnection Facilities and Upgrades as defined in this Agreement.

**“DNR Upgrades Decision Date”** has the meaning set forth in Section 9.2.3.

**“Early Termination Date”** has the meaning set forth in Section 15.2.2.

**“Effective Date”** has the meaning set forth in the first paragraph of this Agreement.

**“Electrical Losses”** means all electrical losses associated with the delivery of energy produced by the Facility to the Point of Delivery, including all electrical losses over distribution and transmission facilities and those related to transformation.

**“Electrical Products”** means all products produced by or related to the Facility, including spinning reserves, operating reserves, balancing energy, regulation service, reactive power and voltage control and other ancillary service products, or any similar benefit Buyer otherwise would have realized from or related to the Facility if Buyer rather than Seller had

**CONFIDENTIAL**

constructed, owned or operated the Facility, it being the Parties' intent that all benefits and entitlements in addition to electrical output that flow to the owner or operator of the Facility belong to Buyer at no additional cost to Buyer.

**"Eligible Guaranty"** means a continuing unlimited guaranty in substantially the form of **Appendix D** hereto, which is properly completed and executed and in full force and effect and with respect to which the Guarantor has not given any notice of termination, cancellation or revocation, issued by a Person: (i) who is a direct or indirect parent of Seller; (ii) with respect to whom there does not exist a Material Adverse Financial Condition at any time such guaranty is intended to constitute Performance Security; and (iii) who has a Net Worth of at least five hundred million dollars (\$500,000,000) for the entire period during which such guaranty is intended to constitute Performance Security.

**"Eligible Letter of Credit"** means a letter of credit in substantially the form of **Appendix C** hereto, in an available undrawn amount of not less than the Required Collateral Amount, which is in full force and effect and is not within ninety (90) Days of terminating or expiring, issued by a major U.S. commercial bank or a U.S. branch office of a major foreign bank who has and maintains assets of at least \$25 billion and at all times having a senior unsecured rating of at least "A2" (or future equivalent) by Moody's and at least "A" (or future equivalent) by S&P.

**"Emergency"** means a condition or situation on the Southern Companies Electric System, including voltage abnormalities, that, in the reasonable judgment of Buyer, adversely affects or is reasonably likely to adversely affect: (i) public health, life or property; (ii) Buyer's employees, agents or property; (iii) Buyer's or any of its Affiliates' ability to safely and reliably operate the Southern Companies Electric System; (iv) the integrity of the Southern Companies

**CONFIDENTIAL**

Electric System or any electric system connected thereto; or (v) Buyer's ability to maintain safe, adequate and continuous service to its customers and the customers of any member of NERC.

**“Environmental Attributes”** means, whether existing as of the Effective Date or in the future, any fuel-related, emissions-related, air quality-related or other environmental-related aspects, claims, characteristics, benefits, credits, reductions, offsets, savings, allowances, efficiencies, certificates, tags, attributes or similar products or rights (including all of those relating to greenhouse gases and all green certificates, green tags, renewable certificates and renewable energy credits) (“Attributes”), howsoever entitled and whether known or unknown and whether or not such Attributes have been certified or verified under any Renewable Standards or otherwise, that: (i) arise or result from the generation of electric, thermal or other energy by the Facility; (ii) are associated with fuel that is used to produce electric, thermal or other energy at the Facility (including any fuel that may serve a dual purpose of contributing both to energy production and another industrial process), including the procurement, collection or aggregation of such fuel; (iii) arise or result from the use of a renewable or other particular type of fuel to generate electric, thermal or other energy at the Facility; (iv) arise or result from the avoidance or reduction of the emission of any gas, chemical or other substance to the air, soil or water that is attributable to the generation of electric, thermal or other energy by the Facility or the use of a particular fuel by the Facility to generate electric, thermal or other energy; (v) arise or result from any Legal Requirement pertaining to the fuel used by the Facility; (vi) arise or result from the recycling, recovery or reuse of any wastes, products, co-products, byproducts or similar materials associated with the generation of electric, thermal or other energy by the Facility; or (vii) arise or result from the avoidance of water use that is associated with the generation of electric, thermal or other energy at the Facility. Environmental Attributes include

**CONFIDENTIAL**

any such Attributes that could qualify or do qualify for application toward compliance with any local, state, federal and/or international renewable energy portfolio standard, green pricing program, renewable energy program, carbon reduction or greenhouse gas reduction initiative, electricity savings program, licensing requirement, verification or certification procedure, federal contract, or other environmental program, incentive mandate or objective, in each case whether voluntary or mandatory, and whether created by a Legal Requirement, or by any Governmental Authority, partnership, coalition, advisory committee, or independent certification board, group or scientific panel. Environmental Attributes also include all rights to report such Attributes to any Governmental Authority or other Person. Environmental Attributes shall not include any tax credit (including federal investment tax credits) derived from the construction or ownership of the Facility.

**“Equity”** means common or preferred stock or membership units in Seller’s capital structure that represents a residual claim or interest in Seller’s assets after all of Seller’s liabilities are paid.

**“Event of Default”** has the meaning set forth in Section 15.1.

**“Facility”** means the solar photovoltaic electric generation facility and all related equipment and structures associated with such generation facility to be or being constructed by Seller in Lauderdale County, Mississippi at the Site, with a generating capacity equal to the Planned Facility Capacity. The Facility shall include solar photovoltaic modules, central inverters, the electrical line(s) connecting such inverters to the Point of Change in Ownership, and all auxiliary equipment and facilities installed at the Site on Seller’s side of the Point of Change in Ownership that are necessary or used for the production, control, delivery or monitoring of electric energy by such modules and inverters. All equipment and facilities

**CONFIDENTIAL**

installed on Seller's side of the Point of Change in Ownership shall be considered a part of the Facility.

**"FASB"** means Financial Accounting Standards Board, including any successor(s) in function.

**"FERC"** means the Federal Energy Regulatory Commission or any Governmental Authority succeeding to the powers and functions thereof.

**"Final MPSC Approval Order"** means an order from the MPSC that is acceptable to Buyer in its sole discretion and that is no longer appealable or subject to appeal or further review by a court or other Governmental Authority and that either: (i) approves this Agreement without modification; or (ii) approves this Agreement with modification that is acceptable to Buyer in its sole discretion.

**"Fitch"** means Fitch Ratings Ltd. or its successor. If Fitch ceases to exist or publish ratings, Fitch shall mean a nationally recognized rating agency mutually agreed upon by the Parties, which agreement will not be unreasonably withheld or delayed.

**"Force Majeure Event"** has the meaning set forth in Section 17.1.

**"Gains"** has the meaning set forth in Section 15.2.3.

**"Governmental Authority"** means any federal, state, local, territorial, county or municipal government authority and any branch, department, commission, board, court, bureau, agency, instrumentality, judicial or administrative body thereof, excluding the Parties but including NERC and SERC.

**"Green-e Energy"** means the Green-e certification and verification program for renewable energy, greenhouse gas emission reductions and other Environmental Attributes that is administered by the Center for Resource Solutions, and any successor(s) thereto.

**CONFIDENTIAL**

**“Green-e National Standard”** means the Green-e National Standard as determined, published, codified and otherwise promulgated by the Center for Resource Solutions and that defines eligibility criteria for Green-e Energy certified renewable energy products, including renewable energy certificates, utility green pricing programs, and competitive market electricity products, as such standard(s) may be modified from time to time.

**“Guarantor”** means an entity that guarantees Seller’s obligations under this Agreement, including through an Eligible Guaranty.

**“Hour”** means one (1) of the twenty-four (24) clock-hours of a Day.

**“Hourly”** has a meaning correlative to that of Hour.

**“IIC”** means the “Southern Company System Intercompany Interchange Contract” as filed pursuant to 119 FERC ¶ 61,065 (2007) and designated as Southern Company Services, Inc., Second Revised Rate Schedule FERC Number 138, as may be amended from time to time, or any successor contract thereto among Buyer and certain of its Affiliates.

**“Impasse Notice”** has the meaning set forth in Section 18.2.2.

**“Indebtedness”** means, with respect to any Person, all of the following without duplication: (i) obligations of such Person for borrowed money evidenced by bonds, debentures, notes, loan agreements or other similar instruments; (ii) purchase money indebtedness of such Person constituting an obligation to pay the deferred purchase price of property or services, other than trade payables incurred in the ordinary course of business; (iii) lease obligations of such Person which are capitalized on the balance sheet of such Person in accordance with generally accepted accounting principles; (iv) liabilities of a second Person secured by any lien on any property of such first Person, whether or not such liabilities have been assumed by such first Person; (v) liabilities of such Person with respect to letters of credit or applications or

**CONFIDENTIAL**

reimbursement agreements therefor; (vi) the net obligations of such Person under any swap or hedging agreement, calculated by reference to the amount that would be due upon the termination of such swap or hedging agreement; or (vii) indebtedness of such Person owing under direct or indirect guarantees of indebtedness of any other Person or constituting obligations to purchase or acquire or to otherwise protect or insure a creditor against loss in respect of indebtedness of any other Person excluding endorsements of negotiable instruments for deposit or collection in the ordinary course of business.

**“Interconnection Agreement”** means an agreement by and between Seller and the Interconnection Provider providing Seller the right to interconnect the Facility to the Southern Companies Electric System and containing terms and conditions governing the interconnection and parallel operation of the Facility with such system (including, as determined by Interconnection Provider, an agreement that is not under the Southern OATT that can be used for Qualifying Facilities).

**“Interconnection Facilities and Upgrades”** means those facilities, equipment and upgrades (including any and all transmission system network upgrades) that are located on Interconnection Provider’s side of the Point of Change in Ownership and that are required in order to interconnect the Facility at the Interconnection Point, which would not have been required but for the interconnection of the Facility to the Interconnection Point (including all breakers and metering equipment needed for interconnection), as such facilities, equipment and upgrades are set forth and identified in the Interconnection Agreement. The Interconnection Facilities and Upgrades, as anticipated on the Effective Date, are depicted in **Appendix H** of this Agreement (which shall be subject to modification after all interconnection studies and the Interconnection Agreement are finalized).

**CONFIDENTIAL**

**“Interconnection Point”** means the physical point at which the Facility is interconnected to the Southern Companies Electric System at the Interconnection Provider’s interconnecting substation, as defined in the Interconnection Agreement and as illustrated in the diagram set forth in **Appendix H**.

**“Interconnection Provider”** means Mississippi Power Company or other entity providing interconnection service for the Facility pursuant to the Interconnection Agreement.

**“Interest Rate”** means the prime rate of interest as published from time to time in the Wall Street Journal or comparable successor publication.

**“Legal Requirement”** means any act; statute; law; requirement; ordinance; order; ruling or rule; regulation; standards and/or criteria contained in any permit, license or other approval; legislative or administrative action; or a decree, judgment or order of any Governmental Authority imposed, whether in effect as of the Effective Date or at any time in the future.

**“Lender”** means any lenders or other third Persons (including cash equity and tax equity providers) providing construction financing, long-term financing or other credit support in connection with the development, construction or operation of the Facility.

**“Losses”** has the meaning set forth in Section 15.2.3.

**“Material Adverse Change”** means, with respect to a Person, any event, occurrence or circumstance whereby the maturity of any Indebtedness of such Person which in the aggregate exceeds an amount equal to Fifty Million Dollars (\$50,000,000.00) or three percent (3%) of the equity in such Person that is owned by the shareholders of such Person, whichever is less, is accelerated by the holder or holders thereof as a result of a default thereunder.

**“Material Adverse Financial Condition”** means, with respect to a Person, any circumstance, event or condition whereby: (i) such Person has or commences to have a Below

**CONFIDENTIAL**

Investment Grade Rating; or (ii) there exists or commences to exist a Material Adverse Change with respect to such Person.

“**Milestone Schedule**” has the meaning set forth in Section 2.2.2.

“**Minimum Energy Contract Amount**” means, for a given Service Year, [REDACTED]

[REDACTED] of the Annual Expected Energy for such Service Year.

“**Minimum Investment Grade Condition**” means, with respect to any Person, any circumstance, event or condition whereby: (i) a Material Adverse Financial Condition does not exist with respect to such Person; and (ii) (a) such Person (or its senior unsecured long-term debt, not supported by third party credit enhancements, as applicable) has an issuer rating or senior unsecured rating of Baa3 (or future equivalent) by Moody’s; (b) such Person (or its senior unsecured long-term debt, not supported by third party credit enhancements, as applicable) has an issuer credit rating or senior unsecured rating of BBB– (or future equivalent) by S&P; or (c) such Person (or its senior unsecured long-term debt, not supported by third party credit enhancements, as applicable) has an issuer rating or senior unsecured rating of BBB– (or future equivalent) by Fitch.

“**Month**” means a calendar Month, commencing at the beginning of the first Day of such calendar Month.

“**Monthly**” has a meaning correlative to that of Month.

“**Monthly Energy Payment**” means the Monthly amount to be paid by Buyer to Seller as calculated in accordance with Section A of **Appendix A**.

“**Moody’s**” means Moody’s Investors Service, Inc. or its successor. If Moody’s ceases to exist or publish ratings, Moody’s shall mean a nationally recognized rating agency mutually agreed upon by the Parties, which agreement will not be unreasonably withheld or delayed.

**CONFIDENTIAL**

“**MPSC**” means the Mississippi Public Service Commission, its staff, or any Governmental Authority succeeding to the powers and functions thereof.

“**MPSC Approval Deadline**” has the meaning set forth in Section 3.5.3.

“**MPSC Filing**” has the meaning set forth in Section 3.5.2.

“**MW**” means megawatts, AC.

“**MWh**” means megawatt hours, AC.

“**National Weather Service**” means the National Weather Service, a component of NOAA, or successor thereto.

“**NERC**” means the North American Electric Reliability Corporation, including any successor thereto and subdivisions thereof.

“**Network Resource**” has the meaning set forth in the Southern OATT, including any successor term.

“**Net Worth**” means, with respect to any Person, the dollar value calculated by subtracting total liabilities from total assets (excluding goodwill and other intangible assets described in ASC Topic 350 (formerly FASB Statement 142)) of such Person as such terms are determined in accordance with generally accepted accounting principles, as such may be modified from time to time.

“**NOAA**” means the National Oceanic and Atmospheric Administration (or successor thereto).

“**Non-Defaulting Party**” has the meaning set forth in Article 15.

“**Notice of Dispute**” has the meaning set forth in Section 18.2.1.

“**Operating Committee**” means the group comprised of the Operating Representatives.

**CONFIDENTIAL**

**“Operating Procedures”** means those procedures developed by the Parties pursuant to Section 4.1.2.

**“Operating Representatives”** means those individuals appointed by each of the Parties to form and maintain the Operating Procedures.

**“Operational Curtailment Hour”** has the meaning set forth in Section 9.5.1.

**“Party”** or **“Parties”** means either Buyer or Seller or both.

**“Party-Appointed Arbitrators”** has the meaning set forth in Section 18.3.1.

**“Performance Security”** means Cash Security, an Eligible Letter of Credit or an Eligible Guaranty; provided, however, at least fifty percent (50%) of any Performance Security required to be provided by Seller under this Agreement must be in the form of Cash Security or an Eligible Letter of Credit whenever Seller is providing an Eligible Guaranty and: (i) the applicable Guarantor (or its senior unsecured long-term debt, not supported by third party credit enhancements, as applicable) has an issuer rating or senior unsecured rating below Baa2 (or future equivalent) by Moody’s; or (ii) the applicable Guarantor (or its senior unsecured long-term debt, not supported by third party credit enhancements, as applicable) has an issuer credit rating or senior unsecured rating below BBB (or future equivalent) by S&P; or (iii) the applicable Guarantor (or its senior unsecured long-term debt, not supported by third party credit enhancements, as applicable) has an issuer rating or senior unsecured rating below BBB (or future equivalent) by Fitch.

**“Person”** means any person, corporation, limited liability company, general partnership, limited partnership, proprietorship, other business organization, trust, union, association or Governmental Authority.

**“Planned Facility Capacity”** means fifty-two and a half (52.5) MW.

**CONFIDENTIAL**

**“Point of Change in Ownership”** means the point where the facilities to be owned by Seller will connect to the facilities to be owned by Interconnection Provider, as illustrated in the diagram set forth in **Appendix H**.

**“Point of Delivery”** means the point(s) where Seller shall deliver energy from the Facility to Buyer pursuant to this Agreement, which shall be the Interconnection Point.

**“Production Performance Adjustment”** has the meaning set forth in Section B of **Appendix A**.

**“Products”** means the energy, Electrical Products and Environmental Attributes required to be provided by Seller to Buyer under this Agreement.

**“Proposed Resolutions”** has the meaning set forth in 18.4.1.

**“Prudent Industry Practices”** means, at a particular time, any of the practices, methods and acts engaged in or approved by a significant portion of the electric industry (as the same pertain to solar powered generation facilities) prior to such time, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired results at the lowest cost consistent with good and acceptable engineering and business practices, reliability, safety and expedition. Prudent Industry Practices is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be a spectrum of possible practices, methods or acts expected to accomplish the desired results, having due regard for, among other things, manufacturers’ warranties, any applicable inspection authorities, and the requirements of Governmental Authorities of competent jurisdiction and the requirements of this Agreement. With respect to the Facility, Prudent Industry Practices include taking reasonable steps to ensure that:

**CONFIDENTIAL**

- (i) equipment, materials, resources, and supplies are available to meet the Facility's needs;
- (ii) sufficient operating personnel are available at all times and are adequately experienced, trained and licensed as necessary to operate the Facility properly and efficiently, and are capable of responding to reasonably foreseeable emergency conditions whether caused by events on or off the site of the Facility;
- (iii) preventive, routine, and non-routine maintenance and repairs are performed at the Facility on a basis that ensures reliable long-term and safe operation, and are performed by knowledgeable, trained, and experienced personnel utilizing proper equipment and tools;
- (iv) appropriate monitoring and testing of the Facility are performed to ensure equipment is functioning properly;
- (v) equipment at the Facility is not operated in a reckless manner, or in a manner unsafe to workers, the general public, or contrary to environmental laws or regulations or without regard to defined limitations such as flood conditions, safety inspection requirements, operating voltage, current, volt-ampere reactive (VAR) loading, frequency, polarity, synchronization, and/or control system limits; and
- (vi) the equipment at the Facility will function properly under both normal and reasonably expected emergency conditions at the Facility.

“**PURPA**” means the Public Utility Regulatory Policies Act of 1978, as such act may be amended from time to time.

“**Qualifying Facility**” has the meaning set forth in Section 292.101(b)(1) of the regulations promulgated under PURPA, 18 C.F.R. Part 292 (including any successor(s) provisions).

“**Renewable Standards**” means any renewable electricity standard, renewable portfolio standard or similar requirements that may be applicable to Buyer or any of its Affiliates or to which Buyer or any of its Affiliates may be subject.

**CONFIDENTIAL**

**“Representatives”** means, when used with respect to a Party, collectively or individually (as the context might indicate), such Party, its Affiliates and permitted successors and assigns, and the directors, officers, representatives, agents, contractors, subcontractors, and employees of each of them.

**“Required Collateral Amount”** means: (i) for any period during which there exists a Minimum Investment Grade Condition with respect to Seller, an amount that is equal to fifty percent (50%) of the Seller Amount for such period; and (ii) for any period during which there exists a Material Adverse Financial Condition with respect to Seller, an amount that is equal to one hundred percent (100%) of the Seller Amount for such period.

**“Required Commercial Operation Date”** means December 31, 2019; provided, however, the Required Commercial Operation Date may be extended as provided in Section 2.4.5 and Section 2.5.

**“Responding Party”** has the meaning set forth in 18.2.1.

**“Restricted Period”** has the meaning set forth in Section 3.4.1.

**“Rules”** has the meaning set forth in Section 18.1.

**“S&P”** means Standard & Poor’s Financial Services LLC, or its successor. If S&P ceases to exist or publish ratings, S&P shall mean a nationally recognized rating agency mutually agreed upon by the Parties, which agreement will not be unreasonably withheld or delayed.

**“Scheduled Outages”** has the meaning set forth in Section 4.4.1.

**“Scheduled Outage Hour”** shall occur in any Hour in which the Facility is wholly or partially unavailable to produce energy due to a Scheduled Outage approved by Buyer under Section 4.4, provided that: (i) for each Hour that the Facility can produce no amount of energy due to a Scheduled Outage, one (1) Scheduled Outage Hour shall occur; and (ii) for each Hour

**CONFIDENTIAL**

that the Facility is partially able to produce energy in which such a Scheduled Outage occurs, a partial Scheduled Outage Hour shall occur that is equal to the ratio of: (A) the amount by which the generating capacity of the Facility is reduced as a result of the Scheduled Outage, to (B) the generating capacity of the Facility immediately prior to such Scheduled Outage.

**“Security Posting Condition”** means, with respect to any Person, an occurrence, non-occurrence, circumstance or event whereby there exists or commences to exist, with respect to such Person, a Material Adverse Financial Condition or a Minimum Investment Grade Condition.

**“Seller”** means SR Meridian III, LLC and its permitted successors and assigns.

**“Seller Amount”** means: (i) for the period of the Term prior to the Commercial Operation Date, the amount of [REDACTED]; and (ii) for the period of the Term on and after the Commercial Operation Date, through the remainder of the Term and until the indefeasible and irrevocable payment and performance of all of Seller’s obligations under this Agreement, an amount equal to [REDACTED]

**“Seller CP Deadline”** has the meaning set forth in Section 2.7.

**“Seller Installed Facilities”** means all facilities and equipment that are located on Seller’s side of the Point of Change in Ownership that are required to interconnect the Facility to the Electric System, as set forth in the diagram in **Appendix H**.

**“Seller Interconnection Cost Threshold”** means [REDACTED]

**“Seller Termination Event”** means the termination of this Agreement under Section 2.4.2, Section 2.4.3, Section 2.4.5, Section 2.7, Section 6.1, Section 15.2 (but only if the

**CONFIDENTIAL**

termination results from an Event of Default by Seller), or Section 17.6 (but only if Buyer terminates this Agreement as a result of a Force Majeure Event affecting Seller).

“**SERC**” means the SERC Reliability Corporation, including any successor thereto and subdivisions thereof.

“**Service Commencement Date**” means the later of: (i) the Day after the Commercial Operation Date; or (ii) the Day after all DNR Upgrades (if any) are completed and operational.

“**Service Term**” has the meaning set forth in Section 3.1.

“**Service Year**” means any one of a succession of three hundred sixty-five (365) Day periods (or a three hundred sixty-six (366) Day period when there is a leap year), the first of which shall begin on the Service Commencement Date and end on the first anniversary of the Day prior to the Service Commencement Date. For example, if the Service Commencement Date occurs on July 1, 2019, (i) the first (1<sup>st</sup>) Service Year shall commence on July 1, 2019 and end at the end of the Day on June 30, 2020, and (ii) the second (2<sup>nd</sup>) Service Year shall commence on July 1, 2020 and end at the end of the Day on June 30, 2021.

“**Settlement Amount**” has the meaning set forth in Section 15.2.2.

“**Shortfall Amount**” has the meaning set forth in **Appendix A**.

“**Site**” means the land on which the Facility is located, as more specifically described in **Appendix K**, which shall be updated and amended from time to time by Seller in order to accurately reflect the land where the Facility is located.

[REDACTED]

[REDACTED]

**CONFIDENTIAL**

**“Southern Companies”** means, collectively, the electric operating company subsidiaries of The Southern Company, which as of the Effective Date include Alabama Power Company, Georgia Power Company, Gulf Power Company, Buyer, and Southern Power Company.

**“Southern Companies Electric System”** means, collectively, the entire network of electric generating, transmission and distribution facilities, equipment and other devices owned (in whole or in part) or controlled by the Southern Companies, or to which the Southern Companies have the right to use, for the purposes of generating, transmitting, distributing, and receiving electric energy, including such facilities, equipment and devices of Buyer.

**“Southern OATT”** means the Open Access Transmission Tariff of the Southern Companies that own or operate transmission systems (which, as of the Effective Date, include Alabama Power Company, Georgia Power Company, Gulf Power Company, and Buyer), as filed and maintained in accordance with the requirements of FERC, as well as any successor tariff or agreement.

**“Station Service”** means electric energy that is necessary to serve the electrical requirements of the Facility.

**“Taxes”** means any or all ad valorem, property, occupational, severance, emissions, generation, first use, conservation, energy, transmission, utility, gross receipts, privilege, sales, use, excise and other taxes, fees, assessments, licenses, taxes based on net income or net worth, and any other charges imposed by a Governmental Authority, together with any interest and penalties thereon.

**“Term”** has the meaning set forth in Section 3.1.

**“Third Arbitrator”** has the meaning set forth in 18.3.1.

**CONFIDENTIAL**

“**Variable Interest Entity**” or “**VIE**” has the meaning as set forth in ASC Topic 810 (formerly FASB Interpretation No. 46 (R)), or any successor definition thereto.

1.2 Interpretation. In this Agreement, unless the context requires otherwise, the singular shall include the plural and any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “hereof,” “herein,” “hereto” and “hereunder” and words of similar import when used in this Agreement shall, unless otherwise expressly specified, refer to this Agreement as a whole and not to any particular provision of this Agreement. Whenever the term “including” is used herein in connection with a listing of items included within a prior reference, such listing shall be interpreted to be illustrative only, and shall not be interpreted as a limitation on or exclusive listing of the items included within the prior reference. Any reference in this Agreement to “Section,” “Article,” or “Appendix,” shall be references to this Agreement unless otherwise stated, and all such Appendices shall be incorporated in this Agreement by reference. In the event that any index or publication referenced in this Agreement ceases to be published, each such reference shall be deemed a reference to a successor or alternate index or publication reasonably agreed to by the Parties. Unless specified otherwise, a reference to a given agreement or instrument, and all schedules, exhibits, appendices and attachments thereto, shall be a reference to that agreement or instrument as modified, amended, supplemented and restated, and in effect from time to time. Unless otherwise stated, any reference in this Agreement to any entity shall include its permitted successors and assigns, and in the case of any Governmental Authority, any entity succeeding to its functions and capacities.

**CONFIDENTIAL****ARTICLE 2****FACILITY DESIGN, CONSTRUCTION AND OWNERSHIP**

2.1 Consents. Seller shall obtain and maintain, at its sole cost and expense, any and all Consents necessary for the siting, construction, ownership and operation of the Facility.

2.2 Design and Construction of the Facility.

2.2.1 Seller shall design, engineer, construct, test and commission the Facility in accordance with Prudent Industry Practices and applicable Legal Requirements, and in a manner required in order to enable Seller to fulfill its obligations under this Agreement. Seller shall use all diligent efforts to achieve Commercial Operation on or before the Required Commercial Operation Date. All equipment, materials and components comprising the Facility shall be manufactured, constructed and installed in a first class, efficient, expeditious, good, proper and workmanlike manner in accordance with Prudent Industry Practices. Seller shall construct, install, operate and maintain the Facility in accordance with all supplier and manufacturer instructions and in a manner that does not void or impair any supplier or manufacturer warranties. All equipment, materials and components comprising the Facility shall: (i) be new and of good quality in accordance with Prudent Industry Practices; and (ii) be free from faults and defects in design, workmanship and materials.

2.2.2 Within thirty (30) Days after the execution and delivery of this Agreement, Seller shall provide to Buyer good faith estimates of the dates by which Seller expects that: (i) notice to proceed will be provided to the engineering, construction and procurement contractor for the Facility; (ii) the generating equipment will be delivered to the Facility Site; (iii) mechanical completion will occur; and (iv) the Facility will initially synchronize to the Southern Companies Electric System ("Milestone Schedule"). Seller shall

**CONFIDENTIAL**

notify Buyer of any changes in these estimates as they may occur from time to time (including the reason(s) for the change); provided, however, that such notification shall not relieve Seller from any of its obligations set forth elsewhere in this Agreement.

2.2.3 Within thirty (30) Days after the end of each Month prior to the Commercial Operation Date, Seller shall deliver a written report to Buyer describing the progress of design, development and construction of the Facility, including the status of events on the Milestone Schedule and other events of material significance.

2.3 Inspections. Upon reasonable prior advance notice to Seller or its Representatives, Buyer or its Representatives shall be entitled to inspect the Site and the construction, maintenance, operation and testing of the Facility. Seller shall cooperate in such inspections as may be reasonably required by Buyer provided that: (i) such inspections shall not materially interfere with the testing or operations of the Facility, and (ii) Buyer complies with Seller's reasonable policies and procedures applicable to the Facility and the Site, including health and safety policies and procedures. Any such review and inspection should it occur, shall not be construed as any endorsement by Buyer of the design or construction of the Facility or as any warranty by Buyer of the safety, durability or reliability thereof.

2.4 Failure to Achieve Commercial Operation by Required Commercial Operation Date.

2.4.1 In the event that Commercial Operation is not achieved by the Required Commercial Operation Date, Seller shall pay Buyer an amount of liquidated damages equal to [REDACTED] for each Day after the Required Commercial Operation Date that the Facility does not achieve Commercial Operation ("Daily LDs"). Such liquidated damages shall be paid to Buyer within three (3) Business Days after Seller receives an invoice

**CONFIDENTIAL**

from Buyer for the same. Seller shall pay such liquidated damages to Buyer for each Day until the earlier of: (i) the Commercial Operation Date; (ii) the Day that Seller notifies Buyer that Commercial Operation will not be achieved; or (iii) the Day that Buyer terminates this Agreement pursuant to Section 2.4.2.

2.4.2 If Commercial Operation is not achieved within three hundred sixty-five (365) Days after the Required Commercial Operation Date, then Buyer shall be entitled to terminate this Agreement at any time thereafter by providing notice to Seller; provided, however, that Buyer shall not be entitled to provide such notice after Commercial Operation is achieved.

2.4.3 If Seller notifies Buyer under Section 2.4.1(ii) that Commercial Operation will not be achieved, or if Buyer provides notice to Seller terminating this Agreement under Section 2.4.2, this Agreement shall immediately terminate and Seller shall, within three (3) Business Days, pay to Buyer: (i) liquidated damages in an amount equal to the difference of: (a) the Seller Amount; minus (b) the amount of Daily LDs previously paid by Seller to Buyer; and (ii) an amount equal to all of the costs relating to the DNR Upgrades (if any), pursuant to Section 9.2.5 (which amounts shall be paid in addition to any amount required to be paid by Seller under the Interconnection Agreement). Upon such termination, neither Party shall have any further obligation under this Agreement, except for obligations and liabilities that survive termination as provided in this Agreement or which accrue prior to or at termination.

2.4.4 The Parties acknowledge and agree that in the event Commercial Operation is not achieved by the Required Commercial Operation Date or if this Agreement terminates pursuant to Section 2.4.2 or Section 2.4.3, all or a portion of the amount of the damages arising therefrom are not susceptible to an accurate determination. The Parties further acknowledge and agree that the liquidated damages set forth above in this Section 2.4 are not

**CONFIDENTIAL**

intended as a penalty and represent a fair and reasonable approximation of all or a portion of the damages Buyer may incur in each particular case.

2.4.5 Seller shall be entitled to extend the Required Commercial Operation Date on a Day-for-Day basis up to the period of any delay in achieving Commercial Operation that is caused by a Force Majeure Event that cannot be overcome by Seller by using commercially reasonable efforts to revise or rearrange Seller's construction schedule; provided that such efforts under this Section 2.4.5 shall not be deemed to require Seller to bear any increased costs or expenses. In the event that Seller extends the Required Commercial Operation Date by more than three hundred sixty-five (365) Days pursuant to this Section 2.4.5, Buyer shall be entitled to terminate this Agreement at any time thereafter upon written notice to Seller; provided, however, that Buyer shall not be entitled to provide such notice after Commercial Operation is achieved. Upon any termination of this Agreement by Buyer under this Section 2.4.5, neither Party shall have any further obligation under this Agreement, except for obligations and liabilities that survive termination as provided in this Agreement or which accrue prior to or at termination.

2.5 Failure to Complete Interconnection Facilities and Upgrades. In the event that: (i) the Interconnection Provider fails to complete the Interconnection Facilities and Upgrades by the Day that is ninety (90) Days prior to the Required Commercial Operation Date ("Required Interconnection Date"); (ii) Seller fails to satisfy all of the criteria for Commercial Operation (as set forth in the definition of Commercial Operation under Article 1) ("COD Criteria") on or before the Required Commercial Operation Date; (iii) the sole reason for Seller's failure to satisfy the COD Criteria is Interconnection Provider's failure to complete the Interconnection Facilities and Upgrades by the Required Interconnection Date, and there is no other reason that would have caused Seller to fail to satisfy such criteria; (iv) Interconnection Provider's failure to

**CONFIDENTIAL**

complete the Interconnection Facilities and Upgrades by the Required Interconnection Date is not due to any act or omission of Seller or a Force Majeure Event (as such term is defined in the Interconnection Agreement); and (v) all of the COD Criteria are satisfied within forty-five (45) Days after Interconnection Provider completes the Interconnection Facilities and Upgrades, then (A) Seller shall not be obligated to pay Daily LDs under Section 2.4.1 and (B) Seller shall be deemed to have achieved Commercial Operation as of the Required Commercial Operation Date (provided that Seller shall not be entitled to any Monthly Energy Payments or other payments or compensation for the electrical capability or output of the Facility until after the Interconnection Facilities and Upgrades are completed and energy deliveries commence from the Facility). However, if (i) through (iv) of the foregoing sentence apply but all of the COD Criteria are not satisfied within forty-five (45) Days after Interconnection Provider completes the Interconnection Facilities and Upgrades, then without further action of the Parties, the Required Commercial Operation Date shall be automatically modified to be the date that Interconnection Provider completed the Interconnection Facilities and Upgrades and the provisions of Section 2.4 shall thereafter apply.

2.6 Ownership of the Facility and the Site .

2.6.1 Seller covenants that Seller shall at all times own and have title to the entire Facility.

2.6.2 Seller covenants and agrees that Seller shall at all times either own and have title to or have a valid leasehold interest in the entire Site; [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**CONFIDENTIAL**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Upon termination of this Agreement pursuant to this Section 2.6.2, neither Party shall have any further obligation or liability under this Agreement except for obligations and liabilities that survive termination as provided in this Agreement or which accrue prior to or at termination. For the avoidance of doubt, Buyer's termination of the Agreement pursuant to this Section 2.6.2 shall in no event be considered an Event of Default or otherwise give rise to any obligation under Section 15.2.

2.7 Seller Conditions Precedent. Notwithstanding any other provision of this Agreement to the contrary, Seller shall have the right to terminate this Agreement by notice to Buyer on or before the applicable date specified below, in the event that, on or before the date that is [REDACTED] ("Seller CP Deadline"):

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Notwithstanding the foregoing, if, for any reason, Seller does not give Buyer written notice of termination pursuant to this Section 2.7 on or before thirty (30) Days after the Seller CP Deadline, then and in such event Seller shall be deemed to have waived the termination rights

**CONFIDENTIAL**

under this Section 2.7 and such rights shall lapse and be and remain void and of no further force or effect. Seller hereby covenants and agrees that it will use commercially reasonable efforts to satisfy the conditions precedent set forth in this Section 2.7. Upon termination of this Agreement pursuant to this Section 2.7, neither Party shall have any further obligation or liability under this Agreement except for obligations and liabilities that survive termination as provided in this Agreement or which accrue prior to or at termination. For the avoidance of doubt, Seller's termination of the Agreement pursuant to this Section 2.7 shall in no event be considered an Event of Default or otherwise give rise to any obligation under Section 15.2.

**ARTICLE 3****TERM AND TERMINATION**

3.1 Term. This Agreement shall become effective as of the Effective Date. Subject to early termination of this Agreement, the term of this Agreement shall begin on the Effective Date and shall continue until the end of the Day on the twenty fifth (25<sup>th</sup>) anniversary of the Day immediately prior to the Service Commencement Date (such period of time is referred to as the "Term"). As used herein, the term "Service Term" means the period commencing on the Service Commencement Date and ending at the end the Day on which the Term ends, subject to earlier termination as provided herein. The Parties acknowledge and agree that the economic life of the Facility (i.e., the number of years the Facility is reasonably expected to remain in service when maintained as required under this Agreement and in accordance with Prudent Industry Practices, as distinguished from the depreciable life of the assets comprising the Facility for Federal income tax purposes) is not reasonably expected to be less than thirty-five (35) years.

3.2 Survival. All provisions of this Agreement that expressly or by implication come into or continue in force and effect following the expiration or termination of this Agreement

**CONFIDENTIAL**

shall remain in effect and be enforceable following such expiration or termination, including all provisions of this Agreement which must survive in order to give force and effect to the rights and obligations of the Parties under this Agreement.

3.3 Effect of Termination. Subject to the exercise of a Non-Defaulting Party's rights under Section 15.2, in the event that this Agreement is terminated, the rights and obligations of the Parties hereunder shall continue unaffected until the termination is effective in accordance with the terms and conditions thereof. Any termination of this Agreement shall not: (i) relieve Buyer of its obligation to pay any unpaid invoices for any energy delivered pursuant to this Agreement prior to the effective date of such termination; (ii) relieve Seller of its obligation to pay any unpaid invoices for any amounts owing by Seller hereunder prior to the effective date of such termination; (iii) relieve Seller of its obligation to provide Products that Seller is required to deliver hereunder prior to the effective date of such termination; (iv) relieve Buyer of its obligation to purchase energy that Seller delivers pursuant to this Agreement prior to the effective date of such termination; (v) relieve the Defaulting Party from its obligation to pay amounts as applicable under Section 15.2; or (vi) relieve either Party of any of its other liabilities or obligations accruing prior to termination, and such liabilities and obligations shall survive termination of this Agreement.

3.4 Limitations after Seller Termination Event.

3.4.1 If this Agreement terminates due to a Seller Termination Event, then for a period of [REDACTED] following the effective date of such termination ("Restricted Period"), neither Seller, its successors and assigns, nor any of its or their Affiliates shall sell, or enter into a contract or obligation to sell, electric energy, electric capacity, or any product that is similar to any Environmental Attributes or Electrical Products generated by, associated with or attributable

**CONFIDENTIAL**

to a generating facility at the Site to a Person other than Buyer (any such sale, contract or obligation being referred to as a “Third Party Transaction”).

3.4.2 The prohibition set forth in Section 3.4.1 will not apply with respect to any Third Party Transaction if: (i) Seller or Seller’s Affiliate provides Buyer with a binding written offer to sell to Buyer electric energy and products similar to the Environmental Attributes and Electrical Products that are associated with the applicable generating facility at the Site pursuant to prices, terms and conditions substantially the same as the prices, terms and conditions contained in this Agreement; and (ii) Buyer fails to accept such offer within sixty (60) Days after Buyer’s receipt thereof.

3.4.3 During the Restricted Period and for so long as the limitations in Section 3.4.1 apply, neither Seller, its successors or assigns, nor any of its or their Affiliates may sell, transfer or assign to any other Person: (i) the Facility or any part thereof; (ii) land rights or interests in the Site (including any interconnection queue position associated with the Site); or (iii) any right to electric capacity, energy or product similar to any Environmental Attributes or Electrical Products associated with the Facility or the Site, unless in any case of (i), (ii) or (iii), such Person agrees to be bound by the terms and restrictions set forth in this Section 3.4 pursuant to a written agreement approved by Buyer.

3.4.4 The provisions of this Section 3.4 shall be binding on Seller and its successors and assigns and shall constitute covenants that run with and benefit and burden the Site.

3.4.5 Upon request by Buyer, Seller shall promptly execute such documentation and instruments as reasonably requested by Buyer that set forth Buyer’s rights in respect of the

**CONFIDENTIAL**

Facility and the Site under this Section 3.4, which Buyer may record to give public notice of Buyer's rights in respect of the Facility and the Site under this Section 3.4.

3.4.6 Seller shall indemnify and hold Buyer harmless from all benefits lost and other damages sustained by Buyer as a result of any breach of the covenants contained within this 3.4.

3.5 MPSC Approval.

3.5.1 Buyer shall have no obligation to receive, accept or purchase any of the Products unless and until either: (i) Buyer has received a Final MPSC Approval Order; or (ii) Buyer fails to exercise its termination right under Section 3.5.3 and as a result Buyer is deemed to have waived its right to terminate this Agreement under that Section.

3.5.2 Any approval of this Agreement by the MPSC shall be preceded by a filing by Buyer with the MPSC requesting approval of this Agreement ("MPSC Filing"), which filing (if any) will be made by Buyer no later than [REDACTED]

[REDACTED] Seller agrees to assist and support Buyer, in a timely manner and to the extent reasonably requested by Buyer, in obtaining approval of this Agreement from the MPSC. [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

3.5.3 In addition to Buyer's right to terminate this Agreement under Section 3.5.2, if there is not a Final MPSC Approval Order by the Day that is [REDACTED] Days after the MPSC Filing is submitted ("MPSC Approval Deadline"), then Buyer may

**CONFIDENTIAL**

terminate this Agreement upon written notice to the Seller, provided that such notice must be provided no later than thirty (30) Days after the MPSC Approval Deadline. In the event Buyer fails to exercise such termination right within such thirty (30) Day period, Buyer shall be deemed to have waived such termination right.

3.5.4 Upon termination of this Agreement pursuant to any provision of this Section 3.5, neither Party shall have any further obligation under this Agreement, except for obligations and liabilities that survive termination as provided in this Agreement or which accrue prior to or at termination.

3.6 Early Termination Due to Variable Interest Entity. Notwithstanding any other provision of this Agreement to the contrary, Buyer shall have the right to terminate this Agreement by notice to Seller on or before the forty-fifth (45<sup>th</sup>) Day following the Effective Date in the event Buyer fails to obtain a favorable opinion from Deloitte & Touche LLP that this Agreement and the transactions contemplated by the Parties herein or together with any other agreements between Seller and Buyer shall not cause Seller to constitute a VIE whose assets and liabilities must be consolidated with those of Buyer. If, for any reason, Buyer does not give Seller written notice of any such termination pursuant to this Section 3.6 on or before the forty-fifth (45<sup>th</sup>) Day following the Effective Date, then and in such event the termination right under this Section 3.6 shall lapse and be and remain void and of no further force or effect. Upon termination of this Agreement pursuant to this Section 3.6, neither Party shall have any further obligation or liability under this Agreement.

**CONFIDENTIAL****ARTICLE 4****OPERATION AND MAINTENANCE OF THE FACILITY****4.1 General Standards.**

4.1.1 During the Term, Seller shall at its sole cost and expense manage, control, construct, operate and maintain the Facility (or cause others to manage, control, operate and maintain the Facility) in a manner consistent with Prudent Industry Practices and the requirements set forth in this Agreement. In addition, Seller shall at its sole cost and expense manage, control, operate and maintain the Facility (and cause others that manage, control, construct, operate and maintain the Facility) in accordance with all applicable Legal Requirements, applicable reliability standards and operating policies of NERC and SERC, and the Operating Procedures developed by the Operating Committee. Seller shall also diligently seek, obtain, maintain, comply with and, as necessary, renew and modify from time to time, any and all Consents.

4.1.2 Seller and Buyer shall jointly develop written Operating Procedures within sixty (60) Days prior to the anticipated Service Commencement Date. Such Operating Procedures shall address: (i) deliveries of energy during start-up and testing of the Facility; (ii) the method of day-to-day communications; (iii) clearance and switching practices; (iv) daily energy reports; (v) Facility operations log; (vi) reactive power output; (vii) technical limitations of Facility operation; (viii) coordination of maintenance scheduling; (ix) designation of Confidential Information; (x) logging and tracking of Scheduled Outage Hours; (xi) the procedure for substantiating the transfer of Environmental Attributes under this Agreement; (xii) verifying information with respect to the production of Environmental Attributes transferred to Buyer hereunder for purposes of certification; and/or (xiii) such other matters as the Operating

**CONFIDENTIAL**

Representatives shall agree are appropriate. The Operating Representatives shall be responsible for modifying the Operating Procedures in writing to reflect mutually agreed upon changes. In the event of inconsistency or conflict between the Operating Procedures and specific terms of this Agreement, the specific terms of this Agreement shall take precedence.

4.1.3 Seller shall, or shall cause others to, employ at the Facility all safety devices and safety practices required by Prudent Industry Practices. To the extent consistent with Prudent Industry Practices, Seller shall keep accurate records of any accident or other occurrence at the Facility Site that results in material injury to persons or material damage to property. Seller shall provide to Buyer reasonable access to these records upon not less than seven (7) Days' notice during normal business Hours, but shall not be required to provide access to employment or medical records regarding Facility personnel.

4.2 Access to the Facility. Upon reasonable notice, Buyer's Representatives shall have access to the Facility and the Site in order to: (i) inspect, maintain, and test meters and other Buyer equipment; (ii) monitor or measure energy generated by the Facility; (iii) inspect the Facility; and (iv) take such other action as may be reasonably necessary to exercise Buyer's rights under this Agreement. Buyer shall comply with the reasonable rules and procedures of Seller when accessing the Facility or the Site under this Section 4.2.

4.3 Availability of Records. Buyer and Seller shall keep complete and accurate records and all other data with respect to their performance under this Agreement (including all information under Section 4.8) in accordance with the following guidelines:

4.3.1 All such records shall be maintained for a minimum of seven (7) years after the creation of such record or data and for any additional period of time required by any Legal Requirement or Governmental Authority. In the event Seller intends to dispose of or

**CONFIDENTIAL**

destroy any such records after such seven (7) year period, Seller shall provide Buyer with thirty (30) Days prior written notice.

4.3.2 Upon reasonable advance notice, either Party shall have the right to examine the records and data of the other Party in order to facilitate any determination that such Party is required or permitted to make under this Agreement.

4.4 Scheduled Outages.

4.4.1 Seller shall submit to Buyer, before October 1 of each calendar year, a schedule of planned Facility outages during which maintenance will be performed for the next calendar year ("Scheduled Outages") (provided that Seller shall submit such schedule for the calendar year in which the Effective Date occurs no later than ninety (90) Days after the Effective Date); provided, however, that: (i) Seller shall only conduct Scheduled Outages of the Facility during either (a) times that do not occur during a Daylight Period, or (b) a Daylight Period occurring in [REDACTED]; and (ii) there shall be no more than [REDACTED] Scheduled Outage Hours during the total aggregate Daylight Periods of [REDACTED]. [REDACTED] Buyer shall have thirty (30) Days to review the proposed schedule of Scheduled Outages and may approve or reject such schedule in whole or in part, and may suggest alternative dates for Scheduled Outages. Scheduled Outages are subject to the prior approval of Buyer, which approval shall not be unreasonably conditioned, withheld or delayed. Seller shall resubmit revised schedules for Scheduled Outages to Buyer within thirty (30) Days after Buyer's disapproval of a previous schedule, and Buyer and Seller agree to use commercially reasonable efforts to promptly develop schedules for Scheduled Outages that are mutually acceptable to the Parties.

**CONFIDENTIAL**

4.4.2 Seller shall not be required to deliver energy from the Facility under this Agreement during any Hour(s) to the extent that the Facility is unavailable due to a Scheduled Outage that has received the prior written approval of Buyer pursuant to Section 4.4.1; provided, however, that in no event shall energy that would have been produced by the Facility but was not produced due to a Scheduled Outage or due to the unavailability of the Facility to produce energy due to maintenance or outages that have or have not received the prior written approval of Buyer constitute Curtailed Energy under this Agreement.

4.5 Station Service. Seller shall be required to enter into a separate agreement with Buyer (or another appropriate entity) for Station Service and will be responsible for bearing all associated costs.

4.6 Unplanned Outages. In addition to Scheduled Outages, Seller shall use commercially reasonable efforts to immediately notify Buyer of any event or condition that will result in any portion of the Facility not being able to produce energy or a reduction in the generating capability of the Facility, including forced outages at the Facility and Force Majeure Events affecting the Facility. Such notices shall contain information describing such event or condition, the beginning date and time of such event or condition, the expected end date and time of such event or condition, the amount of Delivered Energy that Seller expects will be provided during such event or condition, and any other information reasonably requested by Buyer. With respect to any such event or condition, Seller shall provide Buyer with such notice by any reasonable means required by Buyer, including by telephone or electronic mail. To the extent reasonably practicable, Seller shall cause any unplanned outages to occur during Hours that are not within Daylight Periods.

**CONFIDENTIAL**

4.7 Availability Forecasts. Seller shall provide Buyer with forecasts of the delivery of energy under this Agreement as described below. Such availability forecasts shall include the updated status of all equipment that may impact availability (including solar photovoltaic panels, inverters and transformers). Seller shall use commercially reasonable efforts to forecast the delivery of energy under this Agreement accurately and to transmit such information in a format reasonably acceptable to Buyer. Buyer and Seller shall agree upon reasonable changes to the requirements and procedures set forth below from time-to-time, as necessary to accommodate changes to operating and scheduling procedures of Buyer.

4.7.1 By no later than: (i) ninety (90) Days prior to the Commercial Operation Date, with respect to the remainder of the calendar year in which the Commercial Operation Date will occur; and (ii) the September 1 that is prior to each calendar year thereafter, Seller shall provide to Buyer a non-binding forecast of the Hourly delivery of energy under this Agreement for an average Day in each Month of the following calendar year in a form reasonably acceptable to Buyer.

4.7.2 By no later than ten (10) Business Days before the commencement of the Service Term, and thereafter ten (10) Business Days before the beginning of each Month during the Service Term, Seller shall provide to Buyer a non-binding forecast of the Hourly energy deliveries under this Agreement for each day of the following Month in a form reasonably acceptable to Buyer.

4.7.3 By no later than 5:00 a.m. CPT of each Day, Seller shall provide Buyer a non-binding forecast of energy to be delivered under this Agreement for the next Day and each of the next seven (7) Days. Each such notice shall clearly identify, for each Hour, Seller's forecast of all amounts of available energy to be delivered pursuant to this Agreement. In the

**CONFIDENTIAL**

event that Seller foresees that actual deliveries under this Agreement for any Day will be materially different than a forecast previously provided for such Day, Seller shall, as soon as reasonably possible, provide notice to Buyer of such change and an updated forecast. The Operating Committee shall determine what constitutes such a material change and the Representative of Buyer that should receive notice of such change.

4.7.4 The Parties agree that alternatives to the energy forecast schedules as required by Sections 4.7.1, 4.7.2, and 4.7.3 can be included in the Operating Procedures. If such Operating Procedures do not exist or cannot be agreed to by the Parties, then Sections 4.7.1, 4.7.2, and 4.7.3 shall prevail. Likewise, if at any point during the term of this Agreement the Buyer's situation changes such that the alternative schedules in the Operating Procedures are no longer sufficient, Parties agree to renegotiate said procedures, with Sections 4.7.1, 4.7.2, and 4.7.3 representing the default requirement in the event agreement cannot be reached.

4.8 Data and Installation and Maintenance of Weather Station and other Equipment.

4.8.1 Commencing on the later of the Effective Date or the first Day on which the Facility generates energy, and continuing through the end of the Term, Seller shall record and maintain the following data:

- (i) real power production by the Facility for each Hour;
- (ii) changes in operating status and maintenance events;
- (iii) any unusual conditions found during inspections;
- (iv) any significant events related to the operation of the Facility;
- (v) one (1) minute and Hourly time-averaged measurements from data samples at ten (10) seconds or greater frequency for the following parameters at the Facility: total global horizontal irradiance, direct normal

**CONFIDENTIAL**

irradiance, ambient air temperature, relative humidity, precipitation, barometric pressure, and photovoltaic module temperature and other pertinent meteorological conditions; and

- (vi) any other data that is customarily collected and recorded with respect to facilities that are similar to the Facility, as agreed by the Operating Committee.

Buyer shall have real-time access to the meteorological data required by this Section 4.8. Seller shall provide Buyer a report within thirty (30) Days after the end of each Month that provides the information required in subsections (i), (ii), (iii) and (iv) of this Section 4.8.1 for such Month as well as any other additional information that Buyer reasonably requests regarding the operation of the Facility. Buyer reserves the right to validate any of the meteorological data provided by Seller with information publicly available from NOAA and nearby weather stations.

4.8.2 No later than the Commercial Operation Date, Seller, at its own expense, shall install and maintain, at a minimum, five (5) stand-alone meteorological stations throughout the Site to monitor and report the meteorological data required under Section 4.8.1 and shall provide Buyer with the elevation, latitude and longitude of such weather stations. Seller shall maintain the meteorological stations as necessary to provide accurate data with respect to the location of the Facility. Seller shall provide Buyer all data collected by such meteorological stations. The Operating Committee shall determine the appropriate timing and manner of the provision of such data.

4.8.3 Seller shall maintain the confidentiality of all data regarding the electrical output of the Facility pursuant to the provisions of Section 19.16, provided that Buyer shall be entitled to disclose such data to any other Persons in its discretion.

**CONFIDENTIAL**

4.9 Disclaimer. Seller understands and agrees that Buyer's review of any material or information related to the Facility or any physical inspection of the Facility conducted by Buyer under any provision of this Agreement is solely for its own information. Any such review or inspection, or any consent to materials, information or plans provided by Seller, shall not be construed as endorsing the design, fitness or operation of the Facility nor as a warranty or guarantee, and in no event shall Buyer be deemed to have accepted any condition of the Facility that is not in full compliance with the terms of this Agreement. Seller shall in no way represent to any third party that, as a result of the Buyer's receipt and review of any material or information, or any inspections by Buyer, Buyer is in any way responsible for the engineering or construction soundness of the Facility. In no event shall any of Buyer's statements, representations, or lack thereof, either express or implied, relieve Seller of its exclusive responsibility for the maintenance and operation of the Facility.

4.10 Refurbishment of Facility. During the Term, Seller may refurbish the Facility, alter components of the Facility, replace components of the Facility, add additional solar modules, or replace solar modules with more powerful modules or otherwise; provided that the electric generating capability of the Facility, as refurbished, does not exceed the Planned Facility Capacity.

4.11 Expansion of Facility. Neither Seller nor any Affiliates thereof shall enter into any contract for the sale of energy, Environmental Attributes or Electrical Products from any addition to or expansion of the Facility, unless and until: (i) Seller shall have first offered in writing (in the form of a proposed contract) to enter into a contract with Buyer on business terms substantially the same, or more favorable to Buyer, as those specified in any bona fide offer from another Person to Seller with respect thereto, which bona fide offer Seller intends to accept; and

**CONFIDENTIAL**

(ii) Buyer does not accept such offer within [REDACTED] Days after the date presented to Buyer in writing; provided, however, that Seller may not sell energy, Environmental Attributes or Electrical Products from such addition or expansion of the Facility to any other Person(s) for a price and on other material terms more favorable to such Person(s) than those so offered to Buyer. Notwithstanding the foregoing, nothing in this Section 4.11 shall be construed as limiting Seller's obligations under Section 16.5, and Seller shall not add to or expand the Facility if such addition or expansion would cause Seller to not be in compliance with Section 16.5.

**ARTICLE 5****PERFORMANCE SECURITY****5.1 Seller's Provision of Performance Security.**

5.1.1 If at any time there shall occur or exist a Security Posting Condition with respect to Seller, then Seller shall immediately notify Buyer thereof and, within five (5) Business Days after such Security Posting Condition occurs or commences to exist, shall provide to and maintain, in favor of Buyer, Performance Security that secures all of Seller's obligations to Buyer under this Agreement, in an amount not less than the Required Collateral Amount. Seller acknowledges that, as of the Effective Date, a Security Posting Condition exists with respect to Seller. Accordingly, the Parties stipulate and agree that, notwithstanding anything to the contrary contained or implied herein, Seller shall provide to Buyer on or before the date that is

[REDACTED]  
[REDACTED] and maintain thereafter (subject to the provisions below) Performance Security, in favor of Buyer, in an amount not less than the Required Collateral Amount.

**CONFIDENTIAL**

5.1.2 So long as no Event of Default by or attributable to Seller shall have occurred and be continuing, Buyer shall cooperate with Seller, at Seller's request and expense, to release and return to Seller the Performance Security theretofore provided by Seller to and then held by Buyer if and to the extent Seller contemporaneously provides to Buyer replacement or substitute Performance Security in an equal or greater amount that satisfies the requirements of this Agreement.

5.1.3 If, and to the extent, at any time after the Effective Date, the Required Collateral Amount shall be more than the amount of the Performance Security provided by Seller to and then held by Buyer, Seller shall, within three (3) Business Days of Buyer's request, have additional Performance Security in the amount of such difference provided to Buyer unless Seller is no longer required to maintain such Performance Security under the terms of this Agreement. So long as no Event of Default by or attributable to Seller shall have occurred and be continuing under this Agreement, if, and to the extent, on the first Business Day of any calendar year, the Required Collateral Amount shall be less than the amount of the Performance Security theretofore provided by Seller to and then held by Buyer, Buyer shall cooperate with Seller, at Seller's request and expense, to have the Performance Security then held by Buyer reduced by the amount of such difference, subject to Seller's obligation to thereafter provide Performance Security to Buyer in order to comply with the provisions of this Agreement.

5.1.4 At such time that there is no longer a Security Posting Condition with respect to Seller and so long as no Event of Default by or attributable to Seller shall have occurred and be continuing under this Agreement, Seller may request and Buyer shall cooperate with Seller, at Seller's expense, to have Performance Security theretofore provided by Seller and then held by Buyer released and returned to Seller, subject to Seller's obligation to thereafter

**CONFIDENTIAL**

provide Performance Security to Buyer in order to comply with the provisions of this Agreement.

5.1.5 For the avoidance of doubt, in the event that Buyer draws upon and/or realizes payment from the Performance Security provided by Seller under this Agreement, immediately upon such draw or payment, Seller shall provide to Buyer an amendment to such Performance Security or additional Performance Security as necessary such that the total available undrawn amount of Performance Security provided to and held by Buyer hereunder continues to be equal to or greater than the Required Collateral Amount.

5.1.6 If at any time a guaranty provided by Seller as Performance Security no longer satisfies the definition of Eligible Guaranty under this Agreement (including due to the guarantor having a Material Adverse Financial Condition), Seller shall provide Buyer with an Eligible Letter of Credit or Cash Security that satisfies the requirements of this Agreement within three (3) Business Days of such occurrence and thereafter maintain an Eligible Letter of Credit or Cash Security with Buyer until the return of such Eligible Letter of Credit or Cash Security pursuant to Section 5.4.

5.2 Compliance. Seller shall furnish or cause to be furnished to Buyer such financial information, statements, certificates and reports as Buyer shall reasonably request to verify from time to time whether there exists a Security Posting Condition with respect to Seller and whether a guaranty provided as Performance Security constitutes an Eligible Guaranty.

5.3 Use of Performance Security. Buyer shall be entitled to draw and/or be paid upon the Performance Security: (i) for any obligation of Seller arising under this Agreement that is not paid when due, whether or not an Early Termination Date has been declared or this Agreement has expired or otherwise been terminated; (ii) if such Performance Security is within ninety (90)

**CONFIDENTIAL**

Days of expiry, expiration or termination and such Performance Security (or substitute or replacement Performance Security) is still required under the terms of this Agreement and substitute or replacement Performance Security that satisfies the requirements of this Agreement as to form, issuer and amount has not been provided; and/or (iii) otherwise in compliance with the terms of such Performance Security.

5.4 Return of Performance Security. Buyer shall return the Performance Security on the later to occur of: (i) the expiration or termination of this Agreement; and (ii) the indefeasible and irrevocable payment and performance of all of Seller's obligations under this Agreement, except for Seller's record keeping obligations under Section 4.3.1 and Seller's indemnification obligations set forth in Section 11.2 unless Buyer has provided notice to Seller of a claim or proceeding in respect of which it is to be indemnified pursuant to Section 11.2.2.

**ARTICLE 6****INTERCONNECTION AND METERING**

6.1 Interconnection.

6.1.1 Seller represents that as of the Effective Date, Seller has submitted, pursuant to the applicable interconnection process of the Interconnection Provider, a request to interconnect the Facility to the Southern Companies Electric System. Seller shall maintain and use diligent efforts to pursue such interconnection of the Facility in accordance with the applicable interconnection process, including the timely execution and submission of all required study agreements, fees, deposits and other charges. Seller shall be responsible for all costs and expenses associated with all studies, fees, deposits and other charges in connection with such interconnection request.

**CONFIDENTIAL**

6.1.2 Seller shall execute an Interconnection Agreement with Interconnection Provider within thirty (30) Days of being presented with an executable version of the Interconnection Agreement. The Parties agree that the Interconnection Agreement shall contain terms, conditions and requirements pursuant to the interconnection policies and requirements of the Interconnection Provider and its Affiliates. Pursuant to the Interconnection Agreement, Interconnection Provider shall own, design, engineer, procure, construct, install, operate, maintain, repair and replace (as needed) the Interconnection Facilities and Upgrades; provided, however, that Seller shall be responsible for all costs and expenses that are associated with such ownership, design, engineering, procurement, construction, installation, operation, maintenance, repair and replacement of such Interconnection Facilities and Upgrades, as well as a monthly administrative charge of [REDACTED] per Month.

6.1.3 If at any time, based on interconnection studies or otherwise, Buyer determines that the Interconnection Provider and/or Buyer will, in the aggregate, be responsible for or will incur costs and expenses associated with the interconnection of the Facility to the Southern Companies Electric System (including under the Interconnection Agreement, whether for network upgrades or other facilities, and including all amounts that would be required to be repaid or refunded to Seller in connection with upgrades and facilities associated with interconnection and related interest and tax payments) in an amount that exceeds the Buyer Interconnection Cost Threshold, Buyer shall be entitled to terminate this Agreement by providing notice to Seller (provided that the foregoing shall not be interpreted or construed in any way as limiting Seller's responsibility for costs and expenses associated with the interconnection of the Facility as set forth in Section 6.1.2); provided that, if, for any reason, Buyer does not give Seller notice of termination pursuant to this Section 6.1.3 on or before the

**CONFIDENTIAL**

Day that is thirty (30) Days after the date that the results of the facilities study for such interconnection are provided to Seller and Buyer by the Interconnection Provider, then and in such event Buyer shall be deemed to have waived the termination rights under this Section 6.1.3 and such rights shall lapse and be and remain void and of no further force or effect; provided further, that if Buyer provides such notice, this Agreement shall not terminate if Seller agrees in writing, within thirty (30) Days after receipt of such notice, to pay all amounts in excess of the Buyer Interconnection Cost Threshold that are associated with the interconnection of the Facility, and without Seller having any entitlement to any repayments, refunds, credits (including transmission credits) or other reimbursements for such amounts (as determined by Buyer). If Buyer terminates this Agreement pursuant to this Section 6.1.3, neither Party shall have any further liability or obligation under this Agreement, except for liabilities and obligations that survive termination as provided in this Agreement or which accrue prior to or at termination. For the avoidance of doubt, the termination of this Agreement pursuant to this Section 6.1.3 does not constitute an Event of Default.

6.1.4 If at any time, based on interconnection studies or otherwise, Seller determines that Seller will, in the aggregate, be responsible for or will incur costs and expenses associated with the interconnection of the Facility to the Southern Companies Electric System (excluding costs and expenses associated with the Seller Installed Facilities but including costs and expenses associated with Interconnection Facilities and Upgrades under the Interconnection Agreement) in an amount that exceeds the Seller Interconnection Cost Threshold, Seller shall be entitled to terminate this Agreement by providing notice to Buyer; provided that, if, for any reason, Seller does not give Buyer notice of termination pursuant to this Section 6.1.4 on or before the Day that is thirty (30) Days after the date that the results of the facilities study for such

**CONFIDENTIAL**

interconnection are provided to Seller and Buyer by the Interconnection Provider, then and in such event Seller shall be deemed to have waived the termination rights under this Section 6.1.4 and such rights shall lapse and be and remain void and of no further force or effect; provided further that if Seller provides such notice, this Agreement shall not terminate if Buyer agrees in writing, within thirty (30) Days after receipt of such notice, to pay all amounts in excess of the Seller Interconnection Cost Threshold that are associated with the interconnection of the Facility. If Seller terminates this Agreement pursuant to this Section 6.1.4, neither Party shall have any further liability or obligation under this Agreement, except for liabilities and obligations that survive termination as provided in this Agreement or which accrue prior to or at termination. For the avoidance of doubt, the termination of this Agreement pursuant to this Section 6.1.4 does not constitute an Event of Default.

6.1.5 The Interconnection Agreement shall be maintained throughout the Term of this Agreement. Seller shall promptly provide a copy of, and any amendments to, such Interconnection Agreement to Buyer in accordance with the notice provisions of Section 19.9. Seller is responsible for determining all transmission and/or distribution-related rules, practices and policies with which it must comply.

6.1.6 If the Facility does not reach Commercial Operation, and if costs relating to transmission or other Interconnection Facilities and Upgrades were incurred by Buyer in connection with this Agreement or the Interconnection Agreement (including costs incurred that are below the Buyer Interconnection Cost Threshold), in addition to Seller's other obligations under this Agreement (including under Section 2.4), Seller shall owe and be liable to Buyer for such costs.

**CONFIDENTIAL****6.2     Metering.**

6.2.1 At Buyer's sole cost and expense, Buyer or its Affiliate may design, locate, construct, install, own, operate and maintain meters and such other facilities, equipment and devices as Buyer deems necessary or appropriate in order to determine the amount of electric energy delivered by Seller to Buyer under this Agreement, including for purposes of calculating the Monthly Energy Payment, all in accordance with Prudent Industry Practices.

6.2.2 All meters and other such facilities, equipment and devices installed by Buyer shall be and remain the property of Buyer.

**6.3     Inspection and Testing of Meters.** Buyer or its Affiliate shall inspect and test all meters installed by Buyer or its Affiliate in order to measure the output of the Facility at such times as Buyer deems necessary or appropriate. Upon reasonable written request to Buyer, Seller may request inspection or testing of any such meters. Seller shall be responsible for, and shall reimburse Buyer for, all costs and expenses incurred by or on behalf of Buyer or its Affiliate in connection with such inspections or tests requested by Seller unless such inspection or test reveals that such meters are inaccurate by more than one-half of one percent (0.5%) from the measurement made by the standard meter used in the test, in which event Buyer shall bear all costs of such testing. Buyer shall give reasonable written notice to Seller of the time and place when any such meter is to be inspected or tested, and Seller may have a representative present at such test or inspection.

**6.4     Inaccuracies.** If any seal securing the metering is found broken, if the metering fails to register, or if the measurement made by a metering device is found upon testing to vary by more than one-half of one percent (0.5%) from the measurement made by the standard meter used in the test, an adjustment shall be made correcting all measurements of electric energy made

**CONFIDENTIAL**

by the metering during: (i) the actual period when measurements were made by the metering, if that period can be determined to the mutual satisfaction of the Parties; or (ii) if the actual period cannot be determined to the mutual satisfaction of the Parties, one-half of the period from the date of the last test of the metering to the date such failure is discovered or such test is made (such one-half period being the “Adjustment Period”). If the Parties are unable to agree on the amount of the adjustment to be applied to the Adjustment Period, the amount of the adjustment shall be determined (a) by correcting the error if the percentage of error is ascertainable by calibration, tests or mathematical calculation, or (b) if not so ascertainable, by estimating on the basis of deliveries under similar conditions during the period since the last test. Within thirty (30) Days after the determination of the amount of any adjustment, Buyer shall either (a) pay Seller any additional amounts then due for deliveries of electric energy during the Adjustment Period in accordance with **Appendix A**, or (b) be entitled to a credit against any subsequent payments for electric energy, as appropriate.

6.5 Electrical Loss Factor Adjustment to Interconnection Point. In the event, and to the extent, that the meters used to determine the output of the Facility are not measuring deliveries of electric energy physically at the Interconnection Point, the metered amount of electric energy shall be adjusted to or from the Interconnection Point (as applicable) by a loss factor determined by Buyer, in accordance with Prudent Industry Practices. Buyer shall provide Seller with a copy of and an opportunity to review and comment on any study or analysis prepared by Buyer in determining such loss factor prior to the application of any adjustment factor.

**CONFIDENTIAL****ARTICLE 7****PRE-SERVICE COMMENCEMENT ACTIVITIES**

7.1 Initial Operation. Seller shall not operate the Facility in parallel with the Southern Companies Electric System without the prior written acknowledgment of Buyer that the Facility meets Buyer's and its Affiliates' requirements for parallel operation, including those set forth in the Interconnection Agreement. Such acknowledgment pursuant to this Agreement shall not be unreasonably conditioned, withheld or delayed. Seller shall notify Buyer of the estimated date of initial synchronization of the Facility to the Southern Companies Electric System at least forty-five (45) Days prior to such date or such shorter period as the Parties may agree.

7.2 Deliveries Prior to the Service Commencement Date. Prior to the Service Commencement Date, Seller shall sell and deliver, and Buyer shall purchase and receive, the electric energy delivered by Seller from the Facility to the Interconnection Point (including during testing and start up procedures at the Facility), subject to the following:

7.2.1 Prior to the Service Commencement Date: (i) Seller shall obtain Buyer's approval prior to delivering such energy (which approval shall not be unreasonably conditioned, withheld or delayed); (ii) Seller will also consult with Buyer regarding the timing of testing and start up procedures so as to avoid operational problems on the Southern Companies Electric System and to maximize the resulting economic benefits to both Parties; and (iii) Seller shall provide Buyer with at least fifteen (15) Days' notice prior to any initial proposed energy deliveries from the Facility during such testing and start up procedures, and Representatives of Buyer shall have the right to be present during any such testing.

7.2.2 For all deliveries of energy prior to the Service Commencement Date, Buyer's obligation to purchase and receive such energy during any given Hour shall be subject to

**CONFIDENTIAL**

the availability of adequate transmission service and facilities in order for Buyer to accept such energy at the Interconnection Point and to deliver such energy to Buyer's electric load without impairing or curtailing service to any other customer or causing any adverse conditions on the Southern Companies Electric System and without undertaking any congestion management procedures, as determined in the reasonable judgment of Buyer.

7.2.3 There shall be no amounts of Deemed Delivered Energy attributable to any period prior to the Service Commencement Date for any reason.

7.2.4 Prior to the Service Commencement Date, Seller shall purchase such energy at a rate equal to [REDACTED] of AIER for the applicable Hour of delivery.

7.3 Notice. Seller shall provide Buyer not less than fifteen (15) Days written notice before any testing to establish the Commercial Operation Date.

**ARTICLE 8****SALE AND PURCHASE OF ENERGY**

8.1 Sale and Purchase of Energy. During the Service Term, subject to the terms and conditions of this Agreement, Seller shall sell and deliver to Buyer, and Buyer shall purchase and receive from Seller, all Delivered Energy, with Buyer's payment obligation determined pursuant to Section 12.1 and **Appendix A**. Seller shall provide and deliver to Buyer Delivered Energy pursuant to this Agreement at all times the Facility is available and is capable of producing energy.

8.2 Provision of Electrical Products. In consideration of Buyer's purchase of energy under this Agreement, Seller shall deliver and provide to Buyer all Electrical Products associated with the Facility and the energy therefrom. Buyer shall be entitled to all revenues that may be received by Seller from any other Person(s) for any and all Electrical Products. Seller shall not

**CONFIDENTIAL**

be entitled to separate or additional compensation for such Electrical Products beyond the Monthly Energy Payment as calculated in accordance with this Agreement.

8.3 Exclusivity. During the Service Term, Buyer shall have exclusive rights to the entire electrical output of the Facility and all Electrical Products, and Seller shall not sell, supply or otherwise provide electric capacity, energy, or Electrical Products from the Facility to any other Person(s). In addition, except for energy used for operating the electric equipment comprising the Facility (which energy is not provided by the agreement contemplated by Section 4.5 hereof), without prior written approval of Buyer, Seller shall not itself utilize any electrical output or Electrical Products from the Facility for any purpose, including any industrial, processing or Station Service purposes (other than as required to operate the electric equipment comprising the Facility) on-site or at an adjacent site.

8.4 Characteristics of Energy. The electric energy delivered by Seller to the Point of Delivery shall meet the specifications required by Buyer or its Affiliate pursuant to the Interconnection Agreement.

8.5 Point of Delivery; Title. Seller shall deliver energy from the Facility to Buyer at the Point of Delivery. Title to such electric energy shall pass from Seller to Buyer at the Point of Delivery. Seller covenants that it shall have good and marketable title to all energy delivered to Buyer at the Point of Delivery and that it has the right to, and will, sell and deliver such energy to Buyer free and clear of all liens and encumbrances.

8.6 Source of Products. All Products provided by Seller under this Agreement shall be sourced from the Facility. In no event shall Seller have the right to procure any Product from sources other than the Facility for sale or delivery to Buyer under this Agreement, including during times when the Facility is unavailable.

**CONFIDENTIAL****ARTICLE 9****TRANSMISSION; DELIVERY OF ENERGY; CURTAILMENTS****9.1 Transmission Responsibilities of Seller.**

9.1.1 Seller shall be solely responsible for scheduling and making all necessary arrangements for the delivery of the energy to be provided under this Agreement to the Point of Delivery, including arranging for all required transmission and ancillary services. As between the Parties, Seller shall be solely responsible for any and all costs and charges incurred in connection therewith, whether imposed pursuant to standards or provisions established by FERC, another Governmental Authority, any transmission provider, or any other Person, including transmission and distribution costs, scheduling costs, generation and energy imbalance costs, congestion costs, operating reserve charges, and the cost of rights to utilize the transmission or distribution system.

9.1.2 Seller shall use commercially reasonable efforts to provide and make available to Buyer all information with respect to the delivery of energy under this Agreement and the interruption or curtailment of such energy (including for purposes of verifying the amounts of Delivered Energy under this Agreement), and Seller shall use commercially reasonable efforts to obtain such information from other pertinent Person(s) in order to provide such information to Buyer.

9.1.3 Seller shall bear all risk of the curtailment, interruption, or unavailability of transmission service to the Point of Delivery for energy provided under this Agreement. Accordingly, if at any time the transmission service required to transmit energy under this Agreement to the Point of Delivery is curtailed, interrupted or otherwise not available for any reason (including a Force Majeure Event), then Buyer shall be relieved from the obligation to

**CONFIDENTIAL**

purchase and receive the energy that Seller does not deliver to the Point of Delivery as a result of such curtailment, interruption or unavailability and such energy shall be excluded from the determination of Delivered Energy, Deemed Delivered Energy, or Curtailed Energy for all purposes of this Agreement.

9.2 Transmission Responsibilities of Buyer.

9.2.1 Subject to the provisions of this Section 9.2 and the other provisions of this Agreement, Buyer shall be solely responsible for scheduling and making all necessary arrangements for the delivery of the energy to be provided under this Agreement from and after the Point of Delivery. As between the Parties, except as otherwise provided in this Agreement, Buyer shall be solely responsible for any and all costs and charges incurred in connection therewith, whether imposed pursuant to standards or provisions established by FERC, another Governmental Authority, or any other Person. For avoidance of doubt, Buyer shall be responsible for all electrical losses and costs required to deliver energy to points beyond the Point of Delivery.

9.2.2 Subject to 9.2.4, Buyer covenants and agrees that it shall request the Facility to be designated as a Network Resource on a long-term basis (for a term equal to or greater than one (1) year) for serving Buyer's network load with deliveries of energy sourced from the Facility, but only to the extent that such designation does not require the construction or installation of DNR Upgrades. Subject to Section 9.2.4, any such designation that is made available to Buyer pursuant to such request shall be obtained and maintained by Buyer commencing on the Service Commencement Date and thereafter throughout the Term. Such request shall be consistent with the Network Resource process described in Section 30 of the Southern OATT (or any successor provision).

**CONFIDENTIAL**

9.2.3 No later than [REDACTED]

[REDACTED] (“DNR Upgrades Decision Date”), Buyer shall provide notice to Seller indicating that: (i) the Facility can be designated as a Network Resource for the Planned Facility Capacity from the Service Commencement Date through the end of the Term, without the construction or installation of DNR Upgrades, as described in Section 9.2.2, or this Agreement can be designated as a Network Resource for the Planned Facility Capacity from the Service Commencement Date through the end of the Term and Buyer has determined in its sole and absolute discretion that it is willing to pay for the DNR Upgrades (if any) needed for such designation; (ii) this Agreement cannot be so designated as a Network Resource, or Buyer has determined in its sole and absolute discretion that it is unwilling to pay for the DNR Upgrades necessary for such designation; or (iii) Buyer does not then have sufficient information to determine whether such designation can be made (e.g., required transmission studies have not been completed). If such notice is provided under the foregoing subpart (i), then this Agreement shall continue in full force and effect. If such notice is provided under the foregoing subpart (ii), then this Agreement shall immediately terminate. If such notice is provided under the foregoing subpart (iii), then Seller shall have the right to terminate this Agreement; provided, however, Seller shall no longer have the right to terminate this Agreement pursuant to this Section 9.2.3 if Buyer subsequently provides notice to Seller indicating that one of the conclusions set forth in the foregoing subpart (i) is applicable, in which event this Agreement shall continue in full force and effect. In addition, if Buyer provides notice under the foregoing subpart (iii), and Buyer subsequently determines at any time that this Agreement cannot be so designated for any reason, or Buyer determines in its sole and absolute discretion that it is unwilling to pay for the DNR Upgrades necessary for such designation, Buyer shall provide notice to Seller and this

**CONFIDENTIAL**

Agreement shall immediately terminate. Upon termination of this Agreement under this Section 9.2.3, neither Party shall have any further liability or obligation under this Agreement.

9.2.4 Notwithstanding the foregoing provisions of this Section 9.2, and for the avoidance of doubt, because network transmission service is the type of service (as opposed to point-to-point service) required for serving Buyer's native load, Buyer shall have no obligation to procure or obtain point-to-point transmission service or any other type of transmission service on the Southern Companies Electric System other than the service described in Section 9.2.2. In addition, Buyer shall be entitled to temporarily terminate the designation of the Facility (or any portion thereof) as a Network Resource (pursuant to the procedures set forth in Section 30.3 of the Southern OATT) for the duration of any period in which Buyer intends to utilize the energy provided under this Agreement for purposes other than serving its network load (as defined in the Southern OATT); provided, however, if Buyer temporarily terminates the designation of the Facility (or any portion thereof) as a Network Resource pursuant to this Section 9.2.4 in order to utilize the energy provided under this Agreement for purposes other than serving its network load, Buyer shall not be entitled to require Seller to curtail or cease deliveries of energy from the Facility due to a Buyer Curtailment Event under Section 9.3.1(ii) to the extent of such temporary termination. With respect to any period in which the designation of the Facility (or a portion thereof) as a Network Resource is temporarily terminated, Buyer shall implement the provisions of Section 30.3 of the Southern OATT to have the Facility (or the portion thereof that was the subject of such temporary termination) re-designated as a Network Resource upon the conclusion of such temporary termination period.

9.2.5 If Commercial Operation is not achieved under this Agreement, and if costs relating to DNR Upgrades are incurred or will be incurred by Buyer, in addition to Seller's

**CONFIDENTIAL**

other obligations under this Agreement (including under Section 2.4), Seller shall owe and be liable to Buyer for all of such costs, including Taxes that may apply and costs of demobilizing and removing facilities.

9.3 Buyer Curtailment.

9.3.1 Notwithstanding any other provision of this Agreement, Buyer shall be entitled to require Seller to cease or reduce energy deliveries under this Agreement during any Hour to the extent that: (i) there is an Emergency condition or Buyer reasonably anticipates that an Emergency condition will occur; (ii) there is a Buyer Curtailment Event occurring or existing; (iii) due to a Force Majeure Event, Buyer is either unable to receive Delivered Energy from the Facility at the Point of Delivery or unable to transmit such energy to Buyer's customers; or (iv) Buyer is unable to receive Delivered Energy from the Facility at the Interconnection Point, or Buyer is unable to transmit such energy to Buyer's customers, due to scheduled or unscheduled maintenance of the facilities on the Southern Companies Electric System. Seller shall comply with any such requirement as directed by Buyer. The amount of energy that would have been produced by the Facility and delivered by Seller to Buyer at the Point of Delivery pursuant to this Agreement but that was not produced by the Facility and delivered to the Point of Delivery as a result of Buyer's directive under this Section 9.3.1 shall be Curtailed Energy. In such event, Buyer shall be relieved from the obligation to purchase and receive energy, and Seller shall be relieved of the obligation to sell and deliver energy, to the extent of the required cessation or reduction.

9.3.2 The Parties acknowledge that Buyer's ability to receive and transmit the output of the Facility to Buyer's customers has a direct impact on the value of the Facility's electrical output. Accordingly, Buyer shall be relieved from the obligation to purchase and

**CONFIDENTIAL**

receive energy under this Agreement, and Seller shall be relieved of the obligation to sell and deliver energy under this Agreement, to the extent that Buyer requires Seller to cease or reduce deliveries under Section 9.3.1. Such energy for which Buyer's obligation to purchase is relieved shall be excluded from the determination of Delivered Energy and Deemed Delivered Energy for all purposes of this Agreement.

9.3.3 Under no circumstance will Buyer be required to take any action in order to facilitate or enable energy under this Agreement to be received by, or transmitted or delivered to, any Person if such action would require the: (i) construction or installation of any additions or upgrades to any transmission or distribution facilities; (ii) curtailment or interruption of service to any customer of Buyer or any of its Affiliates; or (iii) the undertaking of congestion management procedures (including redispatch of any other generation resource).

9.4 Curtailments under the Interconnection Agreement. Buyer shall be entitled to require Seller to reduce or cease deliveries of energy under this Agreement or disconnect the Facility from the Southern Companies Electric System for any of the reasons set forth in the Interconnection Agreement. In such event, Buyer shall be relieved from the obligation to purchase and receive energy to the extent of the required reduction, cessation and/or disconnection, and such energy that Buyer is not required to purchase and receive shall be excluded from the determination of Delivered Energy and Deemed Delivered Energy for all purposes of this Agreement. Except to the extent that such required reduction, cessation and/or disconnection is due to a condition or circumstance existing with respect to Seller's facilities or equipment, the amount of energy that would have been delivered by Seller to Buyer at the Point of Delivery, but that is not delivered to the Point of Delivery as a result of Buyer's directive under this Section 9.4, shall constitute Curtailed Energy.

**CONFIDENTIAL****9.5     Other Curtailments at Buyer's Sole Discretion.**

9.5.1 In addition to any required reductions or cessation of deliveries for the reasons set forth in Section 9.3 and Section 9.4, at any time, Buyer shall be entitled to require Seller to reduce or cease the delivery of energy under this Agreement in Buyer's discretion due to other operational considerations. Seller shall comply with any such requirement as directed by Buyer. Any Hour for which Buyer directs the reduction or cessation of deliveries of energy under this Section 9.5.1 (excluding a reduction or cessation of deliveries required by Buyer for a reason under Section 9.3 or Section 9.4) shall be referred to as an "Operational Curtailment Hour".

9.5.2 All amounts of energy that would have been delivered by Seller to Buyer at the Point of Delivery, but that are not delivered to the Point of Delivery as a result of Buyer's directive under Section 9.5.1, shall constitute Curtailed Energy.

9.5.3 If Buyer requires the reduction or cessation of deliveries under Section 9.5.1 in excess of [REDACTED] Operational Curtailment Hours in a given Service Year (excluding reductions and cessations of deliveries directed by Buyer under Section 9.3 and Section 9.4), then the amount of energy that is not delivered to the Point of Delivery as a result of Buyer's directive(s) under Section 9.5.1 during such excess Operational Curtailment Hours shall constitute Deemed Delivered Energy.

**9.6     No Economic Curtailment.** Buyer shall not have the right under this Article 9 to require Seller to cease or reduce energy deliveries solely as a result of Buyer's ability to purchase energy at a price lower than the price required to be paid under this Agreement.

**CONFIDENTIAL****ARTICLE 10****ENVIRONMENTAL ATTRIBUTES****10.1 Provision of Environmental Attributes.**

10.1.1 In consideration of the purchase of energy under this Agreement, as soon as reasonably practicable after the end of each Month of the Term (commencing with the Month in which the Facility commences to generate energy) (but by no later than thirty (30) Days after the end of each Month), Seller shall transfer, deliver and otherwise provide to Buyer all Environmental Attributes created, produced or commencing to exist during such Month, including all Environmental Attributes associated with energy produced by the Facility that is not delivered to Buyer at the Point of Delivery. Seller covenants that it shall have good and marketable title to all Environmental Attributes and that it has the right to, and shall, deliver and provide all Environmental Attributes (and all right, title and interest to such Environmental Attributes) to Buyer free and clear of any liens and encumbrances whatsoever. Buyer shall have the right to sell or otherwise transfer to any Person any or all of the Environmental Attributes. Seller shall not be entitled to separate or additional compensation for Environmental Attributes beyond the Monthly Energy Payment and prices for energy under Section 7.2, as calculated in accordance with this Agreement.

10.1.2 With respect to the Environmental Attributes provided to Buyer under this Agreement, Seller represents, warrants and covenants throughout the Term that:

- (i) Seller has, and shall transfer to Buyer, good and marketable title to such Environmental Attributes;
- (ii) Seller has the right to, and shall, deliver and provide all Environmental Attributes (and all right, title and interest to such

**CONFIDENTIAL**

- Environmental Attributes) to Buyer free and clear of any liens, Taxes, claims, security interests and any other encumbrances;
- (iii) Seller has not sold or transferred any of the Environmental Attributes to any other Person;
  - (iv) The Environmental Attributes are separate from the electric energy generated by the Facility from which the Environmental Attributes are sourced;
  - (v) Neither the Environmental Attributes nor the electric energy that was generated with the Environmental Attributes have been utilized by any Person (other than Buyer) to satisfy or comply with any Legal Requirement or other voluntarily or involuntary requirement or standard, including any renewable portfolio standard, renewable energy standard or any other similar standard or requirement;
  - (vi) The electric energy that was generated with the Environmental Attributes has not been sold, separately marketed or otherwise separately represented as renewable energy by any other Person;
  - (vii) Neither Seller nor any Affiliate of Seller and, to the best of Seller's knowledge, no other Person has made any claim or statement in any form that a Person other than Buyer owns or possesses any right, title or interest in or to any of the Environmental Attributes;
  - (viii) No Person other than Buyer has made any claim or statement in any form that the energy that was generated with the

**CONFIDENTIAL**

Environmental Attributes was generated from, solar rays or other sustainable, perpetual, renewable or other particular type of fuel, including: (A) in any marketing or advertising materials; (B) in any product content label or other disclosures regarding fuel mix; (C) in any reports under any emissions trading program, public or private; or (D) in any report or disclosure for purposes of complying with any Legal Requirement or meeting any renewable portfolio standard, renewable energy standard, or carbon reduction initiative (whether voluntary or mandatory);

- (ix) Buyer shall have the right to sell or otherwise transfer to any Person any or all of the Environmental Attributes;
- (x) Such Environmental Attributes satisfy and comply with all of the requirements of the Green-e National Standard for certification by Green-e Energy and therefore constitute certifiable Green-e renewable energy certificates; provided that Seller shall not be in violation of this Section 10.1.2(x) solely by reason of the age of the facility exceeding any Green-e National Standard facility age limitations (as of the Effective Date or in the future);
- (xi) No Environmental Attributes required to be transferred to Buyer under this Agreement violate any applicable rules or requirements of any certification authority (whether with respect to voluntary or involuntary certification) or Governmental Authority pertaining to double counting, double claiming or similar rules; and

**CONFIDENTIAL**

- (xii) Seller shall not be entitled to separate or additional compensation for Environmental Attributes beyond the Monthly Energy Payment as calculated in accordance with this Agreement.

10.2 Exclusivity. Buyer shall have exclusive rights to all Environmental Attributes, which shall include the exclusive right to: (i) claim that the energy associated with such Environmental Attributes was generated from a renewable type of fuel; (ii) report that it owns the Environmental Attributes to any Governmental Authority or other Person for compliance with any Legal Requirement or other purposes; (iii) claim the ownership of Environmental Attributes and reference the renewable nature of the energy that was generated with the Environmental Attributes to customers or potential customers for purposes of marketing and advertising; and (iv) sell or transfer such Environmental Attributes to any other Person.

10.3 Further Action by Seller. During the Term of this Agreement, Seller shall take all actions and execute all documents or instruments necessary to effectuate the provision and use of Environmental Attributes for Buyer's sole benefit (including Buyer's right to sell or transfer such Environmental Attributes) during the Service Term, which actions shall include the following (each, unless expressly provided otherwise, at Seller's cost and expense):

10.3.1 Seller shall provide to Buyer all information pertaining to the Environmental Attributes, including any and all certificates, verifications, attestations and other documentation.

10.3.2 Seller shall maintain and provide to Buyer (or, if directed by Buyer, other applicable Persons) such information as may be necessary to transfer, substantiate, account for, and/or track the quantity of Environmental Attributes under this Agreement, including all information necessary for Buyer to comply with the requirements of any Governmental

**CONFIDENTIAL**

Authority or other certifying, tracking, or standard-setting body relating to the Environmental Attributes to be provided under this Agreement. Seller shall provide Buyer with attestations regarding the accuracy of such information as reasonably requested by Buyer.

10.3.3 Seller shall take such actions as may be required in order for the Facility to provide Environmental Attributes that qualify for use by Buyer and its Affiliates in satisfying any Renewable Standards.

10.3.4 Seller shall take such actions as may be required for the Facility to be certified or otherwise qualify as a resource that Buyer and its Affiliates are able to utilize in order to satisfy Renewable Standards.

10.3.5 Seller shall cooperate with Buyer and take any actions required in order to have the Environmental Attributes certified, registered and verified pursuant to Renewable Standards.

10.3.6 At Buyer's request, Seller shall take all necessary action, including the completion and submission of all required attestation forms and other information, in order to obtain certification by Green-e Energy pursuant to the Green-e National Standard (or other certification from such other entity designated by Buyer) of the Facility and all Environmental Attributes required to be provided under this Agreement.

10.3.7 Seller shall comply with all Legal Requirements and other applicable standards regarding the certification and transfer of Environmental Attributes.

10.3.8 Seller shall take such actions as may be necessary to transfer and/or upload Environmental Attributes required to be provided hereunder to any applicable renewable energy registry, certificate tracking system maintained by or for the account of Buyer in order to

**CONFIDENTIAL**

account for or track Environmental Attributes, and Seller shall pay all costs associated with such transfer and/or upload whether such costs are charged to Buyer or Seller.

10.3.9 Seller shall not take any action that would cause the Environmental Attributes to be retired, double counted, or otherwise utilized (including under the standards established by Green-e, the U.S. Federal Trade Commission, and any other applicable certifying or regulatory organizations).

10.4 Effect. In no way shall the right to, transfer of, or acquisition of Environmental Attributes under this Agreement cause Buyer to be deemed an owner or operator of the Facility or in any way cause Buyer to be responsible for the Facility's compliance with any Legal Requirements.

**ARTICLE 11****INSURANCE AND INDEMNIFICATION****11.1 Insurance Required of Seller.**

11.1.1 During the Term, Seller shall acquire and maintain at its sole cost and expense, the types and amounts of insurance coverage as are consistent with Prudent Industry Practices but in no event less than the types and amounts described in **Appendix E** and this Article 11. All such insurance shall be written by a company or companies with a Best's rating of no less than "A minus, VII."

11.1.2 Buyer and its Representatives shall be designated as additional insureds as their interests may appear on the Commercial General Liability and any excess liability policies.

11.1.3 The required policies in **Appendix E** shall be primary and shall not contribute to any insurance that may otherwise be maintained by, or on behalf of, Buyer and its Representatives.

**CONFIDENTIAL**

11.1.4 To the extent allowed by applicable law, Seller waives and must require its insurers to waive rights of subrogation against Buyer and its Representatives under the insurance policies and coverages required in **Appendix E**.

11.1.5 Notwithstanding this Agreement's insurance requirements, Seller may self-insure all or any part of the insurance coverage required by this Agreement, subject to Buyer's prior written consent. All self-insurance coverage shall be treated as if it were an insurance policy.

11.1.6 No later than ninety (90) Days prior to the commencement of work on the Facility at the Site, Seller shall provide Buyer with certificates of insurance evidencing the required coverage set forth above and in **Appendix E**. Seller shall provide a minimum of thirty (30) Days advance notice to Buyer of cancellation or material change in coverage. Seller shall obtain the prior written consent of Buyer for, after providing Buyer advance copies of, any policy endorsements that could modify or restrict Buyer's rights as an additional insured or under the contractual liability provisions of the subject policies, provided that such approval not be unreasonably withheld, delayed or conditioned, for any policy endorsements that could modify or restrict Buyer's rights as an additional insured or under the contractual liability provisions of the subject policies. Failure by Seller to cause the procurement of the insurance coverage or the delivery of certificates of insurance required by this Article 11 or **Appendix E** shall not relieve Seller of the insurance requirements set forth herein or therein or in any way relieve or limit Seller's obligations and liabilities under any other provision of this Agreement.

11.1.7 The provisions requiring Seller to acquire and maintain insurance under this Agreement shall not be construed as a waiver, restriction, or limitation of any liability imposed on Seller under this Agreement, whether or not the same is covered by insurance. It is

**CONFIDENTIAL**

the intent of the Parties, however, that to the extent there is insurance coverage available to cover the legal and contractually assumed liability of Seller, any payments due as a result of such liability shall be made first from the proceeds of such policies.

11.2 Indemnification.

11.2.1 Seller shall release, defend, indemnify and hold harmless Buyer and its Representatives (on After-Tax Basis), from and against any and all loss, damage, liability, claims, including claims and actions involving injury to or death of any person or damage to property, damages, penalties, demands, fines, forfeitures, suits, actions and causes of action and all costs and expenses incident thereto, including court costs, costs of defense, costs of investigation, settlements, judgments, and attorneys' fees, directly or indirectly resulting from the development, construction, use and operation of the Facility and all activities occurring on Seller's side of the Point of Change in Ownership (except to the extent caused by Buyer's or its Representatives' negligence, wantonness or willful misconduct), including those which are alleged to be caused by, arise out of, or are in connection with: (i) Seller's or its Representatives' environmental permitting or Seller's or its Representatives' compliance with any Consent or Legal Requirement; (ii) Seller's, its Representatives', or the Facility's failure to comply with any Consent or Legal Requirement; (iii) Seller's or its Representatives' acts and omissions in connection with the performance, or failure thereof, of obligations or representations and warranties under this Agreement; (iv) any negligent (including strict liability), wanton, or intentional act or omission of Seller, anyone directly or indirectly employed by Seller, specifically including Seller's agents, contractors, and subcontractors; and (v) the performance or non-performance of activities by Seller's contractors and/or subcontractors

**CONFIDENTIAL**

11.2.2 If Buyer becomes entitled to indemnification under Section 11.2.1, Buyer shall promptly notify Seller of any claim or proceeding in respect of which it is to be indemnified. Such notice shall be given as soon as reasonably practicable after the Buyer becomes aware of such claim or proceeding. Failure to give such notice shall not excuse an indemnification obligation. Seller shall assume the defense thereof with counsel designated by Buyer; provided, however, that if the defendants in any such action include both Seller and Buyer, and if Buyer reasonably concludes that there may be legal defenses available to it that are different from or additional to, or inconsistent with, those available to the Seller, Buyer shall have the right to select and be represented by separate counsel, at the expense of Seller. If Seller fails to assume the defense of a claim, the indemnification of which is required under this Agreement, Buyer may, at the expense of Seller, contest, settle, or pay such claim.

11.2.3 Buyer shall release, defend, indemnify and hold harmless Seller and its Representatives (on an After-Tax Basis), from and against any and all loss, damage, liability, claims, including claims and actions involving injury to or death of any person or damage to property, damages, penalties, demands, fines, forfeitures, suits, actions and causes of action and all costs and expenses incident thereto, including court costs, costs of defense, costs of investigation, settlements, judgments, and attorneys' fees, directly or indirectly resulting from Buyer's or any of Buyer's Representatives' performance of activities on Buyer's side of the Point of Change in Ownership (except to the extent caused by Seller's or its Representatives' negligence, wantonness or willful misconduct), including in connection with: (i) Buyer's or its Representatives' environmental permitting or Buyer's or its Representatives' compliance with any Legal Requirement; (ii) Buyer's or its Representatives' failure to comply with any Legal Requirement; (iii) Buyer's or its Representatives' acts and omissions in connection with the

**CONFIDENTIAL**

performance, or failure thereof, of obligations or representations and warranties under this Agreement; and (iv) any negligent (including strict liability), wanton, or intentional act or omission of Buyer, anyone directly or indirectly employed by Buyer, specifically including Buyer's agents, contractors and subcontractors.

11.2.4 If Seller becomes entitled to indemnification under Section 11.2.3, Seller shall promptly notify Buyer of any claim or proceeding in respect of which it is to be indemnified. Such notice shall be given as soon as reasonably practicable after Seller becomes aware of such claim or proceeding. Failure to give such notice shall not excuse an indemnification obligation. Buyer shall assume the defense thereof with counsel designated by Seller; provided, however, that if the defendants in any such action include both Seller and Buyer, and if Seller reasonably concludes that there may be legal defenses available to it that are different from or additional to, or inconsistent with, those available to the Buyer, Seller shall have the right to select and be represented by separate counsel, at the expense of Buyer. If Buyer fails to assume the defense of a claim, the indemnification of which is required under this Agreement, Seller may, at the expense of Buyer, contest, settle, or pay such claim.

11.2.5 All provisions of this Section 11.2 shall survive termination of this Agreement, by default or otherwise, regardless of whether such obligations accrue prior to or after such termination. Seller's indemnity obligations contained in this Agreement shall be independent of and shall not be limited by or limit the obligations of Seller under Section 11.1.

**CONFIDENTIAL****ARTICLE 12****PAYMENTS**

12.1 Energy Payment. Subject to the terms and conditions of this Agreement, for each Month of the Service Term, Buyer shall pay to Seller a Monthly Energy Payment. The calculation of the Monthly Energy Payment is set forth in **Appendix A**.

12.2 Additional Payments. In addition to the payments specified in this Article 12, the Parties shall pay all amounts due pursuant to the other provisions of this Agreement.

**ARTICLE 13****PAYMENT PROCEDURE**

13.1 Billing and Payment.

13.1.1 Within ten (10) Days after the end of each Month during the Service Term, Buyer shall provide Seller with: (i) the meter readings that measure the amount of energy delivered pursuant to this Agreement for such Month; and (ii) information required for the calculation of the Monthly Energy Payment, including the amount of Delivered Energy delivered hereunder.

13.1.2 Within ten (10) Business Days after receipt of the information from Buyer under Section 13.1.1, Seller shall provide Buyer with an invoice stating the Monthly Energy Payment calculated consistent with the information provided by Buyer under Section 13.1.1, as well as any other amounts required to be paid by Buyer to Seller for such Month.

13.1.3 Within ten (10) Business Days after providing the information to Seller under Section 13.1.1, Buyer shall provide Seller with an invoice stating any amounts (if any) required to be paid by Seller to Buyer for such Month.

**CONFIDENTIAL**

13.1.4 Each Monthly payment shall be due and payable on or before the twentieth (20th) Day after a Party's receipt of such invoice; provided, however, that any amount due pursuant to a provision of this Agreement that provides for a specific period for payment shall be due and payable as set forth in such provision. If such twentieth (20th) Day after a Party's receipt is not a Business Day, then payment shall be due on the next succeeding Business Day. Payment of an invoice shall be made on or before the date due in immediately available funds through wire transfer of funds or other means acceptable to the Parties. In the event payment is not made on or before such twentieth (20th) Day (or, if such twentieth (20<sup>th</sup>) Day is not a Business Day, the next succeeding Business Day), then interest shall be added to the overdue payment, from the date such overdue payment was due until such overdue payment together with interest is paid, which interest shall be compounded Monthly at the Interest Rate.

13.2 Billing Disputes and Final Accounting.

13.2.1 The Parties shall each have until the three hundred sixty-fifth (365th) Day after receipt of a Monthly invoice to question or contest the correctness of any charge or credit set forth in such invoice. If no question or contest is raised during such time period, the correctness of all such charges and credits shall be conclusively presumed.

13.2.2 In the event a Party questions or contests the correctness of any invoiced amount, whether a charge or a credit, of any payment claimed by the other Party to be due pursuant to this Agreement, such Party shall provide written notice to the other Party ("Billing Dispute Notice") that: (i) states the good faith basis for the dispute, (ii) specifies the portion of the invoiced amount in dispute, if any, and (iii) provides documentation reasonably supporting the determination of the disputed amount. Except as provided in Section 15.2.4, the disputing

**CONFIDENTIAL**

Party may withhold payment of any disputed amount until the dispute is resolved pursuant to the dispute resolution provisions contained in Article 18 of this Agreement.

13.2.3 In the event that a Party, by timely notice in accordance with Sections 13.2.1 and 13.2.2, questions or contests the correctness of any charge or credit, the other Party shall promptly review the questioned charge or credit and shall notify such Party, within twenty-eight (28) Business Days following receipt by the other Party of the Billing Dispute Notice or as soon as reasonably practicable if twenty-eight (28) Business Days is not reasonably possible, of the amount of any error and the amount of any reimbursement, if any, that such Party is entitled to receive with respect to such alleged error. Reimbursements determined to be due from a Party under this Section 13.2.3 shall be included on the next Monthly invoice and shall include interest from the date the original payment was received until the date such reimbursement together with interest is invoiced, which interest shall be compounded Monthly at the Interest Rate.

## **ARTICLE 14**

### **REPRESENTATIONS AND WARRANTIES**

14.1 Execution. Each Party represents and warrants to the other Party as of the Effective Date that: (i) it has all the necessary corporate or limited liability company authority (as applicable) and all legal power and authority and has been duly authorized by all necessary corporate or limited liability company action (as applicable) to enable it to lawfully execute, deliver and perform under this Agreement; and (ii) it is a valid legal entity duly organized and validly existing in good standing under the laws of the state of its formation and is, to the extent required, qualified to do business in the State of Mississippi.

14.2 Binding Obligations. Each Party represents and warrants to the other Party that, as of the Effective Date, this Agreement is the valid and binding obligation of such Party,

**CONFIDENTIAL**

enforceable against such Party in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or other similar laws affecting enforcement generally, and by equitable principles regardless of whether such principles are considered in a proceeding at law or in equity.

14.3 Execution and Consummation. Each Party represents and warrants to the other Party that, as of the Effective Date, the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of and compliance with the provisions of this Agreement do not and will not conflict with any of the terms, conditions or provisions of its organizational documents or any law applicable to it, or result in a breach or default under any evidence of its Indebtedness or any other agreement or instrument to which it is a party or by which it or any of its property is bound which has a reasonable likelihood of materially and adversely affecting the consummation of the transactions contemplated hereby or the performance by the Party of any of its obligations under this Agreement.

14.4 Actions and Proceedings. Each Party represents and warrants to the other that, as of the Effective Date, there is no pending or, to the knowledge of such Party, threatened action or proceeding affecting such Party before any Governmental Authority that has a reasonable likelihood of materially adversely affecting or reasonably threatening the ability of such Party to perform its obligations under this Agreement or the validity or enforceability of this Agreement against it and that there are no bankruptcy proceedings pending or being prepared by it or, to its knowledge, threatened against it.

14.5 Absence of Certain Events. Each Party represents and warrants to the other Party that, as of the Effective Date, no Event of Default attributable to it has occurred and is

**CONFIDENTIAL**

continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement.

14.6 Capital Lease and Variable Interest Entity.

14.6.1 Seller shall provide to Buyer, within five (5) Days after the Effective Date, a lease certification in the form of **Appendix G** signed by a duly authorized officer of Seller. Should existing accounting standards be modified or new standards adopted which supersede the standards at the time of execution of this Agreement, then in order for Seller and Buyer to account for this arrangement appropriately in their respective books and records: (i) **Appendix G** shall be modified accordingly; and (ii) Seller shall provide to Buyer a lease certification in the form of such modified **Appendix G** signed by a duly authorized officer of Seller. If, at any time, Buyer determines that this Agreement is a Capital Lease, within ten (10) Business Days after request by Buyer, Seller shall provide to Buyer information necessary for this Agreement to be appropriately recorded in Buyer's books and records.

14.6.2 Within five (5) Days after the Effective Date and prior to June 1 of each calendar year of the Term, Seller shall provide Buyer VIE information in the form of **Appendix F** attested to and signed by a duly authorized officer of Seller. Seller covenants to promptly notify Buyer following any determination made by Seller or its independent auditor that Seller must be partially or fully deconsolidated from the books of Seller's parent, as the case may be, or any other changes that require reconsideration, including a change in the primary benefactor. Should existing accounting standards be modified or new standards adopted which supersede the standards at the time of execution of this Agreement, then **Appendix F** shall be modified accordingly for Seller and Buyer to account for this arrangement appropriately in their respective books and records.

**CONFIDENTIAL**

14.6.3 Seller represents and warrants to Buyer that, as of the Effective Date, the statements in Sections 14.6.3.1 through 14.6.3.4 below are true and correct with respect to Seller as contemplated by ASC Topic 810 (Consolidation) as issued by FASB. In addition, Seller covenants that it shall cause the statements set forth in Sections 14.6.3.1 through 14.6.3.4 below to be true and correct at all times during the Term as contemplated by ASC Topic 810 (Consolidation) (or any successor thereto), as issued by FASB; provided, however, that Seller shall not be deemed to have breached the foregoing covenant with respect to a statement set forth in Sections 14.6.3.1 through 14.6.3.4 to the extent: (i) the failure of such statement to be true and correct shall not have resulted in a Consolidation Determination; or (ii) such statement is rendered untrue and incorrect solely because of a change in ASC Topic 810 (Consolidation) (or any successor thereto) after the Effective Date and Seller is not able to cause such statement to be true and correct through its commercially reasonable efforts. Seller shall notify Buyer within ten (10) Business Days if any of such statements in Sections 14.6.3.1 through 14.6.3.4 are no longer true and correct for any reason.

14.6.3.1 Seller is capitalized with Equity considered sufficient to permit the Seller to finance its activities without additional subordinated financial support.

14.6.3.2 The total Equity of Seller's equity investors is at risk.

14.6.3.3 Buyer has no responsibility for the operation and maintenance of the Facility.

14.6.3.4 Seller's equity investors as a group have the following rights, privileges and obligations: (i) the power through voting or similar rights to direct the activities of Seller that most significantly have an impact on Seller's

**CONFIDENTIAL**

performance; (ii) the obligation to absorb the losses of Seller; (iii) the right to receive the expected residual returns of Seller; and (iv) the right to receive any assets of Seller upon the liquidation of Seller.

14.6.4 In the event that Buyer's independent accountants determine that consolidation of Seller, or any of its Affiliates or permitted assigns, as a VIE in Buyer's or any of its Affiliates' financial statements has occurred ("Consolidation Determination"), Buyer shall provide notice to Seller of such condition ("Consolidation Notice") and the following shall apply:

14.6.4.1 Within ten (10) Business Days after receiving the Consolidation Notice, Seller shall provide all necessary financial information to Buyer to enable Buyer (and any of its applicable Affiliates) to properly consolidate Seller (and any of its applicable Affiliates) on a timely basis.

14.6.4.2 If such condition continues to exist after the Day that is [REDACTED] [REDACTED] after Buyer provides Seller the applicable Consolidation Notice, Buyer shall have the right to terminate this Agreement by providing written notice to Seller; provided, however, that such right to terminate must be exercised no later than the Day that is [REDACTED] after the applicable Consolidation Notice; provided further, and subject to Section 15.1.14, such termination right shall be in addition to (and not in lieu of) any other remedies that Buyer may have under this Agreement (including the right of Buyer to exercise any remedies under Section 15.2.1 due to an Event of Default that results from a statement under Section 14.6.3 not being true and correct). Upon termination of this Agreement pursuant to this Section 14.6.4.2, neither Party

**CONFIDENTIAL**

shall have any further obligation under this Agreement, except for obligations and liabilities that survive termination as provided in this Agreement or which accrue prior to or at termination.

**ARTICLE 15****EVENTS OF DEFAULT; REMEDIES**

15.1 Events of Default. The occurrence of any one or more of the following events with respect to a Party shall constitute an “Event of Default” by and attributable to such Party under this Agreement:

15.1.1 With respect to Seller (and Seller only), Seller sells or supplies energy, Electrical Products, or Environmental Attributes required to be provided to Buyer under this Agreement to a Person other than Buyer, or Seller utilizes energy from the Facility for its own industrial or other purposes in violation of Section 8.3 of this Agreement;

15.1.2 The failure by a Party to make payment to the other Party of any undisputed amount under this Agreement after said amount has become due and payable and such failure is not cured within ten (10) Business Days after receiving written notice of such failure from the Party to which such payments are due;

15.1.3 A Party or a Party’s Guarantor shall: (i) admit its inability to pay its debts as such debts become due; (ii) make a general assignment or an arrangement or composition with or for the benefit of its creditors; or (iii) take any action for the purpose of effectuating any of the foregoing;

15.1.4 A Party’s Guarantor shall: (i) fail to make any payment required or to perform any other material covenant or obligation in any guaranty made by it and held by the other Party in connection with this Agreement and such failure shall not be remedied within ten

**CONFIDENTIAL**

(10) Business Days after written notice, (ii) suffer or cause any guaranty made by it and held by the other Party in connection with this Agreement to fail to be in full force and effect for purposes of this Agreement (other than in accordance with the terms of such guaranty or the terms of this Agreement) without the written consent of the other Party, or (iii) revoke, terminate, repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any guaranty made by it and held by the other Party in connection with this Agreement (other than in accordance with the terms of such guaranty or the terms of this Agreement) without the written consent of the other Party;

15.1.5 A proceeding or case shall be commenced by a Party or against a Party with the consent of such Party or by its Guarantor or against its Guarantor with the consent of such Guarantor, in any court of competent jurisdiction, seeking: (i) its liquidation, reorganization of its debts, dissolution or winding-up, or the composition or readjustment of its debts; (ii) the appointment of a receiver, custodian, liquidator or the like, of the Party or its Guarantor or of all or any substantial part of its assets or the assets of its Guarantor; or (iii) similar relief in respect of such Party or its Guarantor under any law relating to bankruptcy, insolvency, reorganization of its debts, winding-up, composition, or adjustment of debt;

15.1.6 A proceeding or case shall be commenced without the consent of a Party against such Party or without the consent of its Guarantor against such Guarantor, in any court of competent jurisdiction, seeking: (i) its liquidation, reorganization of its debts, dissolution or winding-up, or the composition or readjustment of its debts; (ii) the appointment of a receiver, custodian, liquidator or the like of the Party or its Guarantor or of all or any substantial part of its assets or the assets of its Guarantor; or (iii) similar relief with respect to such Party or its Guarantor under any law relating to bankruptcy, insolvency, reorganization of its debts, winding-

**CONFIDENTIAL**

up, composition or adjustment of debt, unless such proceeding or case is dismissed within sixty (60) Days of the filing thereof;

15.1.7 With respect to Seller (and Seller only), Seller fails to comply with the requirements of Article 5 regarding Performance Security and such failure is not cured within three (3) Business Days after written notice from Buyer;

15.1.8 With respect to Seller (and Seller only), (i) Seller does not enter into the Interconnection Agreement as required by Section 6.1.2; or (ii) the Interconnection Agreement terminates or ceases to be in full force and effect due to the breach or default of Seller under the Interconnection Agreement and Seller and Interconnection Provider fail to execute a replacement agreement meeting the requirements of this Agreement within ten (10) Days after such termination;

15.1.9 A Party violates the requirements of Section 19.1 through an assignment or transfer of this Agreement or an ownership interest in the Facility that is not permitted by Section 19.1, or with respect to Seller, through a Change in Control that is not permitted by Section 19.1;

15.1.10 Any material representation or warranty made by a Party in this Agreement or in any certificate or other document delivered to the other Party pursuant to this Agreement proves to have been false or misleading in any material respect when made and such representation or warranty is not made true within thirty (30) Days after such Party has been provided notice thereof by the other Party; provided, however, that the cure must also remove any adverse effect on the Non-Defaulting Party; provided further, that this Section 15.1.10 shall not apply to the representations and warranties set forth in Section 10.1.2, which representations and warranties are addressed by Section 15.1.16 below;

**CONFIDENTIAL**

15.1.11 A Party or its Guarantor consolidates or amalgamates with, or merges with or into another entity and, at the time of such consolidation, amalgamation or merger: (i) the resulting or surviving entity fails to assume all the obligations of such Party or Guarantor under this Agreement or any Eligible Guaranty, as applicable, by operation of law or pursuant to an agreement reasonably satisfactory to the other Party to this Agreement; (ii) in the case of Seller, the benefits of any Performance Security provided by Seller (or substitute Performance Security reasonably acceptable to Buyer) fail to extend to Seller's or, as applicable, its resulting or surviving entity's performance of its obligations under this Agreement; or (iii) the consolidated, amalgamated, or merged entity does not have the legal power and authority to perform and satisfy the obligations then and thereafter to become due to the other Party under this Agreement;

15.1.12 A Party or its Guarantor enters into an agreement to consolidate or amalgamate with, or merge with or into another entity and neither applicable law nor such agreement provides that at the time of such consolidation, amalgamation or merger: (i) the resulting or surviving entity will assume all the obligations of such Party or Guarantor under this Agreement or any Eligible Guaranty, as applicable, in a manner reasonably satisfactory to the other Party to this Agreement; and (ii) in the case of Seller, the benefits of any Performance Security (or substitute Performance Security reasonably acceptable to Buyer) will extend to the consolidated, amalgamated or merged entity's performance of its obligations under this Agreement;

15.1.13 With respect to Seller (and Seller only), the Facility ceases to use solar energy as its exclusive fuel source at any time;

15.1.14 With respect to Seller (and Seller only), any of the statements set forth in Sections 14.6.3.1 through 14.6.3.4 are not true and correct at any time and such failure to be true

**CONFIDENTIAL**

and correct results in a Consolidation Determination; provided, however, that an Event of Default shall not result if: (i) Seller shall have made such statement true and correct and any adverse effect on Buyer continuing from and after such statement is made true and correct shall have been removed within one hundred eighty (180) Days after the first Day on which such statement was not true and correct; or (ii) such statement was rendered untrue and incorrect solely because of a change after the Effective Date in ASC Topic 810 (Consolidation) (or any successor thereto) and Seller is not able to cause such statement to be true and correct through its commercially reasonable efforts;

15.1.15 With respect to Seller (and Seller only), Seller abandons the development or construction of the Facility prior to the Commercial Operation Date;

15.1.16 With respect to Seller (and Seller only), Seller fails to provide Buyer with Environmental Attributes as required by and in accordance with this Agreement, or any of the representations, warranties or covenants set forth in Section 10.1.2 are not true and satisfied at any time;

15.1.17 With respect to Seller (and Seller only) Seller fails to provide Buyer with the Minimum Energy Contract Amount for [REDACTED] consecutive Service Years, provided, however, that any Curtailed Energy for a Service Year shall count toward satisfying the Minimum Energy Contract Amount for such Service Year for the purpose of this Section 15.1.17;

[REDACTED] [REDACTED]

[REDACTED]

15.1.19 The material failure by a Party to comply with any material provision of this Agreement if such failure is not the result of a Force Majeure Event or is not

**CONFIDENTIAL**

otherwise excused in accordance with this Agreement, and such failure continues uncured for thirty (30) Days after notice thereof from the other Party; provided, however, that if such failure is not reasonably capable of being cured within the thirty (30) Day cure period specified above, then such Party shall have such additional time (not exceeding an additional thirty (30) Days) as is reasonably necessary to cure the failure, so long as such Party promptly commences and diligently pursues the cure; provided further, this Section 15.1.18 shall not apply to any event described in Sections 15.1.1 through 15.1.18.

The Party in default or the Party to whom an Event of Default is attributable as provided in this Section 15.1 shall be referred to as the “Defaulting Party” and the other Party shall be referred to as the “Non-Defaulting Party.” Upon the occurrence of any Event of Default, the Defaulting Party shall promptly notify the Non-Defaulting Party of such Event of Default.

## 15.2 Remedies for Events of Default.

15.2.1 If an Event of Default has occurred and is continuing, the Non-Defaulting Party shall have the right by notice to the Defaulting Party to take one or more of the following actions in its sole discretion: (i) terminate this Agreement; (ii) if the Event of Default is for the failure to pay an amount of money pursuant to this Agreement, pursue an action for damages equal to (but no greater than) the amount of money not paid, pursuant to the procedure set forth in Article 18; (iii) with respect to Buyer as the Non-Defaulting Party, if the Event of Default is due to Seller’s failure to provide Environmental Attributes in accordance with the requirements of this Agreement or if the Event of Default is due to any of the representations, warranties or covenants set forth in Section 10.1.2 being untrue or not being satisfied, Buyer may pursue an action for damages equal to the costs and expenses associated with procuring Environmental Attributes to replace those not so provided and/or for which such representations,

**CONFIDENTIAL**

warranties or covenants are untrue or not satisfied; and/or (iv) proceed by appropriate proceedings in equity to protect its rights and remedies, including specific performance of the Defaulting Party's obligations under this Agreement.

15.2.2 If the Non-Defaulting Party provides notice terminating this Agreement under subpart (i) of Section 15.2.1, the Non-Defaulting Party shall designate a Business Day in such notice that is no more than sixty (60) Days after the date on which such notice is given, on which designated Business Day this Agreement shall terminate (such designated date being referred to as the "Early Termination Date"). As soon as practicable thereafter, the Non-Defaulting Party shall provide notice to the Defaulting Party of the Settlement Amount, including a written statement explaining in reasonable detail the calculation of such amount. As used in this Agreement, the "Settlement Amount" shall be equal to the sum of: (i) the Cover Damages of the Non-Defaulting Party as calculated pursuant to Section 15.2.3; plus (ii) all amounts owed by the Defaulting Party to the Non-Defaulting Party pursuant to this Agreement as of the Early Termination Date; plus (iii) in the case where Seller is the Defaulting Party, the aggregate costs and expenses that Buyer has incurred or will incur with respect to the Interconnection Facilities and Upgrades and the DNR Upgrades, including any Taxes that may apply and costs and expenses associated with the design, engineering, procurement, construction, installation and removal of Interconnection Facilities and Upgrades and the DNR Upgrades or portions thereof, as well as costs of demobilizing and removing facilities.

15.2.3 As used in this Agreement, "Cover Damages" means an amount that is equal to Non-Defaulting Party's Gains, Losses and Costs resulting from the termination of this Agreement netted into a single amount. If the Non-Defaulting Party's aggregate Losses and Costs exceed its aggregate Gains, then the net positive amount shall equal the Cover Damages.

**CONFIDENTIAL**

If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs resulting from the termination of this Agreement, the Non-Defaulting Party may retain such excess and the Cover Damages shall be deemed to be equal to zero (0). Such Gains, Losses and Costs shall be determined in a commercially reasonable manner by comparing the costs under this Agreement of the energy, Electrical Products and Environmental Attributes that would be available to Buyer under this Agreement for the remainder of the Service Term had this Agreement not been terminated (and, with respect to Electrical Products, taking into account, as applicable, any historical operation of the Facility in accordance with this Agreement) to the market price of energy (subject to equivalent terms and conditions regarding reliability and delivery) and products that are equivalent to the Electrical Products and Environmental Attributes for the remaining Service Term had this Agreement not been terminated. To ascertain such market price, Non-Defaulting Party may consider, among other evidence, the settlement prices of NYMEX energy futures contracts, quotations from leading dealers in swap contracts for energy and products that are equivalent to the Electrical Products and Environmental Attributes, offers and proposals for the sale of energy and products that are equivalent to the Electrical Products and Environmental Attributes (including offers and proposals received by the Non-Defaulting Party and/or its Affiliates in response to any request for proposals), all adjusted for the length of the remaining Service Term (had this Agreement not been terminated) and differences in locational basis (including costs of transmission investments and transmission service), reliability, scheduling flexibility and any other considerations affecting value. Non-Defaulting Party shall not be required to enter into any replacement transactions in order to determine the Cover Damages. As used in this Section 15.2.3: (i) "Costs" means brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred by Non-

**CONFIDENTIAL**

Defaulting Party either in terminating any agreement which it has entered into to fulfill its obligations hereunder or entering into new agreements which replace this Agreement, and reasonable attorneys' fees, if any, incurred in connection with enforcing its rights under this Agreement; (ii) "Gains" means an amount equal to the economic benefit determined on a mark to market basis (exclusive of Costs), if any, resulting from the termination of this Agreement; and (iii) "Losses" means an amount equal to the economic loss determined on a mark to market basis (exclusive of Costs), if any, resulting from the termination of this Agreement; provided that the term Losses shall not include the lost value of any investment tax credit, production tax credit, or any other similar tax credit or benefit associated with the Facility.

15.2.4 The Defaulting Party shall pay to the Non-Defaulting Party the Settlement Amount as calculated by the Non-Defaulting Party within three (3) Business Days after receiving notice of the Settlement Amount from the Non-Defaulting Party. Notwithstanding Section 13.2.2 and any other provision of this Agreement, the Defaulting Party shall not be entitled to withhold any portion of the Settlement Amount calculated by the Non-Defaulting Party that is disputed by Defaulting Party. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Settlement Amount, the Defaulting Party shall nevertheless pay the full amount of such Settlement Amount as required by this Section 15.2.4 and shall provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. The dispute shall then be resolved pursuant to the procedure set forth in Article 18, and any amounts owed by a Party as a result shall be paid within three (3) Business Days after the relevant arbitration order or finding.

15.2.5 This Agreement shall terminate on the Early Termination Date and upon such termination, neither Party shall have any further obligation under this Agreement, except

**CONFIDENTIAL**

for obligations and liabilities that survive termination as provided in this Agreement or which accrue prior to or at termination (including the Defaulting Party's obligation to pay the Settlement Amount).

15.2.6 Notwithstanding any other provision of this Agreement, if an Event of Default has occurred and is continuing, the Non-Defaulting Party, upon notice to the Defaulting Party, shall be entitled to suspend the performance of its obligations to the Defaulting Party under this Agreement.

15.2.7 In no event shall a Non-Defaulting Party be required to pay a Defaulting Party a Settlement Amount.

15.3 Exclusive Remedy. In the event that the Non-Defaulting Party terminates this Agreement, subject to Section 15.4, the remedies provided in Section 15.2 shall constitute the Non-Defaulting Party's sole and exclusive remedy for the damages incurred by such Party due to the loss of the economic value of this Agreement to it (including lost revenues for electric capacity and energy). The Parties acknowledge and agree that in the event that this Agreement terminates as a result of an Event of Default, the amount of such damages is not susceptible to an accurate determination. The Parties further acknowledge and agree that the amounts that a Defaulting Party is required to pay under Section 15.2 are not intended as a penalty and represent a fair and reasonable approximation of the damages a non-defaulting Party may incur due to the loss of the economic value of this Agreement to it.

15.4 Survival of Indemnity Obligations. Notwithstanding the termination of this Agreement and payment of the Settlement Amount under Section 15.2, the Parties' indemnification obligations under Section 11.2 shall survive and continue in full force and effect

**CONFIDENTIAL**

after such termination regardless of whether such obligations accrue prior to or after such termination.

15.5 Performance Security Nothing in this Article 15 shall limit Buyer's rights under any Performance Security as described in Article 5.

15.6 Limitation of Remedies, Liability and Damages. EXCEPT AS EXPRESSLY HEREIN PROVIDED (INCLUDING IN SECTION 15.2), NEITHER PARTY SHALL BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT; PROVIDED, HOWEVER, THAT SUCH LIMITATION SHALL NOT APPLY IN THE CASE OF AMOUNTS OWED TO THIRD PARTIES AND FOR WHICH A PARTY IS ENTITLED TO INDEMNIFICATION UNDER SECTION 11.2; PROVIDED FURTHER, THAT SUCH LIMITATION SHALL NOT LIMIT OR REDUCE THE AMOUNTS OWED BY A DEFAULTING PARTY UNDER SECTION 15.2, IT BEING EXPRESSLY AGREED BY THE PARTIES THAT NO PORTION OF THE SETTLEMENT AMOUNT SHALL BE CONSIDERED AS CONSTITUTING SPECIAL, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, OR LOST REVENUE OR LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES; PROVIDED FURTHER THAT IT IS EXPRESSLY AGREED THAT THE LOST VALUE OF ANY INVESTMENT TAX CREDIT, PRODUCTION TAX CREDIT OR ANY OTHER SIMILAR TAX CREDIT OR BENEFIT ASSOCIATED WITH THE FACILITY SHALL BE CONSIDERED CONSEQUENTIAL DAMAGES.

**CONFIDENTIAL**

THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING THE WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO “FAIL OF THEIR ESSENTIAL PURPOSE” OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR’S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR’S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, AND AS OTHERWISE PROVIDED IN THE AGREEMENT, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR

**CONFIDENTIAL**

CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE.

**ARTICLE 16****COMPLIANCE WITH LAWS; ENVIRONMENTAL EMISSIONS; REGULATORY****16.1 Compliance.**

16.1.1 Seller represents, warrants, and covenants that throughout the Term Seller shall: (i) be in material compliance with all Legal Requirements with respect to the design, development, construction, ownership, operation and maintenance of the Facility, including all required Consents, and if applicable, the mitigation of environmental impacts associated with the Facility and Seller's actions, and (ii) pay all costs, expenses, charges and fees in connection therewith. Upon request by Buyer, Seller shall provide Buyer with copies of all compliance information, including without restriction, copies of the necessary Consents.

16.1.2 Seller shall notify Buyer if, at any time during the Term, Seller becomes aware that it has failed to meet, or, due to a Change in Law or change in circumstances, is no longer able to meet, the applicable Legal Requirements or Consents to which Seller or the Facility are subject. Seller shall further notify Buyer if Seller receives correspondence or communication from any Governmental Authority that raises compliance issues under Legal Requirements applicable to Buyer, the Facility or use of the Facility.

16.2 Change In Law. Notwithstanding any provision in this Agreement, the Parties acknowledge that the payments made by Buyer to Seller pursuant to this Agreement shall not be altered as a result of any Change In Law or any costs or expenses incurred by either Party as a result of any Change In Law. Buyer and Seller acknowledge that neither Party shall have a right

**CONFIDENTIAL**

to terminate this Agreement solely because it has incurred costs and expenses due to a Change in Law.

16.3 Environmental Emissions. Seller shall, at its sole cost and expense, be responsible for complying with all Legal Requirements pertaining to environmental emissions associated with the Facility and the energy produced therefrom. In this regard, Seller shall be responsible for all costs and expenses associated with procuring all emissions allowances, offsets and credits required for the Facility to operate and produce the energy required to be provided, or is otherwise provided, to Buyer under this Agreement. In no event shall Buyer be required to provide Seller with, or reimburse Seller for, any such allowances, offsets and/or credits.

16.4 Preservation of Terms.

16.4.1 Each Party agrees that except with the prior written consent of the other Party, it will not institute or voluntarily cooperate in the institution or conduct of any claim, action or proceeding before FERC under Section 205, Section 206 or any other portion of the Federal Power Act, or any other Governmental Authority under any provision of federal law or state or local law or any other Legal Requirement which claim, action or proceeding is intended for the purpose of changing the terms of this Agreement then in effect. Without limiting the foregoing, but subject to the terms of this Agreement, the Parties agree that the rates for service specified herein shall remain in effect for the Term and shall not be subject to change through application to FERC pursuant to the provisions of Section 205 or 206 of the Federal Power Act, or to any other Governmental Authority under any provision of federal law or state or local law or any other Legal Requirement, absent written agreement of the Parties.

16.4.2 The Parties waive all rights to submit filings to FERC seeking modifications or rescission of this Agreement under Sections 205 or 206 of the Federal Power

**CONFIDENTIAL**

Act. Absent the agreement of all Parties to the proposed change, the standard of review for changes to this Agreement proposed by a Party, a non-Party or the FERC acting sua sponte shall be the “public interest” standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956) (the “Mobile-Sierra” doctrine).

16.5 Qualifying Facility Status. Throughout the Term of this Agreement and the term of the Interconnection Agreement, Seller shall cause the Facility to be a Qualifying Facility. Seller shall obtain, and maintain at all times during the Term of this Agreement and the term of the Interconnection Agreement, certification of the Facility as a Qualifying Facility pursuant to the requirements of FERC and other applicable Governmental Authorities.

16.6 General Services Administration Flow-Down Provisions. Seller shall at all times comply with the provisions of **Appendix I** to this Agreement.

## **ARTICLE 17**

### **FORCE MAJEURE**

17.1 Definition of Force Majeure Event. For the purposes of this Agreement, a “**Force Majeure Event**” means: (i) with respect to Seller, any occurrence, nonoccurrence or set of circumstances that is beyond the reasonable control of Seller and is not caused by Seller’s negligence, lack of due diligence, or failure to follow Prudent Industry Practices, that results in a delay in achieving Commercial Operation by the Required Commercial Operation Date or which causes the actual electric generating capability of the Facility to be less than the Planned Facility Capacity; and (ii) with respect to Buyer, any occurrence, nonoccurrence or set of circumstances that is beyond the reasonable control of such Buyer and is not caused by Buyer’s negligence, lack of due diligence, or failure to follow Prudent Industry Practices, that causes Buyer to be

**CONFIDENTIAL**

delayed in completing the Interconnection Provider Installed Facilities, which causes Buyer to be unable to receive energy at the Point of Delivery pursuant to this Agreement, or which causes Buyer to be unable to transmit energy provided under this Agreement to its customers. The term Force Majeure Event shall not include: (a) the inability to meet a Legal Requirement or the change in a Legal Requirement, including the imposition of or increase in Taxes or costs; (b) any inability to obtain or maintain, or delay in obtaining, any Consent; (c) a strike, walkout, lockout or other labor dispute, to the extent it is directed solely at Seller or Buyer; (d) the failure or inadequacy of equipment or facilities unless caused by an Act of God; (e) any failure of equipment or facilities resulting from design, material or manufacturing defects, or the operation, maintenance, age or expiration of the useful life of facilities or equipment; (f) Seller's ability to sell any of the Products at a price greater than that received under this Agreement or Buyer's ability to purchase any of the Products at a price lower than paid under this Agreement; (g) changes in market conditions that affect the cost, price or availability of equipment, materials, supplies or services, fuel, electric capacity, electric energy, Environmental Attributes or similar items; (h) failures of contractors, suppliers, vendors, or other third Person(s), unless such failures are caused by an event directly affecting such Person(s) which would otherwise constitute a Force Majeure Event hereunder, if experienced by a Party; (i) the unavailability, variability or lack of photovoltaic rays or solar insolation to any extent and for any reason; (j) climatic temperature and humidity conditions; (k) Buyer's or Seller's failure or inability to obtain or retain sufficient funds for any reason, including funds from a Governmental Authority; (l) Seller's loss of or inability to obtain or retain tax credits or similar incentives for any portion of the Facility; (m) any event, including a change in any Legal Requirement or accounting standard, that requires Buyer to consolidate Seller or any of its Affiliates or permitted assigns as a

**CONFIDENTIAL**

“Variable Interest Entity” in Buyer’s financial statements; or (n) any directive from the applicable transmission provider to curtail deliveries of energy from the Facility or disconnect the Facility from applicable transmission system.

17.2 No Breach or Liability. Either Party shall be excused from performance of its obligations hereunder other than payment obligations and shall not be construed to be in default in respect of such obligations to the extent that, and for so long as, failure to perform such obligations is due to a Force Majeure Event.

17.3 Mitigation. Following the occurrence of a Force Majeure Event, the affected Party shall:

- (i) give the other Party notice thereof, followed by written notice if the first notice is not written, as promptly as possible after such Party becomes aware of such Force Majeure Event, describing the particulars of such Force Majeure Event (and provided that in the case of Seller as the affected Party, Seller shall provide Buyer with information reasonably required to determine the amount of the reduction of the generating capability of the Facility);
- (ii) remedy its inability to perform as soon as reasonably practicable; and
- (iii) when the affected Party is able to resume performance of its obligations under this Agreement, provide the other Party with written notice of its ability to resume performance and, if requested by the other Party, provide a certification from an independent, registered engineer that the Force Majeure Event has been cured.

17.4 Suspension of Performance. The suspension of performance due to a Force Majeure Event shall be of no greater scope and of no longer duration than is required by such Force Majeure Event. No Force Majeure Event shall extend this Agreement beyond its stated term.

**CONFIDENTIAL**

17.5 Effect on Payments. For any period of time when Seller does not provide energy under this Agreement due to a Force Majeure Event, (i) Seller shall not be entitled to recover any lost revenues for the failure to provide such energy; and (ii) in no circumstance shall such energy that is not provided due to a Force Majeure Event be included in the determination of Delivered Energy under this Agreement for any purpose.

17.6 Extended Force Majeure Event. If, due to a Force Majeure Event with respect to Seller, the electric generating capability of the Facility is reduced by an amount equal to or greater than [REDACTED] of the Planned Facility Capacity (excluding reductions due to normal degradation in accordance with Prudent Industry Practices) for a period of three hundred sixty-five (365) consecutive Days or longer, then Buyer may send a notice to Seller electing to terminate this Agreement. If, due to a Force Majeure Event with respect to Buyer, (i) Buyer is unable to receive energy associated with at least [REDACTED] of the total generating capability of the Facility for a period of three hundred sixty-five (365) consecutive Days or longer, and (ii) Buyer does not agree to pay Seller for the energy that would be generated by the Facility but that Buyer is unable to receive due to such Force Majeure Event, then Seller may send a notice to Buyer electing to terminate this Agreement. Notwithstanding the foregoing, a Party shall not be entitled to terminate this Agreement under this Section 17.6 after the Party affected by the Force Majeure Event has remedied its non-performance caused by the Force Majeure Event and has resumed full performance under this Agreement. If a Party elects to terminate this Agreement pursuant to this Section 17.6, then this Agreement shall immediately terminate and neither Party shall have any further obligation or liability under this Agreement (except for obligations and liabilities that survive termination as provided in this Agreement or which accrue prior to or at termination).

**CONFIDENTIAL****ARTICLE 18****DISPUTE RESOLUTION**

18.1 Dispute Resolution Generally. Except to the extent a Party pursues a remedy in equity pursuant to Section 15.2.1(iv) as a result of an Event of Default, any and all controversies, disputes or claims arising out of, relating to, in connection with or resulting from this Agreement (or any written amendment hereto), including as to its interpretation, performance, non-performance, validity, breach or termination, and including any claim based on contract, tort, regulation, rule, statute or constitution and any claim raising questions of law, whether arising before or after termination of this Agreement (individually “Claim” and collectively “Claims”), shall be resolved under the provisions of the Federal Arbitration Act following the Expedited Procedures of the Commercial Arbitration Rules (“Rules”) of the American Arbitration Association (“AAA”) then in effect, including its evidentiary and procedural rules. It is the Parties’ intent that any arbitration, including the selection and qualification of arbitrators, shall be conducted in accordance with the Rules, as amended and supplemented, except where specifically modified by this Agreement, and not by the terms of any state arbitration act or other Legal Requirement.

18.2 Initiation of Dispute Resolution.

18.2.1 Prior to initiating any arbitration hereunder, a Party wishing to make any Claim (“Disputing Party”) shall provide the other Party (“Responding Party”) with a formal, written notice of the dispute for each issue in dispute, a proposed means for resolving each such issue, and support for such position (“Notice of Dispute”). Within thirty (30) Days after receiving the Notice of Dispute, the Responding Party shall provide the Disputing Party with a written notice of each additional issue (if any) with respect to the dispute raised by the Notice of

**CONFIDENTIAL**

Dispute, a proposed means for resolving every issue in dispute, and support for such position (“Dispute Response”).

18.2.2 Within fifteen (15) Days after the submission of the Dispute Response, the Claim shall be submitted to a designated senior representative of Seller and a designated senior representative of Buyer for resolution. In the event the designated senior representatives are unable to resolve the Claim to the mutual satisfaction of the Parties within thirty (30) Days from the submission to such designated senior representatives, or such other period as the Parties may agree upon, then either Party may provide written notice to the other Party declaring an impasse (“Impasse Notice”) and initiating binding arbitration in accordance with the further provisions of this Article 18. The Parties understand and agree that if the provisions of this Article 18, or a decision of the arbitrators hereunder, is finally adjudged by a court of competent jurisdiction to be legally unenforceable, then the Parties shall have any remedies available to them at law or in equity in a court of competent jurisdiction.

18.3 Initiation of Arbitration; Selection of Arbitrators.

18.3.1 Arbitration shall be deemed to be initiated when an Impasse Notice is given in accordance with the notice provisions of Section 18.2. The Party initiating arbitration shall nominate one (1) arbitrator at the same time it initiates arbitration. The other Party shall nominate one (1) arbitrator within twenty (20) Days of receiving the Impasse Notice. The two (2) arbitrators (“Party-Appointed Arbitrators”) shall appoint a third (3<sup>rd</sup>), neutral arbitrator (“Third Arbitrator”). The Third Arbitrator shall be competent and experienced in matters involving the electric energy business in the United States, with at least ten (10) years of legal, engineering, or business experience in the electric industry, and shall be impartial and independent of either Party and the Party-Appointed Arbitrators. Each Party shall pay for the

**CONFIDENTIAL**

expenses incurred by its Party Appointed Arbitrator and the costs of the Third Arbitrator shall be divided equally between the Parties.

18.3.2 If the Party-Appointed Arbitrators are unable to agree on the Third Arbitrator within thirty (30) Days from initiation of arbitration, then the Third Arbitrator shall be selected by the AAA with due regard given to the selection criteria above and input from Seller, Buyer and the Party-Appointed Arbitrators. Parties shall undertake to request the AAA to complete selection of the Third Arbitrator no later than ninety (90) Days from initiation of arbitration. Costs charged by the AAA for this service shall be borne by the Parties equally.

18.3.3 In the event the AAA should fail to select the Third Arbitrator within ninety (90) Days from initiation of arbitration, then either Party may petition a court of competent jurisdiction in Mississippi to select the Third Arbitrator. Due regard shall be given to the selection criteria above and input from the Parties and the Party-Appointed Arbitrators.

18.3.4 If, prior to the conclusion of the arbitration, a Party-Appointed Arbitrator or the Third Arbitrator becomes incapacitated or otherwise unable to serve, then a replacement arbitrator shall be appointed in the manner described above and applicable to the original arbitrator being replaced.

18.4 Discovery, Hearing.

18.4.1 Discovery and other pre-hearing procedures shall be conducted as agreed to by the Parties, or if they cannot agree, as determined by a majority of the Party-Appointed Arbitrators and the Third Arbitrator; provided, however, all pre-hearing discovery shall be completed within one hundred eighty (180) Days following selection of the Third Arbitrator. Within fifteen (15) Days after completion of such pre-hearing discovery, each Party shall, either individually or jointly, submit by overnight delivery to the other Party, the Party-Appointed

**CONFIDENTIAL**

Arbitrators, and the Third Arbitrator: a separate precise statement for each issue in dispute, that Party's proposed means of resolving each issue in dispute, and the factual or legal support for such proposal ("Proposed Resolutions"). No later than thirty (30) Days after all pre-hearing discovery has been completed, a hearing shall be conducted at which Seller and Buyer shall each present such evidence and witnesses as they may choose. Arbitration shall be conducted in accordance with the Rules, as amended and supplemented, except where specifically modified by this Agreement.

18.4.2 All information produced during discovery or other pre-hearing procedures or used at hearing shall be subject to the confidentiality provisions of Section 19.16 at the election of either Party. The Arbitration, including the receipt, treatment and use of Confidential Information by the Parties, the Party Appointed Arbitrators and the Third Arbitrator, shall be afforded the same confidentiality protections as those set forth in Rule M-1- of the Commercial Mediation Procedures of the AAA or its successor(s) in function.

18.5 Arbitrator Decisions.

18.5.1 The Party-Appointed Arbitrators and the Third Arbitrator shall consider the terms and conditions of this Agreement, including all relevant evidence and testimony, and shall render their decision within ninety (90) Days following conclusion of the hearing; provided, however, the Party-Appointed Arbitrators and the Third Arbitrator are expressly and specifically limited to selecting one (1) of the Proposed Resolutions for each issue in dispute provided by Seller and Buyer; provided further, the Party-Appointed Arbitrators and the Third Arbitrator shall not have the authority to effect any other resolution of the issues in dispute. Except as expressly provided in this Agreement (including in Section 15.2), the Party-Appointed Arbitrators and the Third Arbitrator shall have no authority to award consequential, special,

**CONFIDENTIAL**

indirect, treble, exemplary, incidental, or punitive damages of any type under any circumstances regardless of whether such damages may be available under appropriate state law, federal law, the Federal Arbitration Act, or any other applicable law.

18.5.2 The decision rendered by a majority of the Party-Appointed Arbitrators and the Third Arbitrator, made in writing, shall be provided to the Parties. Such decision shall be final and conclusive with respect to the issue(s) or question(s) submitted for arbitration and shall be binding upon the Parties to this Agreement. Such decision may be filed in a court of competent jurisdiction (specifically including the jurisdictions in which the Parties are incorporated and/or operate) and may be enforced by Seller or Buyer as a final judgment in such court.

18.6 Location of Arbitration. All arbitrations shall take place in Gulfport, Mississippi.

18.7 Injunctive Relief. Notwithstanding any other provision of this Article 18, the Parties agree that a Party threatened with irreparable harm shall be permitted to seek at any time, in accordance with applicable Legal Requirements, procedures, and the terms of this Agreement, injunctive relief relating to the performance of this Agreement from a Governmental Authority of appropriate jurisdiction.

18.8 Continued Performance. Except as provided in Section 15.2.6, the Parties agree to continue performing their respective obligations under this Agreement while the dispute is being resolved unless and until such obligations are terminated or expire in accordance with the provisions of this Agreement.

**CONFIDENTIAL****ARTICLE 19****MISCELLANEOUS****19.1 Assignment; Change in Control.**

19.1.1 Except as provided in Section 19.19, neither Party may assign this Agreement or its rights or obligations under this Agreement without the prior written consent of the other Party (which consent shall not be unreasonably withheld or delayed); provided, however, notwithstanding the foregoing, either Party may assign outright this Agreement and its rights and obligations under this Agreement without the consent of the other Party to an Affiliate who: (i) possesses the experience and capability to satisfy the obligations of such assigning Party under this Agreement; (ii) has the legal power and authority to perform and satisfy the obligations of such assigning Party under this Agreement; and (iii) does not have a Security Posting Condition with respect to such Affiliate or provides to the other Party an Eligible Letter of Credit or Cash Security in the Required Collateral Amount or an Eligible Guaranty. The assigning Party will notify the other Party in writing prior to any assignment with respect to which consent is not required under this Agreement. No assignment by a Party of this Agreement or its rights or obligations under this Agreement shall relieve the assigning Party of liability for its obligations under this Agreement without the written release of the other Party. Such release shall not be withheld or unreasonably delayed if the Assignment Conditions, as defined in Section 19.1.2, are satisfied.

19.1.2 The non-assigning Party's obligation to recognize or perform for any Person claiming or otherwise holding rights in or under this Agreement by outright assignment or through a foreclosure or other exercise of rights pursuant to a collateral assignment, pledge of or grant of security interest in this Agreement (or any related rights) permitted by this Agreement

**CONFIDENTIAL**

(an “Assignee”) shall be subject to such Assignee: (i) establishing that it (a) has the legal power and authority to perform and satisfy the obligations then and thereafter to become due to the non-assigning Party under this Agreement and (b) does not have a Security Posting Condition with respect to such Assignee or provides to the other Party consistent with the provisions of Article 5 hereof an Eligible Letter of Credit or Cash Security in the Required Collateral Amount or an Eligible Guaranty; (ii) having cured all existing Events of Default (other than Events of Default with respect to which the non-assigning Party is the Defaulting Party) under this Agreement; and (iii) having executed and delivered to the non-assigning Party and being in compliance with an assignment and assumption agreement whereby the Assignee assumes and agrees to satisfy all conditions and pay and perform all obligations in favor of the non-assigning Party then existing and/or thereafter arising under this Agreement (“Assignment Conditions”). Any attempted assignment, whether outright, by way of foreclosure or exercise of any rights pursuant to a collateral assignment, pledge or grant of security interest in this Agreement or any related rights or otherwise, which is not in compliance with the terms of this Agreement shall be voidable and ineffective, at the option of the non-assigning Party.

19.1.3 Subject to Section 19.19, Seller agrees that, without the prior written consent of Buyer, there will be no: (i) assignment or transfer of any direct interest in the Facility; or (ii) Change in Control with respect to Seller. For purposes of this Agreement, “Change in Control” means any transaction or series of transactions which, if consummated, would result in Seller being a subsidiary (directly or indirectly) of an ultimate parent entity that is different than Seller’s ultimate parent entity prior to such transaction(s). For purposes hereof, Seller’s ultimate parent entity is the Person who directly or indirectly controls fifty percent (50%) or more of Seller’s equity interests and who does not itself have an ultimate parent entity.

**CONFIDENTIAL****19.2 Taxes.**

19.2.1 Seller shall pay, or cause to be paid, all Taxes on or with respect to: (i) the Facility, including its development, permitting, design, engineering, procurement, construction, testing, startup, ownership, leasing, financing, operation, and maintenance; (ii) the production, sale and provision of energy, Electrical Products and Environmental Attributes under this Agreement; (iii) all Taxes that are associated with emissions from the Facility, regardless of whether such Taxes are assessed on Buyer or Seller; and (iv) Seller's procurement and use of fuel. It is the intent of the Parties that such Taxes for which Seller is responsible shall include any and all sales, transfer and other similar Taxes on the sale to Buyer of energy under this Agreement and/or the provision of Electrical Products and Environmental Attributes to Buyer under this Agreement, whether such Taxes are imposed on Buyer or Seller.

19.2.2 Buyer shall pay, or cause to be paid, all Taxes on or with respect to subsequent sales made by Buyer to third Persons of the energy, Electrical Products and Environmental Attributes received by Buyer under this Agreement. It is the intent of the Parties that such Taxes for which Buyer is responsible shall not include any sales, transfer and other similar Taxes on the sale to Buyer of energy under this Agreement and/or the provision of Electrical Products and Environmental Attributes to Buyer under this Agreement.

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

19.2.4 In the event Seller is required by law or regulation to remit or pay Taxes that are Buyer's responsibility hereunder, Seller may include such Taxes in the next Monthly invoice (on an After-Tax Basis) and Buyer shall remit payment thereof in accordance with

**CONFIDENTIAL**

Article 13. Conversely, if Buyer is required by law or regulation to remit or pay Taxes that are Seller's responsibility hereunder, Buyer may deduct the amount of any such Taxes from the amounts otherwise due to Seller under this Agreement (on an After-Tax Basis), provided that if Buyer does not elect to deduct such amount, Seller shall pay such amount to Buyer upon request by Buyer. Any refunds associated with such Taxes will be handled in the same manner.

19.3 No Partnership. Seller and Buyer do not intend for this Agreement to, and this Agreement shall not, create any joint venture, partnership, association taxable as a corporation, or other entity for the conduct of any business for profit. Neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, or to act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

19.4 Binding Effect Upon Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon any respective permitted successors and assigns of Seller and Buyer.

19.5 No Third Party Benefit. Nothing in this Agreement shall be construed to create any duty, obligation or liability of Buyer to any Person not a party to this Agreement.

19.6 No Buyer Affiliate Liability. Notwithstanding any other provision of this Agreement, no Affiliate of Buyer (including any Affiliate of Buyer acting as Buyer's agent where Buyer's agent is given certain authorities pursuant hereto) shall have any liability whatsoever for any party's performance, nonperformance or delay in performance under this Agreement.

19.7 Time of Essence; No Waiver. Time is of the essence with respect to the performance under this Agreement. Neither Buyer's nor Seller's failure to enforce any provision or provisions of this Agreement shall in any way be construed as a waiver of any such provision

**CONFIDENTIAL**

or provisions as to any future violation thereof, nor prevent it from enforcing each and every other provision of this Agreement at such time or at any time thereafter. The waiver by either Buyer or Seller of any right or remedy shall not constitute a waiver of its right to assert said right or remedy, at any time thereafter, or any other rights or remedies available to it at the time of or any time after such waiver.

19.8 Amendments. This Agreement may be amended by and only by a written instrument duly executed by both Parties, each of which has received all approvals of Governmental Authorities of competent jurisdiction necessary for the effectiveness thereof.

19.9 Notice. Any notice, demand, request, statement, or correspondence provided for in this Agreement, or any notice which a Party may desire to give to the other in connection with this Agreement, shall be in writing (unless otherwise expressly provided by this Agreement) and shall be considered duly delivered when received by hand delivery, first-class mail, facsimile, or by overnight delivery, at the address(es) and to the attention of the person(s) listed below; provided, however, if actual delivery occurs at a time other than between the hours of 0800 and 1700 Central Prevailing Time on a Business Day (each a “Business Hour”), delivery shall be deemed to have occurred in the next Business Hour after actual delivery.

(i) **To Buyer:**

Mississippi Power Company  
Attn: Vice President and Senior Production Officer  
2992 West Beach Blvd.  
Gulfport, MS 39501

**with copies to:**

Southern Company Services, Inc.  
Attn: Vice President, Commercial Operations  
600 18th Street North  
Birmingham, AL 35291

**CONFIDENTIAL****(ii) To Seller:**

Hattiesburg Farm, LLC  
 c/o Silicon Ranch Company  
 Attn: D. Reagan Farr, Secretary/CFO  
 150 Third Avenue South, Suite 2000  
 Nashville, TN 37201

unless Buyer or Seller shall have designated a different officer or address for itself by written notice to the other.

19.10 Counterparts; Electronic Copies. This Agreement may be executed by facsimile or PDF (electronic copy) and in counterparts, all of which for all purposes will be deemed to be an original and all of which, taken together, constitutes one and the same instrument.

19.11 Cross-References. All cross-references contained in this Agreement to Sections, are to the Sections of this Agreement, unless otherwise expressly noted.

19.12 Article and Section Headings. The descriptive headings of the various Sections of this Agreement have been inserted for convenience of reference only and shall in no way modify or restrict any of the terms or provisions hereof.

19.13 Entire Agreement. This Agreement constitutes the entire understanding between the Parties and supersedes any previous agreements related to the subject matter hereof between the Parties.

19.14 Reliance. The Parties have entered into this Agreement in reliance upon the representations and mutual undertakings contained herein and not in reliance upon any oral or written representations or information provided by one Party to the other Party not contained or incorporated herein.

19.15 Governing Law; Forum for Disputes. The validity, interpretation and performance of this Agreement, and each of its provisions, shall be governed by the laws of the

**CONFIDENTIAL**

State of Mississippi. The Parties agree that the state and federal courts, as applicable, of the state of Mississippi shall have exclusive jurisdiction for the resolution of disputes under this Agreement.

19.16 Confidentiality.

19.16.1 The Parties acknowledge that the contents of this Agreement constitute Confidential Information and that this Agreement may require the Parties to disclose additional Confidential Information to one another. Each Party agrees that it shall not, without the written consent of the other Party or as otherwise provided herein, disclose to any third party (other than to Affiliates of the disclosing Party or consultants and advisors to such Affiliates and the disclosing Party who need to know such information in connection with the performance of their duties or services for such Affiliates or the disclosing Party), such portions of this Agreement, or the terms or provisions hereof, or any additional Confidential Information disclosed pursuant to such Party's performance of this Agreement and identified as Confidential Information at the time of such disclosure, except to the extent that disclosure to a third party is required by Legal Requirements or as otherwise authorized under this Agreement.

19.16.2 Buyer agrees to seek confidential treatment of the Confidential Information in this Agreement from the MPSC, but the Parties acknowledge that some or all of the terms, conditions and provisions of this Agreement will need to be disclosed in connection with the application for approval. No assurance or commitment is made regarding the ability of Buyer to obtain confidential treatment.

19.16.3 Prior to and on the Commercial Operation Date, any public statement by a Party concerning the transaction described herein shall be reviewed and agreed upon by the Parties before release to the public, which agreement shall not be unreasonably withheld,

**CONFIDENTIAL**

conditioned or delayed; provided, however, that in no event shall any public statement be made by Seller regarding this Agreement or the discussions leading up to this Agreement be made prior to the submission of this Agreement to the MPSC. After the Commercial Operation Date, any public statement by Seller concerning the transaction described herein shall be reviewed and agreed upon by Buyer before release to the public, which agreement shall not be unreasonably withheld, conditioned or delayed. In addition, without limiting any other provision of this agreement between the Parties, Seller shall submit to Buyer all advertising, sales promotion or other publicity matter relating to this Agreement wherein Buyer's name or the name of its Affiliate(s) is mentioned, and Seller shall not use or publish such advertising, sales, promotion or other publicity matter without written consent of Buyer.

19.16.4 Notwithstanding anything to the contrary in this Section 19.16, Buyer shall have the right to disclose the following information publicly or to any other Person without the consent of Seller: (i) information received by Buyer from Seller pursuant to Section 10.3; (ii) the names of the Parties to this Agreement; (iii) the type of fuel used by the Facility; (iv) the term of this Agreement; (v) the identity of and location of the Facility; (vi) the amount of energy purchased under this Agreement; (vii) the estimated Commercial Operation Date; (viii) the Point of Delivery; and (ix) a forecast of the Seller's energy deliveries under this Agreement.

19.16.5 The terms of this Section 19.16 shall survive for a period of two (2) years after the termination or expiration of this Agreement.

19.17 Construction. The language used in this Agreement is the product of both Parties' efforts. Accordingly, each Party irrevocably waives the benefit of any rule of contract construction that disfavors the drafter of a contract or the drafter of specific language in a contract.

**CONFIDENTIAL**

19.18 Transfer of Information Acknowledgement. Seller agrees to execute contemporaneous with the execution of this Agreement, the Transfer of Information Acknowledgement attached as **Appendix K**, and Buyer agrees to the limited use and confidential treatment of such information as set forth in **Appendix K**.

19.19 Accommodation of Lender.

19.19.1 Notwithstanding Section 19.1 or anything else expressed or implied herein to the contrary, Seller may, without the consent of Buyer, collaterally assign its rights under this Agreement to a Lender for collateral security purposes in connection with the financing or the refinancing of the Facility; provided, however, that Seller's obligations under this Agreement shall continue in their entirety in full force and effect as the obligations of a principal and not as a surety. Seller shall remain fully liable for all of its obligations under or relating to this Agreement. Each such collateral assignment and any Purchaser at Foreclosure (defined below) shall be subject to Buyer's rights and defenses hereunder and under applicable Legal Requirements. Seller shall provide prior notice to Buyer of any such collateral assignment, which notice shall include the identity of the Lender.

19.19.2 In order to facilitate the obtaining of financing of the Facility, Buyer shall execute such consents, agreements or similar documents with respect to a collateral assignment hereof to a Lender as such Lender may reasonably request in connection with the documentation of the financing or refinancing for the Facility, provided, however, that any such consents, agreements or similar documents will be on terms and conditions reasonably acceptable to Buyer; provided further, that the transfer of Seller's rights under this Agreement to a purchaser at foreclosure, purchaser in lieu of foreclosure or similar purchaser or transferee ("Purchaser at Foreclosure") shall not become effective until such Purchaser at Foreclosure has

**CONFIDENTIAL**

established to Buyer's reasonable satisfaction that such Purchaser at Foreclosure has all licenses, permits and approvals and legal, financial and technical wherewithal and capacity reasonably required to perform the obligations of Seller this Agreement. Notwithstanding the foregoing, all obligations of Seller to Buyer under this Agreement shall also be and remain enforceable by Buyer against Seller. Any foreclosure or other exercise of rights and remedies and any assignment to a Purchaser at Foreclosure shall be subject to Buyer's rights and defenses hereunder and under applicable law.


19.20 Costs of Buyer. Seller agrees that: (i) in the event Seller assigns or transfers an interest in the Facility or the Agreement as permitted under Section 19.1; (ii) there is a Change of Control Transaction; or (iii) Seller requests Buyer to execute a written consent or other document pursuant to Section 19.19, then in any case of the foregoing (i), (ii) or (iii) Seller shall be responsible for all costs and expenses incurred by Buyer (including legal fees and expenses) that arise from or relate to the same, including the negotiation, preparation, execution and/or delivery of such documents.

19.21 Forward Contract. The transaction contemplated under this Agreement constitutes a "forward contract" within the meaning of the United States Bankruptcy Code, and the Parties further acknowledge and agree that each Party is a "forward contract merchant" within the meaning of the United States Bankruptcy Code.

[The next page is the signature page.]

IN WITNESS WHEREOF, Seller and Buyer have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

## MISSISSIPPI POWER COMPANY

By:   
Name: 12 Allen Reeves Sr  
Title: VP & SPO

## SR MERIDIAN III, LLC

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

Signature Page to Energy Purchase Agreement

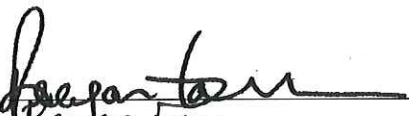
**CONFIDENTIAL**

IN WITNESS WHEREOF, Seller and Buyer have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

**MISSISSIPPI POWER COMPANY**

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

**SR MERIDIAN III, LLC**

By:  \_\_\_\_\_  
Name: Reagan Farr \_\_\_\_\_  
Title: CFO / Secretary \_\_\_\_\_

Signature Page to Energy Purchase Agreement

CONFIDENTIAL

## APPENDIX A

MONTHLY ENERGY PAYMENT CALCULATION AND PRODUCTION  
PERFORMANCE ADJUSTMENTA. Monthly Energy Payment.

For each Month of the Service Term, the Monthly Energy Payment shall equal the sum of the Hourly Energy Charges (“HEC”) for all Hours of the Month. The HEC shall be determined for each Hour as follows:

$$\text{HEC} = (\text{Delivered Energy} + \text{Deemed Delivered Energy}) * \text{Energy Price}$$

Where:

Delivered Energy = The total amount of Delivered Energy (in MWh) for the applicable Hour.

Deemed Delivered Energy = The total amount of Deemed Delivered Energy (in MWh) for the applicable Hour.

Energy Price = The energy price for the applicable Hour, which shall be

[The remainder of this page is intentionally left blank.]

**CONFIDENTIAL****B. Production Performance Adjustment.**

B.1 Both Parties acknowledge and agree that the Monthly Energy Payments and Energy Prices for the Service Term that are determined pursuant to Section A of this **Appendix A** were negotiated and agreed upon with the expectation and presumption that the Facility will produce at minimum an amount of energy during each Service Year that is equal to or greater than the Annual Energy Threshold for such Service Year. Therefore, if Seller does not achieve the Annual Energy Threshold for any given Service Year, then at the end of such Service Year, a pricing adjustment shall be calculated in the form of the Production Performance Adjustment in order to preserve the negotiated economic bargain of this Agreement. The Production Performance Adjustment, as determined pursuant to this Section B of **Appendix A**, shall be credited and/or paid by Seller to Buyer after the end of each applicable Service Year as set forth below.

B.2 For purposes of this Section B of **Appendix A**, Seller shall have achieved the Annual Energy Threshold for a Service Year if the Actual Energy Quantity for such Service Year is greater than or equal to such Annual Energy Threshold. Seller shall have failed to achieve the Annual Energy Threshold for a Service Year if the Actual Energy Quantity for such Service Year is less than the Annual Energy Threshold for such Service Year for any reason ("Threshold Shortfall"). For purposes of making such determination, the Actual Energy Quantity for a given Service Year shall be determined as follows:

$$AEQ = DE + CE$$

Where:

AEQ = Actual Energy Quantity (in MWh) for the applicable Service Year.

DE = the amount of Delivered Energy (in MWh) delivered by Seller during such Service Year pursuant to the Agreement.

CE = the amount of Curtailed Energy (in MWh) during such Service Year.

B.3 In the event that there is a Threshold Shortfall for any given Service Year, then there shall be a "Shortfall Amount" determined for such Service Year as follows:

$$SA = AET - AEQ$$

Where:

SA = Shortfall Amount (in MWh) for the applicable Service Year.

**CONFIDENTIAL**

AET = Annual Energy Threshold for such Service Year

AEQ = Actual Energy Quantity (in MWh) for such Service Year, as determined in Section B.2 above.

B.4 If there is a Shortfall Amount for any given Service Year, Buyer shall determine the Production Performance Adjustment for such Service Year as follows:

$$PPA = SA \times \frac{AEQ - AET}{AET}$$

Where:

PPA = Production Performance Adjustment for the applicable Service Year.

SA = Shortfall Amount for such Service Year.

B.5 After Buyer determines the Production Performance Adjustment for a given Service Year, Seller shall owe Buyer the amount of the Production Performance Adjustment. In order to remit the amount of any such Production Performance Adjustment, Seller shall provide Buyer a credit on the first Monthly invoice under Section 13.1 that is sent to Buyer after Buyer determines such Production Performance Adjustment; provided that if such Production Performance Adjustment exceeds the amount of such first Monthly invoice, Seller shall remit payment of such excess amount to Buyer no later than three (3) Business Days after such invoice is sent to Buyer.

B.6 The payment by Seller of the Production Performance Adjustment shall not relieve Seller from any of its other obligations under this Agreement, including the obligation to provide Delivered Energy pursuant to Article 8 at all times the Facility is available and is capable of producing energy and the obligation to provide Electrical Products, as well as the obligation to provide Buyer exclusive rights to such energy and Electrical Products.

**CONFIDENTIAL****APPENDIX B****ANNUAL EXPECTED ENERGY**

<b>Service Year</b>	
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	

\* The Annual Expected Energy quantities shall be fixed as set forth above and shall not be reduced for any reason (including forced outages at the Facility, Scheduled Outages, inadequate solar rays or Force Majeure Events).

**CONFIDENTIAL****APPENDIX C****LETTER OF CREDIT****IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER \_\_\_\_\_****DATE:** \_\_\_\_\_, \_\_\_\_\_**BENEFICIARY:**  
MISSISSIPPI POWER COMPANY  
\_\_\_\_\_  
\_\_\_\_\_**APPLICANT:**  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_**ATTN:** \_\_\_\_\_**ATTN:** \_\_\_\_\_

LADIES AND GENTLEMEN:

AT THE REQUEST AND FOR THE ACCOUNT OF \_\_\_\_\_ (“APPLICANT”), WE HEREBY ESTABLISH, EFFECTIVE IMMEDIATELY, IN FAVOR OF MISSISSIPPI POWER COMPANY (THE “BENEFICIARY”) OUR IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER \_\_\_\_\_ IN THE AGGREGATE AMOUNT OF \_\_\_\_\_ AND 00/100 UNITED STATES DOLLARS (\$\_\_\_\_\_) (AS SUCH AMOUNT MAY BE REDUCED FROM TIME TO TIME BY PARTIAL DRAWS HEREUNDER, THE “STATED AMOUNT”).

WE ARE INFORMED BY THE APPLICANT THAT THIS LETTER OF CREDIT IS BEING ISSUED IN CONNECTION WITH THE ENERGY PURCHASE AGREEMENT BETWEEN BENEFICIARY AND APPLICANT DATED \_\_\_\_\_, 20\_\_\_\_ (AS MAY BE AMENDED, ASSIGNED, RESTATED OR REPLACED).

THIS LETTER OF CREDIT IS ISSUED, PRESENTABLE AND PAYABLE AT OUR COUNTERS AT \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, AND EXPIRES WITH OUR CLOSE OF BUSINESS ON \_\_\_\_\_, \_\_\_\_\_ (AS MAY BE EXTENDED AS SET FORTH BELOW, THE “EXPIRY DATE”).

IT IS A CONDITION OF THIS LETTER OF CREDIT THAT IT AND THE EXPIRY DATE SHALL BE AUTOMATICALLY EXTENDED WITHOUT WRITTEN AMENDMENT FOR PERIODS OF ONE (1) YEAR FROM THE PRESENT EXPIRY DATE, AND THEN FROM EACH FUTURE EXPIRY DATE, UNLESS AT LEAST NINETY (90) DAYS PRIOR TO ANY SUCH EXPIRY DATE WE SEND YOU NOTICE BY REGISTERED MAIL, RETURN RECEIPT REQUESTED, OR COURIER SERVICE OR HAND DELIVERY AT THE ABOVE STATED ADDRESS THAT THE EXPIRY DATE FOR THIS LETTER OF CREDIT WILL NOT BE EXTENDED BEYOND THE THEN APPLICABLE EXPIRY DATE.

FUNDS IN PAYMENT OF A DRAWING UNDER THIS LETTER OF CREDIT ARE AVAILABLE TO THE BENEFICIARY BY PAYMENT AGAINST PRESENTATION AT OUR OFFICE OF THE FOLLOWING:

**CONFIDENTIAL**

1. THE BENEFICIARY'S DEMAND FOR PAYMENT INCLUDING THE DOLLAR AMOUNT BEING DEMANDED SPECIFICALLY REFERENCING THIS LETTER OF CREDIT NUMBER.
2. THIS LETTER OF CREDIT AND ANY AMENDMENTS ATTACHED THERETO, OR AS PERMITTED BY THIS LETTER OF CREDIT, A COPY OF THE SAME.
3. A DATED STATEMENT PURPORTEDLY SIGNED BY AN AUTHORIZED REPRESENTATIVE OF BENEFICIARY CONTAINING ONE OR MORE OF THE FOLLOWING STATEMENTS WITH APPROPRIATE INSERTIONS:
  - (A) \_\_\_\_\_ OR ITS SUCCESSOR OR ASSIGNEE IS IN DEFAULT OR BREACH OF ONE OR MORE OF ITS OBLIGATIONS, AGREEMENTS OR WARRANTIES AND/OR IS THE DEFAULTING PARTY UNDER THAT CERTAIN ENERGY PURCHASE AGREEMENT DATED \_\_\_\_\_, 20\_\_\_\_, ORIGINALLY BETWEEN \_\_\_\_\_ AND MISSISSIPPI POWER COMPANY, AS AMENDED, ASSIGNED, RESTATED OR REPLACED, AND/OR ANY RELATED DOCUMENT OR AGREEMENT; OR
  - (B) MISSISSIPPI POWER COMPANY ("BENEFICIARY") OR ITS ASSIGNEE HAS DETERMINED OR HAS BEEN NOTIFIED THAT THE EXPIRY DATE FOR LETTER OF CREDIT NUMBER \_\_\_\_\_ HAS NOT BEEN OR WILL NOT BE EXTENDED AND BENEFICIARY OR ITS ASSIGNEE HAS NOT BEEN PROVIDED WITH SUBSTITUTE PERFORMANCE SECURITY IN FORM AND SUBSTANCE ACCEPTABLE TO BENEFICIARY OR ITS ASSIGNEE.

PRESENTATION OF A DEMAND UNDER THIS LETTER OF CREDIT MAY BE MADE ON OR PRIOR TO THE THEN CURRENT EXPIRATION DATE HEREOF BY HAND DELIVERY, COURIER SERVICE, REGISTERED OR CERTIFIED MAIL, OVERNIGHT MAIL, OR FACSIMILE. PRESENTATION OF A DEMAND UNDER THIS LETTER OF CREDIT BY FACSIMILE TRANSMISSION SHALL BE BY TRANSMISSION OF THE ABOVE REQUIRED DEMAND ON US TO OUR FACSIMILE NUMBER 513-358-5950 ATTENTION: TRADE SERVICES WITH TELEPHONIC CONFIRMATION OF OUR RECEIPT OF SUCH FACSIMILE TRANSMISSION AT OUR TELEPHONE NUMBER 513-358-5229 (OR AT SUCH OTHER FACSIMILE AND / OR TELEPHONE NUMBERS AS WE MAY SEND NOTICE TO YOU IN WRITING BY U.S. MAIL OR COURIER SERVICE, AS BEING THE APPLICABLE SUCH NUMBERS) ON OR BEFORE THE THEN CURRENT EXPIRATION DATE. ANY SUCH FACSIMILE PRESENTATION SHALL BE CONSIDERED AN ORIGINAL DOCUMENT AND ANY ORIGINAL DOCUMENTS DELIVERED TO THE BANK SHALL BE RETURNED TO THE SENDER AND WILL NOT BE EXAMINED. FIFTH THIRD BANK SHALL BE UNDER NO OBLIGATION TO ASCERTAIN THE IDENTITY OR AUTHORITY OF ANY PERSON MAKING SUCH FACSIMILE PRESENTATION.

**CONFIDENTIAL**

PARTIAL AND MULTIPLE DRAWINGS ARE PERMITTED HEREUNDER. ANY DEMAND FOR PAYMENT HONORED HEREUNDER BY US SHALL REDUCE THE STATED AMOUNT BY THE DOLLAR AMOUNT PAID BY US PURSUANT THERETO.

BENEFICIARY'S DRAWING RIGHTS UNDER THIS LETTER OF CREDIT SHALL BE TRANSFERRED IN THEIR ENTIRETY BY PRESENTATION OF THE ATTACHED TRANSFER FORM COMPLETED AS INDICATED, TOGETHER WITH THIS ORIGINAL STANDBY AND ALL ORIGINAL AMENDMENTS, IF ANY, TO US AT THE 5050 KINGSLEY DRIVE, MD 1MOCBR, CINCINNATI, OH 45263, ATTN: TRADE SERVICES. UPON PRESENTATION OF A COMPLYING TRANSFER FORM, THE PERSON IDENTIFIED AS THE TRANSFEREE SHALL BECOME THE BENEFICIARY, WHOSE NAME AND ADDRESS SHALL BE SUBSTITUTED FOR THAT OF THE TRANSFEROR ON ANY DEMANDS, REQUESTS, OR CONSENTS THEN OR THEREAFTER REQUIRED OR PERMITTED TO BE MADE BY THE BENEFICIARY. SUBJECT TO COMPLIANCE WITH APPLICABLE LAW, AND RECEIPT OF OUR CUSTOMARY OR AGREED TRANSFER FEE, WE SHALL EFFECT THE DEMANDED TRANSFER AND SHALL ISSUE OUR TRANSFER TO THE TRANSFEREE.

ALL BANKING CHARGES ASSOCIATED WITH THIS LETTER OF CREDIT ARE FOR THE ACCOUNT OF THE APPLICANT.

WE ENGAGE WITH YOU THAT DEMANDS FOR PAYMENT UNDER AND IN CONFORMITY WITH THE TERMS OF THIS LETTER OF CREDIT WILL BE DULY HONORED ON PRESENTATION IF PRESENTED ON OR BEFORE THE EXPIRY DATE BY PAYMENT IN ACCORDANCE WITH THE BENEFICIARY'S PAYMENT INSTRUCTIONS. IF PRESENTED, THIS ORIGINAL LETTER OF CREDIT SHALL BE RETURNED TO THE BENEFICIARY UNLESS THIS LETTER OF CREDIT IS PAID IN FULL. ALL PAYMENTS UNDER THIS LETTER OF CREDIT WILL BE MADE IN OUR OWN FUNDS. IF REQUESTED BY THE BENEFICIARY, PAYMENT UNDER THIS LETTER OF CREDIT WILL BE MADE BY WIRE TRANSFER OF IMMEDIATELY AVAILABLE FUNDS TO BENEFICIARY'S ACCOUNT AT ANY FINANCIAL INSTITUTION LOCATED IN THE CONTINENTAL UNITED STATES.

OUR OBLIGATIONS HEREUNDER ARE PRIMARY OBLIGATIONS THAT SHALL NOT BE AFFECTED BY THE PERFORMANCE OR NON-PERFORMANCE BY APPLICANT OF ANY OBLIGATIONS UNDER ANY AGREEMENT BETWEEN APPLICANT AND YOU OR BETWEEN APPLICANT AND US OR BETWEEN APPLICANT AND ITS AGENTS.

NOTWITHSTANDING THE EXPIRATION DATE, IF YOU RECEIVE PAYMENT FROM APPLICANT ON OR BEFORE THE EXPIRATION DATE AND WITHIN 90 DAYS IMMEDIATELY PRECEDING THE FILING OF A PETITION UNDER THE BANKRUPTCY CODE OR OTHER INSOLVENCY STATUTE BY OR AGAINST APPLICANT, THEN IN THAT EVENT OUR OBLIGATION UNDER THIS LETTER OF CREDIT SHALL BE EXTENDED (OR BE REINSTATED) AND THE EXPIRATION DATE SHALL BE EXTENDED FOR A PERIOD OF ONE HUNDRED AND TWENTY (120) DAYS AND OUR

**CONFIDENTIAL**

OBLIGATIONS TO YOU HEREUNDER SHALL REMAIN IN FULL FORCE AND EFFECT DURING SUCH ADDITIONAL PERIOD.

EXCEPT AS EXPRESSLY STATED HEREIN, THIS UNDERTAKING IS NOT SUBJECT TO ANY AGREEMENT, REQUIREMENT OR QUALIFICATION. OUR OBLIGATION UNDER THIS LETTER OF CREDIT IS OUR INDIVIDUAL OBLIGATION AND IS IN NO WAY CONTINGENT UPON REIMBURSEMENT WITH RESPECT THERETO, OR UPON OUR ABILITY TO PERFECT ANY LIEN, SECURITY INTEREST OR ANY OTHER REIMBURSEMENT.

THIS LETTER OF CREDIT IS SUBJECT TO AND GOVERNED BY THE INTERNATIONAL STANDBY PRACTICES (ISP98), INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 590 ("ISP98").

AS TO MATTERS NOT COVERED BY ISP98, AND TO THE EXTENT NOT INCONSISTENT WITH ISP98, THIS LETTER OF CREDIT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF MISSISSIPPI, INCLUDING ARTICLE 5 OF THE UNIFORM COMMERCIAL CODE AS IN EFFECT IN THAT STATE.

THIS LETTER OF CREDIT SETS FORTH IN FULL THE TERMS OF OUR UNDERTAKING AND SUCH UNDERTAKING IS INDEPENDENT OF AND SHALL NOT IN ANY WAY BE MODIFIED, AMENDED OR AMPLIFIED BY REASON OF OUR REFERENCE TO ANY AGREEMENT OR INSTRUMENT REFERRED TO OR IN WHICH THIS LETTER OF CREDIT IS REFERRED TO. ANY SUCH AGREEMENT OR INSTRUMENT SHALL NOT BE DEEMED INCORPORATED HEREIN BY REFERENCE. EXCEPT FOR INCREASES IN THE STATED AMOUNT, AUTOMATIC EXTENSIONS OF THIS LETTER OF CREDIT AND THE EXPIRY DATE AS PROVIDED FOR ABOVE AND REDUCTIONS IN THE STATED AMOUNT BY PAYMENTS TO HONOR DEMANDS FOR PAYMENT HEREUNDER AS PROVIDED FOR ABOVE, THIS LETTER OF CREDIT MAY NOT BE AMENDED WITHOUT THE PRIOR WRITTEN CONSENT OF THE BENEFICIARY.

WE HEREBY WAIVE ANY RIGHT TO SET OFF AND APPLY ANY AND ALL DEPOSITS (GENERAL OR SPECIAL, TIME OR DEMAND, PROVISIONAL OR FINAL) OR COLLATERAL AT ANY TIME HELD BY US OR OTHER INDEBTEDNESS AT ANY TIME OWING BY US TO OR FOR THE CREDIT OF OR THE ACCOUNT OF APPLICANT AGAINST ANY AND ALL OF THE OBLIGATIONS OF APPLICANT NOW OR HEREAFTER EXISTING TO REIMBURSE US FOR OUR DISBURSEMENTS UNDER THIS LETTER OF CREDIT; PROVIDED, HOWEVER, THAT EACH SUCH RIGHT SHALL BE REINSTATED IF SUCH RIGHT WOULD NOT LEAD TO OUR BEING RELEASED, PREVENTED OR RESTRAINED FROM OR DELAYED IN, HONORING ANY PRESENTATION MADE IN ACCORDANCE WITH THIS LETTER OF CREDIT. THE FOREGOING WAIVER IS INTENDED TO DEFEAT ANY POSSIBLE CLAIM THAT HONOR OF THIS LETTER OF CREDIT OR PRESENTATION MADE HEREUNDER MAY CONSTITUTE A PREFERENTIAL TRANSFER OF THE BANKRUPTCY APPLICANT'S PROPERTY SECURING OUR RIGHT OF REIMBURSEMENT. NOTHING HEREIN

**CONFIDENTIAL**

SHALL BE CONSTRUED TO SUPPORT THE VALIDITY OF ANY SUCH CLAIM, TO SUPPORT ANY DELAY IN OUR OBLIGATION TO HONOR THIS LETTER OF CREDIT OR ANY PRESENTATION OR TO DETRACT FROM THE INDEPENDENCE OF OUR OBLIGATION TO HONOR THIS LETTER OF CREDIT AND ANY PRESENTATION.

SINCERELY,

\_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

**CONFIDENTIAL****REQUEST FOR TRANSFER OF ALL RIGHTS AS BENEFICIARY**

To:

Date: \_\_\_\_\_

Re: Your Reference Number \_\_\_\_\_

Letter of Credit Number SXXXXXXX issued by \_\_\_\_\_

\_\_\_\_\_  
 We, the undersigned, as beneficiary ("Transferor") of the above described letter of credit including any and all amendments to which the Transferor has consented ("Credit"), hereby irrevocably request you ("Bank") to recognize and effect a transfer to:

Exact Name of the Beneficiary: \_\_\_\_\_

Complete Address of the Beneficiary: \_\_\_\_\_

Contact Name and Telephone Number: \_\_\_\_\_ ("Transferee")

of all rights of the Transferor under the Credit to draw or otherwise demand payment under the Credit not heretofore made by the Transferor, to consent or withhold consent to any amendments not heretofore consented to by the Transferor, and to further transfer rights under the Credit to the extent further transfer is permissible.

All future amendments should be directed to the Transferee (without the necessity of any notice to or consent of the Transferor).

The Credit, including all amendments to which the Transferor has consented, is enclosed herewith.

Please send the transferred letter of credit to the transferee

☐ directly by ☐ airmail ☐ courier ☐ other \_\_\_\_\_ -or-

☐ routing the advice of transfer through: (Insert complete name and address of a bank, if desired)

☐ if not checked, Bank will send transferred letter of credit to the address above.

\_\_\_\_\_  
 To cover the Bank's fee in the amount of USD \_\_\_\_\_, the Transferor

☐ encloses a certified or cashier's/official check payable to the Bank

☐ authorizes the Bank to debit the Transferor's account number

**CONFIDENTIAL**

☐ transfer fees are for the account of the applicant

The Transferor agrees to immediately return to the Bank any funds inadvertently paid to the Transferor by the Bank in connection with the Credit.

The Transferor agrees to indemnify the Bank and hold the Bank harmless from and any claim, liability, or expense (including reasonable attorney's fees and disbursements and other dispute resolution expenses) arising out of or in connection with the Bank's effecting the requested transfer (including enforcement of this indemnity), and the Transferor agrees to pay the Bank, on demand, for any such claim, liability, or expense.

The Transferor represents and warrants to the Bank that

- (i) The Transferor's execution and delivery of, and performance under, this request (a) are and will remain within its powers, (b) have been and will remain duly authorized, (c) do not and will not contravene any charter provision, by-law, resolution or contract or other undertaking binding on or affecting it or any of its properties, (d) do not and will not require any notice, filing or other action to or by a governmental authority, and (e) do not and will not violate any laws, rules, or regulations of the United States or any other applicable jurisdiction;
- (ii) this request is and will remain the legal, valid and binding obligation to the Transferor, enforceable in accordance with its terms; and
- (iii) the Credit is undrawn, untransferred, and unamended (except as noted on this request and shown on the enclosed Credit).

This transfer is governed by the International Standby Practices/ISP98, International Chamber of Commerce Publication 590 and by the Laws of the State of Mississippi.

Sincerely yours, ·

\_\_\_\_\_  
Name of Beneficiary (as indicated on the Credit)

\_\_\_\_\_  
(Address of Beneficiary)

\_\_\_\_\_  
(City, State, Zip Code)

\_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
(Authorized Name and Title)

\_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
(Telephone Number)

**Signature Guaranteed**

Signature(s) with title(s) conform(s) with that/those on file with us for this company and signer(s) is/are authorized to execute this agreement.

\_\_\_\_\_  
(Name of Bank)

\_\_\_\_\_  
(Address of Bank)

\_\_\_\_\_  
(City, State, Zip Code)

\_\_\_\_\_  
(Authorized Name and Title)

\_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
(Telephone Number)

CONFIDENTIAL

## APPENDIX D

## GUARANTY AGREEMENT

This Guaranty Agreement ("Guaranty Agreement") is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_, a \_\_\_\_\_ (together with its successors, "Guarantor"), in favor of **Mississippi Power Company**, an Mississippi corporation (collectively with its successors and permitted assigns, "Beneficiary").

RECITALS:

A. \_\_\_\_\_ (collectively with its successors and permitted assigns, "Company") and Beneficiary have entered into that certain Energy Purchase Agreement dated as of \_\_\_\_\_, 20\_\_\_\_ (as the same may be amended, restated, replaced and/or assigned, the "Agreement").

B. Guarantor has agreed to execute, deliver and perform this Guaranty Agreement in order to satisfy the terms and conditions of the Agreement.

NOW, THEREFORE, with reference to the above recitals and in reliance thereon, in consideration of Beneficiary entering into and performing the Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, Guarantor agrees in favor of Beneficiary as follows:

1. General. Guarantor hereby absolutely, irrevocably and unconditionally guarantees and promises to pay to Beneficiary, its successors and permitted assigns, when due all of Company's present and future obligations, debts and liabilities of all kinds to Beneficiary under and/or for breach of the Agreement (as the same may be extended, amended, modified, renewed, restated or replaced, the "Obligations"), such payment to be made within two (2) days following Beneficiary's notifying Guarantor that Beneficiary is demanding payment under this Guaranty Agreement. This Guaranty Agreement is an unconditional and continuing guaranty of payment and not of collection.

2. Nature of Guaranty. The Guarantor irrevocably waives all rights that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor. The Guarantor agrees that Beneficiary may resort to the Guarantor for payment of the Obligations whether or not Beneficiary shall have resorted to any collateral therefor or shall have proceeded against Company or any other obligor principally or secondarily obligated with respect to any Obligations. Beneficiary shall not be obligated to file any claim relating to the Obligations in the event that Company or Guarantor becomes subject to a bankruptcy, reorganization or similar proceeding, and the failure of Beneficiary to so file and any bankruptcy or insolvency of Company or Guarantor shall not affect the Guarantor's obligations hereunder. In the event that any payment by Company or Guarantor in respect of any Obligations is voided, rescinded or recovered from Beneficiary as a preference or fraudulent transfer under the United States Bankruptcy Code or any other applicable federal or state law, Guarantor shall remain liable hereunder in respect to such Obligations as if such payment had not been made and/or this

**CONFIDENTIAL**

Guaranty Agreement shall be reinstated as necessary. This Guaranty Agreement shall continue to be effective if Company or Guarantor merges or consolidates with or into another entity, loses its separate legal identity or ceases to exist. Notwithstanding the foregoing, Guarantor covenants until the Obligations have been indefeasibly paid in full (other than contingent indemnity obligations for which no claim has been asserted), it will maintain its corporate (or other applicable entity) existence and will not dissolve, sell or otherwise dispose of all or substantially all of its assets nor consolidate or merge with or into or acquire all or substantially all of the assets of another entity (nor agree to do any of the foregoing), unless at the time of any such sale, disposition, acquisition, consolidation, or merger (“Corporate Change”) (i) the resulting, surviving or transferee entity (“Successor Entity”) is the Guarantor or assumes all the obligations of the Guarantor under this Guaranty by operation of law or expressly in writing pursuant to an agreement reasonably satisfactory to the Beneficiary, (ii) the Successor Entity’s creditworthiness is equal to or better than that of Guarantor immediately prior to such Corporate Change, (iii) the Successor Entity has the corporate or other legal entity power and authority to perform and satisfy all obligations under this Guaranty, (iv) the Successor Entity delivers a third party legal opinion upon Beneficiary’s request reasonably acceptable to Beneficiary containing such opinions as the Beneficiary may reasonably request, and (v) the Successor Entity delivers such certificates and representations of the Successor Entity as Beneficiary shall reasonably request confirming satisfaction of the foregoing and that such Successor Entity meets the requirements of an issuer of an Eligible Guaranty as set forth in the definition of “Eligible Guaranty” in the Agreement (the “Requirements”).

3. Termination. This is an unconditional continuing guaranty of all present and future Obligations. This Guaranty Agreement shall continue in full force and effect until ninety (90) days after the last to occur of (i) date the Agreement expires or is terminated and (ii) all Obligations are indefeasibly and irrevocably paid in full. Notwithstanding the foregoing, this Guaranty Agreement may be sooner terminated by the Guarantor by providing at least ninety (90) days prior written notice of termination to Beneficiary; provided, however, notwithstanding the foregoing, upon any expiration or termination hereof, Guarantor agrees that this Guaranty Agreement and the obligations and liabilities of Guarantor hereunder shall continue in full force and effect with respect to (i) any Obligations that have accrued prior to the expiration or the effective date of termination of this Guaranty Agreement, (ii) all Obligations then or at any time existing or arising pursuant to any Agreement entered into before the expiration or the effective date of termination of this Guaranty Agreement, and (iii) all of Guarantor’s obligations under Section 7 of this Guaranty Agreement. This Guaranty Agreement may not otherwise be terminated or revoked without Beneficiary’s prior written consent.

4. No Conditions. This Guaranty Agreement is direct, continuing, unconditional and absolute, and is subject only to the defenses expressly reserved by Guarantor in this Guaranty Agreement and the other terms and conditions expressly provided for in this Guaranty Agreement. Without limiting the generality of the foregoing, Guarantor agrees that this Guaranty Agreement is not conditioned upon its receipt of any type of notice (including, but not limited to, notice of acceptance of this Guaranty Agreement), and Guarantor hereby waives and releases any right it may otherwise have to same.

**CONFIDENTIAL**

5. No Discharge. Without limiting the foregoing, none of the following or any similar event or occurrence shall operate to impair, lessen, release, reduce, adversely affect or discharge Guarantor's responsibility to pay the Obligations in accordance with the terms of this Guaranty Agreement:

- 5.1 Any modification of the Agreement or any other contract between Beneficiary and Company;
- 5.2 Beneficiary's acceptance of any instrument in substitution for any claim or debt;
- 5.3 Any increase, renewal, extension, modification, novation or substitution of or for any instrument evidencing the Obligations;
- 5.4 Any leniency or failure to pursue collection by Beneficiary with respect to Company or Guarantor or any waiver or consent to departure from the terms of the Obligations or any waiver or release or exercise or refraining from exercising any rights against Company, Guarantor or any other person (except as expressly provided in any written waiver, consent or release provided by Beneficiary);
- 5.5 Any release or impairment of collateral, if any, which secures payment of Company's obligations to Beneficiary; or
- 5.6 The inclusion by any subsequent separate agreement or by any amendment of this Guaranty Agreement at a later date of additional guarantors of the Obligations guaranteed hereunder, or the subsequent release of any one or more of such additional guarantors;

all in such manner and upon such terms as Beneficiary may deem appropriate and without notice to or further consent from Guarantor.

6. Consents, Waivers and Renewals. Guarantor agrees that Beneficiary may, at any time and from time to time, without notice to or consent of Guarantor and without impairing, reducing or releasing this Guaranty Agreement or the obligations of Guarantor hereunder: (1) extend the time of payment of any Obligations or take, exchange or surrender any collateral or security for any Obligations or renew or make any change in the terms of any Obligations or any other liability of Company or Guarantor to Beneficiary, (2) take or fail to take any action of any kind in respect of any security for any Obligations or other liability of Company or Guarantor to Beneficiary, (3) waive or release or exercise or refrain from exercising any rights against Company or Guarantor or others, (4) assign, create, renew, modify, replace, discharge, release, compromise or subordinate the Agreement, any Obligations or any other liability of Company or Guarantor or any other person to Beneficiary or any security therefor, or (5) enter into, amend, replace or release any agreement effecting or modifying any of the foregoing.

**CONFIDENTIAL**

7. Costs of Collection. The Guarantor will pay for all of Beneficiary's reasonable costs and expenses incurred in enforcing its rights under this Guaranty Agreement or collecting any of the Obligations under this Guaranty Agreement, by legal process or otherwise, whether incurred without the commencement of a suit, including, but not limited to, Beneficiary's reasonable attorneys' fees and expenses in any suit, arbitration, or administrative proceeding, or in any appellate or bankruptcy proceeding.

8. Subrogation. Guarantor waives and will not exercise any rights which it may acquire by way of subrogation until all the Obligations of Company under the Agreement shall have been indefeasibly and irrevocably paid in full and this Guaranty Agreement shall have been terminated in accordance with the terms hereof. Subject to the foregoing, upon the indefeasible and irrevocable payment of all the Obligations of Company under the Agreement and termination of this Guaranty Agreement in accordance with the terms hereof (but not before), Guarantor shall be subrogated to the rights of Beneficiary against Company in respect of payments made by Guarantor under this Guaranty Agreement.

9. Assignment. This Guaranty Agreement is assignable by Beneficiary to any permissible assignee to whom the Agreement has been assigned by Beneficiary in accordance with the provisions thereof and shall inure to the benefit of Beneficiary, and its successors and permitted assigns. This Guaranty Agreement is not otherwise assignable by Beneficiary without the prior written consent of Guarantor. This Guaranty Agreement is not directly or indirectly assignable or delegable by Guarantor without the prior written consent of Beneficiary, except pursuant to a Corporate Change with respect to which the Requirements are satisfied, and any purported assignment or delegation in contravention of the foregoing does not release the assigning or delegating Guarantor and is voidable by Beneficiary.

10. Representations and Warranties. The Guarantor hereby represents and warrants to Beneficiary as follows:

- (a) it is duly organized and validly existing under the law of the jurisdiction of its organization and is in good standing;
- (b) it has the power to execute, deliver and perform its obligations under this Guaranty Agreement, and it has taken all necessary action to authorize such execution, delivery and performance;
- (c) such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its organizational documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;
- (d) all governmental and other consents that are required to have been obtained by it with respect to this Guaranty Agreement have been obtained

**CONFIDENTIAL**

and are in full force and effect and all conditions of any such consents have been complied with;

- (e) there is not pending, or, to its knowledge, threatened against it, any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against it of this Guaranty Agreement or its ability to perform its obligations hereunder;
- (f) Company is a direct or indirect wholly owned subsidiary of Guarantor;
- (g) the person signing on behalf of the Guarantor below is duly authorized and empowered to execute and deliver this Guaranty Agreement on behalf of the Guarantor; and
- (h) when executed and delivered, this Guaranty Agreement will be an Eligible Guaranty in accordance with the provisions of the Agreement.

11. Validity and Defenses. Guarantor represents and warrants to Beneficiary that this Guaranty Agreement has been duly executed and delivered by Guarantor and constitutes the legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms, except as the enforceability of this Guaranty Agreement may be limited by the effect of any bankruptcy of the Guarantor. The Guarantor hereby reserves to itself any defenses to payment of any amounts arising under the Agreement which Company has under the terms of the Agreement, except for rights, counterclaims and defenses waived elsewhere in this Guaranty Agreement and except for rights, counterclaims and defenses arising from or related to the bankruptcy or insolvency of Company or any other person, the enforceability of the Agreement, or the power or authority of Company to enter into the Agreement or to perform its obligations thereunder.

12. No Deduction; Stamp Tax. All sums payable by the Guarantor under this Guaranty Agreement shall be made in freely transferable, cleared and immediately available funds without any deduction or withholding. The Guarantor will pay any stamp tax (or similar tax or duty) levied or imposed upon it, Beneficiary, this Guaranty Agreement or otherwise in respect of the Guarantor's execution, performance or delivery of this Guaranty Agreement.

13. Governing Law. Legal rights and obligations hereunder shall be determined in accordance with the laws of the State of Mississippi, without regard to the principles of conflicts of laws thereunder.

14. Severability. Any provision of this Guaranty Agreement that is invalid, void or unenforceable in any jurisdiction or as to any party shall, as to that jurisdiction or party, be ineffective to the extent of that invalidity, voidness or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of that provision in any other jurisdiction or with respect to any other party, and the parties hereto shall negotiate to replace such invalid, void or unenforceable provision with a suitable and equitable provision in

**CONFIDENTIAL**

order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid, void or unenforceable provision.

15. Notices. All notices, requests, demands and other communications required or permitted to be made or given under this Guaranty Agreement shall be in writing and shall be deemed to have been given and received (i) on the date of personal delivery, (ii) five (5) days after the date of deposit in the U.S. Mail, by registered or certified mail, postage prepaid, or (iii) the first business day after the date of delivery to a reputable overnight courier service for overnight delivery, in each case addressed to the parties as follows:

If to Beneficiary, to: Mississippi Power Company

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 Attn: \_\_\_\_\_  
 Telephone: \_\_\_\_\_  
 Facsimile: (205) \_\_\_\_\_

If to Guarantor, to: \_\_\_\_\_

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 Attn: \_\_\_\_\_  
 Telephone: \_\_\_\_\_  
 Facsimile: \_\_\_\_\_

Beneficiary or Guarantor may change its address for receiving notice by written notice given to the other as set forth above.

16. Entire Agreement/No Amendment. This Guaranty Agreement constitutes the entire agreement and understanding of Beneficiary and Guarantor respecting its subject matter and supersedes all prior written and contemporaneous oral agreements, representations and understandings relating to its subject matter. No term hereof may be changed, waived, discharged or terminated unless by an instrument signed by the person against whom enforcement of such change, waiver, discharge or termination is sought.

17. No Waiver; Cumulative Rights. No failure or delay on the part of Beneficiary to exercise, and no delay in exercising, any right, remedy or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by Beneficiary of any right, remedy or power hereunder preclude any other or future exercise of any right, remedy or power. Each and every right, remedy and power hereby granted to Beneficiary or allowed Beneficiary by law or other agreement shall be cumulative and not exclusive of any other, and may be exercised by Beneficiary at any time or from time to time. Without limiting the foregoing: (i) this Guaranty Agreement shall not release, modify, revoke or terminate any other guaranty heretofore executed by Guarantor; nor shall any other guaranty hereafter executed by Guarantor release, modify, revoke or terminate this Guaranty Agreement except to the extent such subsequent guaranty makes specific reference to this Guaranty Agreement, is agreed to in writing by Beneficiary and

**CONFIDENTIAL**

expressly so provides, and (ii) all of Guarantor's liabilities and obligations and Beneficiary's rights and remedies are cumulative.

18. Waivers.

(a) Guarantor waives notice of the Agreement and the Obligations, any acceptance of this Guaranty Agreement, presentment, all rights of exemption, demand, notice of dishonor, protest, notice of protest, notice of any sale of collateral security, notice of the release or discharge of any person or collateral and, except as expressly set forth above, all other notices.

(b) Guarantor waives and releases: (i) all rights, demands, and defenses Guarantor may otherwise have pursuant to any law or statute that requires (x) that Beneficiary make demand upon, assert claims against, or collect from Company or other persons or entities, foreclose any security interest, sell collateral, exhaust any remedies, or take any other action against Company or other persons or entities prior to making demand upon, collecting from or taking action against Guarantor with respect to the Obligations, or (y) that Company or any other person be joined in, notified of or made part of any action against Guarantor; (ii) all rights to assert against Beneficiary any defense (legal or equitable), set off, counterclaim, or claim that Guarantor may have at any time against Company or its affiliates; and (iii) all defenses relating to invalidity, insufficiency, unenforceability, enforcement, release or impairment of the Agreement or Beneficiary's lien on any collateral.

19. Signature. This Guaranty Agreement may be authenticated by manual signature, facsimile or electronic means, all of which shall be equally valid.

20. Waiver of Right to Trial by Jury. Guarantor irrevocably waives any and all rights to trial by jury with respect to any legal proceeding arising out of or relating to this Guaranty Agreement or any Obligations.

21. Captions. The captions in this Guaranty Agreement have been inserted for convenience only and shall be given no substantive meaning or significance whatsoever in construing the terms and provisions of this Guaranty Agreement.

22. Consent to Jurisdiction and Service of Process. All judicial proceedings brought against Guarantor arising out of or relating to this Guaranty Agreement may be brought in any state or federal court in the State of Mississippi, the County of \_\_\_\_\_ and the City of \_\_\_\_\_. By executing and delivering this Guaranty Agreement, Guarantor irrevocably (i) accepts generally and unconditionally the non-exclusive jurisdiction and venue of such courts; (ii) waives any defense of *forum non conveniens*; (iii) agrees that service of all process in any such proceeding in any such court may be made by registered or certified mail, return receipt requested, to the Guarantor at its address for notices provided herein; (iv) agrees that Beneficiary retains the right to serve process in any other manner permitted by law or to bring proceedings against Guarantor in the courts of any other jurisdiction as may be permitted by law; and (v) without limiting the foregoing, also irrevocably appoints and shall maintain Company as its agent for service of process.

**CONFIDENTIAL**

IN WITNESS WHEREOF, Guarantor has executed this Guaranty Agreement on the date shown below.

**Guarantor:**

---

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

Its: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
[Company] accepts the appointment in Section 22 above to be the agent of  
("Guarantor") for service of process upon Guarantor.

**Company:**

---

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

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**CONFIDENTIAL****APPENDIX E****SELLER INSURANCE REQUIREMENTS**

Seller must acquire and maintain, at its sole cost and expense, the following:

1. Commercial General Liability insurance, or equivalent coverage, on an “occurrence” form, with bodily injury and property damage combined liability limits of not less than [REDACTED] per occurrence and which shall include specific coverage for broad form contractual liability and a separation of insured provision. Seller may use the insurer, Associated Electric & Gas Insurance Services, Limited (“AEGIS”) as its insurer and its “claims made” form to satisfy this requirement; provided, Seller shall maintain coverage for a minimum period of five (5) years after the termination of this Agreement.

2. All risk property insurance providing coverage for the full replacement value of the Facility, subject to industry standard sublimits.

3. Worker compensation insurance in statutory amounts covering the legal liability of Seller under the applicable laws of the state (or under Federal acts or statutes when appropriate). Such insurance must include employer’s liability in an amount of [REDACTED]  
[REDACTED]

**CONFIDENTIAL****APPENDIX F**

**CERTIFICATION OF WHETHER THE AGREEMENT  
WILL REQUIRE DECONSOLIDATION BY SELLER WITH RESPECT TO VARIABLE  
INTEREST ENTITY**

**AGREEMENT** – Energy Purchase Agreement dated \_\_\_\_\_, 20\_\_ between Mississippi Power Company (“Buyer”), and \_\_\_\_\_ (“Seller”) (the “Agreement”). Capitalized terms used herein shall have the meaning assigned in the Agreement.

The undersigned individual, being the Chief Financial Officer of Seller and having responsibilities for financial accounting matters associated with the Agreement, hereby certifies that [at the time of the execution of the Agreement][for the calendar year ending December 31, \_\_\_\_\_], the Agreement WILL (\_\_\_\_)/WILL NOT (\_\_\_\_) require the Seller, [at the time of the execution of the Agreement] [at any time over the calendar year covered by this certification], to deconsolidate on its books and records any assets, liabilities, cash flow, profits or losses of Seller as a result of the Buyer being determined to be the primary beneficiary. My determination of the most likely accounting treatment of this transaction results from my personal consideration after necessary discussions with relevant officers of Financial Accounting Standards Board (FASB) Accounting Standards Codification (ASC) 810 Consolidation (formerly FASB Interpretation Number 46(R), Consolidation of Variable Interest Entities) (FASB ASC 810) as modified from time to time, and the following factual matters:

Seller’s accounting policies, procedures, and internal controls are sufficient to provide us with an appropriate basis for confirming the information contained herein.

\_\_\_\_\_ Yes  
\_\_\_\_\_ No (please explain)

Seller qualifies for one of the scope exceptions listed FASB ASC 810-10-15-12 and 17.

\_\_\_\_\_ Yes (please explain)  
\_\_\_\_\_ No (please explain)

Seller is financed with equity equal to or greater than ten percent (10%) of the Seller’s total assets (FASB ASC 810-10-25-45).

\_\_\_\_\_ Yes  
\_\_\_\_\_ No

The Agreement revenues correlate with fluctuations in Seller’s operating cash flows (operating expenses).

\_\_\_\_\_ Yes  
\_\_\_\_\_ No

**CONFIDENTIAL**

The Agreement reduces variability in the fair value of Seller's assets, for example by absorbing fuel or electricity price risk.

\_\_\_\_\_ Yes  
 \_\_\_\_\_ No

The Agreement term is for greater than 50% of the remaining economic life of the Facility.

\_\_\_\_\_ Yes  
 \_\_\_\_\_ No

The Agreement is for substantially all of the proposed Seller's productive output.

\_\_\_\_\_ Yes  
 \_\_\_\_\_ No

The Buyer and/or its affiliates participated significantly in the design or redesign of the Seller's Facility.

\_\_\_\_\_ Yes  
 \_\_\_\_\_ No

The percentage that the Facility's fair value represents, of the fair value of the proposed Seller's total assets, is approximately

\_\_\_\_\_ %

The Facility is essentially the only source of payment for specified liabilities or specified other interest (there is specific debt associated with the Facility).

\_\_\_\_\_ Yes  
 \_\_\_\_\_ No

**The above information (and any attachments) has been completed in full and agrees with our records as of the date hereof.**

By: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Company: \_\_\_\_\_  
 Date: \_\_\_\_\_

**CONFIDENTIAL****APPENDIX G****CERTIFICATION AS TO CERTAIN FACTUAL STATEMENTS RELATED TO THE AGREEMENT WITH RESPECT TO CAPITAL LEASE TREATMENT**

**AGREEMENT** – Energy Purchase Agreement dated \_\_\_\_\_, 20\_\_, between Mississippi Power Company (“Buyer”), and \_\_\_\_\_ (“Seller”) (the “Agreement”). Capitalized terms used herein shall have the meaning assigned in the Agreement.

The undersigned individual, being the Chief Financial Officer of Seller and having responsibilities for financial accounting matters associated with the Agreement, based on my personal consideration after necessary discussions with relevant officers of factual matters hereby certifies the following based on his/her understanding of Generally Accepted Accounting Standards (specifically, Accounting Standards Codification 840 Leases (ASC 840), formerly Statement of Financial Accounting Standards No. 13).

1. The Agreement DOES (\_\_\_\_)/DOES NOT (\_\_\_\_) contain a bargain purchase option as described in ASC 840-10-25-1.
2. The Agreement DOES (\_\_\_\_)/DOES NOT (\_\_\_\_) transfer ownership of the Facility at or by the end of the Term.
3. The Agreement Term IS (\_\_\_\_)/IS NOT (\_\_\_\_) equal to 75% or more of the estimated remaining economic life of the Facility offered (refer to ASC 840-10-25-1).
4. The present value of the minimum Agreement payments at the beginning of the Term (excluding executor costs) IS (\_\_\_\_)/IS NOT (\_\_\_\_) greater than or equal to 90% of the fair market value of the Facility offered (refer to 840-10-25-1).

If I have responded in the affirmative to one or more of the above factual statements, I have attached a good faith statement of the dollar amounts that the Buyer would be required to capitalize and the residual value of the Facility at the end of the Term.

**The Seller understands that the Buyer will rely upon this certification, and that the Buyer may require further documentation supporting this certification.**

**CONFIDENTIAL**

**Confirmation**

**The above information (and any attachment) has been completed in full and agrees with our records as of the date hereof.**

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

Title: \_\_\_\_\_

Company: \_\_\_\_\_

Date: \_\_\_\_\_

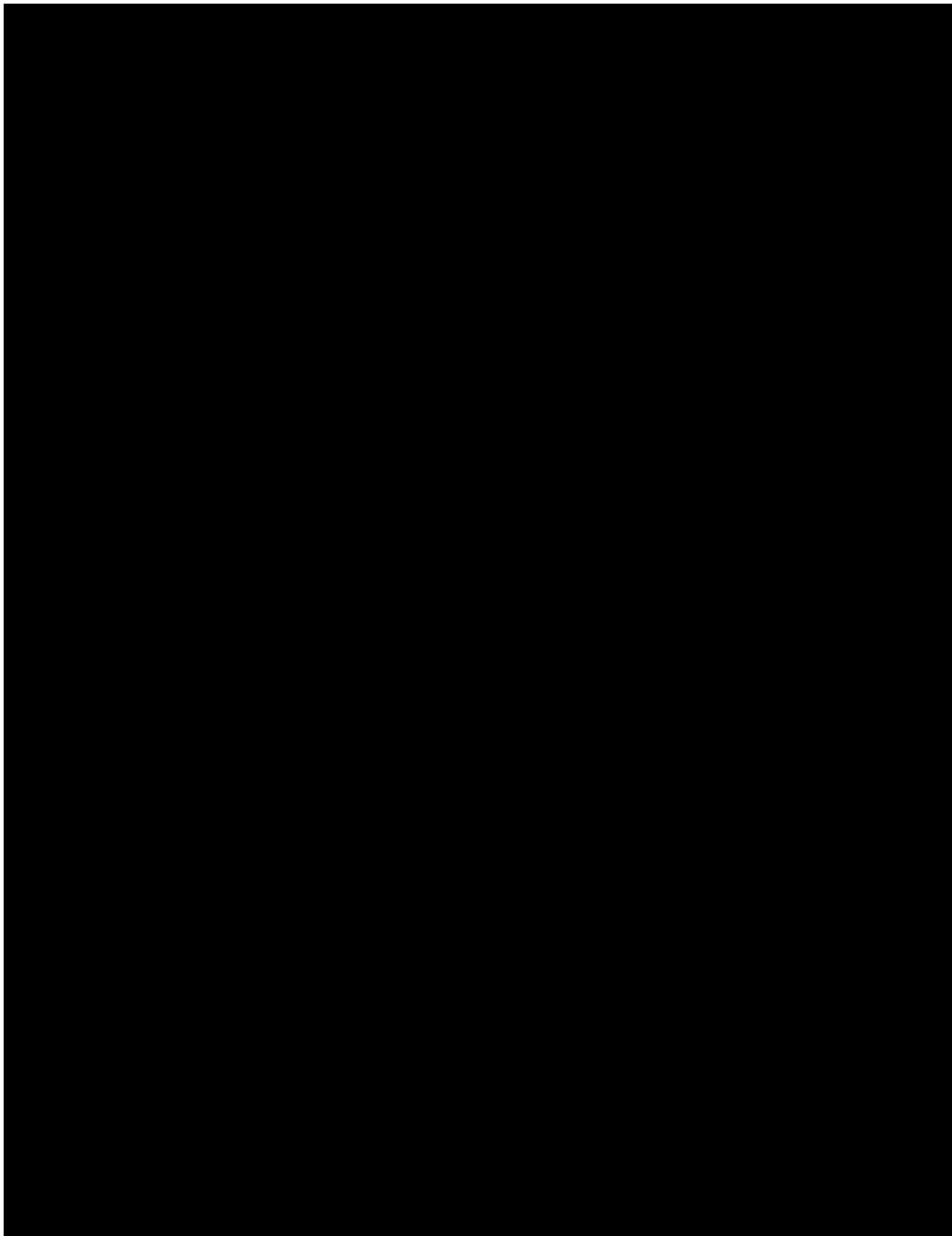
**CONFIDENTIAL**

**APPENDIX H**  
**INTERCONNECTION DIAGRAM**

See attached diagram.

Note: The attached diagram is effective as of the Effective Date and shall be modified as necessary in order to reflect the Interconnection Facilities and Upgrades as such facilities and upgrades are identified through the applicable interconnection study and planning process.

**CONFIDENTIAL**



**CONFIDENTIAL****APPENDIX I****GENERAL SERVICES ADMINISTRATION FLOW-DOWN PROVISIONS**

Buyer is a government contractor under an Areawide Public Utilities Contract with the General Services Administration of the United States Government, and as such, is required to conduct business with entities in compliance with the regulations contained herein. Accordingly, Seller agrees that its performance and the performance of its contractors, subcontractors, vendors and suppliers under this Agreement shall comply with the following Federal Acquisition Regulations which shall be incorporated herein by reference as if set forth herein in full text:

- (i) 52.203-3 Gratuities (APR 1984);
- (ii) 52.203-6 Restrictions on Subcontractor Sales to the Government (JUL 1995);
- (iii) 52.203-7 Anti-Kickback Procedures (JUL 1995);
- (iv) 52.219-8 Utilization of Small Business Concerns (MAY 2004);
- (v) 52.222-21 Prohibition of Segregated Facilities (FEB 1999);
- (vi) 52.222-26 Equal Opportunity (APR 2002);
- (vii) 52.222-37 Employment Reports on Veterans (JUL 2014);
- (viii) 52.222-40 Notification of Employee Rights under the National Labor Relations Act (DEC 2010);
- (ix) 52.222-50 Combating Trafficking in Persons (FEB 2009);
- (x) 52.222-54 Employment Eligibility Verification (AUG 2013); and
- (xi) 52.222-13 Restrictions on Certain Foreign Purchases (JUN 2008)

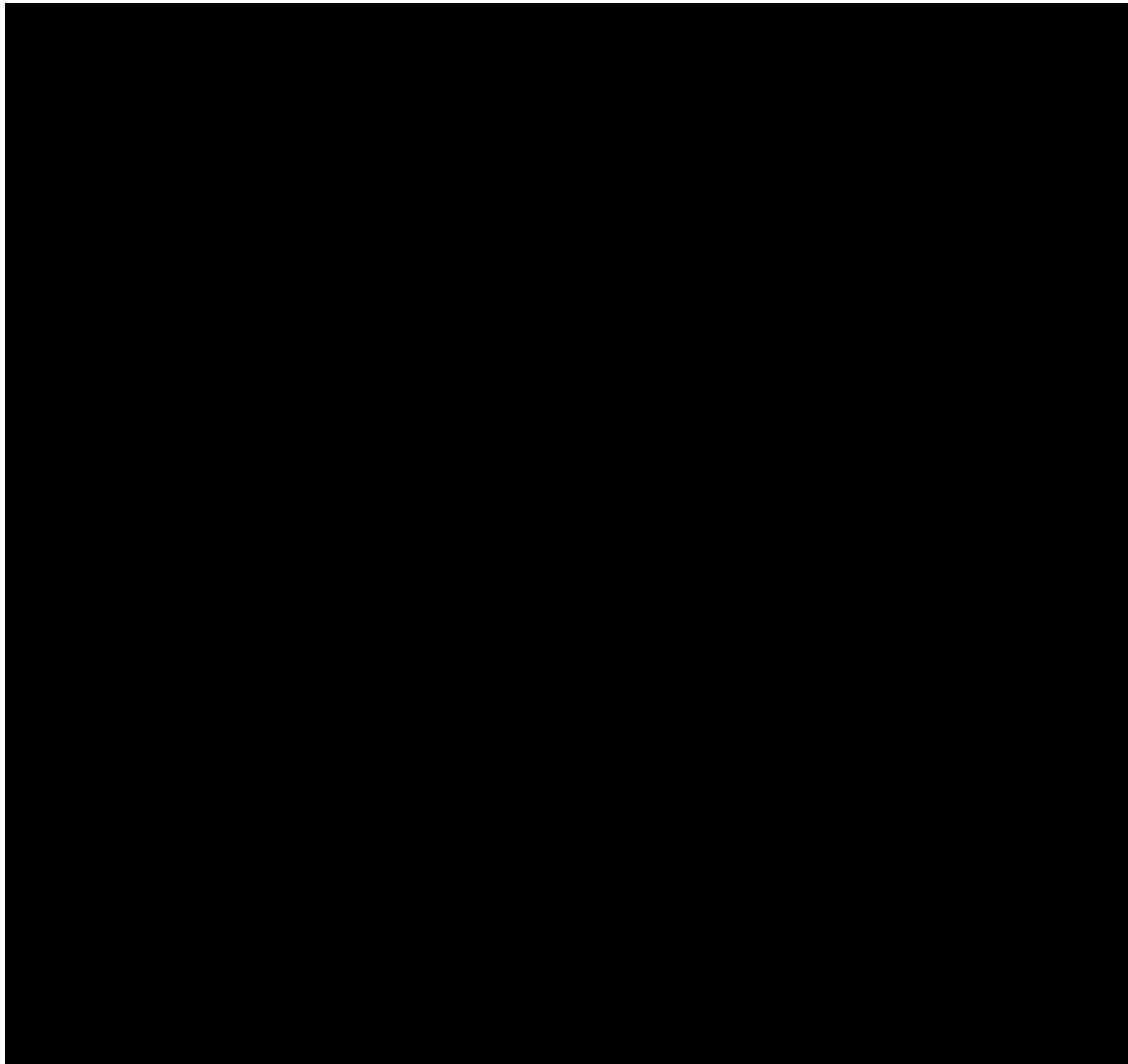
Upon written request, Buyer will provide the full text of any of the above sections incorporated herein by reference. Seller warrants and represents that neither it nor any of its Affiliates, agents, contractors or subcontractors is debarred, suspended or proposed for debarment as a contractor or subcontractor to any department, agency or other division of the United States Government. In the event that Seller or any of its Affiliates, agents, contractors or subcontractors become debarred, suspended or proposed for debarment during the term of this Agreement, Seller will immediately notify Buyer verbally and in writing.

**CONFIDENTIAL**

**APPENDIX J**

**SITE**

The Site shall be defined as:



Buyer acknowledges and agrees that this **Appendix J** shall be updated and amended by Seller from time to time to accurately reflect the final Site description.

**CONFIDENTIAL****APPENDIX K****TRANSFER OF INFORMATION ACKNOWLEDGEMENT**

\_\_\_\_\_ (“Seller”) and Mississippi Power Company (“Buyer”) have entered into that certain Energy Purchase Agreement (“Agreement”) dated as of \_\_\_\_\_. The Agreement contemplates that certain information that could be considered to be non-public information that potentially has implications under the Federal Energy Regulatory Commission’s Standards of Conduct will be provided by Seller to Buyer and/or Southern Company Services, Inc. as agent for the transmission owning subsidiaries of Southern Company (Alabama Power Company, Georgia Power Company, Gulf Power Company, and Mississippi Power Company). Seller acknowledges that such information is being provided for the purposes of operational implementation and administration of the Agreement (which includes conducting Mississippi Power Company’s system operations and dispatch functions) and will be utilized by individuals in both Transmission Provider and Energy Affiliate/wholesale marketing unit functions under the Standards of Conduct.

The individuals within the Southern Company organizations indicated above may only use the information for the purpose of implementing and administering the Agreement (including conducting Mississippi Power Company’s system operations and dispatch functions). Seller understands that such information will not be used or disseminated in any manner contrary to the confidentiality provision(s) in the Agreement or in violation of the Federal Energy Regulatory Commission’s Standards of Conduct. Seller’s provision of this information has not been and is not being provided in exchange for any preferential treatment, either operational or rate-related, by Southern Company Services, Inc. or by any of the transmission-owning subsidiaries of Southern Company. Seller also acknowledges that Seller is not providing the information under duress or coercion. In accordance with requirements of the Federal Energy Regulatory Commission, Southern Company Services, Inc. may post on OASIS the fact of Seller’s consent to the provision of the information specified above to certain employees that may be employed within organizational units deemed to be Energy Affiliates/wholesale marketing units under the Standards of Conduct.

Acknowledged on behalf of Seller:

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

Exhibit PAS-3  
Filed Confidentially

**Scenario Analysis Results**  
**SR Meridian III Solar PPA**  
**(Millions of Dollars – 2017 NPV Savings (Costs))**

<b>Fuel \ CO<sub>2</sub></b>	<b>Existing CO<sub>2</sub></b>	<b>\$10 CO<sub>2</sub></b>	<b>\$20 CO<sub>2</sub></b>
<b>High</b>			
<b>Moderate</b>			
<b>Low</b>			

Exhibit PAS-5  
Filed Confidentially

# Henry Hub Natural Gas Prices



Note: Low, Moderate, and High forecasts shown above were produced during MPC's Budget 2017 planning cycle concurrent with EIA AEO 2016.

Exhibit PAS-7  
Filed Confidentially

**SR Meridian III - MPC Solar Energy PPA**  
**PPA Pricing versus B2017 Solar-Weighted Avoided Energy Costs**



**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE  
STATE OF MISSISSIPPI**

**TESTIMONY OF MATT BROWN**

1     **Q.     Please state your name, current position and the address of your employer.**

2     A.     My name is Matt Brown. I am Director, Utility Development and Strategy, at Silicon  
3           Ranch Corporation (“Silicon Ranch”). The headquarters of Silicon Ranch is at 150 3<sup>rd</sup>  
4           Ave South, Suite 2000, Nashville, Tennessee 37201.

5     **Q.     Please describe your professional background.**

6     A.     I have been a project developer and in my current position at Silicon Ranch since 2014.  
7           Before joining the company, I worked in the utility industry at Tennessee Valley  
8           Authority managing various renewable energy and economic development programs  
9           across the service territory. I hold a Bachelor of Science degree in Agricultural  
10          Economics and Master of Science degree from the University of Tennessee – Knoxville  
11          in Economics and Statistics.

12    **Q.     Please provide the reason for your testimony.**

13    A.     I am providing testimony in support of the petition of SR Meridian III, LLC to receive a  
14          Certificate of Public Convenience and Necessity from the Mississippi Public Service  
15          Commission.

16    **Q.     Please provide background information on SR Meridian III, LLC and Silicon  
17          Ranch Corporation.**

18    A.     SR Meridian III, LLC is a special purpose entity created to own and operate a 52.5 MW  
19          solar generating facility in Lauderdale County Mississippi (the “Facility”). Attached at  
20          Exhibit Brown -1 is a map indicating the site of the Facility. The Facility will have an

1 interconnection agreement with Mississippi Power and intends to sell wholesale energy  
2 to Mississippi Power pursuant to the terms of a Power Purchase Agreement (“PPA”). SR  
3 Meridian III, LLC, a Delaware limited liability company, is a wholly owned, direct  
4 subsidiary of Silicon Ranch.

5 **Q. Please provide background information on Silicon Ranch.**

6 A. Silicon Ranch was founded in 2010 and is today one of the largest independent solar  
7 power producers in the United States. The company owns and operates photovoltaic  
8 systems totaling almost 400 MW<sub>DC</sub> with an additional 300 MW<sub>DC</sub> under engineering and  
9 construction, and more than 600 MW<sub>DC</sub> in late-stage development. Although our  
10 company has a growing national footprint, Silicon Ranch has placed special emphasis on  
11 the development of the Mississippi market and is particularly proud of the significant  
12 financial investments we have made in the state. Silicon Ranch is the proud owner of  
13 eight (8) solar projects in Okolona, Columbus, Houston, and New Albany and will  
14 complete construction on additional projects in Hattiesburg, Houston, and Tupelo before  
15 the end of 2017. To construct each and every project we continue to work with our  
16 construction partners to utilize significant local labor and subcontractors as much as  
17 possible. Silicon Ranch benefits from the experience of our management team that has  
18 built over 2.5 gigawatts of conventional and renewable generation assets, including the  
19 first large-scale solar projects in Tennessee, Georgia, Arkansas, and Mississippi.

20 What sets Silicon Ranch apart is that the company is a partner not only through  
21 development and construction, but also through the ongoing operation of the solar  
22 facility. Unlike many solar developers who sell their projects to third parties, Silicon  
23 Ranch owns and operates its entire portfolio. Working with local leaders and community

1 partners, Silicon Ranch develops, designs, constructs, funds, owns, operates, and  
2 maintains each project to maximize the economic, environmental, and community  
3 benefits for all stakeholders. As the owner-operator of all of our projects, Silicon Ranch  
4 takes a long-term approach to our relationships and to our responsibilities in the  
5 communities we serve.

6 Silicon Ranch brings seasoned approach to our development process, succeeding  
7 where other developers have failed. The company is proud of our record of completion:  
8 since the company was founded in 2010, Silicon Ranch has successfully executed every  
9 project for each PPA we have signed. The company has managed to maintain this  
10 unblemished record in large part because of our commitment to choosing the right path  
11 over the easier path to get the job done. Silicon Ranch leverages our experience with  
12 large, complex transactions, our access to a wide range of capital resources, and our  
13 extensive experience in large-scale conventional and renewable energy generation.

14 In summary, Silicon Ranch possesses the technical expertise and financial  
15 strength to design, fund, construct, own, operate, and maintain a quality project in  
16 Lauderdale County.

17 Silicon Ranch utility-scale projects include, for example: the 50 MW Hattiesburg  
18 Solar Farm in Forrest County, Mississippi, currently under construction, which will  
19 produce approximately 100,000 MWh per year of electricity; the Selmer I Solar Farm and  
20 the Selmer II Solar Farm, 20 MW and 10 MW, respectively, solar facilities located in  
21 McNairy County, Tennessee, which were completed in 2016 and scheduled to produce  
22 energy this calendar year.

1 Q. **Is Silicon Ranch financially able to develop the Lauderdale County project and**  
2 **meet its obligations under the PPA?**

3 A. Yes. Over the course of construction, financing, and operation of the hundreds of MWs  
4 of facilities which Silicon Ranch has already completed and has underway, we have  
5 never defaulted on our obligations. With an executed PPA, the project will be able to  
6 raise the debt and/or equity financing required to fund the cost of constructing these  
7 facilities and to finance the remaining development obligations of the project. Silicon  
8 Ranch has the resources and experience necessary to manage these ongoing obligations,  
9 as we have for all of the other projects in the company's portfolio.

10 Q. **Please provide further details regarding the design and specifications of the solar**  
11 **project for which you are seeking a Certificate of Public Convenience and Necessity.**

12 A. Silicon Ranch is developing this Facility to meet the needs of Mississippi Power and the  
13 United States Department of the Navy (DON). The planned Facility is a 52.5 MW  
14 electric generating station delivering wholesale power directly into Mississippi Power's  
15 230kV transmission grid. As I understand it, Mississippi Power will have the flexibility  
16 to (1) use the energy and associated renewable energy credits (RECs) to serve its  
17 customers with solar energy, (2) use the energy and associated RECs for a future  
18 renewable energy program (where Mississippi Power customers that wish to support  
19 renewable generation sign up for a special renewable rate), or (3) sell the energy and  
20 associated RECs, either bundled together or separately, to third parties. The Facility uses  
21 approximately 570,000 First Solar Series 4 photovoltaic solar panels mounted directly on  
22 the ground via steel support structures. The panels are connected into blocks via  
23 underground cables, with each block using Power Electronics inverters to convert the

1 power from DC to AC. The inverters from each block are connected together via  
2 overhead cables to a project substation. The construction cost of the facility will be  
3 approximately \$90,000,000 - \$110,000,000. Detailed engineering and procurement for  
4 the facility will begin on October 1, 2017, with commercial operation by December 31,  
5 2019.

6 **Q. Are you familiar with the supporting data requirements for certificate proceedings**  
7 **pursuant to Schedule 1 of Appendix A to Rule 7 of the Public Utility Rules of**  
8 **Practice and Procedure of the Commission?**

9 A. Yes, and I will respond to each item in turn.

10 **Q. Item 1: If a corporation, a copy of the corporate charter or its articles of**  
11 **incorporation as filed with the Secretary of State.**

12 A. While not a corporation, please see Exhibit Brown-2, a true and correct copy of the  
13 Limited Liability Company Certificate of Incorporation of SR Meridian III, LLC as filed  
14 with the Secretary of State of Delaware.

15 **Q. Item 2: If a foreign corporation, a copy of its authority to do business in the State of**  
16 **Mississippi.**

17 A. Please see Exhibit Brown-3, a true and correct copy of the foreign limited liability  
18 company registrations for SR Meridian III, LLC in the State of Mississippi.

19 **Q. Items 3, 5, 7, 9, 10, 11, 12, and 17.**

20 A. I understand from counsel that the Commission previously has determined that these  
21 items are not required for petitioners like SR Meridian III, LLC which are not public  
22 utilities.

- 1 Q. **Item 4: If a corporation, the names and addresses of its board of directors, officers**  
2 **and any person owning fifteen percent (15%) or more of its stock. If not a**  
3 **corporation, the names and address of all owners or partners.**
- 4 A. SR Meridian III, LLC is a limited liability company of which Silicon Ranch Corporation  
5 is the sole member.
- 6 Q. **Item 6: A full legal description of the proposed service area.**
- 7 A. SR Meridian III, LLC will be selling at wholesale and will not have a service area.
- 8 Q. **Item 8: A general description of new facilities.**
- 9 A. The Facility is generally described in my testimony above at pages 1-2, 4-5.
- 10 Q. **Item 13: A complete set of engineering plans and specifications.**
- 11 A. At this stage of development of the Facility, we do not yet have complete engineering  
12 plans and specifications. A general description of the plans and specifications are  
13 provided in my testimony above on pages 4-5. In addition, the Facility will meet the  
14 interconnection guidelines specified in the interconnection agreement.
- 15 Q. **Item 14: A copy of any required approvals from Health or Environmental Quality**  
16 **authorities.**
- 17 A. No such approvals are required for the Facility.
- 18 Q. **Item 15: An exhibit listing the names and addresses of all interested persons as**  
19 **defined in RP 2.115 herein together with a certificate that the filing utility has**  
20 **served a notice of the filing upon each.**
- 21 A. Please see the Service List that accompanied the Submittal Letter filed by Mississippi  
22 Power in this proceeding.
- 23 Q. **Item 16: A copy of all testimony to be relied upon at hearing.**

1 A. This written testimony of Matt Brown, with accompanying Exhibits, together with any  
2 relevant testimony provided by Mississippi Power, will be relied upon.

3 Q. **Please describe any permits or approvals other than the Commission's approval**  
4 **required for the Facility to be constructed.**

5 A. Standard building and electrical permits and state NPDES are required for this project.  
6 Upon further site investigations, we may determine that wetland permits are required for  
7 construction of the facility. To date, Lauderdale County does not have any planning or  
8 zoning regulations; however, should rules and regulations be established prior to  
9 construction of the facility, all applicable permits will be secured.

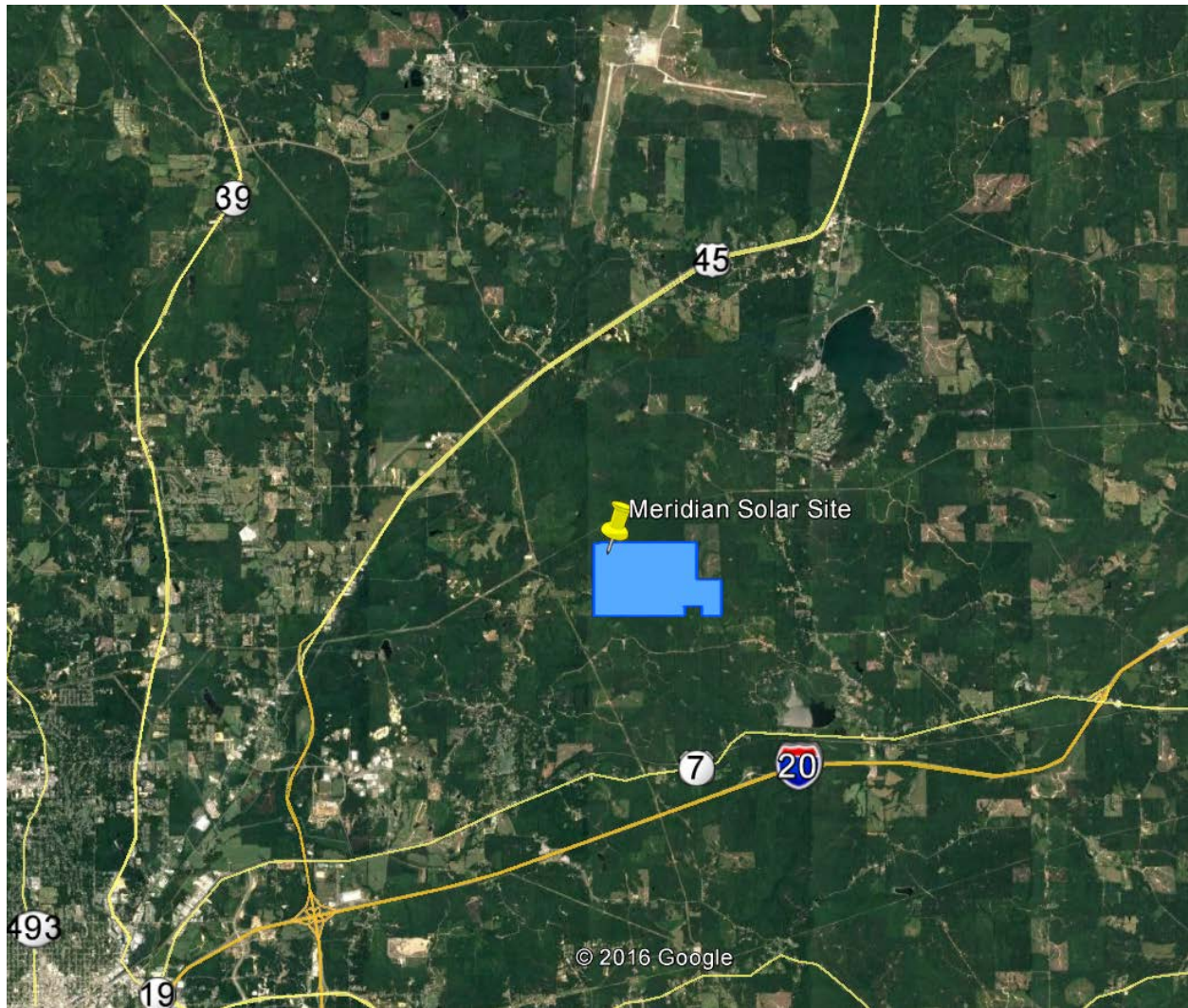
10 Q. **Please provide a description of the timing of the project and any reasons you might**  
11 **have for the need for the Mississippi Commission to act before a certain date.**

12 A. To provide the renewable solar generation desired by Mississippi Power at the prices  
13 provided for in the PPA, SR Meridian III, LLC will need to begin construction of the  
14 Facility before January 1, 2020 and the Facility must be placed in service before January  
15 1, 2024 in order to meet eligibility requirements for solar investment tax credit  
16 qualification under federal law. Because of the typical construction period for a project  
17 of this size, we need approximately 24-30 months after the PPA is approved to complete  
18 construction with confidence.

19 Q. **Does this complete your testimony?**

20 Q. Yes.

**EXHIBIT BROWN-1  
SITE MAP**



# Delaware

The First State

Page 1

*I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF  
DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT  
COPY OF THE CERTIFICATE OF FORMATION OF "SR MERIDIAN III, LLC",  
FILED IN THIS OFFICE ON THE TWENTY-EIGHTH DAY OF APRIL, A.D.  
2017, AT 7:52 O`CLOCK P.M.*



Jeffrey W. Bullock, Secretary of State

6394835 8100  
SR# 20172913731

You may verify this certificate online at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

Authentication: 202466765  
Date: 05-01-17

State of Delaware  
Secretary of State  
Division of Corporations  
Delivered 07:52 PM 04/28/2017  
FILED 07:52 PM 04/28/2017  
SR 20172913731 - File Number 6394835

**CERTIFICATE OF FORMATION**

**OF**

**SR MERIDIAN III, LLC**

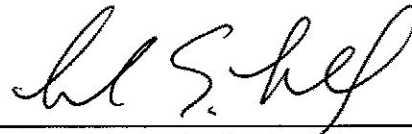
The undersigned authorized person executes the following Certificate of Formation under Section 18-201 of the Delaware Limited Liability Company Act, as amended, and does hereby certify as follows:

(1) The name of the limited liability company is SR Meridian III, LLC (the "Company").

(2) The address of the registered office of the Company in the State of Delaware is 1209 Orange Street, Corporation Trust Center, in the city of Wilmington, County of New Castle, Delaware 19801.

(3) The name of the registered agent of the Company, located at the registered office set forth above, is The Corporation Trust Company.

This Certificate of Formation is executed by the undersigned authorized person on April 28, 2017.



Amanda E. Nichols, Authorized Person



DELBERT HOSEMANN  
Secretary of State

**Invoice Number:** 14347604

**Invoice Date:** 05/03/2017

**Customer Information**

Mary Ward  
1600 DIVISION ST STE 700  
NASHVILLE, TN 37203-2771

Description	Tracking Number Qty	Item Cost	Amount Paid
Foreign LLC - Online	2017172827	\$ 250.00	\$ 250.00
MSI Transaction Fee		\$ 7.54	\$ 7.54
<b>Payment Details</b>			
Invoice Total:			\$ 257.54
Payment Total:			\$ 257.54
Amount Due:			\$ 0.00
<b>Payment Method</b>			
Payment Type: Credit Card			

**Include invoice number on all correspondence and send to:**

Mississippi Secretary of State's Office  
P.O. Box 136  
Jackson, MS 39205

To discuss payment for Corporation items  
call:  
(601) 359-1633

**F0200**

**2017172827**

**Fee: \$ 250**



**DELBERT HOSEMANN**  
*Secretary of State*

**P.O. BOX 136**  
**JACKSON, MS 39205-0136**

Business ID: 1117975  
Filed: 05/03/2017 03:04 PM  
C. Delbert Hosemann, Jr.  
Secretary of State

**TELEPHONE: (601) 359-1633**

**Application to Register Foreign Limited Liability Company**

**Business Information**

***Business Type:*** Limited Liability Company

***Business Name:*** SR Meridian III, LLC

***State of Incorporation:*** DE

***Date Organized:*** 04/28/2017

***Principal Office Address:*** 150 3rd Ave South Suite 2000  
Nashville, TN 37201

**Registered Agent**

***Name:*** C. T. CORPORATION SYSTEM

***Address:*** 645 LAKELAND EAST DRIVE STE 101  
FLOWOOD, MS 39232

**Signature**

The undersigned certifies that:

- 1) he/she has notified the above-named registered agent of this appointment;
- 2) he/she has provided the agent an address for the company, and;
- 3) the agent has agreed to serve as registered agent for this company

By entering my name in the space provided, I certify that I am authorized to file this document on behalf of this entity, have examined the document and, to the best of my knowledge and belief, it is true, correct and complete as of this day **05/03/2017**.

***Name:***  
D. Reagan Farr  
*Secretary*

***Address:***  
150 Third Avenue South, Suite 2000  
Nashville, TN 37201

# Delaware

The First State

Page 1

*I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF  
DELAWARE, DO HEREBY CERTIFY "SR MERIDIAN III, LLC" IS DULY FORMED  
UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND  
HAS A LEGAL EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS  
OF THE THIRD DAY OF MAY, A.D. 2017.*

*AND I DO HEREBY FURTHER CERTIFY THAT THE ANNUAL TAXES HAVE BEEN  
ASSESSED TO DATE.*



6394835 8300

SR# 20173036294

You may verify this certificate online at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

A handwritten signature of Jeffrey W. Bullock in black ink, written over a horizontal line. Below the line, the text "Jeffrey W. Bullock, Secretary of State" is printed.

Jeffrey W. Bullock, Secretary of State

Authentication: 202476876

Date: 05-03-17