***Appendix C***

***PPA System Sale of Schedulable Planning Reserve Power –***

***350 MW Max Product***

***For***

***2011***

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

***For***

Transition Plan Resources

Entergy Arkansas, Inc.

June 10, 2011

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

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

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| --- | --- | --- | --- |
| **ID** | **Proposal Term** |  | **Description of Proposal Term** |
| **1** | **Product Description:** |  | The product described in this Term Sheet Template is designated as **“PPA System Sale of Schedulable Planning Reserve Power – 350 MW Max.”** This product provides for a utility “system sale” of schedulable generation capacity of up to 350 MW, but not less than 100 MW, of capacity from Seller’s portfolio of generating resources (such portfolio, the “Seller System” and each generating resource within the Seller System, a “Facility”).  *{If Bidder wishes to submit multiple “PPA System Sale of Schedulable Planning Reserve Power – 350 MW Max” product proposals from the same Seller System, Bidder must submit a separate Term Sheet for each such proposal.}* |
| **2** | **Buyer:** |  | Entergy Arkansas, Inc. |
| **3** | **Seller:** |  | *{insert name of proposed Seller}*  ***{Seller must be a utility system operating a balancing authority that is adjacent to the EAI Transmission System or that has firm transmission service arrangements to the EAI Transmission System that provide EAI with comparable certainty regarding deliverability as a utility system operating a balancing authority that is adjacent to the EAI Transmission System.}*** |
| **4** | **Seller System:** |  | As of the date of Bidder’s proposal, the Seller System consists of:  (1) *{insert name or description of the first generation resource in the Seller System}* located *{describe location}*, having a nameplate capacity of *{insert nameplate capacity}*MW and consisting of *{insert description of major equipment, including all generating units}*;  (2) *{repeat with respect to other Facilities}*. |
| **5** | **Point(s) of Delivery:** |  | The Point(s) of Delivery will be *{describe the Point(s) of Delivery at which power from the Seller System will be delivered to Buyer}*[; provided, however, that, if the Points of Delivery are no longer treated collectively as equivalent to a single delivery point for “tagging,” scheduling, offering and bidding purposes (including, if applicable, after the balancing authority area that includes the Points of Delivery becomes subject to a regional transmission organization or independent system operator), then, from and after such event, Buyer may designate the Point of Delivery to be the single delivery point (or group of delivery points treated collectively as equivalent to a single delivery point for “tagging,” scheduling, offering and bidding purposes) that, in Buyer’s reasonable discretion, is most consistent with the Points of Delivery] *{include bracketed language only if Bidder’s proposal initially contemplates multiple Points of Delivery}*.  ***{Each Point of Delivery must be located on the EAI Transmission System and, if Bidder specifies multiple Points of Delivery, all such multiple Points of Delivery must be treated collectively as equivalent to a single delivery point for tagging purposes.****}* For purposes of this Term Sheet Template, the term “EAI Transmission System” is limited to the interconnected group of transmission lines and substations owned or leased by EAI that are used to transfer bulk electricity between supply and delivery points, notwithstanding that there may be a balancing authority (including any regional transmission organization or independent system operator) applicable thereto that covers a system broader than such interconnected group of transmission lines and substations.  ***{Please note that any proposal conditioned on a change in or transition of the EAI Transmission System to an alternative arrangement for central planning and coordinated dispatch, including a regional transmission organization, independent system operator or other comparable arrangement, will be rejected as non-conforming.}*** |
| **6** | **Transmission:** |  | Seller will be responsible for the transmission or transfer of power dispatched by Buyer to the Point(s) of Delivery located on the EAI Transmission System. Without limiting the foregoing, (i) all costs of any transmission service and of any transmission system additions or modifications (which could include additions or modifications beyond the Point(s) of Delivery) required for the transmission or transfer of power to the Point(s) of Delivery will be borne by Seller and (ii) to the extent applicable, Seller will be responsible for any basis differential between the point of generation and the Point(s) of Delivery. All proposals must provide for the firm transmission or transfer of power to the Point(s) of Delivery.  *{Bidder should describe the location of the Seller System and how firm transmission or transfer of power to the Point(s) of Delivery will be achieved.}*  Buyer will be responsible for the transmission or transfer beyond the Point(s) of Delivery of any power dispatched by Buyer and delivered to Buyer from the Seller System at the Point of Delivery (*i.e.,* after Buyer’s receipt on the EAI Transmission System). In this regard, Buyer will be responsible for the costs of transmission system additions and/or modifications beyond the Point(s) of Delivery that are required solely to obtain firm transmission or transfer of such power beyond the Point(s) of Delivery (*i.e.,* excluding those that are required to allow each Facility to interconnect or for the firm transmission or transfer of power to the Point(s) of Delivery), and Bidder should not include any such costs in the pricing offered by Bidder. |
| **7** | **Delivery Term:** |  | Subject to item 36 below and to the last paragraph of this item 7, from the start of hour ending 0100 Central Prevailing Time (“CPT”) on January 1, 2014 through the end of hour ending 2400 CPT on December 31, 2016 (three years). *{If Bidder is willing to offer an extended Delivery Term beyond December 31, 2016, Bidder should so indicate and describe any modifications to the Contract Capacity and/or the Capacity Rate that apply during such extended term; Bidder may not modify any other terms or conditions of the Definitive Agreement for purposes of the extended term. In addition, any offer for an extended term must allow EAI to accept Bidder’s proposal for the base Delivery Term without accepting the offer for the extended term and must allow Buyer to terminate the extended term on no more than 36 months’ notice (with no liability arising out of such termination). Bidder may include terms that allow Seller to terminate the extended term or reduce the Contract Capacity for any year or years of the extended term with specified notice and/or the occurrence of specified conditional events, provided that Buyer is allowed to terminate or reduce the Contract Capacity on the same terms (or on terms more favorable to Buyer) and that such terms require at least 12 months’ notice for reductions of up to 25% of the Contract Capacity in effect for the applicable year of the extended term immediately prior to such reduction, 24 months’ notice for reductions of up to 50% of the Contract Capacity in effect for the applicable year of the extended term immediately prior to such reduction and 36 months’ notice for termination or reductions of up to 100% of the Contract Capacity in effect for the applicable year of the extended term immediately prior to such reduction.}*  Notwithstanding the foregoing, unless Buyer otherwise elects, the Delivery Term will not commence at the time it would otherwise commence if, at such time, (1) the Seller System is experiencing an outage or other limitation, including a Force Majeure (as defined in item 31 below), that reduces the amount of Contract Capacity (as defined in item 9 below) actually available at the Point(s) of Delivery by fifty (50) MW or more below the Contract Capacity or (2) there exists a default (or event or circumstance that with the passage of time or the giving of notice or both would constitute a default) of Seller under the Definitive Agreement (in either case, a “Delivery Delay Condition”). |
| **8** | **Pricing:** |  | Pricing for this product will be composed of (i) a Capacity Rate expressed in $/kW-year specified in item 11 below; (ii) an Energy Price expressed in $/MWh specified in item 18 below; [and] (iii) a Variable O&M Rate expressed in $/MWh specified in item 19 below[[; (iv) a Start-up Charge expressed in $ per Completed Start specified in item 21 below; and (v) a Start Fuel Charge expressed in $ per Completed Start specified in item 22 below]] *{exclude bracketed “and” and include applicable portions of double bracketed language only if Bidder’s proposal contemplates a Start-up Charge in item 21 below and/or a Start Fuel Charge in item 22 below; otherwise, include bracketed “and” and exclude double bracketed language}*.  Except to the extent otherwise expressly provided in this Term Sheet Template, Buyer will not be required to pay any amounts to Seller other than the Capacity Payment (equal to the Capacity Rate multiplied by the Contract Capacity) and the Energy Payment (equal to the sum of the Energy Price and the Variable O&M Rate multiplied by the energy that is dispatched by Buyer and delivered to Buyer from the Seller System at the Point(s) of Delivery) [and the Start-up Payment (equal to the Start-up Charge multiplied by the number of Completed Starts) and the Start Fuel Payment (equal to the the applicable Start Fuel Charge multiplied by the number of Completed Starts)] *{include applicable portions of bracketed language only if Bidder’s proposal contemplates a Start-up Charge in item 21 below and/or a Start Fuel Charge in item 22 below}*, so the Capacity Rate[, Start-up Charge, Start Fuel Charge] *{include applicable portions of bracketed language only if Bidder’s proposal contemplates a Start-up Charge in item 21 below and/or a Start Fuel Charge in item 22 below}* and portions of the Energy Price proposed by Bidder should take into account all costs of generating and delivering capacity, capacity-related benefits and energy to the Point(s) of Delivery and all other costs that Bidder would like to recover from Buyer, including the costs of cyclical, major and other maintenance, fuel costs (inluding start-up fuel), any applicable start-up costs, fuel taxes and adders and any applicable ancillary services and other balancing authority services, penalties, settlements and other charges and fees, that are not recovered through the prescribed Variable O&M Rate and portions of the Energy Price.  All payments will be monthly in arrears. |
| **9** | **Contract Capacity:** |  | The “Contract Capacity” for each year of the Delivery Term (expressed in MW) is *{insert quantity in MW for each year, subject to a* ***minimum of 100 MW, and a maximum of 350 MW, in each year****; proposals that offer a constant amount of nameplate capacity over the Delivery Term are preferred, but proposals offering amounts that vary each year are acceptable}*:  Year Contract Capacity  2014 *{insert quantity in MW}*  2015 *{insert quantity in MW}*  2016 *{insert quantity in MW}* |
| **10** | **Seller’s Obligation to Maintain Adequate Capacity and Reserves:** |  | Seller’s aggregate commitments to deliver firm power that are required to be, or may be, served from the Seller System (including native load and Seller’s commitments under the Definitive Agreement) may not exceed, at any time, the net capacity of the Seller System reduced by an allowance for planning reserves, all as established and adjusted according to applicable capacity accreditation and reliability standards of the North American Electric Reliability Corporation (“NERC”), any regional reliability organization, any applicable reliability or planning group and any other applicable governmental authority. Without limiting the foregoing, Seller will manage the System and its commitments to deliver power that are required to be, or may be, served from the Seller System in compliance with all applicable laws, including any supply planning and adequate reserves requirements of NERC, any regional reliability organization, any applicable reliability or planning group or any other applicable governmental authority. Upon request from Buyer from time to time, Seller will provide to Buyer its current load and capability projection for the period covering the Delivery Term, including its load forecast and firm sales commitments and an identification of its power supply resources and projected reserve margins, as would be provided to NERC, any regional reliability organization, any applicable reliability or planning group or any other applicable governmental authority and all other data and information requested by Buyer to verify Seller’s compliance with its obligations set forth in this item 10.  *{Bidder must provide with its proposal Seller’s most current load and capability projection, including Seller’s load forecast and firm sales commitments and an identification of its power supply resources and projected reserve margins.}* |
| **11** | **Capacity Rate:** |  | The Capacity Rate (expressed in $/kW-year) for the Contract Capacity in each year is:  Year Capacity Rate  2014 *{insert rate in $/kW-year}*  2015  *{insert rate in $/kW-year}*  2016  *{insert rate in $/kW-year}*  *{In lieu of a specific Capacity Rate, Bidder may propose (a) a base Capacity Rate expressed as $/kW-year applicable to the entire Delivery Term and (b) an annual escalator, which will be either CPI or PPI and will be applied on each anniversary of the start of the Delivery Term. The Capacity Rate will be the base Capacity Rate multiplied by the percentage change in the escalator from the start of the Delivery Term through the applicable anniversary of the start of the Delivery Term on which the annual escalator is applied. If Bidder chooses this option, Bidder should specify its proposed base Capacity Rate (in $/kW-year) and whether it elects the CPI or PPI escalator. For this purpose, “CPI” means the Consumer Price Index for All Urban Consumers; US City Average; All Items: Not Seasonally Adjusted (base index year 1982-1984 = 100), as published by the United States Department of Labor, Bureau of Labor Statistics, from time to time; and “PPI” means the Producer Price Index for All commodities – WPU00000000, as published by the United States Department of Labor, Bureau of Labor Statistics, from time to time.}*  The Capacity Rate, **expressed in $/kW-year**, will be allocated to each month according to the schedule below. The Capacity Payment (equal to the Capacity Rate for the applicable month multiplied by the Contract Capacity) will be payable monthly in arrears. The Capacity Payment will be subject to a Capacity Payment discount based on Monthly Availability as described in item 12 below.  Month % of annual Capacity Rate  January 7%  February 7%  March 4%  April 4%  May 9%  June 15%  July 15%  August 15%  September 9%  October 4%  November 4%  December 7% |
| **12** | **Monthly Availability Requirement:** |  | The “Monthly Availability Requirement” will be 99% for each month.  The “Monthly Availability” will be calculated for each month as follows:    where:  MAm = Monthly Availability for the applicable month;  n = total number of hours in the applicable month;  i = each hour in the applicable month;  DEi = the lower of (a) the amount of energy from the Seller System delivered to Buyer at the Point(s) of Delivery during hour *i* (which, for the avoidance of doubt, means taken over the course of the entire hour *i* as a whole) or (b) SEi; provided that if, during hour *i*, the Seller System is not available to deliver energy to Buyer at the Point(s) of Delivery at the minimum permitted dispatch level for the Contract Capacity specified by Bidder in item 20 below (even if higher dispatch levels can be achieved and whether or not dispatched by Buyer), DEi will be deemed to be 0 MWh for hour *i*; for the avoidance of doubt, energy that is not delivered to Buyer at the Point(s) of Delivery during hour *i* due to Force Majeure or to any curtailment or other limitation or shortcoming on, or other circumstance relating to, electric transmission occurring outside of the EAI Transmission System or otherwise at or before the Point of Delivery, will not be included in DEi; and  SEi = (a) the amount of energy dispatched by Buyer for hour *i* plus (b) if, as a result of a unit contingency or other limitation, Buyer’s dispatch level was limited, any additional amount of energy that would have been dispatched by Buyer for hour *i* absent such limitation minus (c) the Excused Energy (as defined below) for hour *i*, where “Excused Energy” means, for any hour *i*, any portion of the amount of energy described in clauses (a) and (b) above for such hour *i* that is not delivered to Buyer at the Point(s) of Delivery during such hour *i* due solely to a lack of available transmission service occurring beyond the Point of Delivery within the EAI Transmission System, except to the extent the lack of available transmission service is due to Force Majeure or an act or omission of Seller or its affiliates or its direct and indirect contractors, subcontractors and suppliers or any of their respective agents or representatives (including any failure to comply with applicable laws, accepted electrical practices, the interconnection agreement, any other project documents or the Definitive Agreement); for the avoidance of doubt, Excused Energy will not include energy that, despite the lack of available transmission service occurring beyond the Point of Delivery within the EAI Transmission System, could have been delivered to Buyer at the Point(s) of Delivery during hour *i* if Seller had complied with its obligations set forth in item 10 above and item 15 below.  If the Monthly Availability is below the applicable Monthly Availability Requirement for any month, a Capacity Payment discount will apply to the Capacity Payment. The Capacity Payment discount will be twenty percent (20%) for each one percent (1%) shortfall to the Monthly Availability Requirement; provided, however, that (a) to the extent of unavailability due solely to Force Majeure, the Capacity Payment discount will be one percent (1%) for each one percent (1%) shortfall to the Monthly Availability Requirement and (b) in no event will the Capacity Payment be reduced below zero (0). |
| **13** | **Capacity-Related Benefits:** |  | Any benefit associated with the Contract Capacity, including any capacity credit or similar right or benefit, will exclusively and solely accrue to and be owned by Buyer. Seller will be required, at its own expense, to timely execute and file all documents (including any applicable request for qualification as a capacity resource) and take all other actions necessary to obtain and transfer to Buyer capacity-related benefits, provided that Seller will not be required to pay for any system additions and/or modifications beyond the Point(s) of Delivery that are required solely to obtain such capacity-related benefits (*i.e.,* that would not otherwise be required to allow each Facility to interconnect or for the firm transmission or transfer of power to the Point(s) of Delivery). Except as otherwise provided in the foregoing proviso, all costs required for any capacity qualification or otherwise to obtain and transfer to Buyer capacity-related benefits will be borne by Seller and should be considered in the Capacity Rate offered by Bidder.  *{Bidder should indicate whether the Contract Capacity is or will be eligible for capacity credits or other capacity-related benefits and, if so, which ones and the basis of that belief. Bidder should describe any studies or other actions needed to qualify the Contract Capacity for capacity-related benefits. Bidder should also describe the status and any results of any such actions.}* |
| **14** | **Additional Testing/ Required Data:** |  | Without limiting item 13 above, to the extent Buyer is required by applicable laws (including balancing authority rules) to demonstrate the capability of any Facility for purposes of capacity qualification or otherwise test any Facility (including to meet requirements imposed by Buyer’s participation in a reliability group or regional transmission organization), Seller will perform such tests according to applicable requirements. In such event, Buyer will purchase the power delivered pursuant to any such tests, unless otherwise designated by Seller (provided that Seller may not, through any such designation, limit Buyer’s rights to dispatch, receive and purchase power set forth in the Definitive Agreement). In addition, Seller will provide to Buyer (in the form and timeframe reasonably requested by Buyer) all data and other information relating to any Facility, or the delivery of capacity, other capacity-related benefits and energy under the Definitive Agreement (including, if there are multiple Points of Delivery, the Point of Delivery to which capacity, other capacity-related benefits or energy dispatched by Buyer will be delivered), necessary or advisable for Buyer to participate fully in any markets (including any marketplace administered by the balancing authority) in which Buyer is participating, otherwise exercise its rights or perform its obligations set forth in item 6 above and item 17 below or otherwise comply with applicable laws. |
| **15** | **Priority:** |  | Notwithstanding anything to the contrary, Seller shall allocate to Buyer (up to the Contract Capacity) any capability of the Seller System to deliver energy to the Point(s) of Delivery prior to allocating any such capability to any other customer or other use, except for serving Seller’s firm native load. |
| **16** | **Dispatch Rights:** |  | Throughout the Delivery Term, Buyer will have the right to dispatch the Contract Capacity and associated capacity-related benefits and energy (including modifying any existing dispatch notice) from time to time as it deems appropriate in its sole and absolute discretion on a day-ahead and intra-day basis, subject to Buyer’s observance of any operating restrictions (*i.e.,* permitted dispatch levels, minimum run time and downtime, maximum number of Completed Starts, start times and ramp rate) set forth in this Term Sheet Template and according to the following:   * Buyer may provide the initial dispatch notice or modify an existing dispatch notice for any day on a “day-ahead basis” until 8:30 a.m. CPT on the business day immediately prior to such day; and * Buyer may provide the initial dispatch notice or modify an existing dispatch notice after the day-ahead dispatch deadline for any day (*i.e.,* on an “intra-day basis”), provided that such intra-day dispatch notice complies with the maximum ramp rate and start times set forth in this Term Sheet Template. [The use of this intra-day dispatch flexibility by Buyer may result in a different gas price applicable to Intra-Day Energy for purposes of the Energy Payment to be made by Buyer as described in item 18 below or in a settlement of gas resale gains or losses as described in item 28 below.] *{Include applicable portions of bracketed language only if Bidder proposes to use a different applicable gas price for Intra-Day Energy in item 18 below and/or to provide for settlement of gas resale gains or losses in item 28 below.}*   Seller will make available to Buyer all of the Contract Capacity and will deliver to Buyer all associated capacity-related benefits and energy at the Point(s) of Delivery in accordance with Buyer’s dispatch notices. Except to the extent required by unit contingencies (despite Seller’s compliance with its obligations set forth in item 15 above), Seller will not interrupt, curtail or otherwise reduce the availability or deliveries of the Contract Capacity dispatched by Buyer or any associated capacity-related benefits or energy, even if Seller is otherwise above the availability requirements of the Definitive Agreement. In addition, to the extent the Seller System is capable, from time to time, of reduced operating restrictions (including reduced physical minimum dispatch levels and start times and increased ramp rate) and, as a result, allows Buyer greater dispatch flexibility, Seller will make available such capability to Buyer.  *{This Term Sheet Template contemplates both day-ahead and intra-day dispatch flexibility, and proposals that can provide the contemplated intra-day dispatch flexibility are strongly encouraged; however, EAI will entertain proposals that cannot offer intra-day dispatch flexibility (or that offer alternative terms and conditions for intra-day dispatch flexibility). If Bidder is unable to provide the intra-day dispatch flexibility contemplated by this Term Sheet Template, Bidder should so indicate and describe with specificity any terms and conditions on which Bidder is able to offer intra-day dispatch flexibility. EAI prefers proposals that offer alternative terms and conditions for intra-day dispatch flexibility (e.g., intra-day changes to start of schedule and/or hourly shape while preserving same daily MWh), rather than no intra-day dispatch flexibility.}* |
| **17** | **Tagging:** |  | If (a) the balancing authority area that includes the Point of Delivery becomes subject to a regional transmission organization or independent system operator or (b) “tagging,” scheduling, offering and/or bidding of capacity, capacity-related benefits or energy with the balancing authority (including into a marketplace administered by the balancing authority) is otherwise permitted or required, then:   * Buyer will be entitled to “tag,” schedule, offer and/or bid (on an exclusive basis) the capacity, capacity-related benefits and energy at the Point of Delivery in its sole and absolute discretion, provided that Buyer dispatches the capacity, capacity-related benefits and energy that are expressly “tagged,” scheduled, offered and/or bid by Buyer in a manner that complies with any balancing authority requirement to generate (or not generate) each such product that is triggered solely by Buyer’s “tags,” schedules, offers and/or bids; and * Seller will continue to perform all other functions with respect to the Seller System before the applicable balancing authority (including any applicable regional transmission organization or independent system operator), including, to the extent applicable, transmitting to the applicable balancing authority (including any applicable regional transmission organization or independent system operator) operational data or information and coordinating outages and “tagging,” scheduling, offering and/or bidding the capacity, capacity-related benefits and energy at each Facility’s point of interconnection for purposes of meeting Buyer’s dispatch.   Buyer will be entitled to any payments from the balancing authority or any other person for capacity, capacity-related benefits and energy and to any other payments from the balancing authority relating thereto (including the curtailment thereof), and, if any such payments are received by Seller, Seller will pay (or cause to be paid) any such payments promptly over to Buyer. Notwithstanding the foregoing, Seller will be entitled to any payments for (and will be responsible for any settlement at negative prices of or other settlement charge for) capacity, capacity-related benefits and energy (i) required by the balancing authority or other governmental authority or the interconnection agreement or applicable law to be provided from the Facility that were not dispatched by Buyer or expressly “tagged,” scheduled, offered and/or bid by Buyer pursuant to this item 17 and dispatched by the balancing authority solely as a result of such “tags,” schedules, offers and/or bids or (ii) to the extent applicable, “tagged,” scheduled, offered and/or bid by Seller at any Facility’s point of interconnection for purposes of meeting Buyer’s dispatch, provided that, in furtherance of Seller’s obligations pursuant to item 6 above, if the balancing authority at the Point(s) of Delivery does not recognize physical delivery at the Point(s) of Delivery (*e.g.*, because there is neither a generation resource nor a point of importation into such balancing authority at the Point(s) of Delivery), Seller will be required to pay to Buyer the real-time price at the Point(s) of Delivery for each MWh dispatched by Buyer. For the avoidance of doubt, any settlement at negative prices of, and other imbalance charges for, positive imbalance energy will be allocated according to item 29 below. |
| **18** | **Energy Price:** |  | For each MWh of energy dispatched by Buyer and delivered to Buyer from the Seller System at the Point(s) of Delivery, Buyer will pay the “Energy Price” equal to the applicable heat rate (expressed in MMBtu/MWh) multiplied by the applicable gas price (expressed in $/MMBtu). The Energy Price will not apply to ramp energy delivered by Seller to Buyer during any start-up.  The applicable heat rate (expressed in MMBtu/MWh) will be the heat rate set forth in the table below corresponding to Buyer’s dispatch level, provided that if, as a result of a unit contingency or other limitation, Buyer’s dispatch level was limited and such limitation would result in a higher applicable heat rate, the applicable heat rate will be the heat rate set forth in the table below corresponding to Buyer’s dispatch that would have occurred absent such limitation. The applicable heat rate is a blended heat rate for all MW included in the corresponding dispatch level. For example, if, for a dispatch level of 175 MW, the first 100 MW have a Marginal Heat Rate (as defined below) of 13.500 MMBtu/MWh and the other 75 MW have a Marginal Heat Rate of 10.000 MMBtu/MWh, the “applicable heat rate” for the dispatch level of 175 MW is 12.000 MMBtu/MWh = [(100 x 13.500) + (75 x 10.000)] / (100 + 75), and the Energy Price will be based on a total of 2,100 MMBtu of gas = 175 x 12.000.  *{Insert heat rate curve below. The heat rate curve should plot the applicable heat rate for each permitted dispatch level of the Contract Capacity specified by Bidder in item 20 below. For the permitted dispatch level at the full Contract Capacity, the applicable heat rate is required to be exactly 12.000 MMBtu/MWh. In addition, if the full Contract Capacity is greater than 175 MW, Bidder must include at least one permitted dispatch level at or below 175 MW that has an applicable heat rate of exactly 12.000 MMBtu/MWh.*  *For each such permitted dispatch level, Bidder should also indicate the heat rate associated with the incremental MW added to the next lower permitted dispatch level (the “Marginal Heat Rate”). For example, if, for a dispatch level of 175 MW, the applicable heat rate is 12.000 MMBtu/MWh, the next lower permitted dispatch level is 130 MW and, for a dispatch level of 130 MW, the applicable heat rate is 13.000 MMBtu/MWh, the Marginal Heat Rate for a dispatch level of 175 MW is 9.111 MMBtu/MWh = [(175 x 12.000) – (130 x 13.000)] / (175-130), meaning that an additional 9.111 MMBtu of gas is charged in the Energy Price in each hour for each MW dispatched above 130 MW when dispatching at a level of 175 MW compared to a 130 MW dispatch level.}*  Applicable Marginal  Dispatch Level Heat Rate Heat Rate  (MW) (MMBtu/MWh) (MMBtu/MWh)  *{insert heat rate curve for permitted dispatch levels other than the full Contract Capacity; if the full Contract Capacity is greater than 175 MW, Bidder must include at least one permitted dispatch level at or below 175 MW that has an applicable heat rate of exactly 12.000 MMBtu/MWh}*  Full Contract  Capacity 12.000 *{insert Marginal Heat Rate}*  The applicable gas price (expressed in $/MMBtu) will be the index published by Platts *Gas Daily* (in the internet publication currently accessed through *www.platts.com)* in the table entitled “Daily Price Survey” under the column heading “Midpoint” for gas to flow at *{insert flow point}* on the gas day of delivery of the applicable energy [plus the Gas Adder (as defined below)] *{include bracketed language only if Bidder proposes to include a Gas Adder according to the immediately following paragraph}* [[, provided that, in the case of Intra-Day Energy (as defined below), the applicable gas price will be *{insert proposed mechanism/ formula for determination of applicable gas price for Intra-Day Energy; the mechanism/formula should be transparent and capable of verification by Buyer; the projected result of such mechanism/formula may not exceed the projected actual costs to Seller of purchasing intra-day gas and should exclude any sales and use taxes and the cost of transportation and delivery, except to the extent included in the Gas Adder}*. For this purpose, “Intra-Day Energy” means, for any gas day, any amount of (a) the total energy dispatched by Buyer for delivery during such gas day after giving effect to any dispatch notices given by Buyer after the day-ahead dispatch deadline, but excluding any increases after the day-ahead dispatch deadline resulting from increased availability of the Seller System notified to Buyer after the day-ahead availability notice deadline, that is more than (b) the Gas Flexibility Amount over the total amount of energy that was dispatched by Buyer for delivery during such gas day by the day-ahead dispatch deadline, where “Gas Flexibility Amount” refers to the quantity of energy corresponding to any tolerance on gas imbalances available to Seller under applicable gas interconnection arrangements]] *{include double bracketed language only if Bidder proposes to use a different applicable gas price for Intra-Day Energy than for other energy; Bidder may, but is not required to, use a different applicable gas price for Intra-Day Energy }*.  *{Bidder may, but is not required to, propose to include in the applicable gas price all or any portion of the actual amount (expressed in $ per MMBtu) incurred by Seller for (i) sales or use taxes on its purchase of gas used to generate the energy dispatched by Buyer and/or (ii) third-party transportation and delivery of such gas to Seller (a “Gas Adder”). If Bidder desires for the applicable gas price to include a Gas Adder, Bidder should so indicate and specify a proposed mechanism/formula for determination of, or fixed amount of, the Gas Adder. Any proposed mechanism/formula should be transparent and capable of verification by Buyer. Further, the projected result of any proposed mechanism/formula for determination of, or the fixed amount of, the Gas Adder may not exceed the projected actual costs to Seller of the items described in clauses (i) and (ii) above. Double recovery of Gas Adder costs is not permitted, and Bidders should ensure that, if the election provided for above is made, no such double recovery is possible under the terms of its proposal.}* |
| **19** | **Variable O&M Rate:** |  | For each MWh of energy dispatched by Buyer and delivered to Buyer from the Seller System at the Point(s) of Delivery, Buyer will pay a “Variable O&M Rate” of $2.00/MWh. The Variable O&M Rate is fixed for the entire Delivery Term and will not apply to ramp energy delivered by Seller to Buyer during any start-up. |
| **20** | **Permitted Dispatch Levels; Physical Minimum Dispatch Levels:** |  | The permitted dispatch level(s) (expressed in MW delivered to Buyer at the Point of Delivery) for the Contract Capacity in each year are as follows:  *{Insert each permitted dispatch level for the Contract Capacity in each year. Bidder must include at least two permitted dispatch levels in each year in addition to the permitted dispatch level at the full Contract Capacity, and, if the full Contract Capacity is greater than 175 MW, Bidder must include at least one permitted dispatch level at or below 175 MW. A proposal that offers a large number of permitted dispatch levels and a large operating range is preferred.}*  Year Permitted Dispatch Levels\*  2014 *{insert quantity in MW}*  *{insert quantity in MW}*  *{repeat for any other permitted dispatch levels; if the full Contract Capacity is greater than 175 MW, Bidder must include at least one permitted dispatch level at or below 175 MW}*  full Contract Capacity  2015 *{insert quantity in MW}*  *{insert quantity in MW}*  *{repeat for any other permitted dispatch levels; if the full Contract Capacity is greater than 175 MW, Bidder must include at least one permitted dispatch level at or below 175 MW}*  full Contract Capacity  2016 *{insert quantity in MW}*  *{insert quantity in MW}*  *{repeat for any other permitted dispatch levels; if the full Contract Capacity is greater than 175 MW, Bidder must include at least one permitted dispatch level at or below 175 MW}*  full Contract Capacity  \*In addition to the permitted dispatch levels set forth in this table, if, as a result of a unit contingency or other limitation, Buyer’s dispatch is limited, Buyer will be permitted to dispatch at the level equal to the full amount that Buyer is able to dispatch given such limitation, subject to the physical minimum dispatch level(s) specified below in this item 20.  For the avoidance of doubt, the above permitted dispatch level(s) apply only if Buyer elects, in its sole and absolution discretion, to dispatch the Contract Capacity; Buyer may elect, in its sole and absolution discretion, not to dispatch any of the Contract Capacity (*i.e.,* 0 MW).  The physical minimum dispatch level (expressed in MW delivered to Buyer at the Energy Delivery Point) for the Contract Capacity in each year are as follows:  Physical Minimum  Year Dispatch Level  2014 *{insert quantity in MW}*  2015 *{insert quantity in MW}*  2016 *{insert quantity in MW}* |
| **21** | *{Bidder may, but is not required to, propose a Start-up Charge per Completed Start. Insert bracketed language below only if Bidder’s proposal contemplates a Start-up Charge. The Start-up Charge will be payable by Buyer only if Bidder’s proposal includes the bracketed language below.}* | | |
| **Completed Start [and Start-up Charge]:** |  | “Completed Start” means an increase in dispatch by Buyer from 0 MW to positive MW, after which (i) the output level dispatched by Buyer is achieved for at least thirty (30) consecutive minutes and (ii) the Seller System is available unconditionally for ramping to, and the attainment of, any other output level dispatched by Buyer according to the Definitive Agreement, but excluding any such increase that follows any reduction to 0 MW that is not scheduled by Buyer (such as a reduction resulting to 0 MW from a unit contingency or other limitation).  [For each Completed Start, Buyer will pay the “Start-up Charge.” The Start-up Charge (expressed in $ per Completed Start) for each year of the Delivery Term is:  Year Start-up Charge  2014  *{insert charge in $ per Completed Start}*  2015  *{insert charge in $ per Completed Start}*  2016  *{insert charge in $ per Completed Start}*  *{In lieu of a specific Start-up Charge for each year, Bidder may propose (a) a base Start-up Charge expressed as $ per Completed Start applicable to the entire Delivery Term and (b) an annual escalator, which will be either CPI or PPI and will be applied on each anniversary of the start of the Delivery Term. The Start-up Charge will be the base Start-up Charge multiplied by the percentage change in the escalator from the start of the Delivery Term through the applicable anniversary of the start of the Delivery Term on which the annual escalator is applied. If Bidder chooses this option, Bidder should specify its proposed base Start-up Charge (in $ per Completed Start) and whether it elects the CPI or PPI escalator. For this purpose, CPI and PPI have the same meanings as specified in item 11 above.}*  *{The Start-up Charge proposed by Bidder should reflect no more than the actual start charge payable by Seller under any applicable long-term services agreement(s) or other comparable maintenance contract(s).}*  *{For dispatch periods greater than 24 hours after a Completed Start, Bidder may, but is not required to, propose an hourly charge (expressed in $ per additional run hour) for each additional hour of run time in excess of 24 hours (or other applicable run-hours based charge in addition to, or in lieu of, the Start-up Charge set forth above) that reflects no more than Seller’s actual cost under any applicable long-term services agreement(s) or other comparable maintenance contract(s).}*] |
| **22** | *{Bidder may, but is not required to, propose a Start Fuel Charge per Completed Start. Insert bracketed Start Fuel Charge clause below only if Bidder’s proposal contemplates a Start Fuel Charge. The Start Fuel Charge will be payable by Buyer only if Bidder’s proposal includes the bracketed Start Fuel Charge clause below.}* | | |
| **[Start Fuel Charge:** |  | For each Completed Start, Buyer will pay the “Start Fuel Charge” equal to the applicable gas price (expressed in $/MMBtu) multiplied by the applicable start fuel amount (expressed in MMBtu) set forth below:  Type of Start Start Fuel  *{insert type of start} {insert amount in MMBtu}*  *{insert type of start} {insert amount in MMBtu}*  *{insert type of start} {insert amount in MMBtu}*  *{Please define with specificity each applicable type of start.}*  *{The amount of start fuel specified may not exceed the amount of fuel reasonably expected, based on the operating history of the Facility and Bidder’s experience with the Facility, to be consumed with respect to each type of Completed Start. Double recovery of start fuel costs is not permitted, and Bidders should ensure that, if the election provided for above is made, no such double recovery is possible under the terms of its proposal.}***]** |
| **23** | **Maximum Completed Starts:** |  | Buyer will have a maximum of two (2) Completed Starts per day. |
| **24** | **Minimum Run Time:** |  | Buyer may schedule 0 MW following a Completed Start only after Buyer has maintained a schedule of positive MW for at least three (3) hours since such Completed Start. |
| **25** | **Minimum Downtime:** |  | Buyer may schedule a Completed Start following a schedule of 0 MW by Buyer only after such schedule of 0 MW has been maintained at least two (2) hours since it began. |
| **26** | **Start-up Times:** |  | Seller requires the following amount of time to achieve a Completed Start (measured from the time Buyer notifies Seller that is schedules such Completed Start):  Type of Start Start-up Time  *{insert type of start} {insert start-up time}*  *{insert type of start} {insert start-up time}*  *{insert type of start} {insert start-up time}*  *{Please define with specificity each applicable type of start. The type of start may not depend on Seller’s operational decisions of where to source the energy dispatched by Buyer. They must be based exclusively on Buyer’s dispatch pattern.}* |
| **27** | **Maximum  Ramp Rate:** |  | The maximum ramp rate corresponding to the Contract Capacity is *{insert quantity in MW/minute}*. This maximum ramp rate applies after the initial output level dispatched by Buyer is achieved (*i.e.,* after the start-up period). |
| **28** | **Fuel Supply and Transport:** |  | [Subject to the following paragraph,] *{include bracketed language only if Bidder proposes to provide for settlement of gas resale gains or losses; Bidder may, but is not required to, provide for such settlement.}* Seller will have sole responsibility for and bear the full costs (including any applicable gas taxes) of the arrangement, procurement, transportation, nomination, delivery, storage, use, loss and disposition of fuel for the Seller System. Without limiting the foregoing, Seller will bear all risk associated with any decision not to procure firm fuel supply and transportation. If the Contract Capacity is or will be unavailable as a result of Seller’s failure to procure firm fuel supply or transportation, Buyer will have the right, but not the obligation, to obtain replacement capacity or to start-up or increase the output of its own generating resources to replace any portion of the capacity that is not or will not be provided by Seller. In such event, Seller will pay to Buyer the positive difference, if any, obtained by subtracting (i) any amount that would have been paid by Buyer under the Definitive Agreement for the equivalent output from the Seller System that is not paid by Buyer from (ii) the sum of all costs incurred by Buyer in connection with or relating to the provision or purchase, and use (including incremental transmission costs), of the replacement capacity, associated capacity-related benefits and/or energy that would not have been incurred if the capacity, associated capacity-related benefits and/or energy had been provided by Seller according to the Definitive Agreement.  [If, for any gas day, (a) the total energy dispatched by Buyer for delivery during such gas day after giving effect to any dispatch notices given by Buyer after the day-ahead dispatch deadline, but excluding any reductions after the day-ahead dispatch deadline resulting from reduced availability of the Seller System notified to Buyer after the day-ahead availability notice deadline, is more than the Gas Flexibility Amount less than (b) the total amount of energy that was dispatched by Buyer for delivery during such gas day by the day-ahead dispatch deadline, then *{insert proposed mechanism for determination of corresponding gas resale losses or gains; mechanism should be transparent and capable of verification by Buyer; Bidders are encouraged to base any such mechanism on the projected actual losses and gains to Seller of reselling gas resulting from any such reduction in dispatch}*. For this purpose, “Gas Flexibility Amount” has the same meaning as specified in item 18 above.] *{Include bracketed language only if Bidder proposes to provide for settlement of gas resale gains or losses; Bidder may, but is not required to, provide for such settlement.}*  *{Seller should describe the fuel supply and fuel transportation arrangements currently in place, including identifying the associated pipelines and interconnection points and indicating whether firm or interruptible and whether they include swing capability. In addition, Seller should describe its historical fuel costs. Finally, Seller should describe any additional fuel supply and fuel transportation that are available to support the Definitive Agreement, including whether firm fuel transportation is available on any pipeline(s) to which the Facilities are interconnected, and any other fuel considerations.}* |
| **29** | **Operation and Maintenance Costs/ Imbalances:** |  | Without limiting Buyer’s Capacity Payment[, Start-up Payment] *{include bracketed language only if Bidder’s proposal contemplates a Start-up Charge in item 21 above}* and Energy Payment obligations provided in this Term Sheet Template and except to the extent otherwise expressly provided in this Term Sheet Template, Seller will bear all costs and expenses of any kind or character incurred in connection with the ownership, leasing, financing, operation, maintenance, use, testing, repair or replacement of the Facilities (or any part thereof), including the real property interests related thereto, or the conduct of business by Seller, including the provision or delivery of capacity, capacity-related benefits and energy under the Definitive Agreement. Without limiting the foregoing, Seller will be responsible for any balancing authority (including applicable regional transmission organization or independent system operator) membership, transaction or other fees or charges; penalties, fees, assessments or other costs or charges for failure to satisfy any policy, rule, guideline, procedure, protocol, standard, criterion or requirement of the transmission provider, any market monitor, the independent coordinator of transmission or the balancing authority (including any applicable regional transmission organization or independent system operator) (“BA Penalties”); gas and electric imbalance charges; integration charges; ancillary services and other balancing authority (including any applicable regional transmission organization or independent system operator) services (including regulation); and similar costs and charges associated with the ownership, leasing, financing, operation, maintenance, use, testing, repair or replacement of the Seller System (or any part thereof), including the real property interests related thereto, or the conduct of business by Seller, including the provision or delivery of capacity, capacity-related benefits and energy under the Definitive Agreement (including costs or charges associated with any offer or bid made by Buyer at the Point(s) of Delivery and, if the balancing authority at the Point(s) of Delivery does not recognize physical delivery at the Point(s) of Delivery (*e.g.*, because there is neither a generation resource nor a point of importation into such balancing authority at the Point(s) of Delivery), costs or charges associated with any virtual offer or bid made by Buyer at the Point(s) of Delivery to synthetically create such physical delivery), in each case as now or in the future assessed (including, if applicable, after the balancing authority area that includes the Point of Delivery becomes subject to a regional transmission organization or independent system operator or any other implementation of a marketplace), but in each case excluding imbalance charges payable by Buyer pursuant to the immediately following paragraph and BA Penalties incurred by Seller solely as a result of (i) compliance by Seller with a dispatch notice issued by Buyer that requires Seller to violate (A) a directive or other instruction communicated by the balancing authority to Buyer in its role as market participant pursuant to item 17 above that has not been communicated to Seller or (B) a balancing authority requirement to generate (or not generate) a product expressly “tagged,” scheduled, offered and/or bid by Buyer pursuant to item 17 above that is triggered solely by Buyer’s “tags,” schedules, offers and/or bids or (ii) Buyer “tagging,” scheduling, offering and/or bidding the capacity, capacity-related benefits and energy in a manner that violates balancing authority requirements. If Buyer is invoiced for or otherwise assessed any amounts that are the responsibility of Seller under this or the following paragraph, Seller will promptly pay such amounts to Buyer.  Without limiting the immediately preceding paragraph, Seller will be responsible and pay for all gas and electric imbalance charges (regardless of whether assessed against Seller or Buyer) arising out of or in connection with the Definitive Agreement, except that Buyer will be responsible for any electric imbalance charges resulting solely from Buyer submitting a “tag” or schedule to the balancing authority pursuant to item 17 above that is inconsistent with Buyer’s dispatch notice to Seller. |
| **30** | **[Reserved]** |  |  |
| **31** | **Force Majeure:** |  | “Force Majeure” means any event that meets all of the following criteria: (i) the event occurs after the execution of the Definitive Agreement; (ii) the event and its effects are not within the reasonable control, directly or indirectly, of the Party claiming Force Majeure (including its direct and indirect contractors, subcontractors and suppliers); (iii) the event and its effects are unavoidable or could not be prevented, overcome or removed by the reasonable efforts and diligence of the Party claiming Force Majeure (including its direct and indirect contractors, subcontractors and suppliers); (iv) the event and its effects do not result from such party’s negligence or fault (including any breach by such party of the Definitive Agreement) or the negligence or fault of its direct or indirect contractors, subcontractors or suppliers; and (v) the event causes the Party claiming Force Majeure, despite such party’s (including its direct and indirect contractors, subcontractors and suppliers) use of reasonable efforts and diligence, to be actually delayed in performing, or unable to perform, its obligations under the Definitive Agreement, in whole or in part (for reasons other than economic hardship, including lack of money). Provided the event meets all of the criteria described above, Force Majeure will include: natural disasters; landslides; drought; fire; flood; earthquake; hurricanes; tornados; tsunamis; hail and ice and ice storms that are abnormally severe for the period of time when, and the area where, such weather event or condition occurs; epidemic; war (whether declared or undeclared) or other armed conflict; riot; explosions; civil disturbance; sabotage; vandalism; terrorism; documented threats of terrorism; and blockades.  Force Majeure will not include: (a) mechanical failure or other breakdown, flaw, defect, or failure of equipment or systems not the direct or proximate result of acts of God (which acts of God will include floods, earthquakes, hurricanes, tornadoes and lightning); epidemics; war; riots; civil disturbances; and, subject to clause (b) of this sentence, sabotage; (b) sabotage by employees, agents, representatives, or direct or indirect contractors, subcontractors or suppliers of the Party claiming Force Majeure; (c) delay in obtaining, or failure to obtain or revocation of, a permit, consent, license or other authorization; (d) any event stated in the technical specifications of the applicable Facility to be within the tolerance of such Facility; (e) the failure or other act or omission of employees, agents, representatives, or direct or indirect contractors, subcontractors or suppliers of the Party claiming Force Majeure (including the failure of a direct or indirect contractor, subcontractor or supplier to furnish machinery, spare parts, materials, consumables (including fuel), labor, equipment or services in accordance with its contractual obligations) or any non-delivery, delayed delivery, shortages or other unavailability of machinery, spare parts, materials, consumables (including fuel), labor, equipment or services (including any interruption or curtailment of fuel transportation or electric transmission), unless (A) the Party claiming Force Majeure has a firm contract for the applicable service or item and (B) the provider, if it were a party to the Definitive Agreement, would be able to claim Force Majeure for the same; (f) any weather event or condition that is not abnormally severe for the period of time when, and the area where, such weather event or condition occurs; (g) Seller’s ability to sell the capacity, capacity-related benefits and/or energy at a price greater than provided for in the Definitive Agreement; (h) a party’s financial inability to perform; (i) events that affect the cost of equipment or materials or other costs of owning, operating, or maintaining any Facility or changes in market conditions affecting the economics of either party (including a change in commodity prices or increased inflation) or any other economic hardship (including lack of money); or (j) labor strikes, slowdowns or stoppages.  If Buyer is the Party claiming Force Majeure and does not overcome the Force Majeure and resume performance of its obligations under this Agreement within six (6) months after the inception of such Force Majeure, then Buyer may, at any time following the end of such six (6)-month period, and for so long as performance continues to be delayed or prevented by Force Majeure, terminate the Definitive Agreement upon notice to Seller. Neither Party will have any liability arising out of a termination effectuated in accordance with this paragraph. |
| **32** | **Replacement Products:** |  | When Seller is not capable of providing the full availability of Contract Capacity and/or associated capacity-related benefits and/or energy, Seller may, but will not be obligated to, offer to provide and deliver replacement capacity, capacity-related benefits and/or energy. In such event, Buyer will, in its sole and absolute discretion, have the right to accept or reject the offer of replacement. If Buyer receives such an offer and Buyer, in its sole and absolute discretion, accepts such offer in writing, such replacement product(s) will be treated the same as if Seller provided the product(s) from the Seller System for the period for which Buyer has agreed that Seller may provide such replacement product(s), except to the extent the parties have agreed otherwise in writing (including in the agreement(s) permitting Seller to provide such replacement product(s)). Without limiting and subject to the foregoing, replacement energy will be treated as energy from the Seller System for all purposes under the Definitive Agreement, including the availability calculations. |
| **33** | **No QF Put:** |  | Notwithstanding any other provision of the Definitive Agreement, Seller waives any and all rights to deliver “qualifying facility” energy from each Facility to the applicable host utility (or Buyer) at any time during the Delivery Term and expressly agrees not to deliver “qualifying facility” energy from any Facility to any host utility (or Buyer) at any time during the Delivery Term. |
| **34** | **Change in Law:** |  | The Parties acknowledge the possibility that a change in law may occur that requires or will require one or both of the Parties to incur additional costs (including environmental costs) during the Delivery Term beyond those projected to be incurred by such Party as of the date of execution of the Definitive Agreement. Notwithstanding the foregoing, if such a change in law occurs, the other Party will not be required to share in, reimburse or otherwise pay all or any portion of such additional costs[, except as otherwise expressly provided below] *{include bracketed language only if Bidder makes a proposal as outlined below}*.  *{EAI is willing to consider proposals for Buyer to share in the risk of Environmental Changes in Law, but makes no commitment, and is under no obligation, to accept any such proposal or agree to assume any such risk. Any such proposal will be the subject of negotiation only if, in EAI’s sole and absolute discretion, the proposal is part of a bid that merits further consideration. EAI’s acceptance of sharing in the risk of Environmental Changes in Law will be predicated on, among other things, full regulatory recovery of associated Environmental Change in Law costs and the inclusion of deductibles and caps on Buyer’s sharing of Environmental Change in Law costs. Buyer will not share in the risk of any change in law that is not an Environmental Change in Law. For purposes of this item 34:*   * *“Environmental Change in Law” means (i) the enactment, promulgation, issuance or adoption by a governmental authority with jurisdiction of new environmental legislation, rules or regulations or (ii) the amendment by a governmental authority with jurisdiction of existing environmental legislation, rules or regulations, in the case of each of clause (i) and (ii), that occurs after the date of execution of the Definitive Agreement, is binding upon Seller, applies to or in respect of one or more Facilities, modifies the requirements in respect of such Facility(ies) with respect to Carbon Matters, and is of general applicability to electric power generation facilities located in the respective state(s) where such Facility(ies) are located (or the owners thereof); provided, however, that “Environmental Change In Law” excludes, without limitation, any enactment, promulgation, issuance, adoption, or amendment described in clause (i) or (ii) above that (A) results from any action or omission of (1) Seller, its affiliates, or any of their respective contractors or subcontractors of any tier (including the operator of any Facility), employees, agents or representatives or (2) any steam host or other customer (other than Buyer) of any Facility, including any violation of law or permit or modification of any Facility by any such person, (B) was not beyond the reasonable control of any such person or, with the exercise of due diligence, could reasonably have been prevented, avoided, overcome or removed by such person, or (C) was enacted, promulgated, issued, adopted, or amended, or was pending or officially proposed, as of the date of execution of the Definitive Agreement but takes effect after the date of execution of the Definitive Agreement; and* * *“Carbon Matters” means (i) taxes imposed by a governmental authority with jurisdiction the payment of which is based specifically on the carbon content of natural gas used as fuel for, or of emissions into the atmosphere from, an electric power generation facility and (ii) allowances by a governmental authority with jurisdiction under a mandatory federal, regional or state cap and trade program to emit up to a specific quantity of CO2 during a specified period.*   *If Bidder proposes for Buyer to share in the risk of Environmental Changes in Law, Bidder should describe the terms of its proposal, including the following features:*   * *the basis for allocating Environmental Change in Law costs to Buyer (e.g., pro rata share based on energy taken by Buyer);* * *deductibles (i.e., the amounts of Environmental Change in Law costs that would otherwise be allocated to Buyer that will be exclusively for Seller’s account before Buyer’s obligation to share in such costs) on a per occurrence and/or on an aggregate basis;* * *a cap and/or termination threshold (i.e., the amount or percentage increase in Buyer’s costs or other event that will trigger Buyer’s right to terminate the Definitive Agreement or its participation in any further sharing of Environmental Change in Law costs), and whether such amount is calculated on an aggregate, per occurrence, percent increase in monthly costs or other basis; and* * *a “dead zone” period, if any, after the start of the Delivery Term during which no Environmental Change in Law costs will be borne by Buyer.*   *In its proposal, Bidder may not propose for Buyer to pay more than the net increase or decrease (as the case may be) in the reasonable, actual, direct, and verifiable out-of-pocket costs (without mark-up) that Seller incurs in the provision to Buyer of, and only to the extent incurred in the provision to Buyer of, Contract Capacity or associated energy as a direct and proximate result of, and only to the extent required by, the Environmental Change In Law. In addition, if more than one commercially reasonable option is available to comply with an Environmental Change In Law, Buyer’s share of the costs associated with such Environmental Change in Law may not exceed Buyer’s share that would apply if the least cost commercially reasonable option (as measured over the remaining Delivery Term) was selected (irrespective of the option actually selected). Any proposed mechanism/formula for sharing in the risk of Environmental Changes in Law should be transparent and capable of verification by Buyer. Further, the projected result of any such proposed mechanism/formula may not exceed the projected amount of the net increase or decrease (as the case may be) in the reasonable, actual, direct, and verifiable out-of-pocket costs (without mark-up) described above.*  *EAI prefers that Bidders provide a proposal to share in the risk of Environmental Changes in Law rather than assuming this risk and incorporating the uncertainty in the proposal pricing.}* |
| **35** | **Credit Support:** |  | EAI will apply its own internal procedures to determine an internal EAI credit rating for each Bidder. These procedures include, among other things, a credit analysis of financial statements with a focus placed on appropriate leverage, liquidity and profitability metrics. If the Bidder has a published credit rating, the internal EAI credit rating will, in most cases, be equivalent to such published credit rating.  Based on the Bidder’s internal EAI credit rating, EAI will determine whether the Bidder will initially be required to provide credit support under the Definitive Agreement. For rough guidance, a Bidder with an internal EAI credit rating equivalent to BB+ or below from S&P or Ba1 or below from Moody’s will initially be required to provide credit support. Bidders that are required to provide credit support will be required to provide an amount of credit support commensurate with net exposure to that Bidder, as determined by EAI. A Bidder not initially required to provide credit support under the Definitive Agreement will be required to provide credit support during the Delivery Term if such Bidder’s credit rating falls below BBB- from S&P or Baa3 from Moody’s. Required credit support could take the form of:   * a parent guaranty * a letter of credit from a bank acceptable to EAI * cash collateral * other forms of credit support suggested by Bidder * combinations of the foregoing,   provided that any form of credit support provided by Bidder is subject to EAI’s satisfaction with the form and substance of such credit support. EAI will undertake a similar process with respect to a credit support provider as described above for the Bidder in order to determine an internal EAI credit rating for such credit support provider. Bidder will get credit toward its credit support requirements for the credit support provided by such credit support provider if and only if the internal EAI credit rating for such credit support provider meets the requirements for such type of credit support. For rough guidance, a credit support provider with an internal EAI credit rating equivalent to BBB- or higher from S&P and Baa3 or higher from Moody’s that is the direct or indirect parent of Seller will be eligible to provide a parent guaranty. The internal EAI credit rating requirements are higher for a bank providing a letter of credit or holding cash collateral. If the internal EAI credit rating assigned to a credit support provider is sufficiently reduced at any time during the term of the Definitive Agreement, Buyer will be required to replace the credit support being provided by such credit support provider. |
| **36** | **Conditions Precedent:** |  | Buyer’s obligations under the Definitive Agreement will be conditioned upon the fulfillment or express waiver, by Buyer, of all of the following conditions:   1. Buyer has obtained from FERC and/or each of the state or local governmental authorities having jurisdiction over Buyer or Buyer’s operations (i) regulatory approval of the Definitive Agreement and the transaction thereunder or contemplated thereby, including approval of the full recovery of all Buyer costs associated with the Definitive Agreement (through base rates, fuel adjustment charges, and/or such other rates or charges as may be applied pursuant to a rider or otherwise) pursuant to a finding that the participation by Buyer in the Definitive Agreement is prudent and in the public interest, and/or (ii) any other regulatory treatment in connection with the Definitive Agreement and any transaction contemplated thereby desired by Buyer, including with respect to timing, scope, means of recovery, and any certificate of convenience and necessity, which approvals are, in each case, final and non-appealable and on terms and conditions acceptable to Buyer in its sole and absolute discretion; 2. Buyer has obtained the governmental approvals and other third-party consents necessary or prudent for Buyer to enter into the Definitive Agreement or to perform its obligations thereunder, which approvals and consents are, in each case, on terms and conditions acceptable to Buyer in its sole and absolute discretion; 3. Buyer has obtained the consents, approvals and authorizations contemplated by item 37 below on terms and conditions acceptable to Buyer in its sole and absolute discretion; 4. the transaction contemplated by the Definitive Agreement qualifies as a firm capacity resource (scheduled as a firm transaction between Seller’s balancing authority and the EAI Transmission System) with deliverability on a firm network resource basis to Buyer’s load served from the EAI Transmission System and Buyer has otherwise obtained transmission service from the Point(s) of Delivery in respect of the capacity, capacity-related benefits and energy to be provided under the Definitive Agreement on terms and conditions acceptable to Buyer in its sole and absolute discretion, including terms and conditions (i) concerning the timing, installation, location, cost, or cost recovery of transmission upgrades or other transmission improvements, (ii) relating to deliverability, re-dispatch or outages of any generation resource of any of the Entergy operating companies (including any resource under contract), or (iii) that may, if accepted or given effect, adversely affect reliability or operation of the EAI Transmission System or resources therein; 5. Seller has obtained firm transmission service to the Point(s) of Delivery in respect of the capacity, capacity-related benefits and energy to be provided under the Definitive Agreement; 6. if required, credit support meeting the requirements of the Definitive Agreement has been posted by Seller; and 7. certificates of insurance evidencing the coverages required by the Definitive Agreement have been obtained and submitted to Seller.   In addition, other Buyer conditions precedent may be required, depending on the transmission path, other operational aspects of the specific proposed Seller System, the status of applicable laws, rules and regulations and other factors as Buyer deems relevant in its sole and absolute discretion. |
| **37** | **Management Approval:** |  | The Definitive Agreement is subject to review and approval by, and will be contingent upon the consents, approvals and authorizations from, the Entergy Corporate Risk office, the Board of Directors and such other governing bodies as Buyer deems necessary or advisable in its sole and absolute discretion. |
| **38** | **Select Contract Terms and Conditions:** |  | The Definitive Agreement will also include, among others, the following covenants, terms and/or conditions:   * Seller will operate, maintain, replace, repair and test each Facility and the Seller System in accordance with (i) accepted electrical practices, (ii) applicable permits, consents and laws, (iii) its interconnection agreement and other project documents and (iv) the Definitive Agreement; * Seller will maintain adequate reserves for, and schedule and perform according to the Definitive Agreement, required maintenance; and * Seller will insure against all insurable risks with coverage in an amount not less than full replacement cost and on terms specified in the Definitive Agreement. |
| **39** | **Events of Default:** |  | The Definitive Agreement will include the following events of default of Seller:   * failure to pay amounts due; * breach of representations and warranties; * breach of covenants; * the average of the Monthly Availabilities during any Rolling 12 Month Period is less than the Rolling 12 Month Availability Requirement of ninety percent (90%), where “Rolling 12 Month Period” means, as of the end of any month during the Delivery Term, the twelve (12)-month period that includes such month and the preceding eleven (11) months that occurred during the Delivery Term, provided that, for the first contract year, the measurement of the Rolling 12 Month Period will begin at the end of the sixth (6th) month of such contract year, at which time and thereafter for the remainder of the first contract year, the Rolling 12 Month Period will be determined using the months then elapsed in the Delivery Term; * bankruptcy, dissolution or liquidation of Seller; * failure to provide or maintain required credit support; * failure of the resulting, surviving or transferee entity in a merger or sale of all or substantially all of the assets of Seller to assume such party’s obligations under the Definitive Agreement; * assignment by Seller of the Definitive Agreement, including by merger, consolidation or sale of all or substantially all of its assets, except as permitted by the Definitive Agreement; * Seller breaches any obligation set forth in item 10 or item 15 above; * Seller makes any material misrepresentation or material omission in any availability report, metering report or invoice required to be made or furnished by Seller pursuant to the Definitive Agreement or Seller’s actual fraud, tampering with Buyer-owned facilities or material intentional misrepresentation or misconduct in connection with the Definitive Agreement or operation of any Facility; * default of Seller under any agreements relating to indebtedness for borrowed money in excess of a specified aggregate amount; * default of Seller under, or failure to maintain in effect, any project document (including any interconnection agreement and any transmission service agreement); * Seller’s abandonment of operation of any Facility (or any portion thereof affecting its obligations under the Definitive Agreement); * the commencement of the Delivery Term is delayed as a result of the occurrence of one or more Delivery Delay Conditions for a period of six (6) months or more from the date that the Delivery Term would have commenced without the occurrence thereof; and * Seller’s failure to maintain in effect any agreement required to deliver energy to any Point of Delivery. |
| **40** | **Termination Rights:** |  | The Definitive Agreement will contain provisions entitling a Party the right to terminate the Definitive Agreement upon the occurrence and continuation of an event of default by the other Party and to calculate termination damages based on the costs, gains or losses incurred by the non-defaulting Party arising out of termination of the Definitive Agreement. If the termination damages are negative, the non-defaulting Party will not be obligated to pay such amount to the defaulting Party. |
| **41** | **Audit Rights:** |  | Buyer will have the right to examine the books and records of Seller and any affiliates of Seller involved, directly or indirectly, in the transactions or actions contemplated by the Definitive Agreement, including the records for each Facility, which records will include (x) actual generating records for each Facility and (y) copies of contracts evidencing Seller’s gas interconnection, supply and transportation arrangements, in each case to the extent reasonably necessary or appropriate to verify, among other things, (a) the accuracy of any statement, charge or computation made pursuant to the provisions of the Definitive Agreement or (b) Seller’s performance under or compliance with the terms and provisions of the Definitive Agreement. Seller will be responsible for ensuring that all first-tier and lower-tier suppliers, vendors, agents, contractors and representatives of Seller or its affiliates performing work or providing services relating to any Facility (and, to the extent that Seller is not the owner of an Facility, the owner(s)) commit to supply to Seller, and allow Seller to freely provide to Buyer, the records supporting any cost or charge paid by Seller and passed on to Buyer according to the terms of the Definitive Agreement. Any information obtained by Buyer under its audit rights will be required to be kept confidential pursuant to the confidentiality section of the Definitive Agreement. As a condition precedent to the Definitive Agreement becoming effective, to the extent that Seller is not the owner of an Facility, Seller will provide to Buyer evidence satisfactory to Buyer of its ability and rights to facilitate Buyer’s access to the books and records of such owner pursuant to the provisions of the audit section of the Definitive Agreement. |
| **42** | **Seller’s Use of Real-time Information:** |  | Seller will limit the availability of real-time generation, dispatch and outage information related to the Facilities to its designated asset management personnel primarily responsible for operation and management of the Facilities. Seller and such personnel may use all such real-time information only for the limited purpose of operating the Facilities and otherwise performing its obligations under the Definitive Agreement and under any other power sales from the Facilities permitted by the Definitive Agreement. Seller and such personnel will not use such real-time generation, dispatch and outage information to enable Seller to engage in any other activity. |
| **43** | **AGC Capability:** |  | *{Is any Facility capable of, and is Bidder willing to offer, automatic generation control (AGC)?* *If so, please describe such capability and any operating limitations or other terms and conditions that apply to operation under AGC that differ from those otherwise specified in this Term Sheet Template.}* |
| **44** | **Special Exceptions:** |  | *{If Bidder is not able to accept any of the terms and conditions set forth in this Term Sheet Template, Bidder should so indicate here and describe with specificity any terms and conditions that Bidder is able to offer in place of the terms and conditions to which Bidder takes exception.}* |