APPENDIX IV
Clean Coal Sourcing Agreement

UNIT CONTINGENT

POWER PURCHASE AGREEMENT

Between

[FUTUREGEN INDUSTRIAL ALLIANCE, INC.]

and

[BUYER]

[**DATE**]

FOR SUBMISSION TO ILLINOIS POWER AGENCY
INCLUSION IN 2013 POWER PROCUREMENT PLAN REQUESTED

UNIT CONTINGENT
POWER PURCHASE AGREEMENT
Between
[FUTUREGEN INDUSTRIAL ALLIANCE, INC.]
and
[BUYER]

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UNIT CONTINGENT
POWER PURCHASE AGREEMENT
Between
FUTUREGEN INDUSTRIAL ALLIANCE, INC.
and
[BUYER]

This Power Purchase Agreement is made [_____], by and between [FutureGen Industrial Alliance, Inc., a non-profit corporation organized under the laws of the State of Delaware] ("Seller") and [_____], a [_____] organized under the laws of the State of [_____] ("Buyer"), (each a "Party" and together the "Parties").

RECITALS

A. The United States Department of Energy has entered into Cooperative Agreements with Seller in support of the Department's FutureGen 2.0 Program;

B. Pursuant to the Cooperative Agreements, Seller or an Affiliate of Seller will develop, own and operate an electric power Project consisting of an oxy-combustion advanced coal power generation plant, with CO_2 capture at the site of the Meredosia generating station located in Meredosia, Illinois;

C. Pursuant to the Cooperative Agreements, Seller or an Affiliate of Seller will also develop, construct, own and operate a CO_2 pipeline and storage reservoir project located in Morgan County, Illinois to transport, inject and store CO_2 captured from Seller's Project;

D. Seller is organized for the purpose of developing, owning and maintaining the Project and will incur all costs associated with that purpose;

E. Seller intends to enter into one or more agreements with buyers for the sale and delivery of the electric energy produced by the Project and each buyer will have a proportionate right to that output and proportionate obligation to pay for the full capital and operating costs of the Project based on that buyer's share of the output;

F. Seller and Buyer have agreed to implement, pay for and operate the Project on a cost-of-service basis pursuant to which Buyer will compensate Seller for its proportionate share of all costs associated with constructing, owning, operating and maintaining the Project as further set forth in this agreement; and

G. Seller will be solely liable for the obligations of Seller under this agreement, and no Alliance Member Company or Affiliate of Seller will be so liable.

NOW, THEREFORE, the Parties agree as follows:

1. **Definitions and Rules of Interpretation.**

1.1. **Definitions**. Unless otherwise defined in this agreement, the capitalized terms used in this agreement have the meanings set forth whenever the terms appear in this agreement, whether in the singular or the plural or in the present or past tense. Other terms used in this agreement but not listed in this section 1.1 have the meanings as commonly used in the English language. Words not otherwise defined herein that have well known and generally accepted technical or trade meanings are used herein in accordance with such recognized meanings.

"Addressee" has the meaning set forth in section 22.2.

"Affiliate" of any named Person means any other Person that controls, is under the control of, or is under common control with, the named Person. The term "control" (including the terms "controls", "under the control of" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management of the policies of a Person, whether through ownership interest, by contract or otherwise; except that no Alliance Member Company is an Affiliate of Seller.

"Alliance Member Company" means one or more of the companies listed in Exhibit 1.1-D (Alliance Members) and any companies that may become members of Seller while this agreement is in force.

"Ameren Illinois" means the Illinois regulated utility Ameren Illinois Company.

"Ancillary Services" means those services other than Net Energy, Environmental Attributes and Capacity Attributes that are defined as Ancillary Services in the open access transmission tariff of MISO as of the Effective Date.

"Annual Damages Cap" has the meaning set forth in Exhibit 6.4(c).

"Applicable Law" means all applicable laws, statutes, treaties, codes, ordinances, regulations, certificates, orders, licenses and permits of any Governmental Authority, now in effect or hereafter enacted, amendments to any of the foregoing, interpretations of any of the foregoing by a Governmental Authority having jurisdiction, and all applicable judicial, administrative, arbitration and regulatory decrees, judgments, injunctions, writs, orders, awards or like actions (including those relating to human health, safety, the natural environment or otherwise).

"ARES" means an alternative retail electric supplier as defined in 220 ILCS 5/16-102. In addition, "ARES" will also include electric utilities, as that term is defined in 220 ILCS 5/16-102, which sell electric power and energy to retail customers outside their service territories.

"Btu" means a British thermal unit.

"Business Day" means any Day on which Federal Reserve Banks and Branches are open for business such that payments can be effected on the Fed Wire system.

"Buyer" has the meaning set forth in the introductory paragraph hereof.

"Buyer Indemnified Persons" has the meaning set forth in section 13.1.

"Cancellation Costs" means the actual and demonstrable third party costs incurred by cancellation or termination of any third party contracts, including contracts with service providers, equipment vendors, financing prepayment and penalty costs, and similar costs.

"Capacity Attributes" means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the amount of power that the Project can generate at a particular moment and that can be purchased and sold under market rules adopted in the region where the Project is located.

"Capital Replacement and Additions Payment" has the meaning set forth in section 5.2(d)(v).

"Clean Coal Facility" has the meaning set forth in Section 1-10 of Illinois Power Agency Act.

"CO_2 Services Agreement" means an agreement between Seller and the CO_2 Services Provider whereby the CO_2 Services Provider will develop, construct, own and operate a CO_2 pipeline and storage reservoir, and the other facilities that are necessary to transport, inject and store CO_2 produced by the Project.

"CO_2 Services Provider" means the party with whom Seller has entered into the CO_2 Services Agreement.

"Commercial Operation" means, with respect to the Project, that the Project has met the requirements for Commercial Operation in accordance with section 4.3.

"Commercial Operation Date" means, with respect to the Project, the date that the Project achieves Commercial Operation in accordance with section 4.3.

"Commercially Reasonable" or "Commercially Reasonable Efforts" means, with respect to any decision or other action made, attempted or taken by a Party, those efforts that a reasonably prudent business would undertake for the protection of its own interests under the conditions affecting that decision or other action including with respect to Project design and operation, electric system safety, the amount of notice of the need to take a particular action, the duration and type of the action, and the commercial and regulatory environment in which such decision or other action occurs. Commercially Reasonable or Commercially Reasonable Efforts will be reviewed and determined based upon the facts and circumstances known, or which could have been known with the exercise of reasonable efforts, at the time

that an action is taken and will not be based upon a retroactive review by a Party or any tribunal of what would have been optimal at that time.

"Commission" means the Illinois Commerce Commission or its successor.

"Commonwealth Edison" means the Illinois regulated utility Commonwealth Edison Company.

"Confidential Information" has the meaning set forth in section 23.1.

"Contract Month" means each consecutive calendar Month period the first of which will begin on the Commercial Operation Date and each succeeding calendar Month; except that if the Commercial Operation Date does not occur on the first Day of a calendar Month, then the first Contract Month and the last Contract Month will be pro rated based on the number of Days in that Contract Month that elapsed prior to Commercial Operation.

"Contract Price Adjustment" has the meaning set forth in section 5.2(d)(viii).

"Contract Price Components" has the meaning set forth in section 5.2(a).

"Contract Year" means each consecutive 12-Month period beginning June 1 through May 31; except that if the Commercial Operation Date does not occur on June 1, then the first Contract Year will run from the Commercial Operation Date through the immediately following May 31.

"Cooperative Agreement" means a Cooperative Agreement entered into between Seller and the Department.

"Credit Support" means Credit Support to be provided by Buyer in accordance with Exhibit 14.

"Damages" has the meaning set forth in section 13.1.

"Day" means a calendar day.

"Delivery Point" means the point where Seller delivers the Net Energy generated by the Project to the MISO System, as specifically described in Exhibit 1.1-A (Delivery Point).

"Department" means the United States Department of Energy and any successor department or agency.

"Dispute" has the meaning set forth in section 17.1.

"Dispute Notice" has the meaning set forth in section 17.1.

"Effective Date" means the date on which the Parties execute this agreement.

"Electric Utility" or "Electric Utilities" means the electric utilities, as defined in 220 ILCS 5/16-102, for which the Illinois Power Agency is authorized to develop electricity procurement plans pursuant to Section 1-20 of the Illinois Power Agency Act.

"Eligible Retail Customers" means those retail customers that purchase power and energy from an Electric Utility under fixed-price bundled service tariffs as provided in Section 16-111.5(a) of the Illinois Public Utilities Act.

"Emergency" means an abnormal system condition requiring manual or automatic action to maintain operational control of the Project, or to prevent equipment damage or tripping of system elements that could adversely affect the reliability of the Project or the safety of persons or property.

"Environmental Attributes" means any and all presently existing or future benefits, emissions reductions, environmental air quality credits, emissions reduction credits, renewable energy credits, offsets and allowances, attributable to the Project commencing on the Commercial Operation Date and continuing during the Term, or otherwise attributable to the generation, purchase, sale or use of metered output from or by the Project during the Term, howsoever entitled or named, resulting from the avoidance, reduction, displacement or offset of the emission of any gas, chemical or other substance, including any of the same arising out of presently existing or future legislation or regulation concerned with oxides of nitrogen, sulfur or carbon, with particulate matter, soot or mercury, or implementing the United Nations Framework Convention on Climate Change (UNFCCC) or the Kyoto Protocol to the UNFCCC, or their successors or crediting "early action" emissions reduction, or laws or regulations involving or administered by the Clean Air Markets Division of the United States Environmental Protection Agency, or any state or federal entity given jurisdiction over a program involving transferability of Environmental Attributes, and any renewable energy certificate reporting rights to such Environmental Attributes. Notwithstanding any other provision hereof, Environmental Attributes do not include: (i) any state or federal tax credits; (ii) any state, federal or private cash payments or grants relating in any way to the Project or the output thereof; or (iii) state, federal or private grants or other benefits related to the Project or the output.

"Event of Default" has the meaning set forth in section 16.1(a).

"Final Buyer Retail Sales" means, for any given Contract Month, the total amount of electric energy that Buyer sold to retail customers in Commonwealth Edison's and Ameren Illinois' service territories, determined using amounts as settled by PJM or MISO, as applicable, within 105 Days of that Contract Month.

"Final Settlement Payment" has the meaning set forth in section 6.2(c)(ii).

"Final Total Retail Load" means, for any given Contract Year, the total combined amount of electric energy sold by Electric Utilities and ARES to retail customers in Commonwealth Edison's and Ameren Illinois' service territories determined using amounts as settled by PJM or MISO, as applicable, within 105 Days of that Contract Year.

"Financial Close" means the date on which the Financing Documents relating to the financing of the Project are executed and delivered to Lenders by Seller, or if no Financing Documents are contemplated by Seller, the date on which the Department authorizes Seller to proceed with active construction of the Project.

"Financing Documents" means the loan and credit agreements, notes, bonds, indentures, security agreements, lease financing agreements, mortgages, deeds of trust, interest rate exchanges, swap agreements and other documents relating to the development, bridge, construction and/or permanent debt financing for the Project, including any credit enhancement, credit support, working capital financing, or refinancing documents, and any and all amendments, modifications, or supplements to the foregoing that may be entered into from time to time at the discretion of Seller in connection with development, construction, ownership, leasing, operation or maintenance of the Project.

"Fixed Project Payment" has the meaning set forth in section 5.2(d)(i).

"Fixed O&M Payment" has the meaning set forth in section 5.2(d)(ii).

"Forecasted Total Retail Load" means, for any given Contract Year, the total combined amount of electric energy forecasted to be sold on a Monthly basis for each Month of a Contract Year by Electric Utilities and ARES to retail customers in Commonwealth Edison's and Ameren Illinois' service territories representing amounts to be settled by PJM or MISO, as applicable, as forecasted by Commonwealth Edison and Ameren Illinois for their respective service territories and provided annually to Seller by July 15 of the prior Contract Year.

"Force Majeure" has the meaning set forth in section 18.1.

"Formula Rate" has the meaning set forth in section 5.2(a).

"Fuel Payment" has the meaning set forth in section 5.2(d)(iv).

"FutureGen 2.0 Program" means the Department's FutureGen 2.0 program, including the funding and implementation of the program pursuant to the Cooperative Agreements.

"Governmental Authority" means any federal, state, county, city, town, borough, village, district or other jurisdiction; federal, state, local, municipal, or other government; governmental or quasi-governmental authority of any nature (including any agency, branch, department, board, commission, court, tribunal or other entity exercising governmental or quasi-governmental powers), or official of any of the foregoing, exercising, or entitled or purporting to exercise, any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power over the Project, or any of the Parties.

"Governmental Authorization" means all applications, permits, licenses, franchises, certificates, concessions, consents, authorizations, approvals, registrations, orders, filings, entitlements, and similar requirements of whatever kind and however, described, that are issued by any Governmental Authority,

including any amendments and adoption notices thereto, and which are to be obtained or maintained by any Person with respect to the development, design, acquisition, construction, equipping, financing, ownership, possession, start-up, testing, operation or maintenance of the Project, or any other transactions or matter contemplated by this agreement, including those pertaining to electrical, building, zoning, environmental and occupational safety and health requirements.

"Heat Rate Variance Adjustment" has the meaning given that term in Exhibit 5.2(d), Part D.

"Hourly Day-Ahead Energy Market Locational Marginal Price" means, for any hour, the hourly prices stated in U.S. Dollars published by MISO under the heading "Hourly Day-Ahead LMP" or any successor heading, for the zone in which the Delivery Point is located.

"Indemnified Person" has the meaning set forth in section 13.3(a).

"Indemnifying Person" has the meaning set forth in section 13.3(a).

"Initial Buyer Retail Sales" means, for any given Contract Month, the total amount of electric energy that Buyer sold to retail customers in Commonwealth Edison's and Ameren Illinois' service territories determined using amounts settled by PJM or MISO, as applicable, within 15 Days of the end of current Contract Month.

"Initial Settlement Payment" has the meaning set forth in section 6.2(c)(i).

"Interconnection Facilities" means all facilities required to be installed to interconnect and deliver energy from the Project to the Delivery Point, but not limited to, interconnection, switching, metering, relaying, communications and safety equipment.

"Interest Rate" means, for any date, the lesser of: (i) the per annum rate of interest equal to the prime lending rate as may from time to time be published in The Wall Street Journal under "Money Rates" on that Day (or if not published on that Day, on the most recent preceding Day on which published), plus 2%; and (ii) the maximum rate permitted by Applicable Law.

"KWh" means a kilowatt hour.

"Lender" means, collectively, any lender(s) providing any Project Debt and any successor(s) or assigns thereto.

"Lender Consent" has the meaning set forth in section 16.2(b).

"LGIA" means the Large Generator Interconnection Agreement entered into by Seller, and MISO pursuant to which the Project will be interconnected with the MISO System, and pursuant to which Seller's Interconnection Facilities and any other Interconnection Facilities will be constructed, operated and maintained during the Term.

"Metering Point" means the point where the Project's Net Energy is measured by the Metering and Telemetry Equipment.

"Metering and Telemetry Equipment" means all equipment required by this agreement to measure, record and telemeter power flows at the Metering Point.

"Minimum Annual Energy" means the quantity of Net Energy expressed in KWh that Seller intends to produce and deliver to the Delivery Point for the applicable Contract Year as set forth in Exhibit 6.4(c).

"Minimum Energy Shortfall" has the meaning set forth in section 6.4(c).

"MISO" means the Midwest Independent Transmission System Operator, Inc., or any successor organization.

"MISO System" means the transmission facilities operated by MISO, now or hereafter in existence, which provide energy transmission service from the Delivery Point.

"Month" means a period of time beginning on the first Day of a calendar month and ending the last Day of that calendar month as settled by PJM or MISO, as applicable. The term "Monthly" will be construed accordingly.

"Monthly Clean Coal Rate" has the meaning set forth in section 5.2(e).

"Monthly Contract Price" has the meaning set forth in section 5.2(e).

"MW" means megawatt.

"MWh" means megawatt hour.

"Net Energy" means electric energy, expressed in KWh, produced by the Project and delivered to and measured at the Metering Point.

"Net Energy Sales Credit" has the meaning set forth in section 5.2(d)(vi).

"Non-Eligible Retail Customers" means all of the retail customers in an Electric Utility's service area for which an Electric Utility provides delivery services but which are not Eligible Retail Customers as defined in Section 16-111.5(a) of the Illinois Public Utilities Act.

"Notice" has the meaning set forth in section 22.1, and "Notify" has the correlative meaning.

"Other Product Credit" has the meaning set forth in section 5.2(d)(vii).

"Outside Commercial Operation Date" means the date that is 18 Months after the Target Commercial Operation Date.

"Party" and "Parties" have the meaning set forth in the introductory paragraph hereof.

"Party Representative" has the meaning set forth in section 17.1.

"Person" means an individual person, corporation, firm, association, partnership (general or limited), joint venture, limited liability company, trust, estate or other legal entity or organization.

"PJM" means the PJM Interconnection, LLC, or any successor organization.

"Pre-approved Total Capital Costs" means the amount of capital costs, as set forth in Exhibit 5.2(c), that will be included in the Fixed Project Payment of the Formula Rate to the extent that such costs are approved by the Commission, and actually incurred. The Commission's determination of the amount of Pre-approved Total Capital Costs may not be increased unless Seller requests the Commission to approve the proposed increase, and the Commission determines it is consistent with Section 1-75 of the Illinois Power Agency Act.

"Project" means the project consisting of the nominal 200 megawatt gross output Meredosia clean coal oxy-combustion electric generating station to be constructed, owned and operated by Seller located near Meredosia, Illinois as further described under "Project" in Exhibit 1.1-C (Project Description).

"Project Costs" means any and all of the demonstrable costs expended, incurred or irrevocably committed by Seller to develop, obtain and maintain permits, finance, construct, operate, and maintain the Project, Project Debt, the costs and funding of all working capital reserves, operating reserves, maintenance reserves, debt service reserves and other reserves as may be required by Lenders or the Department, the costs of implementing Seller's Cooperative Agreement, the costs of transporting, injecting and storing CO_2 produced by the Project long term, general and administrative costs of the Project, organizational and general and administrative costs of Seller required by the Project, and including all charges to Seller by any third party that expended, incurred or irrevocably committed to costs at the request of Seller for any of the above. Without limiting the foregoing, Project Costs include all of the costs attributable to the cost categories listed in Exhibit 1.1-B (Project Costs).

"Project Debt" means the obligations of Seller to any lender pursuant to the Financing Documents, including principal, premium and interest on indebtedness, fees, expenses or penalties, amounts due upon acceleration, prepayment or restructuring, swap or interest rate hedging breakage costs and any claims or interest due with respect to any of the foregoing.

"Project Equity Investor" means an investor, if any, that receives an equity interest in the Project, directly or indirectly, in exchange for its investment. An investor is not a Project Equity Investor solely as a result of issuing or being the obligee for Project Debt.

"Prudent Utility Practice" means the applicable practices, methods and acts engaged in or approved by a significant portion of the electric utility industry in the United States of America, during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment by a prudent utility operator, in light of the facts known (or that should have been known) at the time the decision was made, could have been expected to accomplish the desired result consistent with good business practices, reliability, safety, expedition and the requirements of any Applicable Law and Governmental Authority having jurisdiction.

"Public Utilities Act" means the Illinois Public Utilities Act, 220 ILCS 5/1 *et seq*.

"Rate Cap Limit" means the limit set forth in Section 1-75(d)(2) of the Illinois Power Agency Act, as now in effect or hereafter amended, on the annual estimated average net increase in the amounts paid by Eligible Retail Customers in connection with electric service due to the costs incurred pursuant to sourcing agreements with Clean Coal Facilities. As of the Effective Date of this agreement, the Rate Cap Limit is as follows:

(i) for Commonwealth Edison Eligible Retail Customers and Non-Eligible Retail Customers, $2.382 per MWh, per year;

(ii) for Ameren Illinois Eligible Retail Customers and Non-Eligible Retail Customers, $2.169 per MWh, per year; and

(iii) for customers of each ARES, the Rate Cap Limit for the utility set forth in subsections (i) and (ii) of this definition, as applicable, which provides distribution services for the customers of the ARES.

"Representative" means with respect to a particular Person, any director, officer, manager, employee, agent, consultant, advisor, accountant, financial advisor, legal counsel or other representative of that Person.

"Seller" has the meaning set forth in the introductory paragraph hereof.

"Seller Decommissioning Costs" means the reasonable costs and expenses of Seller for the removal from service of all or part of the Project, which costs include decommissioning, dismantling, demolishing, disposing of, closing or removing all or part of the Project, costs of compliance with Environmental Laws and the monitoring, security and maintenance associated with the removal from service or decommissioning of all or part of the Project.

"Seller Indemnified Person(s)" has the meaning set forth in section 13.2.

"Shortfall Damages Payment" has the meaning set forth in section 6.4(d).

"Sole Discretion" means with respect to any determination made by a Party, the sole and absolute discretion of that Party, for any reason or no reason, without regard to any standard of reasonableness or other standard by which the determination of that Party might be challenged.

"System Emergency" means the existence of a physical or operational condition or the occurrence of an event which, at the time of such occurrence or event, is: (i) imminently likely to endanger life or property, or (ii) impairs or will imminently impair the safety or reliability of the Project, the MISO System or the electric system of Buyer.

"Target Commercial Operation Date" means July 1, 2017.

"Term" has the meaning set forth in article 2.

"Termination Payment" has the meaning set forth in section 16.5(a).

"Third-Party Claim" means any claim against any Indemnified Person by a person that is not a Party to this agreement, whether or not involving a proceeding.

"Total Bundled Rate" means the total amount paid for electric service by Eligible Retail Customers for the applicable period expressed on a per kilowatt hour basis which includes without limitation amounts paid for supply, transmission, distribution, surcharges and add-on taxes.

"Total Damages Cap" has the meaning set forth in Exhibit 6.4(c).

"Total Project Capital Costs" has the meaning set forth in Exhibit 5.2(c).

"Transportation and Storage Project" means the CO_2 transportation and storage project that is to be implemented as part of the FutureGen 2.0 Program, as further described under "Transportation and Storage Project" in Exhibit 1.1-C.

"Variable Payment" has the meaning set forth in section 5.2(d)(iii).

1.2. **Rules of Interpretation.**

(a) In this agreement, unless a clear contrary intention appears:

(i) the singular number includes the plural number and vice versa;

(ii) reference to any Person includes such Person's successors and assigns but, if applicable, only if such successors and assigns are not prohibited by this agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity or individually;

(iii) reference to any gender includes each other gender;

(iv) reference to any agreement, document or instrument means that agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof;

(v) reference to any Applicable Law means such Applicable Law as amended, modified, codified, replaced or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder, and reference to any section or other provision of any Applicable Law means that provision of such Applicable Law from time to time in effect and constituting the substantive amendment, modification, codification, replacement or reenactment of such section or other provision;

(vi) "hereunder," "hereof," "hereto," and words of similar import will be deemed references to this agreement as a whole and not to any particular section or other provision hereof;

(vii) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term;

(viii) "or" is used in the inclusive sense of "and/or";

(ix) with respect to the determination of any period of time, "from" means "from and including" and "to" means "to but excluding"; and

(x) references to documents, instruments or agreements refer to all addenda, exhibits, schedules or amendments thereto.

(b) This agreement was negotiated by the Parties with the benefit of legal representation, and any rule of construction or interpretation otherwise requiring this agreement to be construed or interpreted against any Party will not apply to any construction or interpretation hereof.

2. **Term.** The term of this agreement will begin on the Effective Date and end on the date that is 30 Contract Years after the Commercial Operation Date ("Term").

3. **Conditions Precedent.**

3.1. **Conditions Precedent to Obligations of Buyer.**

(a) The following are conditions precedent to the obligations of Buyer under this agreement:

(i) Seller has obtained all Governmental Authorizations set forth in Exhibit 3.1(a)(i) required for the construction, ownership, operation and maintenance of the Project;

(ii) the Federal Energy Regulatory Commission has authorized Seller to make the sales of Net Energy contemplated by this agreement;

(iii) the Commission has approved this agreement pursuant to Section 1-75 of the Illinois Power Agency Act;

(iv) Seller has entered into a CO_2 Services Agreement or otherwise has rights sufficient for the transport and storage of CO_2 produced at the Project for a term no less than the Term of this agreement, and the Transportation and Storage Project is available to receive deliveries of CO_2 from Seller on a commercial basis;

(v) Seller has achieved Commercial Operation of the Project;

(vi) the conditions in section 3.2 have been satisfied or waived; and

(vii) Seller has certified to Buyer the achievement of each of the aforementioned conditions precedent.

(b) The conditions precedent in this section 3.1 are for the benefit of Buyer, and Buyer may waive any or all of these conditions.

3.2. **Conditions Precedent to Obligations of Seller.**

(a) The following are conditions precedent to the obligations of Seller to sell and deliver Net Energy under this agreement:

(i) Seller has obtained all Governmental Authorizations set forth in Exhibit 3.1(a)(i) required for the construction, ownership, operation and maintenance of the Project;

(ii) the Department has authorized funding for Phase III of each of Seller's Cooperative Agreements in a form reasonably satisfactory to Seller, and Seller has provided Notice to Buyer thereof;

(iii) Seller has entered into a CO_2 Services Agreement or otherwise has rights sufficient for the transport and storage of CO_2 produced at the Project for a term no less than the Term of this agreement, and the Transportation and Storage Project is available to receive deliveries of CO_2 from Seller on a commercial basis;

(iv) Seller has entered into one or more agreements (including this agreement), which together provide for the sale and delivery of the entire electrical energy output of the Project and that, as determined in the Sole Discretion of Seller, will permit recovery by Seller of all Project Costs and has provided Notice to Buyer thereof;

(v) Seller has entered into an agreement for the supply of coal fuel for the Project;

(vi) the Federal Energy Regulatory Commission has authorized Seller to make the sales of Net Energy contemplated by this agreement.

(b) The conditions precedent in this section 3.2 are for the benefit of Seller, and Seller may waive any or all of these conditions.

4. **Development, Construction and Commercial Operation.**

4.1. **Construction of Project.** Seller shall use Commercially Reasonable Efforts to design, develop, permit, finance and construct the Project materially in accordance with the project description in Exhibit 1.1-C (Project Description), and so as to allow safe and reliable generation and delivery of Net Energy for the full term of the agreement, consistent with Prudent Utility Practice. Seller may amend Exhibit 1.1-C (Project Description) by Notice to Buyer and without the consent of Buyer so long as that amendment does not materially affect the ability of Seller to perform its obligations under this agreement.

4.2. **Progress Reports and Monitoring.** On the first Day of each Month following the Effective Date until the Commercial Operation Date is achieved, Seller shall provide Buyer with summary progress reports on the development and construction of the Project. These progress reports will include, but not be limited to, a project development schedule including all major activities and milestones and the status of

these items, and other information determined pertinent by Seller in respect of its progress on development and construction of the Project. Buyer may at its sole risk and expense monitor the construction, start-up and testing of the Project and Seller shall permit that monitoring pursuant to reasonable requests of Buyer. All persons visiting the Project on behalf of Buyer shall comply with all of Seller's applicable safety and health rules and requirements**.**

4.3. **Commercial Operation.**

(a) Seller shall use Commercially Reasonable Efforts to achieve Commercial Operation of the Project no later than the Target Commercial Operation Date. Commercial Operation will be achieved on the date on which all of the following requirements have been achieved by Seller or waived in writing by Buyer, as applicable:

(i) the boiler, generator, turbine, and other associated equipment enabling the Project to deliver Net Energy in a stable, reliable, consistent and safe manner have been installed, tested and determined to be functioning properly;

(ii) Seller has obtained all Governmental Authorizations set forth in Exhibit 3.1(a)(i);

(iii) Seller has caused the Project to complete initial synchronization, to be in compliance with all aspects of the LGIA, and to meet the requirements of MISO for operating on the MISO System;

(iv) Seller has installed all equipment needed to enable metering of the Net Energy at the Delivery Point as required by this agreement and has demonstrated to Buyer's reasonable satisfaction that such equipment is fully operational; and

(v) The Project is generating power and energy and such power and energy is being delivered to the MISO system.

(b) Not more than 60, but at least 20, Days before Seller expects the Project to achieve Commercial Operation, Seller shall Notify Buyer of the expected Commercial Operation Date and that each of the conditions in section 4.3(a) has been, or will be, satisfied or waived in writing by the Parties not later than the expected Commercial Operation Date.

4.4. **Extension of Commercial Operation Date.** If Seller is unable to achieve Commercial Operation by the Outside Commercial Operation Date by reason of Force Majeure, then upon Notice to Buyer, Seller may extend the Outside Commercial Operation Date without payment or other penalty on a Day-for-Day basis for each Day of delay caused by reason of Force Majeure.

5. **Project Costs, Regulatory Review and Monthly Contract Price.**

5.1. **Project Cost Recovery.** Seller shall undertake the budgeting process described in this article 5 in order to keep Buyer apprised of Project Costs, credits and the estimated Monthly Contract Prices. Buyer acknowledges that subject to review and approval of this agreement by the Commission pursuant to section 5.2: (i) the Parties intend that, subject to the Rate Cap Limit and other than any damages payable under this agreement, the payments by Buyer under this agreement will fully compensate Seller for all Project Costs consistent with Section 1-75 of the Illinois Power Agency Act, as finally determined by Seller and approved by the Commission from time to time; (ii) the final Project Costs for development and construction of the Project will not be known until after the Commercial Operation Date; (iii) the budgets

provided under this article 5 will be used by Seller as the inputs to the Formula Rate and the basis for establishing the Monthly Contract Prices subject to review and approval of the Commission; and (iv) Seller may revise the Monthly Contract Prices from time to time based on actual Project Costs and the Formula Rate pursuant to this article 5 and review and approval of the Commission.

5.2. **Regulatory Review and Approval.**

(a) Seller shall submit this agreement to the Commission for review and approval of the agreement under Section 1-75 of the Illinois Power Agency Act; and recovery by Buyer of the Contract Price payable by Buyer. Seller shall also submit to the Commission the formula rate ("Formula Rate") that will use Seller's Contract Price Components to determine the Monthly Contract Prices. The Parties acknowledge that for each Contract Year of this agreement, the Commission will determine the Contract Price Components and the Monthly Contract Price, based on the projections submitted by Seller and the Formula Rate. Exhibit 5.2(a) sets forth an example of the Formula Rate.

(b) Seller shall request the Commission to, within 120 Days of the approval of this agreement, determine a rate of return for the Project based on a capital structure consisting of 55% debt and 45% equity, assuming a level capital recovery methodology as described in Attachment A to Exhibit 5.2(d). Seller shall request that the Commission's determination of the rate of return take into account (i) rates of return received by clean coal generation facilities similar to the Project inside or outside of Illinois; (ii) lender requirements for debt service coverage ratios; (iii) the rate that the Commission deems sufficient for the Project to attract capital; (iv) other customary financing requirements; and (v) the need to protect Illinois ratepayers. Seller shall request that the rate of return will be no lower than the weighted average authorized total rates of return of the electric utilities in accordance with their original cost rate base for their electric distribution assets as of January 1, 2013. Seller shall request that, notwithstanding the minimum rate of return established in the preceding sentence, the rate of return be no greater than the rate of return based on a 55% debt and 45% equity capital structure with cost of debt being the actual average cost, including all associated costs and fees, of the Project debt, and the cost of equity being 11.5%. Seller shall request that the rate of return for the Project be adjusted 6 Months prior to the anticipated Commercial Operation Date to account for changes in (i) the applicable 30-Year Treasury rate and (ii) the credit spread between the applicable 30-Year Treasury rate and senior unsecured debt rated "Baa3" from Moody's and "BBB-" from S&P. The rate of return will apply for the term of this agreement and will not be subject to change except for the one-time adjustment to reflect changes in the applicable 30-year Treasury rate and debt credit spreads described in this section 5.2(b).

(c) Seller shall request that the Commission, within [180] Days following the approval of this agreement, determine the amount of Pre-approved Total Capital Costs to be included in the Fixed Project Payment of the Formula Rate, in accordance with the following process:

(i) Not later than [60] Days following approval of this agreement, Seller shall submit to the Commission its estimate of the Total Project Capital Costs to be included in the Fixed Project Payment of the Formula Rate.

(ii) Seller shall request, within [60] Days following the approval of this agreement, the procurement admistrator, in consultation with the Commission staff and the Illinois Power Agency, shall submit to the Commission and Seller its estimate of the Total Project Capital Costs to be included in the Fixed Project Payment of the Formula Rate.

(iii) Seller shall request that if Seller's estimate of the Total Project Capital Costs is equal to or less than the estimate of Total Project Capital Costs submitted by the procurement administrator, then Seller's estimate of Total Project Capital Costs, less all federal grants, non-federal grants and any other non-investment contributions, be approved by the Commission as the amount of Pre-approved Total Capital Costs to be included in the Fixed Project Payment of the Formula Rate.

(iv) Seller shall request that if Seller's estimate of Total Project Capital Costs is greater than the estimate submitted by the procurement administrator, then the procurement administrator's estimate of Total Project Capital Costs, less all federal grants, non-federal grants and any other non-investment contributions, be approved by the Commission as the amount of Pre-approved Total Capital Costs to be included in the Fixed Project Payment of the Formula Rate.

(d) Not later than 9 Months before the Commercial Operation Date expected by Seller, and 120 Days before the beginning of each succeeding Contract Year, Seller shall submit to the Commission: (i) projections of its Contract Price Components; and (ii) Forecasted Total Retail Load for the Project for the next Contract Year. The Parties acknowledge that based on the projected Contract Price Components and the Forecasted Total Retail Load submitted by Seller, the Commission will determine the Monthly Contract Prices for the next Contract Year of this agreement using the Formula Rate. The Contract Price Components are:

(i) A "Fixed Project Payment," equal to all Project Costs identified as "Fixed Project Costs" in Exhibit 5.2(d), Part A, as may be amended.

(ii) A "Fixed O&M Payment," equal to all Project Costs identified as "Fixed O&M Costs" in Exhibit 5.2(d), Part B, as may be amended.

(iii) A "Variable Payment," equal to all Project Costs identified as "Variable Costs" in Exhibit 5.2(d), Part C, as may be amended.

(iv) A "Fuel Payment," equal to all Project Costs identified as "Fuel Costs" in Exhibit 5.2(d), Part D, as may be amended. Beginning in the third Contract Year and continuing through the end of the Term, the Fuel Payment will be adjusted for the Heat Rate Variance Adjustment calculated in accordance with Exhibit 5.2(d), Part D.

(v) A "Capital Replacement and Additions Payment," equal to all Project Costs identified as "Capital Replacement and Additions" in Exhibit 5.2(d), Part E, as may be amended.

(vi) A "Net Energy Sales Credit," equal to the revenue that the project generates from the sale of the Net Energy into the MISO wholesale energy market

(vii) An "Other Product Credit," equal to all Project Costs identified as "Other Product Credits" in Exhibit 5.2(d), Part F, as may be amended, which will be credited against the Fixed Project Payment.

(viii) A "Contract Price Adjustment" credit or payment equal to the difference between (i) the sum of the actual Contract Price Components in clauses 5.2(d)(i) through 5.2(d)(v), as adjusted by the Contract Price Component in 5.2(d)(vii)for each of the first eight Months of the current Contract Year and the last four Months of the prior Contract Year, as charged to Buyer; and (ii) the sum of the actual Contract Price Components in clauses 5.2(d)(i) through 5.2(d)(v), as adjusted by the

Contract Price Component in 5.2(d)(vii), for the first eight months of the Contract Year and the last four months of the prior Contract Year.

(e) Seller shall request that based on Seller's projections set forth in section 5.2(d), the Commission to approve (i) the Forecasted Total Retail Load for each Contract Month in a Contract Year; (ii) the Monthly Contract Price for each Month, each of which will be equal to the sum of the amounts set forth in clauses 5.2(d)(i) through 5.2(d)(v), as adjusted by the credits and adjustments set forth in clauses 5.2(d)(vi) through 5.2(d)(viii), for each Contract Month; and (iii) the "Monthly Clean Coal Rate," which will be equal to the Monthly Contract Prices, divided by the Forecasted Total Retail Load, for each Contract Month in the Contract Year.

(f) Buyer acknowledges and agrees that the Formula Rate and Project Cost Components approved by the Commission under those procedures that the Commission determines applicable to this agreement will be the basis for the Monthly Contract Prices payable by Buyer. Buyer and Seller shall use Commercially Reasonable Efforts to cooperate with each other in complying with any lawful review and approval requirements established by the Commission, and to obtain all lawful approvals required by the Commission for purposes of making the sales contemplated by this agreement. Buyer shall use Commercially Reasonable Efforts to support Seller's requests for approvals of Project Cost Components, the Formula Rate, and this agreement as may be required by the Commission or necessary to obtain in the judgment of Seller.

(g) The Parties acknowledge that the Commission may exclude from the Formula Rate certain advertising expenses, political activity or lobbying expenses, social club dues, or charitable contributions, to the extent that, in each case, a utility would not be permitted to recover such costs.

(h) Seller shall request the Commission to review any costs and inputs not provided for in this agreement that Seller seeks to recover through the Formula Rate.

(i) If Buyer is an Electric Utility and the Commission disallows recovery by Buyer of costs incurred under this agreement, then Buyer will not be responsible for charges under the agreement to the extent of the disallowance. Buyer shall not seek to have disallowed any costs incurred under this agreement that are allowed by the Commission to be recovered, and Buyer shall file any tariff or amend an existing tariff as may be necessary to provide for recovery of costs incurred by Buyer under this agreement and allowed by the Commission. Seller may challenge any disallowance or potential disallowance of cost-recovery under this agreement.

5.3. **Regulatory Modification of Agreement.** If after approval of this agreement by the Commission, the Commission or another Governmental Authority having jurisdiction over Buyer restricts or denies Buyer's ability to recover the costs of this agreement, then the Parties shall negotiate in good faith to amend this agreement or enter into a new agreement in order to preserve to the maximum extent practical the ability of Seller to receive Buyer's proportionate share of the Project Costs.

5.4. **Dodd-Frank Act.** The Parties acknowledge that it is their intent that Net Energy be physically delivered by Seller to the Delivery Point in accordance with the terms of this agreement, and that such delivery is an essential part of the bargain entered into by Buyer pursuant to this agreement. If as a result of this agreement a Party becomes subject to the provisions of the Dodd-Frank Act (Pub. L. No. 111–203, July 21, 2010) regulating "swaps" (as defined in the Dodd-Frank Act and implementing regulations), and

such statutory provisions or regulations significantly affect the allocation of benefits and burdens reflected in this agreement, the Parties will negotiate to amend this agreement to maintain the balance of benefits to and obligations of the Parties under this agreement. Any such amendment will maintain the requirement that Buyer will compensate Seller for its proportionate share of all costs associated with constructing, owning, operating and maintaining the Project as set forth in this agreement.

5.5. **Standard of Review.** Absent the express agreement of the Parties to the proposed change, the standard of review for changes to this contract proposed by a Party, a non-party or FERC acting *sua sponte* will be the "public interest" application of the "just and reasonable" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Services Corp.*, 350 U.S. 332 (1956), and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) and clarified by *Morgan Stanley Capital Group, Inc. v. Public Utility District No. 1 of Snohomish*, 554 U.S. 527 (2008) and *NRG Power Marketing, LLC v. Maine Public Utility Commission*, 558 U.S. 165 (2010) (the "*Mobile-Sierra*" doctrine).

5.6. **Amendment of Contract Price.** Subject to any requirements of the Commission from time to time, Seller may change the Contract Price, or any component thereof, based on actual Project Costs incurred or projected to be incurred by Seller.

6. **Purchase and Sale.**

6.1. **Net Energy.** Beginning on the Commercial Operation Date and continuing through the end of the Term, Seller shall deliver the Net Energy produced by the Project to the Delivery Point, and Buyer shall pay for such Net Energy; provided that the obligations of the Parties in this section 6.1 will be settled financially as provided in section 6.2.

6.2. **Payment Process.**

(a) Payment for Seller's sale of Net Energy will be accomplished using the mechanism set forth in this section 6.2.

(b) Buyer hereby authorizes the Electric Utility that provided distribution service to Buyer's customers, or an affiliate of that Electric Utility, to release to Seller the Initial Buyer Retail Sales data within 15 Days of the end of each Contract Month, and the Final Buyer Retail Sales data within 110 Days of the end of each Contract Month 4 months prior; which information will be the same information as settled by MISO or PJM, as applicable.

(c) For each Contract Month just ended, Seller shall calculate and provide to Buyer, and Buyer shall pay Seller:

(i) The "Initial Settlement Payment," which will be equal to the product of (1) the Monthly Clean Coal Rate multiplied by (2) the Initial Buyer Retail Sales for the Contract Month just ended.

(ii) The "Final Settlement Payment," which will be equal to the product of (1) the Monthly Clean Coal Rate for the fourth Contract Month preceding the Contract Month just ended, calculated using the actual Net Energy Sales Credit for the fourth Contract Month preceding the Contract Month just ended, multiplied by (2) the Final Buyer Retail Sales for the fourth Contract Month preceding the Contract Month just ended.

(iii) If the Final Settlement Payment is greater than the Initial Settlement Payment, then Buyer shall pay Seller the difference. If the Final Settlement Payment is less than the Initial Settlement Payment, then Seller shall pay Buyer the difference.

(d) In the event that MISO or PJM publishes revised Hourly Day-Ahead Energy Market Locational Marginal Prices after the Final Settlement Payment for the applicable Contract Month has been paid, those revised prices will be used to recalculate applicable prior Final Settlement Payments, with interest accruing at the Interest Rate; except that in no event will Final Settlement Payments be adjusted under this section 6.2(d) as a result of revisions to Hourly Day-Ahead Energy Market Locational Marginal Prices that are published after the period ending 24 Months after the applicable Contract Month. Seller shall reflect all recalculations made under this section 6.2(d) in its invoice for the Contract Month following the completion of the recalculation.

(e) No provision of this agreement or its submission to the Commission's jurisdiction limits the ability of a Party to challenge any disallowance by the Commission of Buyer's recovery of costs of this agreement, or to assert any claim of federal preemption in relation to such disallowance.

6.3. **Contract Price Limitation.**

(a) Not later than 60 Days before the end of each Contract Year, Seller shall determine and submit to Buyer and the Commission its determination whether the Monthly Clean Coal Rate for the next Contract Year, excluding any penalties or other payments to Seller, would result in an estimated average incremental rate increase for Buyer's customers for the next Contract Year greater than the applicable Rate Cap Limit. If for any Contract Year Seller determines that the Monthly Clean Coal Rate would result in an average incremental rate increase greater than the applicable Rate Cap Limit, then the Monthly Clean Coal Rate for each Contract Month in the next Contract Year will be adjusted downward in a manner pro-rata across all Contract Months so that the Monthly Clean Coal Rate does not result in an estimated average incremental rate increase greater than the applicable Rate Cap Limit. The adjusted Monthly Clean Coal Rates for the next Contract Year will be utilized to calculate the Initial Settlement Payment and Final Settlement Payment for each Contract Month in the next Contract Year as determined in section 6.2(c). An example of this determination is attached as Exhibit 6.3(b).

(b) Not later than 110 Days following the end of each Contract Year, Seller shall determine whether the Monthly Clean Coal Rate for the immediately preceding Contract Year, excluding any penalties or other payments to Seller, resulted in an estimated average incremental rate increase for Buyer's customers for the applicable Contract Year greater than or less than the applicable Rate Cap Limit. If the Monthly Clean Coal Rate results in a rate exceeding the applicable Rate Cap Limit, then Seller shall refund to Buyer an amount equal to the difference between the Monthly Clean Coal Rate and the applicable Rate Cap Limit, multiplied by Buyer's total annual Final Buyer Retail Sales. An example of this determination is attached in Exhibit 6.3(b).

6.4. **Minimum Annual Energy.**

(a) Beginning on the Commercial Operation Date and continuing through the end of the Term, for each Contract Year, Seller shall use Commercially Reasonable Efforts to deliver the Minimum Annual Energy to the MISO wholesale energy market.

(b) For any period during which Seller is unable to deliver Net Energy due to Force Majeure or a System Emergency, for the purpose of determining the delivery of the Mininimum Annual Energy, Seller will be deemed to have been delivering Net Energy at a rate equivalent to the Monthly average of the Net Energy deliveries that occur during the Contract Month immediately following the Contract Month in which the condition preventing Seller from delivering Net Energy concludes.

(c) Beginning in the third Contract Year and continuing through the end of the Term, if Seller fails to deliver the Minimum Annual Energy for 2 consecutive Contract Years, then Seller shall determine the amount by which the sum of Minimum Annual Energy for those 2 Contract Years exceeds the sum of the Net Energy actually delivered in those 2 Contract Years, and that difference will be the "Minimum Energy Shortfall" applicable to the 2 Contract Years. Seller may remedy the Minimum Energy Shortfall by delivering, at any time during the following 2 Contract Years, Net Energy in a total amount that exceeds the Minimum Annual Energy for the applicable Contract Year, by crediting against the Minimum Energy Shortfall the excess of Net Energy delivered in the Contract Year above the Minimum Annual Energy for that Contract Year.

(d) If Seller fails to fully remedy a Minimum Energy Shortfall as provided in section 6.4(c) by the end of the second Contract Year following the 2 Contract Years for which there was an unremedied Minimum Energy Shortfall, then for that Contract Year and the subsequent Contract Year, Buyer may reduce each Contract Month's Initial Settlement Payment to Seller as determined in accordance with section 6.4(c) (such reduction is referred to herein as "Shortfall Damages Payment"); except that payments under this agreement will not be reduced under this section 6.4(d) in any Contract Year in excess of the amount of the Annual Damages Cap, and payments under this agreement will not be reduced under this section 6.4(d) if the Total Damages Cap for the Term has been reached.

6.5. **End of Term True-Up.** Within 60 Days of the end of the Term, Seller shall provide for review and approval a determination of the final Contract Price Adjustment and Shortfall Damages Payment, given the Rate Cap Limit. The net amount determined by the Commission shall be paid by the Party owing the obligation to the other Party in a manner and over a period of time determined by the Commission.

6.6. **Additional Obligations.**

(a) The obligation of Seller to make available Net Energy pursuant to this agreement is on an as-generated, unit contingent basis, and Seller's failure to make available Net Energy will not give Buyer the right to any damages, other than as specifically set forth in section 6.4. Without limiting the foregoing:

(i) Seller shall provide Buyer with reasonable advance Notice of project maintenance that will reduce delivered Net Energy; and

(ii) Seller shall provide Notice of any reduction in delivery of Net Energy due to a forced outage or based on any other transmission provider or MISO notice to reduce or discontinue deliveries from the Project pursuant to the terms of the LGIA or applicable tariff that will reduce the output of the Project by more than 25%. Seller's Notice shall include the expected duration, if known, of such reduction or termination of deliveries.

(b) Notwithstanding anything to the contrary in this agreement, Seller shall have no obligation to make Net Energy available for any period: (i) in which Seller's obligation to make Net Energy available

is suspended pursuant to section 16.4; or (ii) in which either Party's obligations are suspended due to Force Majeure.

(c) If Buyer is an Electric Utility, then not later than [6] Months before the Commercial Operation Date expected by Seller, and thereafter 30 Days before the start of each Contract Year, Buyer shall provide to the Seller a Forecasted Total Retail Load for the next Contract Year.

(d) Seller shall make Commercially Reasonable Efforts to sell Other Products, except to the extent that such sale efforts conflict with Seller's obligation to deliver Net Energy under this agreement; any other obligation of Seller under this agreement; Seller's Cooperative Agreement; or Applicable Law.

6.7. **Title and Risk of Loss.** As between the Parties, Seller will be deemed to be in control of Net Energy from the Project up to and until delivery at the Delivery Point. Buyer will not receive title to or assume any risk of loss with respect to the Net Energy, the purchase and sale of which will be settled financially pursuant to section 6.1.

7. **Billing and Payment.**

7.1. **Billing Period and Invoices.** The billing period is the Contract Month. Seller shall issue to Buyer an invoice for each Contract Month, setting forth in each such invoice:

(a) the metered quantities of Net Energy delivered by Seller to the Delivery Point;

(b) the Initial Settlement Payment for the Contract Month;

(c) the Final Settlement Payment for the Contract Month 4 months prior;

(d) any additional amount owing or credit determined pursuant to section 6.3(b); and

(e) any additional amount owing or credit determined pursuant to section 6.4(d).

7.2. **Invoicing and Payment.** Seller shall invoice Buyer for each Contract Month within 30 Days after the last Day of that Contract Month, and Buyer shall pay this invoice not later than 15 Days after receipt of the invoice. Buyer will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by Seller. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, that interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

7.3. **Billing Disputes.** Either Party may dispute invoiced amounts with respect to any bill during the period ending 24 Months after the relevant Contract Month. Alleged or actual billing errors that are not disputed under this section 7.3 within the period prescribed are waived. A Party disputing a bill shall pay to the other Party both the undisputed and the disputed portions of invoiced amounts on or before the invoice due date. To resolve any billing dispute, the Parties shall use the procedures set forth in section 17. When the billing dispute is resolved, the Party owing shall pay the amount owed within 5 Business Days of the date of that resolution, with late payment interest charges calculated on the amount owed in accordance with the provisions of section 7.2.

8. **Transmission, Scheduling, Dispatch and Operation.**

8.1. **Designation of Scheduling Coordinator.** Seller may designate a scheduling coordinator for the Project, and may instruct the scheduling coordinator to request to dispatch the Project as frequently and at the highest level of production consistent with applicable MISO rules.

8.2. **Operating Procedures.** Seller shall staff, control, and operate the Project consistent at all times with Prudent Utility Practices. Seller personnel capable of starting, operating, and stopping the Project shall be continuously available at the Project.

8.3. **Outages Schedules.** At least 90 Days before Commercial Operation, and at least 90 Days before the beginning of each Contract Year, Seller shall provide Buyer with a non-binding planned outage schedule for the forthcoming Contract Year.

9. **Metering.** Seller shall use data published by MISO as to the quantity of electric energy delivered by the Project to the Delivery Point, for purposes of establishing the Net Energy delivered by the Project for purposes of this agreement.

10. **Compliance with Applicable Laws; Governmental Authorizations.**

10.1. **Compliance with Applicable Laws.** Each Party shall at all times comply with all Applicable Laws except for any non-compliance that, individually or in the aggregate, could not reasonably be expected to have a material adverse effect on the ability of the non-complying Party to perform its obligations under this agreement.

10.2. **Regulatory Cooperation.** Each Party shall deliver or cause to be delivered to the other Party certificates of its officers, accountants, engineers or agents as to such matters as may be reasonably requested in order to fulfill any regulatory reporting requirements with respect to this agreement.

10.3. **Governmental Authorizations.** Seller shall use Commercially Reasonable Efforts to obtain and maintain all Governmental Authorizations necessary to construct, operate and maintain the Project in accordance with its obligations under this agreement, and shall pay its respective charges and fees in connection therewith.

11. **[Reserved]**

12. **Representations and Warranties.**

12.1. **Buyer's Representations, Warranties and Covenants.** Buyer hereby represents and warrants as follows:

(a) Buyer is a [_____] duly organized, validly existing and in good standing under the laws of the State of [_____]. Buyer is qualified to do business in each other jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Buyer; and Buyer has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this agreement.

(b) The execution, delivery, and performance of its obligations under this agreement by Buyer have been duly authorized by all necessary corporate action, and do not and will not:

(i) require any consent or approval by any governing body of Buyer, other than that which has been obtained and is in full force and effect;

(ii) violate any Applicable Law, or violate any provision in any formation documents of Buyer, the violation of which could have a material adverse effect on the ability of Buyer to perform its obligations under this agreement;

(iii) result in a breach or constitute a default under Buyer's formation documents or bylaws, or under any agreement relating to the management or affairs of Buyer or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which Buyer is a party or by which Buyer or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under this agreement; or

(iv) result in, or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than as may be contemplated by this agreement) upon or with respect to any of the assets or properties of Buyer now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under this agreement.

(c) This agreement is a valid and binding obligation of Buyer.

(d) The execution and performance of this agreement will not conflict with or constitute a breach or default under any contract or agreement of any kind to which Buyer is a party or any judgment, order, statute, or regulation that is applicable to Buyer, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under this agreement.

12.2. **Seller's Representations, Warranties and Covenants.** Seller hereby represents and warrants as follows:

(a) Seller is a [non-profit corporation duly organized, validly existing and in good standing under the laws of the State of Delaware]. Seller is qualified to do business in each other jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller; and Seller has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this agreement.

(b) The execution, delivery, and performance of its obligations under this agreement by Seller have been duly authorized by all necessary corporate action, and do not and will not:

(i) require any consent or approval by any governing body or shareholders of Seller, other than that which has been obtained and is in full force and effect;

(ii) violate any Applicable Law, or violate any provision in any corporate documents of Seller, the violation of which could have a material adverse effect on the ability of Seller to perform its obligations under this agreement;

(iii) result in a breach or constitute a default under Seller's corporate charter or bylaws, or under any agreement relating to the management or affairs of Seller, or any indenture or loan or credit

agreement, or any other agreement, lease, or instrument to which Seller is a party or by which Seller or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this agreement; or

(iv) result in, or require the creation or imposition of, any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than as may be contemplated by this agreement) upon or with respect to any of the assets or properties of Seller now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this agreement.

(c) This agreement is a valid and binding obligation of Seller.

(d) The execution and performance of this agreement will not conflict with or constitute a breach or default under any contract or agreement of any kind to which Seller is a party or any judgment, order, statute, or regulation that is applicable to Seller.

13. **Indemnification.**

13.1. **Indemnification of Buyer by Seller.** Seller shall indemnify and hold harmless Buyer, and its Representatives and Affiliates (collectively, the "Buyer Indemnified Persons"), and will reimburse Buyer Indemnified Persons for any loss, liability, claim, damage, expense (including costs of investigation and defense and reasonable attorneys' fees and expenses) involving a Third-Party Claim (collectively, "Damages") arising from, or related to, any personal injury or death to Persons and damage to any Person's real property and tangible personal property or facilities, or the property of any other Person to the extent arising from, or related to, breach of a representation or warranty given in this agreement, an Event of Default under this agreement, violation of any Applicable Laws or Governmental Authorizations, or by the gross negligence of Seller, its Affiliates, directors, officers, employees, or agents. Nothing in this section 13.1 will enlarge or relieve Seller of any liability to Buyer Indemnified Persons for any breach of this agreement. This indemnification obligation will apply notwithstanding any negligent or intentional acts, errors or omissions of a Buyer Indemnified Person, but Seller's liability to pay Damages to a Buyer Indemnified Person will be reduced in proportion to the percentage by which that Buyer Indemnified Person's negligent or intentional acts, errors or omissions caused the Damages. Seller is not required to indemnify a Buyer Indemnified Person for its Damages resulting from that Buyer Indemnified Person's sole negligence, intentional acts or willful misconduct. These indemnity provisions will not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

13.2. **Indemnification of Seller by Buyer.** Buyer shall indemnify and hold harmless Seller, and its Representatives and Affiliates (collectively, the "Seller Indemnified Persons"), and will reimburse Seller Indemnified Persons for any Damages arising from, or related to, any personal injury or death to Persons and damage to any Person's real property and tangible personal property or facilities, or the property of any other Person to the extent arising from, or related to, breach of a representation or warranty given in this agreement, an Event of Default under this agreement, violation of any Applicable Laws or Governmental Authorizations, or by the gross negligence of Buyer, its Affiliates, directors, officers, employees, or agents. Nothing in this section 13.2 will enlarge or relieve Buyer of any liability to Seller Indemnified Persons for any breach of this agreement. This indemnification obligation will apply notwithstanding any negligent or intentional acts, errors or omissions of Seller Indemnified Persons, but

Buyer's liability to pay Damages to a Seller Indemnified Person will be reduced in proportion to the percentage by which that Seller Indemnified Person's negligent or intentional acts, errors or omissions caused the Damages. Buyer is not required to indemnify a Seller Indemnified Person for its Damages resulting from that Seller Indemnified Person's sole negligence, intentional acts or willful misconduct. These indemnity provisions will not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

13.3. **Third-Party Claims.**

(a) Promptly after receipt by a Person entitled to indemnity under this article 13 (an "Indemnified Person") of notice of the assertion of a Third-Party Claim against it, such Indemnified Person shall give Notice to the Person obligated to indemnify under this article 13 (an "Indemnifying Person") of the assertion of such Third-Party Claim, provided that the failure to Notify the Indemnifying Person will not relieve the Indemnifying Person of any liability that it may have to any Indemnified Person, except to the extent that the Indemnifying Person demonstrates that the defense of such Third-Party Claim is prejudiced by the Indemnified Person's failure to give such Notice.

(b) If an Indemnified Person gives Notice to the Indemnifying Person pursuant to section 13.3(a) of the assertion of a Third-Party Claim, the Indemnifying Person will be entitled to participate in the defense of that Third-Party Claim and, to the extent that it wishes (unless (i) the Indemnifying Person is also a Person against whom the Third-Party Claim is made and the Indemnified Person determines in good faith that joint representation would be inappropriate or (ii) the Indemnifying Person fails to provide reasonable assurance to the Indemnified Person of its financial capacity to defend such Third-Party Claim and provide indemnification with respect to that Third-Party Claim), to assume the defense of that Third-Party Claim with counsel satisfactory to the Indemnified Person. After Notice from the Indemnifying Person to the Indemnified Person of its election to assume the defense of that Third-Party Claim, the Indemnifying Person shall not, so long as it diligently conducts the defense, be liable to the Indemnified Person under this article 13 for any fees of other counsel or any other expenses with respect to the defense of the Third-Party Claim, in each case subsequently incurred by the Indemnified Person in connection with the defense of the Third-Party Claim, other than reasonable costs of investigation. If the Indemnifying Person assumes the defense of a Third-Party Claim, (i) that assumption will conclusively establish for purposes of this agreement that the claims made in that Third-Party Claim are within the scope of and subject to indemnification, and (ii) no compromise or settlement of the Third-Party Claims may be effected by the Indemnifying Person without the Indemnified Person's consent unless (A) there is no finding or admission of any violation of Applicable Law or any violation of the rights of any Person; (B) the sole relief provided is monetary damages that are paid in full by the Indemnifying Person; and (C) the Indemnified Person will have no liability with respect to any compromise or settlement of the Third-Party Claims effected without its consent. If Notice is given to an Indemnifying Person of the assertion of any Third-Party Claim and the Indemnifying Person does not, within 10 Days after the Indemnified Person's Notice is given, give Notice to the Indemnified Person of its election to assume the defense of the Third-Party Claim, the Indemnifying Person will be bound by any determination made in the Third-Party Claim or any compromise or settlement effected by the Indemnified Person.

(c) Notwithstanding the foregoing, if an Indemnified Person determines in good faith that there is a reasonable probability that a Third-Party Claim may adversely affect it or its Affiliates other than as a result of monetary damages for which it would be entitled to indemnification under this agreement,

the Indemnified Person may, by Notice to the Indemnifying Person, assume the exclusive right to defend, compromise or settle such Third-Party Claim, but the Indemnifying Person will not be bound by any determination of any Third-Party Claim so defended for the purposes of this agreement or any compromise or settlement effected without its consent (which may not be unreasonably withheld).

(d) With respect to any Third-Party Claim subject to indemnification under this article 13: (i) both the Indemnified Person and the Indemnifying Person, as the case may be, shall keep the other Person fully informed of the status of such Third-Party Claim and any related proceedings at all stages thereof where that Person is not represented by its own counsel, and (ii) the Parties agree (each at its own expense) to render to each other such assistance as they may reasonably require of each other and to cooperate in good faith with each other in order to ensure the proper and adequate defense of any Third-Party Claim.

(e) With respect to any Third-Party Claim subject to indemnification under this article 13, the Parties agree to cooperate in such a manner as to preserve in full (to the extent possible) the confidentiality of all confidential information and the attorney-client and work-product privileges. In connection therewith, each Party agrees that: (i) it will use its Commercially Reasonable Efforts, in respect of any Third-Party Claim in which it has assumed or participated in the defense, to avoid production of confidential information (consistent with Applicable Law and rules of procedure), and (ii) all communications between any Party hereto and counsel responsible for or participating in the defense of any Third-Party Claim will, to the extent possible, be made so as to preserve any applicable attorney-client or work-product privilege.

14. **Credit Support.**

14.1. **Credit Annex.** The credit and security rights and obligations of the Parties are set forth in the Credit Annex attached as Exhibit 14, which is specifically incorporated into this agreement.

14.2. **Notice and Time for Establishing Credit Support.** Seller shall Notify Buyer at least 45 Days before the date that Seller estimates Financial Close to occur, and Buyer shall establish the Credit Support required by section 14.1 and Exhibit 14 at least 30 Days prior to Seller's estimated date of Financial Close; except that Public Utilities with a legal duty to serve under the Public Utilities Act and which are allowed to recover the cost of this agreement from such customers are not required to establish Credit Support.

15. **Early Termination.**

15.1. **Early Termination Rights of Seller.**

(a) Seller may terminate this agreement at any time upon Notice to Buyer, if:

(i) the laws in effect, or adopted but not yet in effect, as of the execution of this agreement change in such a way as to require additional capital expenditures or make continued operation of the Project in the manner anticipated by Seller as of the execution of this agreement materially more expensive or burdensome; or

(ii) the Department terminates or ceases funding one or both Cooperative Agreements.

(b) If Seller terminates this agreement due to an event set forth in this section 15.1 neither Party will have any further liability to the other Party except for liabilities that have accrued prior to the Notice of termination.

15.2. **Termination Rights of Buyer.** Buyer may terminate this agreement at any time upon Notice to Seller if the Project fails to achieve Commercial Operation by the Outside Commercial Operation Date, as may be extended pursuant to this agreement. If Buyer terminates this agreement solely for the reasons set forth in this section 15.2, then it will have no liability for the Termination Payment.

16. **Default and Remedies.**

16.1. **Events of Default of Either Party.**

(a) Any of the following events will be an Event of Default ("Event of Default") of either Party, each of which will be an Event of Default upon its occurrence and no cure period will apply:

(i) A Party fails to maintain adequate security in accordance with the provisions of this agreement.

(ii) A Party files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law;

(iii) A Party makes an assignment or any general arrangement for the benefit of creditors;

(iv) A Party otherwise becomes bankrupt or insolvent, however evidenced;

(v) A Party has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets; or

(vi) A Party is generally unable to pay its debts as they fall due.

(b) Any of the following will constitute an Event of Default of a Party upon its occurrence, but will be subject to cure within 60 Days after the date of Notice from the other Party:

(i) Any representation or warranty made by a Party in this agreement proves to have been false or misleading in any material respect when made and that failure would reasonably be expected to result in a material adverse impact on the other Party; and

(ii) An involuntary case in bankruptcy or any proceeding under any other insolvency law is filed against a Party as debtor; provided, however, that that Party does not obtain a stay or dismissal of the filing within the cure period.

(c) A Party's failure to make any payment due to the other Party under or in connection with this agreement will be an Event of Default of that Party upon its occurrence, but will be subject to cure within 5 Business Days after the date of Notice from the other Party.

(d) A Party's failure to comply with any other material obligation under this agreement will be an Event of Default of that Party upon its occurrence, but will be subject to cure within 30 Days after the date of Notice from the other Party.

16.2. **Lender's Right to Cure Default of Seller; Lender Consent.**

(a) Seller shall provide Buyer with a Notice identifying the Project Lender and providing appropriate contact information for the Project Lender. Following receipt of that Notice, Buyer shall provide Notice of any Event of Default of Seller to the Project Lender, and Buyer will accept a cure to an Event of Default of Seller performed by the Project Lender. In addition to the other cure periods provided to Seller in section 16.1, the Project Lender will have an additional 90 Days to cure any Event of Default.

(b) To facilitate Seller obtaining financing to construct and operate the Project, Buyer shall provide those consents to collateral assignment, certifications, representations, information or other documents as may be reasonably requested by Seller or the Project Lender in connection with the financing of the Project (generally, a "Lender Consent"). The Lender Consent will include the provisions set forth on Exhibit 16.2(b) and such other terms as the Project Lender may reasonably request. Seller shall be responsible for the incremental direct expenses incurred by Seller and Buyer in the preparation, negotiation, execution and/or delivery of any documents requested by the Project Lender, and provided by either Party, pursuant to this subsection.

16.3. **Remedies upon Event of Default.** Subject to the limitations on damages and remedies set forth in this agreement, for all Events of Default, the non-defaulting Party will be entitled to receive from the defaulting party all of the damages incurred by the non-defaulting Party in connection with that Event of Default; except that if an Event of Default has occurred and has continued uncured for a period of 365 Days, the non-defaulting Party shall either waive its right to collect further damages on account of such Event of Default or terminate this agreement as provided for in section 16.4.

16.4. **Termination.**

(a) Upon the occurrence of an Event of Default that has not been cured within the applicable cure period, the non-defaulting Party may declare a date, which will be between 15 and 30 Days after the Notice thereof, upon which this agreement will terminate.

(b) In connection with establishing a termination date under this section 16.4, the non-defaulting Party will have the right to accelerate the amounts owed it by the defaulting party under this agreement, to withhold any payments due to the defaulting Party under this agreement, and to suspend performance under this agreement.

(c) Neither Party has the right to terminate this agreement except as provided for upon the occurrence of an Event of Default as described above or as otherwise may be explicitly provided for in this agreement. If Seller is the non-defaulting party, it will be entitled to receive only the Termination Payment. Upon the termination of this agreement based solely on an Event of Default of Seller, Buyer will be entitled to receive from Seller, subject to the limitation on damages set forth in sections 16.7 and 16.8, all of the damages incurred by Buyer in connection with that termination.

16.5. **Termination Payment.**

(a) If a Termination Payment ("Termination Payment") is owed by Buyer, it will be computed by multiplying a fraction the numerator of which is the total of the Monthly Final Buyer Retail Sales for the 12 Month period immediately preceding the Month in which the termination occurs, and the denominator of which is the total of the Final Total Retail Load for the same period, by the sum of:

(i) the Total Project Capital Costs through the date on which the termination is effective; plus

(ii) all Cancellation Costs;

(iii) all Seller Decommissioning Costs; less

(iv) all Project Costs paid by Seller with contributions to Seller from Alliance Member Companies; less

(v) all Project Costs paid by Seller with funds received by Seller [and its Affiliates] from the Department pursuant to a Cooperative Agreement; less

(vi) all amounts paid by other purchasers of Project output in respect of Project Costs, Cancellation Costs and Seller Decommissioning Costs; less

(vii) all amounts paid by Buyer in respect of Project Costs, Cancellation Costs and Seller Decommissioning Costs before the date on which the termination is effective; less

(viii) revenues from the sale of Net Energy, and Other Products Credits.

(b) Seller shall provide Buyer with a reasonably detailed invoice setting forth the bases for the Termination Payment. Buyer shall pay Seller the Termination Payment within 30 Days of receipt of the invoice from Seller. If Buyer disputes the termination payment, then Seller shall deposit the Termination Payment in an escrow account reasonably satisfactory to Buyer pending resolution of the dispute.

16.6. **Remedies Cumulative.** Each right or remedy of the Parties provided for in this agreement is cumulative of and is in addition to every other right or remedy provided for in this agreement, and the exercise, or the beginning of the exercise, by a Party of any one or more of the rights or remedies provided for herein will not preclude the simultaneous or later exercise by that Party of any or all other rights or remedies provided for herein.

16.7. **Limitation of Liability.** The Parties acknowledge that the express remedies and measures of damages provided in this agreement satisfy the essential purposes hereof. If no remedy or measure of damages is expressly herein provided, the obligor's liability will be limited to direct, actual damages only. Neither Party will be liable to the other Party for consequential, incidental, punitive, exemplary or indirect damages, lost profits or other business interruption damages by statute, in tort or contract (except to the extent expressly provided herein); except that if either Party is held liable to a third party for those damages and the Party held liable for those damages is entitled to indemnification therefore from the other Party hereto, the indemnifying Party will be liable for, and obligated to reimburse the indemnified Party for, those damages. To the extent any damages required to be paid hereunder are liquidated, 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 harm or loss. No Alliance Member Company or Affiliate of Seller will have any liability under this agreement.

16.8. **Duty to Mitigate.** Each Party shall use Commercially Reasonable Efforts to mitigate any damages it may incur as a result of the other Party's performance or non-performance of this agreement.

17. **Dispute Resolution.** In the event of any dispute arising under this agreement (a "Dispute"), within 10 Days following the delivered date of a written request by either Party (a "Dispute Notice"), (i) each Party shall appoint a representative (individually, a "Party Representative", and together, the "Parties' Representatives"), and (ii) the Parties' Representatives shall meet, negotiate and attempt in good faith to resolve the Dispute quickly, informally and inexpensively. In the event the Parties' Representatives cannot resolve the Dispute within 30 Days after commencement of negotiations, then within 10 Days following any request by either Party at any time thereafter, each Party Representative (i) shall independently prepare a written summary of the Dispute describing the issues and claims, (ii) shall exchange its summary with the summary of the Dispute prepared by the other Party Representative, and (iii) shall submit a copy of both summaries to a senior officer of the Party Representative's Party with authority to irrevocably bind the Party to a resolution of the Dispute. Within 10 Business Days after receipt of the Dispute summaries, the senior officers for both Parties shall negotiate in good faith to resolve the Dispute. If the Parties are unable to resolve the Dispute within 14 Days following receipt of the Dispute summaries by the senior officers, either Party may seek available legal remedies. Notwithstanding any provision in this agreement to the contrary, if no Dispute Notice has been issued within 24 Months following the occurrence of all events and the existence of all circumstances giving rise to the Dispute (regardless of the knowledge or potential knowledge of either Party of such events and circumstances), then the Dispute and all claims related thereto will be deemed waived and the aggrieved Party will thereafter be barred from proceeding thereon.

18. **Force Majeure.**

18.1. **Force Majeure.**

(a) The term "Force Majeure" means any event beyond Seller's reasonable control and that is not due to Seller's negligence or non-compliance with Applicable Law. An event of Force Majeure may include, but is not limited to flood, drought, earthquake, unusually severe weather, fire, lightning, or other Acts of God; epidemic; war; riot; civil disturbance or disobedience; sabotage; restraint by a Governmental Authority; expropriation; a failure by Seller to obtain required permits or approvals, or renewal of required permits or approvals, provided Seller has taken diligent action to obtain them; failure or breakdown of the Project that is not due to Seller's failure to operate and maintain the Project in accordance with Prudent Utility Practices; an Emergency affecting the Project; a System Emergency; a Force Majeure event affecting a fuel supplier; or failure of transmission facilities.

(b) Notwithstanding section 18.1(a), the term Force Majeure does not include (i) acts or omissions of any third party, including any vendor, material man, customer, or supplier, unless such acts or omissions are themselves are the result of Force Majeure; and (ii) changes in market conditions that affect the cost of supplies, or that affect demand or price for power, CO_2 or Environmental Attributes.

18.2. **Applicability of Force Majeure.** Seller will not be responsible or liable for any delay or failure in its performance under this agreement, and no delay, failure, or other occurrence or event will become an Event of Default, to the extent such delay, failure, occurrence or event is caused by Force Majeure, provided that:

(a) Seller gives Buyer prompt Notice describing the particulars of the occurrence of the Force Majeure; except that if the nature of the event of Force Majeure is such that Notice cannot be immediately given, then Seller shall provide verbal notice, the effectiveness of which will be subject to Buyer confirming receipt thereof as soon as practicable;

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

(c) Seller proceeds with reasonable diligence to remedy its inability to perform and provides progress reports to the other Party describing actions taken to end the Force Majeure; and

(d) when Seller is able to resume performance of its obligations under this agreement, Seller shall give Buyer Notice to that effect; except that if the nature of the event of Force Majeure is such that Notice cannot be immediately given, then Seller shall provide verbal notice, the effectiveness of which will be subject to the other Party confirming receipt thereof as soon as practicable.

18.3. **Certain Exceptions.** Except as otherwise expressly provided for in this agreement, the existence of a condition or event of Force Majeure will not relieve Seller of: (i) other obligations under this agreement to the extent that performance of those obligations is not precluded by the condition or event of Force Majeure; and (ii) obligations to make payments under this agreement.

18.4. **Termination of Agreement for Extended Force Majeure.** In the event that any delay or failure of performance caused by a condition or event of Force Majeure affecting Seller continues for an uninterrupted period of 18 Months from its inception, then either Party may, at any time following the end of the 18 Month period, terminate this agreement upon Notice to the other Party. If this agreement is terminated pursuant to this section 18.4, neither party will have liability in respect of the termination.

19. **Taxes.** Subject to the other provisions of this article 19, Seller shall pay or cause to be paid all taxes and assessments imposed on Seller with respect to the Net Energy delivered hereunder prior to the Delivery Point. Buyer shall pay or cause to be paid all taxes and assessments, if any, imposed on Buyer with respect to this agreement.

20. **Assignments.** Seller may assign this agreement without the consent of Buyer as security for purposes of securing Project Debt, to an Affiliate, or in connection with a merger, consolidation, disposition or sale of the Project or substantially all of the assets of Seller. Buyer may assign this agreement to an Affiliate or in connection with a merger, consolidation, disposition, or sale of substantially all of the assets of Buyer without the prior consent of Seller, subject to the assignee or surviving entity meeting the creditworthiness requirements otherwise applicable to Buyer pursuant to article 14.

21. **Successors and Assigns.** This agreement will bind and benefit the Parties hereto and their successors and permitted assigns; provided that no conveyance or transfer of any interest of either Party will relieve a Party of any obligation to the other Party unless and until a Party's successors or assigns are approved in writing by the other Party which consent will be in the consenting Party's Sole Discretion.

22. **Notices.**

22.1. **Delivery.** Each Party giving or making any Notice, request, demand or other communication pursuant to this agreement (each, a "Notice") shall:

(a) give the Notice in writing; and

(b) use one of the following methods of delivery, each of which for purposes of this agreement is a writing: personal delivery; registered or certified mail, in each case, return receipt requested and postage prepaid; nationally recognized overnight courier, with all fees prepaid; facsimile; or e-mail.

22.2. **Addressees and Addresses.** Each Party giving a Notice shall address the Notice to the appropriate Person at the receiving party (the "Addressee") at the address listed in Exhibit 22.2 or at another address as designated by a Party in a Notice pursuant to this section 22.2.

22.3. **Effectiveness of a Notice.** Except as provided elsewhere in this agreement, a Notice is effective only if the Party giving the Notice has complied with this article 22, and if the Addressee has received the Notice. A Notice is deemed to have been received as follows:

(a) if a Notice is delivered in person, or sent by registered or certified mail or nationally recognized overnight courier, upon receipt as indicated by the date on the signed receipt;

(b) if a Notice is sent by facsimile, upon receipt by the Party giving the Notice of an acknowledgment or transmission report generated by the machine from which the facsimile was sent indicating that the facsimile was sent in its entirety to the Addressee's facsimile number;

(c) if a Notice is sent by email, upon confirmation by telephone of receipt of the email by the Addressee; and

(d) notwithstanding the other clauses of this subsection, if any Notice is received after: (i) 5:00 p.m. on a Business Day where the Addressee is located, or (ii) on a Day that is not a Business Day where the Addressee is located, then the Notice is deemed received at 9:00 a.m. on the next Business Day where the Addressee is located.

23. **Confidentiality.**

23.1. **Confidentiality Obligation.** Each Party shall keep this agreement and the terms of this agreement (the "Confidential Information") confidential, and shall not, without the prior written consent of the other Party, directly or indirectly disclose any portion of the Confidential Information to any third party.

23.2. **Permitted Use and Disclosures.** A Party may disclose Confidential Information (whether directly or indirectly and by whatever means or method) only to those directors, officers, employees, consultants and agents of that Party, its Affiliates, or its Representatives (and in the case of Seller, Alliance Member Companies) who need to know the Confidential Information; provided, however, that those Affiliates, Representatives and Alliance Member Companies are subject to an obligation (or in the case of legal counsel, an ethical duty of confidentiality) to keep the information confidential. Seller may disclose Confidential Information to the Commission, the Federal Energy Regulatory Commission or any other Governmental Authority for purposes of establishing and continuing the effectiveness of any Governmental Authorizations deemed required by Seller in its Sole Discretion to effect the transactions contemplated by this agreement.

23.3. **Term of Confidentiality Obligation.** Notwithstanding the expiration or termination of this agreement, each Party shall keep the Confidential Information confidential in accordance with this agreement for a period of 3 years from the date of expiration or termination of this agreement.

23.4. **Exceptions to Disclosure of Confidential Information.** The obligations of confidentiality in this agreement do not apply to Confidential Information that:

(i) at the time of disclosure is already in the public domain or becomes part of the public domain through no act or fault of the receiving Party;

(ii) can be clearly demonstrated by the receiving Party to have been in the receiving Party's possession before the time it was received by the receiving Party under this agreement, and which was not then subject to any restriction in its use or disclosure;

(iii) is disclosed in writing to the receiving Party after it was disclosed or made available to the receiving Party under this agreement, from another Person that is not a Party and that had no obligation to keep it confidential and that did not acquire the Confidential Information directly or indirectly from the disclosing Party;

(iv) is disclosed as a result of the receiving Party's obligation to disclose imposed by any Applicable Law, regulation, order of any Governmental Authority, regulation of any stock exchange upon which a Party or any of its Affiliates is listed, or legal process; provided, however, that disclosures under this clause (iv) are subject to section 23.6; or

(v) is or was independently developed by the receiving Party without reference to the Confidential Information.

23.5. **Disclosure for Purposes of Cooperative Agreements.** Seller may disclose Confidential Information to the Department for purposes of complying with its obligations under its Cooperative Agreement and any regulation or policy of the Department applicable to Seller or the Project.

23.6. **Compelled Disclosure.** If a Party, it Affiliates, or its Representatives are required or obligated, whether by oral question, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process, then that Party shall promptly Notify the other Party of the intended disclosure, so that the other Party may take action including, without limitation, to seek an appropriate protective order, as appropriate, or waive compliance with this agreement and, further, the disclosing Party will cooperate with the reasonable requests of the non-disclosing Party in protecting the confidentiality of the Confidential Information in a lawful manner.

23.7. **Injunctive Relief.** Disclosure, communication or use of Confidential Information by the receiving Party not permitted by this agreement may cause irreparable harm and result in significant damages to the disclosing Party, and such harm and monetary damages may be difficult to ascertain or insufficient. In the event of any breach or threatened breach of this agreement by the receiving Party or any of its representatives, the disclosing Party and each of its Affiliates has the right, without the posting of a bond or other security, to equitable relief including specific performance and temporary, preliminary and permanent injunctive relief in addition to any other remedies that may be available to the disclosing Party or its Affiliates at law or in equity.

23.8. **Non-Disclosure Agreements.** Buyer agrees that Seller may require Buyer to enter into one or more non-disclosure agreements with vendors of Seller before Seller may disclose certain business or technical information to Buyer.

24. **Miscellaneous.**

24.1. **Examination of Records.** Each Party may, at its sole expense and during normal working hours upon reasonable notice to the other Party, examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, invoice, charge or computation made pursuant to this agreement. If requested, a Party shall provide to the other Party statements evidencing the quantity of Net Energy delivered. If any examination reveals any inaccuracy in any statement, the necessary adjustments in that statement and the payments thereof will be made promptly and will bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; except that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of 12 Months from the rendition thereof, and thereafter any objection will be deemed waived.

24.2. **Amendments.** This agreement may only be amended, changed, modified or altered if that amendment, change, modification or alteration is by means of a writing signed by both Parties that identifies itself as an amendment to this agreement; except that Exhibit 22.2 may be changed in accordance with the process in section 22.

24.3. **Waivers.** The Parties may waive any provision in this agreement only by a writing executed by the Party against whom the waiver is sought to be enforced. No failure or delay in (i) exercising any right or remedy, or (ii) requiring the satisfaction of any condition, under this agreement, and no act, omission or course of dealing between the Parties, operates as a waiver or estoppel of any right, remedy or condition. A waiver made in writing on one occasion is effective only in that instance and only for the purpose stated. A waiver once given is not to be construed as a waiver on any future occasion or against any other Person.

24.4. **Survival of Obligations.** All representations, warranties, covenants and obligations in this agreement and the certificates delivered pursuant to this agreement will survive the cancellation, expiration or earlier termination of this agreement, for the period of the applicable statute(s) of limitation. The right to indemnification, reimbursement or other remedy based upon such representations, warranties, covenants and obligations will not be affected by any investigation (including any environmental investigation or assessment) conducted with respect to, or any knowledge acquired (or capable of being acquired) at any time, whether before or after the execution and delivery of this agreement, with respect to the accuracy or inaccuracy of or compliance with any such representation, warranty, covenant or obligation. The waiver of any condition based upon the accuracy of any representation or warranty, or on the performance of or compliance with any covenant or obligation, will not affect the right to indemnification, reimbursement or other remedy based upon such representations, warranties, covenants and obligations.

24.5. **Severability.** Except for sections 3.1 and 15.2, in the event any of the terms, covenants or conditions of this agreement, its exhibits, or the application of any such terms, covenants or conditions, is held invalid, illegal, or unenforceable by any court or administrative body having jurisdiction, all other terms, covenants and conditions of the agreement and their application not adversely affected thereby will remain in force and effect; provided, however, that the Parties shall negotiate in good faith, but have no

obligation to agree, to attempt to implement an equitable adjustment in the provisions of this agreement with a view toward effecting the purposes of this agreement by replacing the provision that is held invalid, illegal or unenforceable with a valid provision the economic effect of which comes as close as possible to that of the provision that has been found to be invalid, illegal or unenforceable. In the event that section 3.1 or 15.2, or any portion thereof, is held invalid, illegal or unenforceable by any court or administrative body having jurisdiction or other Applicable Law, the agreement will terminate immediately and be of no further force and effect. In such event, neither Party will have any further liability to the other Party except for such liabilities as may have accrued prior to the termination.

24.6. **Complete Agreement.** The terms and provisions contained in this agreement constitute the entire agreement between the Parties with respect to the subject matter hereof, and supersede all previous communications, representations or agreements, either verbal or written, between Parties with respect to the subject matter hereof.

24.7. **Merger.** This agreement constitutes the final agreement between the Parties. It is the complete and exclusive expression of the Parties' agreement on the matters contained in this agreement. All prior and contemporaneous negotiations and agreements between the Parties on the matters contained in this agreement are expressly merged into and superseded by this agreement. The provisions of this agreement may not be explained, supplemented or qualified through evidence of trade usage or a prior course of dealings. In entering into this agreement, no Party has relied upon any statement, representation, warranty or agreement of any other Party except for those expressly contained in this agreement. There are no conditions precedent to the effectiveness of this agreement, other than those expressly stated in this agreement.

24.8. **Counterparts.** The Parties may execute this agreement in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement. The signatures of all of the Parties need not appear on the same counterpart, and delivery of an executed counterpart signature page by facsimile is as effective as executing and delivering this agreement in the presence of the other Parties to this agreement. This agreement is effective upon delivery of one executed counterpart from each Party to the other Party. In proving this agreement, a Party must produce or account only for the executed counterpart of the Party to be charged.

24.9. **Third Party Beneficiaries and Dedication.**

(a) Buyer Indemnified Persons and Seller Indemnified Persons are third party beneficiaries of this agreement. This agreement does not and is not intended to confer any rights or remedies upon any Person other than the Parties, Buyer Indemnified Persons and Seller Indemnified Persons.

(b) No undertaking by one Party to the other under any provision of this agreement will constitute the dedication of that Party's system, facilities, Project or any portion thereof to the other Party or to the public or affect the status of Buyer as an independent entity or Seller as an independent entity.

24.10. **Governing Law.** The laws of the State of Illinois, without giving effect to its conflicts of law principles, govern all matters arising out of or relating to this agreement, including, without limitation, its validity, interpretation, construction, performance or enforcement.

24.11. **Designation of Forum.** Any party bringing a legal action or proceeding against any other party arising out of or relating to this agreement shall bring the legal action or proceeding in the United

States District Court for the Northern District of Illinois, or if there is no federal subject matter jurisdiction, in any court of the State of Illinois sitting in Chicago.

24.12. **Waiver of Right to Contest Jurisdiction and Jury Trial.**

(a) Each Party waives, to the fullest extent permitted by law: (i) any objection which it may now or later have to the laying of venue of any legal action or proceeding arising out of or relating to this agreement brought in such courts as are prescribed in section 24.11; and (ii) any claim that any action or proceeding brought in such courts has been brought in an inconvenient forum.

(b) Seller and Buyer each knowingly, voluntarily and intentionally waive any rights they may have to a trial by jury in respect of any litigation based hereon, or arising out of, under, or in connection with, this agreement or any course of conduct, course of dealing, statements (whether oral or written) or actions of Seller and Buyer related hereto and expressly agree to have any disputes arising under or in connection with this agreement be adjudicated by a judge of the court having jurisdiction without a jury.

IN WITNESS WHEREOF, the undersigned have caused this agreement to be executed by their duly authorized representatives as of the dates set forth below.

[BUYER]	**[SELLER]**
By:	**By:**
Its:	**Its:**
Date:	**Date:**

EXHIBITS TO

UNIT CONTINGENT

POWER PURCHASE AGREEMENT

Between

[FUTUREGEN INDUSTRIAL ALLIANCE, INC.]

and

[BUYER]

Exhibit 1.1-A
Delivery Point

1. The Delivery Point will be located at Bus # 347685, Bus Name 1MERDSA 4 20.000, and as shown in the below diagram:

[Single Line Diagram to be Attached]

2. The Metering Point will be [_____]

Exhibit 1.1-B
Project Costs

Project Costs will include all costs of the Project related to the following cost categories:

Development & Construction Expenses:

- Development Expenses
- Permitting Expenses
- Legal Expenses
- Front-End Engineering & Design Expenses
- Utility Interconnection Expenses
- Site Purchase and Readiness Expenses
- Site Preparation
- Engineering, Construction & Procurement
- Commissioning & Start-Up Expenses
- Owner's Project Management
- Security
- Spare Parts
- Initial Fuel Stockpile
- Initial Working Capital (non-Fuel)
- Insurance
- Financing Fees & Closing Costs
- Interest During Construction
- Debt Service Reserve Fund
- Operation & Maintenance Reserve Fund
- Management Reserve
- Sales Tax

Fixed Project Payment:

- Return of and on Invested Equity Capital (if any)
- Principal Payments
- Interest Expense
- Ongoing Lender Fees and Administrative Costs

Fixed Operations and Maintenance:

- Labor (Power Block, ASU & CPU)
- Maintenance Materials & Contract Labor
- Consumables & Chemicals (fixed portion only; if any)
- Water and Water Treatment (fixed portion only; if any)

- Lime/Limestone (fixed portion only; if any)
- Waste Disposal (fixed portion only; if any)
- Carbon Transport & Storage (fixed portion only)
- Air Separation Unit (ASU) Fixed O&M (ex-Labor)
- Compression & Purification Unit (CPU) Fixed O&M (ex-Labor)
- ASU Fixed Fee for Capital Cost Recovery (if Over-the-Fence)
- Purchased Power
- Ongoing Legal, Environmental and Permitting, & Engineering Support
- Insurance
- General & Administrative
- Security
- Operator Fee
- Interconnection & Transmission Costs
- MISO Scheduling Coordinator
- Major Maintenance Sinking Fund
- Decommissioning Sinking Fund
- Local Property Taxes
- Other Taxes and Fees

Variable Operations & Maintenance:

- Consumables & Chemicals
- Water and Water Treatment
- Lime/Limestone
- Emissions Allowances
- Waste Disposal
- Carbon Transport & Storage Variable O&M
- ASU Variable O&M
- CPU Variable O&M

Fuel:

- Delivered Fuel Costs (including all applicable taxes)