

# RATE CPE CONTRACT FOR PURCHASED ENERGY



Mississippi Public Service Commission Schedule No. 62		
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## APPLICABILITY

This rate schedule shall apply to any Qualifying Facility (QF), as defined under the Public Utility Regulatory Policies Act of 1978, as amended (PURPA):

- (1) not otherwise selling its output to Mississippi Power Company (Company) under another rate schedule,
- (2) seeking to sell its total output, or a portion thereof, to the Company pursuant to a Legally Enforceable Obligation.

For purposes of this rate schedule and for such other purposes as are relevant under PURPA, a Legally Enforceable Obligation shall be deemed to arise only after the QF has complied with all of the following requirements:

- (1) Certified with FERC as a QF,
- (2) Made a commitment to sell its output to the Company under PURPA,
- (3) Received a Certificate of Public Convenience and Necessity (CPCN) for the construction of the facility, to the extent required by law,
- (4) Submitted a completed generator interconnection request to MPC.

## AVAILABILITY AND KIND OF SERVICE

The terms and conditions of this rate are available to a QF that has a nameplate capacity greater than 100 kW AC for rotating machines or 100 kW DC for inverter-based systems and that meets the applicability requirements above. Service shall be taken under the contract identified below.

Attachment A – Contract for the Purchase of Energy from a QF shall be used for any QF (cogeneration facility or small power production facility) that seeks to sell its total output to the Company (less any production consumed on site for station service or similar reasons), as provided herein and in the contract.

## GENERAL REQUIREMENTS

### Delivery and Interconnection

A QF that seeks to make sales to the Company under this rate shall be responsible for all costs of interconnection and the delivery of the energy from the QF to the Company and the Company's electrical system, including any costs related to or incurred as a result of the transmission of energy across the Company's electrical system.

For any QF that seeks to physically interconnect to the Company's electrical system, the Standard Contract in Attachment A shall apply and the QF must complete and execute a generation interconnection agreement prior to the project delivering energy to the Company.

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In addition to the costs previously described, the QF is responsible for payment of all fees and costs associated with applications, required studies, administration of the interconnection agreement and financial security requirements.

A complete description of the applicable interconnection procedures, including an interconnection application, generation interconnection agreement and contact information for interconnections, is maintained on the Company website at [www.mississippipower.com](http://www.mississippipower.com).

## Rate for Purchase of Energy from a Qualifying Facility

The prices are provided in the Company's Basic Avoid Energy Cost Bulletin. The prices set forth in the Company's Basic Avoided Energy Cost Bulletin, which are updated biennially, are set at the 2-year average of the expected avoided costs for energy delivered by the QF to the system during the defined hourly periods below for standard system operations.

- On-Peak Season - Billing Months of July through October:

On-Peak Hours: 10 a.m. to 9 p.m. Monday through Friday, except Holidays listed below.

Off-Peak Hours: 9 p.m. to 10 a.m. Monday through Friday, and all hours on Weekends and Holidays listed below.

- Off-peak Season - Billing Months of November through June:

On-Peak Hours: 7 a.m. to 9 p.m. Monday through Friday, except Holidays listed below.

Off-Peak Hours: 9 p.m. to 7 a.m. Monday through Friday, and all hours on Weekends and Holidays listed below.

Holidays: New Year's Day (January 1), Independence Day (July 4), Labor Day (first Monday of September), Thanksgiving Day (fourth Thursday of November), Christmas Day (December 25).

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## STANDARD CONTRACT REVIEW AND APPROVAL

Execution of a Standard Contract pursuant to the terms of this rate schedule shall not require Mississippi Public Service Commission (Commission) approval; provided, however, upon issuance of a Standard Contract under this rate schedule the Company will notify the Mississippi Public Utilities Staff (Staff) in writing.

### ELECTRIC SERVICE TO QUALIFYING FACILITY

As applicable, any QF requiring Electric Service from the Company must obtain such service in accordance with applicable rates, rules and regulations on file with the Mississippi Public Service Commission and/or FERC, including but not limited to the Rules Governing Electric Service, Mississippi Distributed Generator Interconnection Rule (MDGIR) and OATT Transmission Policies of Southern Companies.

Supplementary, Back-up, and Maintenance Power shall be provided as required under provisions of rate schedules LPSS or SPSS, as applicable.

**RATE CPE (CONTRACT FOR PURCHASED ENERGY) -- ATTACHMENT A**

**CONTRACT FOR THE  
PURCHASE OF ENERGY  
FROM A QUALIFYING FACILITY**

**BETWEEN**

---

**AND**

**MISSISSIPPI POWER COMPANY**

**Dated as of \_\_\_\_\_**

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by QF with Respect to Variable Interest Entity**

**CONTRACT FOR THE PURCHASE OF ENERGY  
FROM A QUALIFYING FACILITY**

This Contract for the Purchase of Energy from a Qualifying Facility (“Agreement”) is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (“Effective Date”), by and between **MISSISSIPPI POWER COMPANY**, a corporation organized and existing under the laws of the State of Mississippi (“Mississippi Power”), and \_\_\_\_\_, a \_\_\_\_\_ organized and existing under the laws of the State of \_\_\_\_\_ (“QF”).

**WITNESSETH:**

**WHEREAS**, [QF intends to construct, own, operate and maintain a \_\_\_\_\_ facility for the generation of electric power in \_\_\_\_\_ County, Mississippi] [OR] [QF presently owns and operates a \_\_\_\_\_ facility for the generation of electric power in \_\_\_\_\_ County, Mississippi];

**WHEREAS**, QF has certified and will operate such facility as a Qualifying Facility and, pursuant to the provisions of PURPA, QF desires to sell all of the electric energy produced by such facility to Mississippi Power; and

**WHEREAS**, the Parties desire to set forth the terms and conditions upon which such sale of electric energy shall be conducted between the Parties.

**NOW, THEREFORE**, in consideration of the premises and of the mutual covenants set forth herein and other good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, Mississippi Power and QF, each intending to be legally bound, hereby agree as follows:

**ARTICLE 1**

**DEFINITIONS AND INTERPRETATION**

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

“**AC**” means alternating current.

“**Adjustment Period**” has the meaning set forth in Section 5.4.

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

“**Agreement**” has the meaning set forth in the first paragraph hereof.

“**Annual Period**” means each period during which a given revision to Rate CPE is effective, each of which shall commence upon the first Day of the Month for which a



given revised Rate CPE is made effective by the MPSC and end on the last Day of the Month for which such revised Rate CPE is effective.

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

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

**“Commercial Operation”** has the meaning set forth in the Interconnection Agreement.

**“Confidential Information”** has the meaning set forth in Section 13.1.

**“Consents”** means all approvals, consents, permits, licenses, decrees, orders, judgments, certificates, zoning and other variances, waivers, exceptions, exemptions, franchises, rulings, authorizations or similar orders from, or filings or registrations with or notices to, any Governmental Authority that are required to own, develop, site, construct, operate, use, test, modify, and/or maintain the Facility and the Site, and for QF to perform its obligations under this Agreement.

**“Day”** means a calendar day.

**“Delivered Energy”** means, for any Hour, the amount of energy (expressed in kWh or MWh) that is produced by the Facility and delivered by QF to Mississippi Power at the Interconnection Point pursuant to this Agreement; provided that Delivered Energy shall not include: (i) Electrical Losses; or (ii) energy that Mississippi Power is not required to receive or purchase under Section 6.1.2 or Section 6.1.3.

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

**“Electric System”** means, collectively, the entire network of electric generating, transmission and distribution facilities, equipment and other devices owned (in whole or in part) or controlled by Mississippi Power or its Affiliates, or to which Mississippi Power or its Affiliates has the right to use, for the purposes of generating, transmitting, distributing, and receiving electric energy.

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

**“Electrical Products”** means any products produced by or related to the Facility, other than the electrical energy produced by the Facility, including electric capacity, spinning reserves, operating reserves, balancing energy, regulation service, reactive power and voltage control and other ancillary service products.

**“Environmental Attributes”** means, whether existing as of the Effective Date or in the future, any fuel-related, emissions-related, air quality-related or other environmental-related aspects, claims, characteristics, benefits, credits, reductions, offsets, savings, allowances, efficiencies, certificates, tags, attributes or similar products or rights (including all of those relating to greenhouse gases and all green certificates, green tags, renewable certificates and renewable energy credits) (“Attributes”), howsoever entitled, whether known or unknown, whether or not such Attributes have been certified or verified under any renewable energy standards or criteria or otherwise, and whether or not such Attributes could qualify or do qualify for application toward compliance with any public, private, local, state, federal and/or international renewable energy related standard, program, law, policy, or contract, that: (i) arise or result from the generation of

electric, thermal or other energy by the Facility; (ii) are associated with fuel that is used to produce electric, thermal or other energy at the Facility (including any fuel that may serve a dual purpose of contributing both to energy production and another industrial process), including the procurement, collection or aggregation of such fuel; (iii) arise or result from the avoidance or reduction of the emission of any gas, chemical or other substance to the air, soil or water that is attributable to the generation of electric, thermal or other energy by the Facility or the use of a particular fuel by the Facility to generate electric, thermal or other energy; (iv) arise or result from the recycling, recovery or reuse of any wastes, products, co-products, byproducts or similar materials associated with the generation of electric, thermal or other energy by the Facility; or (v) arise or result from the avoidance of water use that is associated with the generation of electric, thermal or other energy at the Facility. Environmental Attributes shall not include any tax credit (including federal investment tax credits) derived from the construction or ownership of the Facility.

**“Event of Default”** has the meaning set forth in Section 10.1 for QF and Section 10.2 for Mississippi Power.

**“Facility”** means the [insert applicable technology] electric generation facility and all related equipment and structures associated with such generation facility [to be or being constructed by QF] [OR] [presently owned and operated by QF] in [City], [State], with a nameplate generating output equal to \_\_\_ kW. The Facility shall include all equipment and facilities installed at the Site on QF’s side of the Point of Change in Ownership that are necessary or used for the production, control, delivery or monitoring of electric energy.

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

**“Force Majeure Event”** has the meaning set forth in Section 12.1.

**“Governmental Authority”** means any local, state, regional or federal administrative, legal, judicial or executive agency, court, commission, department or other such entity.

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

**“Initial Delivery Criteria”** means the fulfillment of all of the following criteria to Mississippi Power’s reasonable satisfaction:

- (i) the Facility has been interconnected to the Electric System pursuant to the Interconnection Agreement, the Interconnection Agreement is in full force and effect, and QF and the Facility are in compliance with the Interconnection Agreement; and
- (ii) QF shall have demonstrated that it has obtained all authorizations necessary to deliver energy from the Facility under this Agreement to the Electric System.

**“Initial Delivery Date”** means the later of: (i) \_\_\_\_\_ [Note: insert a date agreed to by Mississippi Power and QF]; (ii) the Day on which the Facility achieves Commercial Operation; or (iii) the Day on which all Initial Delivery Criteria are satisfied.

**“Initial Period”** means the period of time from the Initial Delivery Date through the next occurring date on which a revision to Rate CPE is made effective by the MPSC.

**“Interconnection Agreement”** means an agreement by and between QF and the Interconnection Provider providing QF the right to interconnect the Facility to the Electric

System and containing terms and conditions governing the interconnection and parallel operation of the Facility with such system.

**“Interconnection Facilities and Upgrades”** means those facilities, equipment and upgrades (including any and all transmission system network upgrades) that are located on Interconnection Provider’s side of the Point of Change in Ownership and that are required in order to interconnect the Facility at the Interconnection Point, which would not have been required but for the interconnection of the Facility to the Electric System (including all breakers and metering equipment needed for interconnection), as such facilities, equipment and upgrades are set forth and identified in the Interconnection Agreement.

**“Interconnection Point”** means the physical point at which the Facility is interconnected to the Electric System, as defined in the Interconnection Agreement.

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

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

**“kW”** means kilowatts, AC.

**“kWh”** means kilowatt hours, AC.

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

**“Mississippi Power”** has the meaning set forth in the first paragraph of this Agreement, and its permitted successors and assigns.

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

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

**“Monthly Administration Charge”** means, for a particular Month of the Term, the Monthly amount required to be paid by QF to Mississippi Power, as determined in **Appendix C**.

**“Monthly Statement”** has the meaning set forth in Section 8.1.1.

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

**“MW”** means megawatts, AC.

**“MWh”** means megawatt hours, AC.

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

**“Party” or “Parties”** means either Mississippi Power or QF or both.

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

**“Point of Change in Ownership”** means the point where the facilities to be owned by QF will connect to the facilities to be owned by Interconnection Provider.

**“Prudent Industry Practices”** means, at a particular time, any of the practices, methods and acts engaged in or approved by a significant portion of the electric industry

prior to such time, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired results at the lowest cost consistent with good and acceptable engineering and business practices, reliability, safety and expedition. Prudent Industry Practices are not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to encompass a spectrum of possible practices, methods or acts expected to accomplish the desired results, having due regard for, among other things, manufacturers' warranties, any applicable inspection authorities, and the requirements of Governmental Authorities of competent jurisdiction and the requirements of this Agreement.

**"PURPA"** means the Public Utility Regulatory Policies Act of 1978, including the implementing regulations of FERC and implementing regulations, practices or procedures of the MPSC, as each may be amended or modified from time to time.

**"QF"** has the meaning set forth in the first paragraph of this Agreement, and its permitted successors and assigns.

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

**"Rate CPE"** means "Rate CPE – Contract for Purchased Energy" or any successor in function applicable to the rates to be paid for energy delivered to Mississippi Power by Qualifying Facilities of a size and kind more fully described in Rate CPE, as filed by Mississippi Power with the MPSC and as may be modified from time to time.

**"Rate Rider"** means the schedules of retail electric service tariffs and rates, as filed by Mississippi Power with the MPSC and as may be modified from time to time.

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

**"Rules"** means collectively: (i) Mississippi Power Company's Rules Governing Electric Service; (ii) the MPSC's Public Utilities Rules of Practice and Procedure; and (iii) the MPSC's Rules and Regulations Governing Public Utility Service, or any successor in function and as may be modified from time to time.

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

**"Site"** means the land on which the Facility is located.

**"Station Service"** has the meaning set forth in Section 4.4.

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

**"Term"** has the meaning set forth in Section 3.2, as may be extended pursuant to Section 3.2.

1.2 Interpretation. Whenever the term "including" is used herein in connection with a listing of items included within a prior reference, such listing shall be interpreted to be illustrative only, and shall not be interpreted as a limitation on or exclusive listing

of the items included within the prior reference. Any reference in this Agreement to "Section," "Article," or "Appendix," shall be references to this Agreement unless otherwise stated, and all such Appendices shall be incorporated in this Agreement by reference. Unless specified otherwise, a reference to a given agreement or instrument, and all schedules, exhibits, appendices and attachments thereto, shall be a reference to that agreement or instrument as modified, amended, supplemented and restated, and in effect from time to time. Unless otherwise stated, any reference in this Agreement to any entity shall include its permitted successors and assigns, and in the case of any Governmental Authority, any entity succeeding to its functions and capacities.

[NOTE: the following Article 2 only applies to new generation facilities.]

## **ARTICLE 2**

### **DEVELOPMENT OF THE FACILITY**

2.1 Standard for Development. QF shall design, engineer, construct, test and commission the Facility in accordance with Prudent Industry Practices and applicable Legal Requirements.

2.2 Status of the Facility. No later than the end of each Month prior to the Initial Delivery Date, QF shall deliver a written report to Mississippi Power describing the progress of development and construction of the Facility, including the estimated date that mechanical completion will occur and the estimated date that the Facility will initially synchronize to the Electric System.

## **ARTICLE 3**

### **INITIAL DELIVERY DATE; TERM AND TERMINATION; MPSC APPROVAL**

3.1 Initial Delivery Date; Failure to Achieve Initial Delivery Date.

3.1.1 QF shall notify Mississippi Power of the estimated Initial Delivery Date at least forty-five (45) Days prior to such date or such shorter period as the Parties may agree.

3.1.2 In the event that QF believes that all of the Initial Delivery Criteria have been achieved, QF shall provide Mississippi Power notice thereof.

3.1.3 After the Initial Delivery Criteria have been satisfied, QF shall provide Mississippi Power with at least fifteen (15) Days prior notice of the actual Initial Delivery Date or such shorter period as the Parties may agree.

3.1.4 In the event that the Initial Delivery Date does not occur within four (4) years of the Effective Date of this Agreement, then this Agreement shall terminate without further action by the Parties. Upon such termination, neither Party shall have any further obligation under this Agreement, except for obligations and liabilities that survive termination as provided in this Agreement or which accrue prior to or at termination.

3.2 Term. This Agreement shall become effective as of the Effective Date. Subject to early termination of this Agreement, the “Term” of this Agreement shall begin on the Initial Delivery Date and shall continue until the end of the Initial Period; provided that QF shall be entitled to extend the Term of this Agreement beyond the Initial Period (and any Annual Period, if applicable), on an Annual Period by Annual Period basis. In order to exercise such right to extend the Term, QF shall provide notice to Mississippi Power no later than sixty (60) Days prior to the end of the then-existing Term, but no earlier than one hundred twenty (120) Days prior to the end of such then-existing Term. If QF timely provides such notice, then the Term shall be extended though the end of the immediately following Annual Period. Upon provision of such notice, Mississippi Power reserves the right to modify the Monthly Administration Charge for the applicable Annual Period to reflect any changes in costs of administration and implementation; provided, however, that the Monthly Administration Charge shall not exceed \$1,000 absent approval by the MPSC.

3.3 Early Termination. QF may terminate this Agreement at any time in its sole and absolute discretion by providing Mississippi Power at least thirty (30) Days’ notice prior to the effective date of such termination; provided, however, that if QF exercises such right of early termination, Mississippi Power shall have no obligation to purchase energy from the Facility until the expiration of at least one (1) year from the effective date of such termination.

3.4 Survival. All provisions of this Agreement that expressly or by implication come into or continue in force and effect following the expiration or termination of this Agreement shall remain in effect and be enforceable following such expiration or termination, including all provisions that must survive in order to give force and effect to the rights and obligations of the Parties under this Agreement.

3.5 MPSC Approval. To the extent required by law, this Agreement is subject to approval or prior authorization and ratification by the MPSC, and any modifications that may be ordered by the MPSC at the time of approval or in the future.

## **ARTICLE 4**

### **OPERATIONAL CONSIDERATIONS**

4.1 General Standards. In furtherance of the safety and reliability of the Electric System, QF shall at its sole cost and expense manage, control, construct, operate and maintain the Facility (or cause others to manage, control, construct, operate and maintain the Facility) in a manner consistent with Prudent Industry Practices, applicable Legal Requirements, and applicable reliability standards and operating policies of NERC and SERC. QF shall also diligently seek, obtain, maintain, comply with and, as necessary, renew and modify from time to time, any and all Consents. QF shall designate one or more representatives that Company may contact regarding any operational matter relating to the Facility and provide Company with contact information (including telephone number and email address) for such representatives.

4.2 Scheduled Outages. QF shall submit to Mississippi Power, before October 1 of each calendar year, a schedule of planned Facility outages during the next calendar year, as well as any updates to such schedule as they become known.

4.3 Unplanned Outages. In addition to scheduled outages under Section 4.2, QF shall use commercially reasonable efforts to immediately notify Mississippi Power of any event or condition that will result in any portion of the Facility not being able to produce energy. Such notices shall contain information describing such event or condition, the beginning date and time of such event or condition, the expected end date and time of such event or condition, the amount of Delivered Energy that QF expects will be provided during such event or condition, and any other information reasonably requested by Mississippi Power. QF shall provide Mississippi Power with such notice by any reasonable means required by Mississippi Power, including by telephone or electronic mail.

4.4 Station Service. If QF is located in the service territory of Mississippi Power, QF shall be required to enter into a separate agreement with Mississippi Power for the supply of electrical energy necessary to serve the electrical requirements of the Facility (“Station Service”) pursuant to the applicable Rate Riders and the Rules; provided that QF shall not be required to procure firm back-up power from Mississippi Power.

4.5 Availability Forecasts. By no later than 5:00 a.m. CPT of each Day, QF shall provide, in a format reasonably acceptable to Mississippi Power, a non-binding forecast of energy to be delivered under this Agreement for the next Day and each of the next seven (7) Days. Each such notice shall clearly identify, for each Hour, QF’s forecast of all amounts of available energy to be delivered pursuant to this Agreement. In the event that QF foresees that actual deliveries under this Agreement for any Day will be materially different than a forecast previously provided for such Day, QF shall, as soon as reasonably possible, provide notice to Mississippi Power of such change and an updated forecast.

4.6 Weather Data. At Mississippi Power’s direction, QF shall make available, in a form reasonably acceptable to Mississippi Power, all data from any weather monitoring portals and/or weather stations that QF elects to install at the Site.

4.7 Inspection and Access. Mississippi Power shall have the right to inspect the Facilities to ensure compliance with the terms and conditions of this Agreement. QF shall grant Mississippi Power reasonable access to the Facilities sufficient for Mississippi Power to enforce any rights under this Agreement.

## ARTICLE 5

### INTERCONNECTION AND METERING.

#### 5.1 Interconnection.

5.1.1 QF shall maintain and use diligent efforts to pursue interconnection of the Facility to the Electric System in accordance with the interconnection process of the Interconnection Provider, including the timely execution and submission of all required study agreements, fees, deposits and other charges. QF shall be responsible for all costs and expenses associated with all studies, fees, deposits and other charges in connection with such interconnection request.

5.1.2 The Interconnection Agreement shall contain terms, conditions and requirements pursuant to the interconnection policies and requirements of the Interconnection Provider and its Affiliates. Pursuant to the Interconnection Agreement, QF shall be responsible for all costs and expenses that are associated with the ownership, design, engineering, procurement, construction, installation, operation, maintenance, repair and replacement of all Interconnection Facilities and Upgrades.

5.1.3 The Interconnection Agreement shall be maintained throughout the Term of this Agreement. QF shall promptly provide a copy of, and any amendments to, such Interconnection Agreement to Mississippi Power in accordance with the notice provisions of Section 13.12. QF is responsible for determining all transmission and/or distribution-related rules, practices and policies with which it must comply.

5.1.4 It is the responsibility of QF to provide for the protection of the Facility from hazards resulting from parallel operation with Mississippi Power's Electric System. Mississippi Power does not guarantee that service will be free from, and Mississippi Power shall not be liable for, interruptions, surges, voltage fluctuations or disturbances. Mississippi Power shall have not liability for any loss or damage resulting from interconnection to Mississippi Power's Electric System or from any loss of service, or delay in providing service.

#### 5.2 Metering.

5.2.1 At QF's sole cost and expense, Mississippi Power or its Affiliate may design, locate, construct, install, own, operate and maintain meters and such other facilities, equipment and devices as Mississippi Power deems necessary or appropriate in order to determine the amount of electric energy delivered by QF to Mississippi Power under this Agreement, including for purposes of calculating the payments under **Appendix A**, or to determine the amount of electric energy delivered by Mississippi Power to QF, all in accordance with Prudent Industry Practices.

5.2.2 All meters and other such facilities, equipment and devices installed by Mississippi Power shall be and remain the property of Mississippi Power. Any charges paid by QF for any facilities or equipment provided by Mississippi Power or for



any work performed by Mississippi Power shall not convey title to QF for such facilities and equipment.

5.3 Inspection and Testing of Meters. Mississippi Power or its Affiliate shall have the right to inspect and test all meters installed by Mississippi Power or its Affiliate in order to measure the output of the Facility at such times as Mississippi Power deems necessary or appropriate. Upon reasonable written request to Mississippi Power, QF may request inspection or testing of any such meters. QF shall be responsible for, and shall reimburse Mississippi Power for, all costs and expenses incurred by or on behalf of Mississippi Power or its Affiliate in connection with such inspections or tests requested by QF unless such inspection or test reveals that such meters are inaccurate by more than two percent (2%) from the measurement made by the reference meter used in the test, in which event Mississippi Power shall bear all costs of such testing. Mississippi Power shall give reasonable written notice to QF of the time and place when any such meter is to be inspected or tested, and QF may have a representative present at such test or inspection.

5.4 Inaccuracies. If any seal securing the metering is found broken, if the metering fails to register, or if the measurement made by a metering device is found upon testing to vary by more than the allowable margin of metering error (as reflected in the rules and regulations of the MPSC), based upon the measurement made by the reference meter used in the test, an adjustment shall be made correcting all measurements of electric energy made by the metering during: (i) the actual period when inaccurate measurements were made by the metering, if that period can be determined to the mutual satisfaction of the Parties; or (ii) if such actual period cannot be determined to the mutual satisfaction of the Parties, the second half of the period from the date of the last test of the metering to the date such failure is discovered or such test is made ("Adjustment Period"). If the Parties are unable to agree on the amount of the adjustment to be applied to the Adjustment Period, the amount of the adjustment shall be determined (a) by correcting the error if the percentage of error is ascertainable by calibration, tests or mathematical calculation, or (b) if not so ascertainable, by estimating on the basis of deliveries under similar conditions during the period since the last test. Within thirty (30) Days after the determination of the amount of any adjustment, Mississippi Power shall either (a) pay QF any additional amounts then due for deliveries of electric energy during the Adjustment Period in accordance with **Appendix A**, or (b) be entitled to a credit against any subsequent payments for electric energy, as appropriate.

5.5 Electrical Loss Factor Adjustment to Interconnection Point. In the event, and to the extent, that the meters used to determine the output of the Facility are not measuring deliveries of electric energy physically at the Interconnection Point, the metered amount of electric energy shall be adjusted to or from the Interconnection Point (as applicable) by a loss factor determined by Mississippi Power, in accordance with Prudent Industry Practices. Mississippi Power shall provide QF with a copy of any study or analysis prepared by Mississippi Power in determining such loss factor.

## ARTICLE 6

### PURCHASE AND SALE OF ENERGY

#### 6.1 Sale and Purchase of Energy.

6.1.1 Commencing on the Initial Delivery Date and thereafter for the Term, subject to the terms and conditions of this Agreement, QF shall sell and deliver to Mississippi Power, and Mississippi Power shall purchase and receive from QF, all Delivered Energy, with Mississippi Power's payment obligation determined pursuant to Section 8.1 and **Appendix A**.

6.1.2 Mississippi Power shall not be required to receive, purchase or compensate QF for energy not delivered or produced by the Facility as a result of: (i) the separation of the Facility from the Electric System pursuant to the Rules; (ii) a Force Majeure Event affecting the facilities or equipment of either Party; or (iii) the interruption of deliveries or disconnection of the Facility pursuant to the Interconnection Agreement.

6.2 Exclusivity. From the Effective Date and throughout the Term, Mississippi Power shall have exclusive rights to the entire electrical output at the point of service to the Facility, and QF shall not sell, supply or otherwise provide electrical energy from the Facility to any other Person(s).

6.3 Electrical Products. The payments under this Agreement constitute full and complete compensation for all energy provided to Mississippi Power, as well as for Electrical Products that are inherently embedded in or connected with such energy. Mississippi Power shall not be required to accept or pay for any Electrical Products, if any, produced by or related to the Facility, and QF shall not seek separate or additional compensation from Mississippi Power for any such Electrical Products under this Agreement or any other agreement, tariff or rate schedule or filing with any Governmental Authority.

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

## ARTICLE 7

### REGULATORY AND COMPLIANCE

7.1 Incorporation of Rules. The Rules are hereby incorporated into and made a part of this Agreement by reference, and QF shall be deemed to be a "Customer" as such term is used under such Rules. The operation of the Facility and the sale and delivery of energy under this Agreement shall be subject to the terms and conditions of the Rules, including those provisions of the Rules that permit Mississippi Power to

separate the Facility from the Electric System under a condition that is likely to result in imminent significant disruption of service to customers or is imminently likely to endanger life or property.

7.2 Qualifying Facility Status. Throughout the Term of this Agreement, QF shall cause the Facility to be a Qualifying Facility and shall obtain, and maintain, certification of the Facility as a Qualifying Facility pursuant to the requirements of FERC and other applicable Governmental Authorities. If at any time the Facility ceases to be a Qualifying Facility for any reason, then Mississippi Power shall be entitled to immediately terminate this Agreement in its sole and absolute discretion. If Mississippi Power so terminates this Agreement, Mississippi Power shall have no further obligation to purchase or receive, and QF shall have no further obligation to sell or provide, any energy under this Agreement.

7.3 Termination of PURPA Purchase Obligation. Notwithstanding anything to the contrary in this Agreement, in the event that Mississippi Power is no longer required under PURPA to purchase the electric energy produced by the Facility (whether due to the repeal or modification of PURPA or by specific reference to QF, this Agreement or by general order or issuance referencing purchases of energy from Qualifying Facilities under PURPA or other reasons), then Mississippi Power shall be entitled to terminate this Agreement, upon fifteen (15) days' written notice to QF, in its sole and absolute discretion. If Mississippi Power so terminates this Agreement, Mississippi Power shall have no further obligation to purchase or receive, and QF shall have no further obligation to sell or provide, any energy under this Agreement.

7.4 Change of Rates. In the event that FERC or another Governmental Authority takes any action, including imposition of a rule, regulation, order or other requirement, which causes (including by specific reference to this Agreement or by general order or issuance referencing purchases of energy from Qualifying Facilities under PURPA) a change in the rates or amounts that Mississippi Power is required to pay to QF or to Qualifying Facilities in general, then upon 30 days' written notice, QF agrees to be bound by such change and agrees to adjust the energy rates and amounts charged under this Agreement to the rates and amounts required to be paid by Mississippi Power as a result of such action.

7.5 Change In Law. Notwithstanding any provision in this Agreement, in the event that there are changes to Legal Requirements or any interpretation thereof, including changes to laws or regulations regulating or imposing a Tax, fee or other charge on discharges, emissions or disposals from the Facility, which cause QF to incur additional costs or expense associated with the Facility or in performing under this Agreement, QF agrees to be responsible for all of such costs and expenses and acknowledges that the payments made by Mississippi Power to QF pursuant to this Agreement shall not be altered as a result of such changes to Legal Requirements or interpretations thereof.

7.6 Compliance. QF represents, warrants, and covenants that throughout the Term QF shall: (i) be in material compliance with all Legal Requirements with respect to

the design, development, construction, ownership, operation and maintenance of the Facility, including all required Consents, and, if applicable, the mitigation of environmental impacts associated with the Facility and QF's actions; and (ii) pay all costs, expenses, charges and fees in connection therewith. Upon request by Mississippi Power, QF shall provide Mississippi Power with copies of all compliance information, including without restriction, copies of the necessary Consents.

7.7 General Services Administration Flow-Down Provisions. QF shall at all times comply with the provisions of **Appendix D** to this Agreement.

## **ARTICLE 8**

### **PAYMENT PROCEDURE**

#### **8.1 Billing and Payment.**

8.1.1 Within a reasonable period of time after the end of each Month during the Term, Mississippi Power or its Affiliate shall provide QF with a statement ("Monthly Statement") containing: (i) the meter readings that measure the amount of Delivered Energy pursuant to this Agreement for such Month; and (ii) the amount of the payments required to be made by Mississippi Power for such Month under **Appendix A** and the calculation thereof. By no later than the last Day of the Month following each Month for which a Monthly Statement is provided by Mississippi Power, Mississippi Power shall pay to QF the payments set forth in such Monthly Statement.

8.1.2 Within ten (10) Business Days after providing the Monthly Statement to QF under Section 8.1.1, except to the extent that Mississippi Power nets amounts payable by QF against amounts payable by Mississippi Power in the Monthly Statement, Mississippi Power or its Affiliate shall provide QF with an invoice stating all amounts that are required to be paid by QF to Mississippi Power, including the Monthly Administration Charge for each Month. Payment by QF of each such invoice shall be due and payable on or before the twentieth (20th) Day after QF's receipt of such invoice; provided, however, that any amount due from QF pursuant to a provision of this Agreement that provides for a specific period for payment shall be due and payable as set forth in such provision.

8.1.3 If any amount required to be paid under this Agreement is due on a Day other than a Business Day, then payment shall be due on the next succeeding Business Day. Payments under this Agreement shall be made on or before the date due in immediately available funds through wire transfer of funds or other means acceptable to the Parties. In the event payment is not made on or before the required due date (or, if such date is not a Business Day, the next succeeding Business Day), then interest shall be added to the overdue payment, from the date such overdue payment was due until such overdue payment together with interest is paid, which interest shall be compounded Monthly at the Interest Rate.

#### **8.2 Billing Disputes and Adjustments.**

8.2.1 In the event that either Party has a bona fide dispute with the applicable Monthly Statement or invoice submitted under this Agreement, such Party shall provide notice to the other Party that: (i) states the good faith basis for the dispute, (ii) specifies the portion of the amount in dispute, if any, and (iii) provides documentation reasonably supporting the determination of the disputed amount. The Party required to make payment shall be entitled to withhold payment of such disputed amount until the dispute is resolved.

8.2.2 If any overcharge or undercharge in any form whatsoever shall at any time be found and substantiated, and the amounts set forth in the applicable Monthly Statement or invoice therefore has been paid, the Party that has been paid the overcharge shall refund the amount of the overcharge to the other Party, and the Party that has been undercharged shall pay the amount of the undercharge to the other Party, within thirty (30) Days after final determination thereof; provided, however, that no retroactive adjustment shall be made for any overcharge or undercharge unless written notice of the same is provided to the other Party within a period of three hundred sixty-five (365) Days from the date of the Monthly Statement or invoice in which such overcharge or undercharge was first included. Reimbursements determined to be due from a Party under this Section 8.2.2 shall be included on the next Monthly Statement or invoice (as applicable) and shall include interest from the date the original payment was received until the date of such reimbursement together with interest compounded Monthly at the Interest Rate.

8.3 Netting. The Parties hereby agree that they shall discharge all obligations due and owing to each other as of the same date under this Agreement through netting, in which case all amounts owed by each Party to the other Party under this Agreement shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

## **ARTICLE 9**

### **REPRESENTATIONS AND WARRANTIES**

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

9.2 Binding Obligations. Each Party represents and warrants to the other Party that, as of the Effective Date, this Agreement is the valid and binding obligation of such Party, enforceable against such Party in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or other similar laws affecting enforcement generally, and by

equitable principles regardless of whether such principles are considered in a proceeding at law or in equity.

9.3 Execution and Consummation. Each Party represents and warrants to the other Party that, as of the Effective Date, the execution and delivery of this Agreement, the consummation of the transactions contemplated under this Agreement, and the fulfillment of and compliance with the provisions of this Agreement do not and will not conflict with any of the terms, conditions or provisions of its organizational documents or any Legal Requirement applicable to it.

9.4 Disclaimer. QF understands and agrees that Mississippi Power's review of any material or information related to the Facility or any physical inspection of the Facility conducted by Mississippi Power under any provision of this Agreement is solely for its own information. Any such review or inspection, or any consent to materials, information or plans provided by QF, shall not be construed as endorsing the design, fitness or operation of the Facility nor as a warranty or guarantee, and in no event shall Mississippi Power be deemed to have accepted any condition of the Facility or any performance by QF that is not in full compliance with the terms of this Agreement. QF shall in no way represent to any Person that, as a result of Mississippi Power's receipt and review of any material or information, any inspections by Mississippi Power, or Mississippi Power's execution of this Agreement, that Mississippi Power is responsible for, has endorsed, warranted or otherwise approved any aspect or characteristic of the Facility.

## **ARTICLE 10**

### **EVENTS OF DEFAULT**

10.1 Default by QF. Any one or more of the following events shall constitute an Event of Default by QF and shall give Mississippi Power the right, without limitation, to exercise the remedies specified in Section 10.3:

- (i) QF fails to pay any amount payable by QF to Mississippi Power under this Agreement when due, which failure has continued for thirty (30) Days after notice thereof has been given by Mississippi Power to QF;
- (ii) QF fails to perform or comply with any other material term or condition of this Agreement and fails to conform to said term and condition within sixty (60) Days after a demand by Mississippi Power to do so;
- (iii) QF fails to comply with the terms and conditions of Section 13.1;
- (iv) QF becomes insolvent, becomes subject to bankruptcy or receivership proceedings, or dissolves as a legal business entity;

- (v) any representation or warranty of QF to Mississippi Power is false or misleading in any material respect when made and QF fails to conform to said representation or warranty within sixty (60) Days after a demand by Mississippi Power to do so; or
- (vi) the Interconnection Agreement is terminated due to an event of default of QF.

10.2 Default by Mississippi Power. Any one or more of the following events shall constitute an Event of Default by Mississippi Power and shall give QF the right, without limitation, to exercise the remedies specified in Section 10.3:

- (i) Mississippi Power fails to pay any amount payable by Mississippi Power to QF under this Agreement when due, which failure has continued for thirty (30) Days after notice thereof has been given by QF to Mississippi Power;
- (ii) Mississippi Power fails to perform or comply with any other material term or condition of this Agreement and fails to conform to said term or condition within sixty (60) Days after a demand by QF to do so;
- (iii) Mississippi Power becomes insolvent, becomes subject to bankruptcy or receivership proceedings, or dissolves as a legal business entity; or
- (iv) any representation or warranty of Mississippi Power to QF is false or misleading in any material respect when made and Mississippi Power fails to conform to said representation or warranty within sixty (60) Days after a demand by QF to do so.

10.3 Remedies for Events of Default. For any Event of Default specified under Section 10.1 or Section 10.2, the non-defaulting Party may in its discretion terminate this Agreement by giving written notice thereof to the defaulting Party and/or exercise all remedies available at law or in equity.

10.4 Limitation of Liability. NEITHER PARTY SHALL BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT; PROVIDED, HOWEVER, THAT SUCH LIMITATION SHALL NOT APPLY IN THE CASE OF AMOUNTS OWED BY MISSISSIPPI POWER TO THIRD PARTIES AND FOR WHICH MISSISSIPPI POWER IS ENTITLED TO INDEMNIFICATION UNDER ARTICLE 11. MISSISSIPPI POWER SHALL HAVE NO LIABILITY TO QF UNDER ANY LEGAL OR EQUITABLE THEORY FOR ANY FAILURE OR INABILITY OF QF TO CONSUMMATE ANY SALE OF ENVIRONMENTAL ATTRIBUTES OR TO HAVE ANY ENVIRONMENTAL

ATTRIBUTES CERTIFIED BY ANY ORGANIZATION FOR ANY PURPOSE. QF SHALL INDEMNIFY AND HOLD MISSISSIPPI POWER HARMLESS FROM ANY COSTS REASONABLY INCURRED BY MISSISSIPPI POWER IN DEFENDING ANY CLAIM RELATED TO THE ENVIRONMENTAL ATTRIBUTES GENERATED BY THE QF, INCLUDING ANY CLAIM RELATED TO FAILURE OR INABILITY TO CONSUMMATE A SALE OF SUCH ENVIRONMENTAL ATTRIBUTES OR TO CERTIFY SUCH ENVIRONMENTAL ATTRIBUTES FOR ANY PURPOSE.

## **ARTICLE 11**

### **INDEMNIFICATION**

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

11.2 Procedure. If Mississippi Power becomes entitled to indemnification under Section 11.1 or any other provision of this Agreement, Mississippi Power shall promptly notify QF of any claim or proceeding in respect of which it is to be indemnified. Such notice shall be given as soon as reasonably practicable after Mississippi Power becomes aware of such claim or proceeding. Failure to give such notice shall not excuse an indemnification obligation. QF shall assume the defense thereof with counsel designated by Mississippi Power; provided, however, that if the defendants in any such action include both QF and Mississippi Power, and if Mississippi Power reasonably concludes that there may be legal defenses available to it that are different from or additional to, or inconsistent with, those available to the QF, Mississippi Power shall have the right to select and be represented by separate counsel, at the expense of QF. If QF fails to assume the defense of a claim, the indemnification of which is required under this Agreement, Mississippi Power may, at the expense of QF, contest, settle, or pay such claim.



11.3 Survival. All provisions of this Article 11 and all other indemnity obligations of the Parties under this Agreement shall survive termination of this Agreement, by default or otherwise, regardless of whether such obligations accrue prior to or after such termination. QF's indemnity obligations contained in this Agreement shall be independent of and shall not be limited by or limit the obligations of QF to procure and maintain insurance as may be required by any other agreement between the Parties.

## **ARTICLE 12**

### **FORCE MAJEURE**

12.1 Force Majeure. For the purposes of this Agreement, a "Force Majeure Event" as to a Party means any occurrence, nonoccurrence or set of circumstances that is beyond the reasonable control of such Party and is not caused by such Party's negligence or lack of due diligence, including flood, drought, ice, earthquake, windstorm or eruption; fire; explosion; invasion, civil war, commotion or insurrection; sabotage or vandalism; military or usurped power; or act of God or of a public enemy.

12.2 No Breach or Liability. A Party shall be excused from performing its obligations under this Agreement and shall not be liable in damages or otherwise if and to the extent that it is unable to so perform or are prevented from performing by a Force Majeure Event, provided that such Party shall:

- (i) give the other Party notice thereof, followed by written notice if the first notice is not written, as promptly as possible after such Party becomes aware of such Force Majeure Event, describing the particulars of such Force Majeure Event;
- (ii) use its reasonable best efforts to remedy its inability to perform as soon as practicable; provided, however, that this Section 12.2 shall not require the settlement of any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Party involved in the dispute, are contrary to its interest; provided further, that the settlement of strikes, lockouts or other labor disputes shall be entirely within the discretion of the Party having the difficulty; and
- (iii) when it is able to resume performance of its obligations under this Agreement, give the other Party written notice to that effect.

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

## **ARTICLE 13**

### **MISCELLANEOUS**

13.1 Confidentiality. QF acknowledges and agrees that the information contained within all Monthly Statements and all invoices under this Agreement, and all amounts paid by the Parties to one another under this Agreement, constitute confidential and proprietary information of Mississippi Power (“Confidential Information”). During the Term of this Agreement and for a period of two (2) years thereafter, QF shall not disclose such Confidential Information to any Person except for those of its officers, directors, and employees who agree to maintain the confidentiality of such Confidential Information in accordance with the terms hereof and who need to know the Confidential Information for purposes of performance under this Agreement.

13.2 Assignment. Neither Party shall assign this Agreement or any portion thereof without the prior written consent of the other Party which consent shall not be unreasonably withheld (except that Mississippi Power may assign this Agreement or any portion thereof to any Affiliate of Mississippi Power without the consent of QF); provided further, that: (i) any assignee shall expressly assume assignor’s obligations under this Agreement and (ii) unless expressly approved by the other Party to this Agreement, which approval shall not be unreasonably withheld, no assignment, whether or not consented to, shall relieve the assignor of its obligations under this Agreement in the event its assignee fails to perform.

#### 13.3 Taxes.

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

13.3.2 In the event Mississippi Power is required by law or regulation to remit or pay Taxes that are QF’s responsibility under this Agreement, Mississippi Power may deduct the amount of any such Taxes from the amounts otherwise due to QF under this Agreement, provided that if Mississippi Power does not elect to deduct such amount, QF shall pay such amount to Mississippi Power upon request by Mississippi Power.

13.3.3 QF shall provide Mississippi Power with all information requested by it for the purpose of reporting payments made pursuant to this Agreement to any federal or state authorities, including a fully completed Form W-9.

#### 13.4 Variable Interest Entity.

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

13.4.2 In the event that Buyer's independent accountants determine that consolidation of QF, or any of its Affiliates or permitted assigns, as a VIE in Mississippi Power's or any of its Affiliates' financial statements has occurred, Mississippi Power may provide notice to QF of such condition. In addition, within ten (10) Business Days after receiving any such notice, QF shall provide all necessary financial information to Mississippi Power to enable Mississippi Power (and any of its applicable Affiliates) to properly consolidate QF (and any of its applicable Affiliates) on a timely basis.

#### 13.5 Governing Law; Venue; Waiver of Jury Trial.

13.5.1 The validity, interpretation and performance of this Agreement, and each of its provisions, shall be governed by the laws of the State of Mississippi, without giving effect to the principles of conflict of laws.

13.5.2 EACH PARTY HERETO HEREBY AGREES THAT THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI AND ANY MISSISSIPPI STATE COURT SITTING IN HARRISON COUNTY, MISSISSIPPI SHALL HAVE EXCLUSIVE JURISDICTION FOR THE PURPOSES OF ALL LEGAL PROCEEDINGS AND RESOLVING ALL DISPUTES ARISING OUT OF OR RELATING TO THIS AGREEMENT. EACH PARTY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF THE VENUE OF ANY SUCH PROCEEDING BROUGHT IN SUCH A COURT AND ANY CLAIM THAT ANY SUCH PROCEEDING BROUGHT IN SUCH A COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

13.5.3 EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT.

13.6 No Partnership. QF and Mississippi Power do not intend for this Agreement to, and this Agreement shall not, create any joint venture, partnership, association taxable as a corporation, or other entity for the conduct of any business for profit.

13.7 Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon any respective successors and assigns of QF and Mississippi Power.

13.8 No Third Party Benefit. Nothing in this Agreement shall be construed to create any duty, obligation or liability of Mississippi Power to any person or entity not a party to this Agreement.

13.9 No Affiliate Liability. Notwithstanding any other provision of this Agreement, no Affiliate of Mississippi Power shall have any liability whatsoever for any party's performance, nonperformance or delay in performance under this Agreement.

13.10 No Waiver. Neither Mississippi Power's nor QF's failure to enforce any provision or provisions of this Agreement shall in any way be construed as a waiver of any such provision or provisions as to any future violation thereof nor prevent it from enforcing each and every other provision of this Agreement at such time or at any time thereafter. The waiver by either Mississippi Power or QF of any right or remedy shall not constitute a waiver of its right to assert said right or remedy, at any time thereafter, or any other rights or remedies available to it at the time of or any time after such waiver.

13.11 Amendment. This Agreement may be amended by, and only by, a written instrument duly executed by each of QF and Mississippi Power, which has received all approvals of Governmental Authorities of competent jurisdiction necessary for the effectiveness thereof.

13.12 Notices. Any notice, demand, request, statement, or correspondence provided for in this Agreement, or any notice which a Party may desire to give to the other in connection with this Agreement, shall be in writing (unless otherwise expressly provided by this Agreement) and shall be considered duly delivered when received by overnight delivery by a national and reputable delivery service, at the address(es) and to the attention of the person(s) listed below.

(i) **To Mississippi Power:**

Mississippi Power Company  
Attn:  
[Address]

**with copies to:**

Mississippi Power Company  
Attn:  
[Address]

(ii) **To QF:**

**with a copy to:**

unless Mississippi Power or QF shall have designated a different officer or address for itself by written notice to the other.

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

13.14 Articles and Section Headings. The descriptive headings of the various articles and sections of this Agreement have been inserted for convenience of reference only and shall in no way modify or restrict any of the terms or provisions under this Agreement.

13.15 Transfer of Information Acknowledgement. QF agrees to execute contemporaneously with the execution of this Agreement, the Transfer of Information Acknowledgement attached as **Appendix E**, and Mississippi Power agrees to the limited use and confidential treatment of such information as set forth in **Appendix E**.

13.16 Entire Agreement; No Reliance. This Agreement constitutes the entire understanding between the Parties and supersedes any previous agreements related to the subject matter hereof between the Parties. The Parties have entered into this Agreement in reliance upon the representations and mutual undertakings contained herein and not in reliance upon any oral or written representations or information provided by one Party to the other Party not contained or incorporated herein.

[The next page is the signature page.]

**IN WITNESS WHEREOF**, QF and Mississippi Power have caused this Agreement to be executed by their duly authorized representatives on the day and year first above written.

**MISSISSIPPI POWER COMPANY**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**[QF]**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## APPENDIX A

### CALCULATION OF MONTHLY PAYMENTS

#### 1. Definitions.

For purposes of this **Appendix A**, in addition to the defined terms in this Agreement, the following terms shall have the meanings set forth below:

**“Off-Peak Season”** means the Months included in the “Off-Peak Season” (or similar designation) as set forth in Rate CPE.

**“Off-Peak Season Off-Peak Hours”** means, with respect to a given Off-Peak Season Month, all Hours of such Month that are designated as “Off-Peak Hours” (or similar designation) as set forth in the Rate CPE that applies for such Month, including all of such Hours when Delivered Energy is not provided by QF.

**“Off-Peak Season On-Peak Hours”** means, with respect to a given Off-Peak Season Month, all Hours of such Month that are designated as “On-Peak Hours” (or similar designation) as set forth in the Rate CPE that applies for such Month, including all of such Hours when Delivered Energy is not provided by QF.

**“On-Peak Season”** means the Months included in the “On-Peak Season” (or similar designation) as set forth in Rate CPE.

**“On-Peak Season Off-Peak Hours”** means, with respect to a given On-Peak Season Month, all Hours of such Month that are designated as “Off-Peak Hours” (or similar designation) as set forth in the Rate CPE that applies for such Month, including all of such Hours when Delivered Energy is not provided by QF.

**“On-Peak Season On-Peak Hours”** means, with respect to a given On-Peak Season Month, all Hours of such Month that are designated as “On-Peak Hours” (or similar designation) as set forth in the Rate CPE that applies for such Month, including all of such Hours when Delivered Energy is not provided by QF.

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## 2. Pricing

Mississippi Power shall pay to QF a Monthly Energy Payment (“MEP”) for each Month of the Term, determined as follows:

For each On-Peak Season Month, the MEP shall be calculated as follows:

$$\text{MEP} = (\text{On-Peak Energy} * \text{On-Peak Price}) + (\text{Off-Peak Energy} * \text{Off-Peak Price})$$

Where:

On-Peak Energy = the total amount of Delivered Energy (in kWh) for all On-Peak Season On-Peak Hours that occur during the applicable Month.

On-Peak Price = the applicable energy rate (in \$/kWh) for the On-Peak Season On-Peak Hours, as prescribed by the Rate CPE that applies for such Month.

Off-Peak Energy = the total amount of Delivered Energy (in kWh) for all On-Peak Season Off-Peak Hours that occur during the applicable Month.

Off-Peak Price = the applicable energy rate (in \$/kWh) for the On-Peak Season Off-Peak Hours, as prescribed by the Rate CPE that applies for such Month.

For each Off-Peak Season Month, the MEP shall be calculated as follows:

$$\text{MEP} = (\text{On-Peak Energy} * \text{On-Peak Price}) + (\text{Off-Peak Energy} * \text{Off-Peak Price})$$

Where:

On Peak Energy = the total amount of Delivered Energy (in kWh) for all Off-Peak Season On-Peak Hours that occur during the applicable Month.

On-Peak Price = the applicable energy rate (in \$/kWh) for the Off-Peak Season On-Peak Hours, as prescribed by the Rate CPE that applies for such Month.

Off-Peak Energy = the total amount of Delivered Energy (in kWh) for all Off-Peak Season Off-Peak Hours that occur during the applicable Month.

Off-Peak Price = the applicable energy rate (in \$/kWh) for the Off-Peak Season Off-Peak Hours, as prescribed by the Rate CPE that applies for such Month.



**APPENDIX B**  
**[RESERVED]**

## APPENDIX C

### MONTHLY ADMINISTRATION CHARGE

QF shall pay to Mississippi Power a Monthly Administration Charge, in dollars (\$) per Month, for: (i) all costs and expenses incurred by Mississippi Power during such Month in connection with Mississippi Power's administration of this Agreement; (ii) all costs and expenses incurred by Mississippi Power during such Month in connection with implementing the applicable Option 1 or Option 2 under **Appendix A**, including preparation of the Monthly Statement and calculation of the amounts required to be paid by Mississippi Power for each Month, the costs and expenses associated with which will vary depending on the option elected by QF; (iii) any Taxes, assessments or other impositions for which Mississippi Power may be liable as a result of purchase of energy from QF or any other activity undertaken pursuant to this Agreement; (iv) any amounts owed to Mississippi Power with respect to metering as set forth in Article 5, or (v) all amounts which are otherwise chargeable to or to be paid by QF under a provision of this Agreement. The Monthly Administration Charge for the Initial Period and any subsequent Annual Period shall not exceed \$1,000.

## APPENDIX D

### GENERAL SERVICES ADMINISTRATION FLOW-DOWN PROVISIONS

Mississippi Power is a government contractor under an Areawide Public Utilities Contract with the General Services Administration of the United States Government, and as such, is required to conduct business with entities in compliance with the regulations contained herein. Accordingly, QF agrees that its performance and the performance of its contractors, subcontractors, vendors and suppliers under this Agreement shall comply with the following Federal Acquisition Regulations which shall be incorporated herein by reference as if set forth herein in full text:

- (i) 52.203-3 Gratuities (APR 1984);
- (ii) 52.203-6 Restrictions on Subcontractor Sales to the Government (SEPT 2006);
- (iii) 52.203-7 Anti-Kickback Procedures (MAY 2014);
- (iv) 52.219-8 Utilization of Small Business Concerns (OCT 2014);
- (v) 52.219-9 Small Business Subcontracting Plan (OCT 2014)
- (vi) 52.222-21 Prohibition of Segregated Facilities (FEB 1999);
- (vii) 52.222-26 Equal Opportunity (MAR 2007);
- (viii) 52.222-37 Employment Reports on Veterans (JUL 2014);
- (ix) 52.222-40 Notification of Employee Rights under the National Labor Relations Act (DEC 2010);
- (x) 52.222-50 Combating Trafficking in Persons (FEB 2009);
- (xi) 52.222-54 Employment Eligibility Verification (AUG 2013); and
- (xii) 52.222-13 Restrictions on Certain Foreign Purchases (JUN 2008)

Upon written request, Mississippi Power will provide the full text of any of the above sections incorporated herein by reference. QF warrants and represents that neither it nor any of its Affiliates, agents, contractors or subcontractors is debarred, suspended or proposed for debarment as a contractor or subcontractor to any department, agency or other division of the United States Government. In the event that QF or any of its Affiliates, agents, contractors or subcontractors become debarred, suspended or proposed for debarment during the term of this Agreement, QF will immediately notify Mississippi Power verbally and in writing.

**APPENDIX E**

**TRANSFER OF INFORMATION ACKNOWLEDGEMENT**

\_\_\_\_\_ (“QF”) and Mississippi Power Company (“Mississippi Power”) have entered into that certain Contract for the Purchase of Energy from a Qualifying Facility (“Agreement”) dated as of \_\_\_\_\_. The Agreement contemplates that certain information that could be considered to be non-public information that potentially has implications under the Federal Energy Regulatory Commission’s Standards of Conduct will be provided by QF to Mississippi Power and/or Southern Company Services, Inc., as agent for the transmission owning subsidiaries of The Southern Company (Alabama Power, Georgia Power Company, Gulf Power Company, and Mississippi Power Company). QF acknowledges that such information is being provided for the purposes of operational implementation and administration of the Agreement (which includes conducting Mississippi Power’s system operations and dispatch functions) and will be utilized by individuals in both Transmission Provider and Energy Affiliate/wholesale marketing unit functions under the Standards of Conduct.

The individuals within The Southern Company organizations indicated above may only use the information for the purpose of implementing and administering the Agreement (including conducting Mississippi Power’s system operations and dispatch functions). QF understands that such information will not be used or disseminated in any manner contrary to the confidentiality provision(s) in the Agreement or in violation of the Federal Energy Regulatory Commission’s Standards of Conduct. QF’s provision of this information has not been and is not being provided in exchange for any preferential treatment, either operational or rate-related, by Southern Company Services, Inc. or by any of the transmission-owning subsidiaries of The Southern Company. QF also acknowledges that QF is not providing the information under duress or coercion. In accordance with requirements of the Federal Energy Regulatory Commission, Southern Company Services, Inc. may post on OASIS the fact of QF’s consent to the provision of the information specified above to certain employees that may be employed within organizational units deemed to be Energy Affiliates/wholesale marketing units under the Standards of Conduct.

Acknowledged on behalf of QF:

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

**APPENDIX F**

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

**AGREEMENT** – Contract for the Purchase of Energy from a Qualifying Facility dated \_\_\_\_\_, 20\_\_ between Mississippi Power Company (“Buyer”), and \_\_\_\_\_ (“QF”) (the “Agreement”). Capitalized terms used herein shall have the meaning assigned in the Agreement.

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

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

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

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

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

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

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

The Agreement revenues correlate with fluctuations in QF's operating cash flows (operating expenses).

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

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

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

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

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

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

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

The Buyer and/or its affiliates participated significantly in the design or redesign of the QF's Facility.

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

The percentage that the Facility's fair value represents, of the fair value of the proposed QF's total assets, is approximately

\_\_\_\_\_ %

The Facility is essentially the only source of payment for specified liabilities or specified other interest (there is specific debt associated with the Facility).

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

**The above information (and any attachments) has been completed in full and agrees with our records as of the date hereof.**

[INSERT NAME OF QF]

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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