

**POWER PURCHASE AGREEMENT**

**BETWEEN**

**OKLAHOMA GAS AND ELECTRIC COMPANY**

**AND**

**[ \_\_\_\_\_ ]**

**- [date] -**

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**Exhibits:**

- EXHIBIT A    DEFINITIONS
- EXHIBIT B    CONSTRUCTION MILESTONES
- EXHIBIT C    FACILITY DESCRIPTION AND SITE MAPS
- EXHIBIT D    NOTICES AND CONTACT INFORMATION

EXHIBIT E	INSURANCE COVERAGE
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EXHIBIT G	FORM OF LETTER OF CREDIT
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EXHIBIT Q	NATURAL GAS FUEL SPECIFICATIONS
EXHIBIT R	FUEL OIL <i>if applicable</i>

OGE Model Capacity Purchase Agreement

**POWER PURCHASE AGREEMENT  
BETWEEN  
OKLAHOMA GAS AND ELECTRIC COMPANY  
AND  
[\_\_\_\_\_]**

This Power Purchase Agreement (this “PPA”) is made as of this [\_\_\_\_] day of [\_\_\_\_\_, 20\_\_], by and between (i) **Oklahoma Gas and Electric Company**, an Oklahoma corporation (“Company”), and (ii) [\_\_\_\_\_] a [\_\_\_\_\_] [limited liability company/corporation] (“Seller”). Company and Seller are hereinafter referred to individually as a “Party” and collectively as the “Parties.”

WHEREAS Seller desires to [develop, design, construct, interconnect,] own, operate and maintain the Facility as defined herein; and

WHEREAS Seller desires to sell and deliver, and Company desires to accept and receive, certain products and services generated from the Facility at the prices and on the terms and conditions set forth in this PPA.

NOW THEREFORE, in consideration of the mutual covenants herein contained, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following:

**Article 1 - Rules of Interpretation**

1.1 Interpretation.

(A) Capitalized terms listed in this PPA shall have the meanings set forth in Exhibit A - Definitions or as otherwise defined in this PPA, whether in the singular or the plural or in the present or past tense. Words not otherwise defined in this PPA shall (i) have meanings as commonly used in the English language, (ii) be given their generally accepted meaning consistent with Good Utility Practice, and (iii) be given their well-known and generally accepted technical or trade meanings.

(B) The following rules of interpretation shall apply: (1) The masculine shall include the feminine and neuter; (2) references to “Articles,” “Sections” or “Exhibits” shall be to articles, sections, or exhibits of this PPA except as the context may otherwise require; (3) all Exhibits are incorporated into this PPA (*provided, however*, that in the event of a conflict between the terms of those Exhibits and the terms of this PPA, the PPA shall control); and (4) use of the words “include” or “including” or similar words shall be interpreted as “include without limitation” or “including, without limitation.”

(C) This PPA was negotiated and prepared by both Parties with the advice and participation of counsel. None of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this PPA or any part hereof.

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### 1.2 Interpretation with Other Agreements.

(A) This PPA does not provide authorization for Seller to interconnect the Facility or inject power into the Transmission Authority's System. Seller shall contract for interconnection services in accordance with the applicable Transmission Tariff. Seller acknowledges that the Interconnection Agreement is/will be a separate contract and that (i) this PPA is not binding on the Transmission Authority, (ii) this PPA does not create any rights between Seller and the Transmission Authority, and (iii) the Interconnection Agreement does not modify the Parties' rights and obligations under this PPA. The applicable Transmission Authority shall be deemed to be a separate and unaffiliated contracting party for purposes of this PPA, regardless of whether such Transmission Authority is Company or an Affiliate of Company.

(B) This PPA does not provide for the supply of retail power for purposes of operating the Facility, including start-up, shut-down, oil heating, turbine adjustment, HVAC or any other purpose ("Station Power"). Seller shall contract with the utility providing Station Power to the Site (the "Local Provider") for the supply of Station Power. Seller acknowledges that (i) Seller must obtain Station Power independently, (ii) this PPA is not binding on the Local Provider, (iii) this PPA does not create any rights between Seller and the Local Provider, and (iv) Seller's contract for Station Power does not affect the Parties' rights and obligations under this PPA. For purposes of this PPA, the Local Provider shall be deemed to be a separate and unaffiliated contracting party regardless whether the Local Provider is Company or an Affiliate of Company.

### **Article 2 - Term and Termination**

This PPA shall become effective as of the date of its execution (the "Effective Date"), and shall remain in full force and effect until the 11:59 pm on the last Day of the calendar month during which occurs the thirtieth (30<sup>th</sup>) anniversary of the Commercial Operation Date (the "Scheduled Termination Date"), subject to early termination as provided in this PPA. Applicable provisions of this PPA shall continue in effect after termination to the extent necessary to (i) provide for final billings, payments and adjustments, (ii) enforce or complete the duties, obligations or responsibilities of the Parties (including under Section 12.1(B)-(D), Section 12.2(C), Section 12.3(B)-(C), Article 13 and Article 17 below), and (iii) address any remedies or indemnifications arising prior to termination.

### **Article 3 - Facility Description**

3.1 Description. Seller shall develop, design, engineer, permit, construct, interconnect, own, operate, and maintain the Facility, as further described in Exhibit C - Facility Description. A scaled map that identifies the Site, the location of the Facility, the Interconnection Point, the Interconnection Facilities, the Point of Delivery and other important facilities, is included in Exhibit C - Facility Description.

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### 3.2 General Design of the Facility.

(A) Seller shall design, construct, operate and maintain the Facility according to Applicable Law, Good Utility Practice, the Interconnection Agreement and the terms and conditions of this PPA.

(B) The Facility shall include all equipment specified in Exhibit C - Facility Description and otherwise necessary to fulfill Seller's obligations under this PPA, including all equipment necessary (i) to meet the requirements of Exhibit I - Operating Standards, and (ii) to interconnect successfully with the Transmission Authority's System for the provision of Contract Capacity at the Point of Delivery.

(C) The Net Capability of the Facility shall be [\_\_\_] MW.

## Article 4 - Implementation

### 4.1 Project Development.

(A) Seller shall enter into and perform at its sole expense all contracts required for (i) the engineering, design, permitting, procurement, construction, acquisition, manufacture, delivery, installation and operation of the Facility, and (ii) the generation and delivery of Contract Energy from the Facility and the provision of Contract Capacity at the Point of Delivery (such contracts generally, the "Project Contracts") with qualified and experienced contractors. Upon written request by Company, Seller shall provide copies of any or all Project Contracts to Company. All Project Contracts obtained by Company shall be deemed Confidential Information subject to Section 9 below.

(B) In its efforts to achieve Commercial Operation by COD, Seller shall use best efforts to achieve the milestones set forth in Exhibit B – Construction Milestones, and shall notify Company promptly, but in no event later than ten (10) Days, following achievement of each such milestone.

(C) Prior to the Commercial Operation Date, Seller shall (i) submit monthly progress reports to Company in a form agreed by the Parties, advising Company of the current status of each Construction Milestone, any significant developments or delays (along with an action plan for making up delays), and Seller's best estimate of the Commercial Operation Date; (ii) provide copies of reports submitted to the Facility Lender relating to status, progress and development of the project, and (iii) invite Company to participate in monthly meetings to discuss the progress reports, answer questions, and assess the schedule. Seller shall make all relevant counterparties under the Project Contracts available to Company, upon request, in order to keep Company fully informed on the status of development. Each report delivered to Company under this paragraph (C) shall be deemed Confidential Information subject to Section 20.19

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(D) Upon request, Company shall have the right to monitor the construction, start-up, testing, and operation of the Facility at the Site to verify compliance with this PPA, *provided, however,* that Company shall comply with all of Seller's applicable safety and health rules and requirements.

(E) Neither Company's review of Project Contracts and Seller's reports, nor its discussions with Seller and its contractors, nor its monitoring of development and construction the Facility, shall be construed as endorsement by Company of the design, engineering, construction or testing thereof nor as any express or implied warranty as to the performance, safety, durability, or reliability of the Facility.

### 4.2 Environmental Matters.

(A) No later than sixty (60) Days following a written request from the Company, Seller shall complete and provide to Company a comprehensive independent "Phase I" environmental investigation of the Site or its equivalent (including associated raw data, if requested by Company). Seller shall notify Company promptly (i) if and to what extent any Environmental Contamination on the Site will preclude or interfere with Seller's ability to perform its obligations under this PPA, and (ii) Seller's plan for remediation thereof that would allow Seller to perform this PPA as and when due. The Phase I report delivered to Company under this paragraph shall be deemed Confidential Information for purposes of Section 20.19.

(B) Throughout the Term, Seller promptly shall

1. disclose to Company and remediate, at Seller's sole cost and expense, any Environmental Contamination identified at the Site;
2. provide to Company copies of any further environmental assessments or investigations of the Site (including associated raw data, if requested by Company); and
3. disclose to Company the existence of any enforcement, legal, or regulatory action or proceeding relating to any alleged presence of Environmental Contamination and/or the alleged violation of any Applicable Law related to the protection of endangered, migratory or other protected species.

(C) For purposes hereof:

1. "Environmental Contamination" means the introduction or presence of Hazardous Materials at such levels, quantities or location, or of such form or character, that (i) requires remediation under Applicable Law, (ii) present a material risk that the Site will not be available or usable for the purposes contemplated by this PPA, and/or (iii) will preclude or interfere with Seller's ability to perform its obligations under this PPA as and when due.
2. "Hazardous Materials" means any substance, material, gas, or particulate matter that is regulated by any Governmental Authority as an environmental pollutant or dangerous to public health, public welfare, or the natural

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environment (including protection of non-human forms of life, land, water, groundwater, and air), including any material or substance that is (i) defined as “toxic,” “polluting,” “hazardous waste,” “hazardous material,” “hazardous substance,” “extremely hazardous waste,” “solid waste” or “restricted hazardous waste” under any provision of local, state, or federal law; (ii) petroleum, including any fraction, derivative or additive; (iii) asbestos; (iv) polychlorinated biphenyls; (v) radioactive material; (vi) designated as a “hazardous substance” pursuant to the Clean Water Act, 33 U.S.C. §1251 *et seq.* (33 U.S.C. §1251); (vii) defined as a “hazardous waste” pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. §6901 *et seq.* (42 U.S.C. §6901); (viii) defined as a “hazardous substance” pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601 *et seq.* (42 U.S.C. §9601); (ix) defined as a “chemical substance” under the Toxic Substances Control Act, 15 U.S.C. §2601 *et seq.* (15 U.S.C. §2601); or (x) defined as a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §136 *et seq.* (7 U.S.C. §136).

### 4.3 Permits.

(A) Seller shall obtain and pay for all Permits necessary or advisable under Applicable Law and Good Utility Practice for the construction, ownership, operation and maintenance of the Facility and the generation and delivery of the output from the Facility. Seller shall keep Company informed as to the status of its permitting efforts and shall provide Company the opportunity to review and comment on major applications for draft and final Permits. Seller shall promptly inform Company of (i) any Permits which Seller is unable to obtain, that are delayed, limited, suspended, terminated or otherwise constrained, along with a statement of whether and to what extent this circumstance may limit or preclude Seller’s ability to perform under this PPA, and (ii) Seller’s plan to overcome such issue(s) to allow Seller to perform this PPA as and when due. Company shall have the right to inspect and obtain copies of all Permits held by Seller.

(B) Seller represents and warrants to Company that, except for those Permits identified in Exhibit F - Required Permits (each of which will be obtained by Seller in the ordinary course of business not later than the applicable date set forth in Exhibit F – Required Permits), all Permits and other actions required or recommended by applicable Governmental Authorities to authorize Seller’s execution, delivery and performance of this PPA have been duly obtained and are in full force and effect.

(C) Throughout the Term, Seller promptly shall disclose to Company the existence of any enforcement, legal, or regulatory action or proceeding relating to the alleged violation of any Permit held by Seller, which proceeding (if successful) could materially interfere with Seller’s performance of this PPA.

(D) For purposes hereof, “Permits” means all applicable construction, land use, air quality, emissions control, environmental, protected species, and other permits, market and resource adequacy registrations, licenses and approvals from any Governmental Authority for construction, ownership, operation and maintenance of the

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Facility and the generation and delivery of energy, and the provision of capacity, therefrom.

4.4 Governmental Inspections. Seller shall notify Company (i) sufficiently in advance of any known upcoming significant inspections by any Governmental Authority relating to the Facility, to allow Company the opportunity to attend, and (ii) promptly after any unscheduled or impromptu inspection with a description of the nature and outcome of such inspection.

### 4.5 Commercial Operation.

(A) Seller shall cause COD to occur no later than the earlier to occur of (i) the date on which the requirements of Section 4.5(C) have been satisfied (subject to Company's rights pursuant to Section 4.5(D)), and (ii) June 1, 2021 (such date, the "Target COD"). Company shall not be obligated to accept and establish a Commercial Operation Date earlier than June 1, 2019.

(B) Seller shall notify Company of the date on which Seller believes the Facility has achieved Commercial Operation (a "COD Notice"). A COD Notice shall include all necessary supporting documentation of the satisfaction or occurrence of all COD Conditions. Company shall have thirty (30) Business Days to review a COD Notice and raise any objection to Seller's satisfaction of any of the COD Conditions, *provided, however*, that Seller's COD Notice shall be deemed accepted by Company as of the date of delivery if Company fails to object within such time period. Seller may notify Company of completion of one or more COD Conditions on an individual and incremental basis prior to COD, *provided, however*, that Company shall in all cases have up to thirty (30) Business Days to review and object to each such notice.

(C) For purposes hereof:

1. the "Commercial Operation Date" or "COD" means 12:01 am on the Day following the date on which Company receives Seller's COD Notice, without valid objection thereto by Company; and

2. the "COD Conditions" are:

(a) an officer of Seller, authorized to bind Seller and who is familiar with the Facility, has provided written confirmation that (1) all necessary Permits have been obtained and are in full force and effect, (2) Seller is in compliance with this PPA in all respects, and (3) the Facility is available to commence normal operations in accordance with Seller's operating agreements, Project Contracts, and applicable manufacturers' warranties;

(b) Seller has made all necessary arrangements to obtain and pay the Local Provider for Station Power;

(c) Seller, the applicable Transmission Owner and the Transmission Authority have signed the Interconnection Agreement, and Seller

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has received no notice of breach thereof from the Transmission Authority or the Transmission Owner;

(d) the Facility is interconnected to the Transmission Authority's System, and has been fully tested, achieved initial synchronization, and been successfully operated at a generation level acceptable to the Transmission Authority, without experiencing any abnormal or unsafe operating conditions on any interconnected system;

(e) the Facility meets all criteria for Network Resource Interconnection Service, under the Interconnection Agreement and the Transmission Tariff;

(f) the Facility is configured and available for operation in a manner to permit accreditation of the Facility as a Capacity Resource, in an amount substantially equal to its Net Capability;<sup>1</sup>

(g) Seller has made all arrangements necessary to deliver Contract Energy from the Facility in accordance with SPP Market Protocols and the Transmission Tariff during the Term;

(h) Seller has made all arrangements necessary to make the Contract Capacity from the Facility available at the Delivery Point during the Term;

(i) Seller has obtained and provided to Company a certification from an independent registered professional engineer stating that the Facility has been completed in all respects;

(j) each Generating Unit has achieved at least four Successful Starts [(including one Successful Start on fuel oil) *if applicable*] [in each possible operating configuration *if applicable*], without experiencing any abnormal operating conditions;

(k) the Facility has generated continuously for a period not less than [\_\_\_\_\_] (\_\_\_) consecutive hours, at an output level not less than ninety seven percent (97%) of Net Capability (adjusted for ambient conditions), without experiencing any abnormal operating conditions;

(l) the Transmission Authority has confirmed Commercial Operation Year 1 (as set forth on Exhibit M) that this PPA qualifies as a contract for accredited capacity pursuant to the Transmission Tariff in an amount equaling the Reference Capacity Amount for Commercial Operation Year 1;

(m) Seller has registered the Facility as a resource pursuant to the Transmission Tariff and the SPP Market Protocols and has demonstrated the

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<sup>1</sup> **Note to Bidders:** Bidders who are bidding in less than the Net Capability of a Facility or who are bidding in intermittent resources should amend this requirement to reflect the facts of their bid.

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reliability of the Facility's communications systems with the Seller's EMCC and the AGC interface with the SPP Integrated Marketplace, and the capability of the Facility to receive and respond to signals from the SCADA System of the SPP Integrated Marketplace, in accordance with the parameters set forth in Exhibit C – Facility Description and Exhibit I - Operating Standards;

(n) the Facility has demonstrated its capability to meet the Expected Ramp Rates, and meets the Dispatchability Requirements set forth in Exhibit I - Operating Standards; and

(o) all fuel supply, fuel storage and fuel delivery arrangements necessary to operate the Facility in compliance with this PPA have been completed, tested and are in effect.

(D) In the event that the COD Conditions are satisfied with respect to one or more (but fewer than all) of the Generating Units planned for the Facility, Company at its option and in its sole discretion may issue a "Partial Completion Declaration" stating that COD has been achieved with respect to such Generating Units. In that case:

1. from and after the date of a Partial Completion Declaration, all of the rights and duties of the Parties under this PPA shall apply in respect of the Generating Units included in the Partial Completion Declaration, including payments for capacity under Article 8 (which shall be prorated based upon the capacity of such Unit(s)), and the dispatch, accreditation and maintenance requirements of this PPA;

2. Liquidated Delay Damages, if any, shall be prorated for the Unit(s) not included in the Partial Completion Declaration; and

3. in the event that the Generating Unit(s) not included in the Partial Completion Declaration fail to achieve the COD Conditions by the Target COD (which failure is not cured within the cure period set forth in Section 12.2), Company shall have the right, but not the obligation, by notice to Seller, either (i) to declare an Event of Default and terminate this PPA entirely, as permitted and with the consequences set forth in Section 12.2, or (ii) to terminate this PPA only as to the Generating Units that failed to achieve the COD Conditions, and collect prorated Termination LDs accordingly, in which case the balance of this PPA shall survive as to the Generating Units included in the Partial Completion Declaration.

(E) For purposes hereof, the first "Commercial Operation Year" shall mean the period starting at 12:01 a.m. on the Commercial Operation Date and ending at 11:59 pm on the last Day of the calendar month in which the first anniversary of COD occurs, and each successive "Commercial Operation Year" shall mean the twelve (12) month period following the prior Commercial Operation Year.

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### 4.6 Pre-COD Testing.

(A) Seller shall provide Company and Transmission Authority with the information necessary to have the Facility registered with the Transmission Authority for purposes of any applicable resource adequacy requirements, for SPP Integrated Marketplace purposes, and for inclusion in any generation modeling maintained by the Transmission Authority, sufficiently in advance to allow the Facility to be registered in such model prior to generating any Pre-COD Test Energy. Company shall cooperate reasonably to assist in the registration of the Facility to allow generation of Pre-COD Test Energy.

(B) Seller shall not sell any capacity, energy or any other products or services from the Facility to any third party, prior to COD, without the express prior written consent of Company.

(C) Seller shall be responsible for the sale of all Pre-COD Test Energy (whether generated from natural gas fuel or fuel oil *if applicable*). For purposes hereof, "Pre-COD Test Energy" means energy generated by the Facility prior to COD, required to satisfy the COD Conditions. Company shall have no obligation to purchase (i) any Pre-COD Test Energy or (ii) any Contract Capacity available prior to COD.

## Article 5 - Delivery

### 5.1 Arrangements.

(A) Seller shall be responsible for arranging, maintaining and paying the costs associated with the interconnection of the Facility to the Transmission Authority's System. Seller shall comply with the Transmission Authority's requirements for interconnection and shall comply with all requirements set forth in the applicable Transmission Tariff. The resulting Interconnection Agreement must include Network Resource Interconnection Service at a minimum. Seller shall cooperate reasonably in any request by Company to assist in Company's efforts to have the Facility approved as a Capacity Resource or equivalent classification pursuant to the applicable Transmission Tariff.

(B) Seller hereby authorizes Company to contact, discuss and obtain information concerning the Facility and the Interconnection Facilities directly with/from the Transmission Authority. Promptly upon request by Company, Seller shall confirm such authorization in writing to the Transmission Authority and to the applicable Transmission Owners, in such form as may be requested by Company or the Transmission Authority.

(C) To the extent applicable, Seller shall be the market participant for the Facility, as defined by the Transmission Authority.

(D) Seller shall be responsible for all interconnection, electric losses, transmission and ancillary service arrangements and costs required to deliver Contract Energy from the Facility.

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(E) Seller shall be solely (i) responsible for any and all congestion costs, penalties, fees or other charges imposed by SPP in respect of the generation node to which the Facility is connected; and (ii) entitled to any and all congestion, credits or other payments made by SPP in respect of the generation node to which the Facility is connected in each case as a result of the Facility being a generation facility within the SPP Integrated Marketplace.

### 5.2 Market Changes.

(A) If at any time during the Term, (i) SPP is no longer the Transmission Authority with respect to Company's resources or loads, or (ii) Company's resources and loads are no longer participating in the SPP Integrated Marketplace, then the Parties shall cooperate in good faith to facilitate the provision by Seller to Company of the Contract Capacity, at no cost to the Company, consistent with this PPA to the extent possible.

(B) If at any time during the Term, the Transmission Authority, the ERO or any other Governmental Authority with jurisdiction over the SPP Integrated Marketplace (i) changes the manner in which the Facility is scheduled and dispatched, (ii) alters current capacity types (as defined under the Transmission Tariff) or adds additional capacity types (e.g., capacity performance obligations), (iii) introduces concepts into the Transmission Tariff such as fuel security, or (iv) otherwise alters the Transmission Tariff or the SPP integrated Marketplace in a manner that actually or potentially exposes Company to penalties or other costs for a failure to perform under or comply with such changes, introductions or alterations, the Parties shall cooperate in good faith to change their protocols for operation of the Facility accordingly, at no cost to Company, consistent with this PPA to the extent possible.

(C) In the event that improvements to the Facility or other expenditures by Seller are necessary to comply with this Section 5.2, which expenditures must be capitalized by Seller under generally accepted accounting principles consistently applied, such expenditures shall be borne solely and exclusively by Seller and Company shall have no obligation to reimburse Seller in respect of such expenditures.

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5.3 Electric Metering Devices. All Electric Metering Devices used to measure energy shall be owned, installed, and maintained in accordance with the Interconnection Agreement, at no cost to Company.

(A) Meter readings will be adjusted to reflect losses from the Electric Metering Devices to the Point of Delivery in accordance with applicable manufacturers' parameters or as otherwise agreed by the Parties.

(B) Seller shall arrange any necessary authorization to provide Company access to all Electric Metering Devices for purposes related to this PPA, and shall provide Company the opportunity to be present at any time when such Electric Metering Devices are to be inspected, tested or adjusted.

### 5.4 Natural Gas Fuel. *[if applicable]*

(A) Seller shall be solely responsible for all natural gas interconnection, transportation, delivery and metering arrangements, and all associated costs, required to procure and receive natural gas fuel to operate the Generating Unit(s). Seller shall, at its sole expense, construct, operate and maintain the pipelines, compressors, meters, heaters, filter/separation equipment, electronics, and other necessary equipment, of sufficient capacity and industrial specifications to procure, receive, regulate, meter and transport natural gas fuel to the Generating Unit(s), to allow for full operation of the Generating Unit(s) on natural gas fuel over the Term.

(B) Seller shall obtain and utilize firm gas transportation service for the delivery of natural gas fuel to the fuel delivery point for the Facility.

(C) Seller shall bear entirely the risk of loss of any fuel, and shall be responsible for any costs, damages, fines or penalties associated with leaks, spills, remediation, or other liabilities associated with such fuel. Seller shall promptly report and resolve any natural gas leaks or spills, at its sole expense, in accordance with Applicable Laws. Company shall bear no risk of loss or other liability in respect of any fuel for any reason.

### 5.5 Fuel Oil. *[if applicable]*

(A) Seller shall install Fuel Oil Storage Facilities as part of the Facility, consistent with Exhibit R - Fuel Oil. Seller shall be solely responsible for all Fuel Oil transportation, delivery and other arrangements, and all associated costs, required to procure and receive Fuel Oil necessary to operate the Generating Unit(s). Seller shall maintain and calibrate the fuel oil meter(s) from time to time in accordance with Good Utility Practices.

(B) Seller shall at its sole cost and expense fill the fuel oil storage tank(s) at the Facility with Acceptable Fuel Oil prior to the Commercial Operation Date, in time to conduct required pre-COD testing.

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(C) Following the initial fill of the fuel oil storage tank(s), Seller shall arrange and pay for all subsequent fills of such tank(s), as and when desired by Seller.

(D) Seller shall be solely responsible for (i) maintenance of the fuel oil in the Fuel Oil Storage Facilities, and (ii) the removal and replacement of any degraded and unusable fuel oil, at its expense. Seller, at its own expense, may conduct fuel oil tests to determine the extent of degradation, if any. Included in Exhibit R – Fuel Oil is the Fuel Oil Maintenance Plan for the Facility.

(E) Seller shall bear entirely the risk of loss of any fuel, and shall be responsible for any costs, damages, fines or penalties associated with leaks, spills, remediation, or other liabilities associated with such fuel. Seller shall promptly report and resolve any Fuel Oil leaks or spills, at its sole expense, in accordance with Applicable Laws. Company shall bear no risk of loss or other liability in respect of any fuel for any reason.

(F) Seller shall, in its sole discretion, determine when and if the Generating Unit(s) shall be dispatched using fuel oil as the combustion fuel to generate Contract Energy, subject to the Fuel Oil Maintenance Plan and the emissions limitations in Seller's Permits.

5.6 Deliverability. The Parties acknowledge and agree that the Contract Capacity is intended to be Deliverable Capacity for purposes of this PPA. In the event Firm Transmission is required during the term of this PPA to ensure for any Commercial Operation Year (or subsequent Commercial Operation Years) that the Accredited Capacity Amount for such year retains its accredited capacity status under the Transmission Tariff, Company may, in its sole discretion, proceed to obtain such Firm Transmission (which would in turn require that the Deliverable Capacity be changed to Firm Capacity under this PPA) from the Transmission Authority; provided, however, that all costs related to obtaining or maintaining such Firm Transmission shall be borne exclusively by Seller. Seller acknowledges and agrees that the lead time required by Company to establish Firm Transmission pursuant to this Section 5.6 could be substantial and further acknowledges and agrees that all costs, fines, penalties and other Losses incurred by Company that are related to any failure under this Section 5.6 to change Deliverable Capacity to Firm Capacity prior to the establishment of such Firm Transmission shall be borne exclusively by Seller.

### Article 6 - Conditions Precedent

#### 6.1 PUC Approval.

(A) No later than [\_\_\_\_\_( )] Days after the Effective Date, Company may apply for PUC Approval.

(B) Seller shall cooperate with Company at Company's request in connection with Company's efforts to obtain PUC Approval.

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(C) If Company applies for PUC Approval, Company shall have the right to terminate this PPA, without any further financial or other obligation to Seller as a result of such termination, by notice to Seller:

1. at any time within one hundred twenty (120) Days following issuance of a written order by the PUC rejecting PUC Approval, or granting PUC Approval with conditions unacceptable to Company in its sole discretion;
2. at any time prior to [\_\_\_\_\_, 20\_\_], if prior to such date the PUC has not issued a written order granting or rejecting PUC Approval;
3. at any time within one hundred twenty (120) Days following timely request for reconsideration (in whole or in any material part) by any third party with standing, of a written PUC order granting PUC Approval; and/or
4. at any time within one hundred twenty (120) Days following timely appeal by any third party with standing, of a written PUC order granting PUC Approval.

(D) For purposes of this PPA, "PUC Approval" means a written order of the PUC making an affirmative determination that all costs incurred under this PPA are recoverable from Company's retail customers pursuant to Applicable Law. PUC Approval must be unconditional and subject only to the requirement that the PUC retains ongoing prudency review of Company's performance and administration of this PPA.

6.2 Other Company CPs. *[if any].*

6.3 Seller CPs. *[if any - bid specific].*

### Article 7 - Sale and Purchase

7.1 General Obligation.

(A) Beginning on the Commercial Operation Date, Seller shall generate from the Facility and sell to Company, and Company shall receive at the Point of Delivery and purchase from Seller, the Contract Capacity as required by this PPA. For purposes of this PPA:

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1. “Contract Capacity” shall mean all of the committed (under this PPA) net generating capacity actually available at any time from the Facility at the Point of Delivery, following COD, not to exceed the Net Capability; and

2. “Contract Energy” shall mean the energy generated by the Contract Capacity as offered by the Seller into the SPP Integrated Marketplace and actually dispatched by the Transmission Authority from time to time.

(B) Seller shall not be entitled to deliver Contract Energy or Contract Capacity from any source other than the Facility. Subject Section 8.1(B) and Section 8.1(C), Seller intends all Contract Capacity to be Deliverable Capacity.

7.2 Dispatch. Seller shall present and offer the output of the Facility into the SPP Integrated Marketplace, including offer parameters addressing starts, shutdowns, ramping, and loading levels of the Generating Units associated with the Contract Capacity and Contract Energy, all in accordance with Good Utility Practices, Applicable Law, the SPP Market Protocols, the Transmission Tariff and Exhibit I – Operating Standards. The Facility will be equipped to accept electronic dispatch instructions issued by the Transmission Authority on a dispatch interval basis, which is currently a 5-minute interval. The actual dispatch of the Facility shall be governed by the SPP Market Protocols and the Transmission Tariff. For any Facility trip, Seller shall restart the Facility in accordance with Good Utility Practices.

### 7.3 Permit Limitations.

(A) Seller shall not take any action that would result in or materially contribute to a restriction under any Permit that would preclude or limit the availability of Contract Capacity to Company.

(B) Seller covenants that Seller holds or prior to COD will obtain the necessary authority under Applicable Law to generate and deliver Contract Energy in amounts at least equal to the Planned Permitted Energy. Seller accepts the risk that its Permits or other Applicable Law will preclude or limit its legal authority to generate and deliver all of the Planned Permitted Energy, subject to Section 20.4(C).

(C) Upon request by Company from time to time, whether pre- or post-COD, Seller shall provide to Company such detailed data regarding emissions from the Facility, in one or more operating configurations, as Company may request.

(D) For purposes of this PPA, “Planned Permitted Energy” means [redacted] MWh per calendar year of Contract Energy authorized or expected to be authorized to be generated in accordance with Seller’s Permits.<sup>2</sup>

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<sup>2</sup> **Note to Bidders:** To the extent “Planned Permitted Energy” is expected in your bid to differ for any or all Commercial Operation Years, please provide a schedule reflecting those differences.

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7.4 Ancillary Services and Green Benefits. The Parties acknowledge that existing and future Applicable Laws create significant value in the ownership, use and allocation of Ancillary Services and Green Benefits. To the full extent allowed by Applicable Law, Seller shall own and be entitled to claim all Ancillary Services and Green Benefits to the extent existing or created during the Term associated with the Facility, the Contract Capacity purchased by Company hereunder and the Contract Energy. Seller agrees not to use any Ancillary Services associated with the Facility during those periods when it is required by the Transmission Authority under the Transmission Tariff to perform those testing protocols required to determine an Accredited Capacity Amount for purposes of this PPA. For purposes hereof:

1. "Ancillary Services" means ancillary services subject to regulation or reward by the ERO and/or addressed under the Transmission Tariff from time to time (if any), that are associated, directly or indirectly, with the Contract Capacity (excluding the Contract Capacity itself) or the generation and/or transmission of Contract Energy therefrom from time to time, including any rights to compensation therefor. By way of example only, and except for the Contract Capacity itself, "Ancillary Services" may include availability or reliability attributes; resource adequacy characteristics; locational benefit attributes; and/or VaR generation.

2. "Green Benefits" means existing and future environmental credits, benefits or attributes, emissions reductions and avoidances (including emission rate credits), offsets, allowances and green tags, attributable to the Facility and/or to the Contract Energy offered by Seller into the SPP Integrated Market Place and dispatched by the Transmission Authority during the Term, recognized by Applicable Law, including any rights to compensation therefor. Green Benefits include but are not limited to:

- Avoided emissions of pollutants to the air, soils or waters, such as sulfur oxides (SO<sub>x</sub>), nitrogen oxides (NO<sub>x</sub>) and carbon monoxide (CO);
- Credits, benefits, allowances and attributes arising from avoided emissions of greenhouse gases (such as carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide (N<sub>2</sub>O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and sulfur hexafluoride (SF<sub>6</sub>)) that have been or may in the future be determined by the United Nations Intergovernmental Panel on Climate Change or by Applicable Law to contribute to the threat of climate change; and
- Reporting rights for avoided emissions, such as Green Tag Reporting Rights.

## Article 8 - Payment Calculations

8.1 Payment for Contract Capacity. Commencing on the Commercial Operation Date, Company shall pay Seller a monthly Capacity Payment for Contract Capacity as follows:

(A) For each Commercial Operation Year, an amount equal to the Capacity Price multiplied by the Reference Capacity Amount, (all as reflected in Exhibit M), divided by (ii) twelve (12).

(B) For each Commercial Operation Year, Seller shall ensure that it timely conforms with those testing protocols required by the Transmission Authority under the Transmission Tariff to calculate the accredited capacity of the Facility including those protocols and requirements specified in Section 7.0 of Attachment AA to the Transmission Tariff (the amount so calculated, the "Accredited Capacity Amount"). Within thirty (30) Days after Seller has determined the Accredited Capacity Amount for such year (verified if and as required by the Transmission Authority pursuant to the Transmission Tariff), Seller shall (i) provide to Company documentation signed by an officer of Seller certifying such Accredited Capacity Amount.

1. If such Accredited Capacity Amount is less than the Reference Capacity Amount for such year, Seller shall pay to Company in cash by wire transfer of immediately available funds, an amount equal to the difference between the Reference Capacity Amount and the Accredited Capacity Amount *multiplied by* the greater of (x) the Capacity Price and (y) the price required to be paid by the Company to replace difference between the Reference Capacity Amount and the Accredited Capacity Amount.

2. If the Accredited Capacity Amount for any Commercial Operation Year exceeds the Reference Capacity Amount for such year, Company shall have no obligation to pay Seller for any such excess and Seller shall be able to dispose of such excess in its sole discretion.

(C) If, for any Commercial Operation Year, the Accredited Capacity Amount is less than ninety percent (90%) of the Reference Capacity Amount, the Company may, in its sole discretion and in addition to any remedy it may have pursuant to Section 8.1(B) for such Commercial Operation Year, terminate this Agreement. In the event Company elects to terminate this Agreement pursuant to this Section 8.1(C), Company shall notify Seller in writing of such election. Within five (5) Days after receipt of such notice, Seller shall pay to Company in cash by wire transfer of immediately available funds, in addition to any other amounts otherwise required by this PPA, any amount due to the Company pursuant to Section 8.1(B).

8.2 Payment for Energy. Commencing on the Effective Date, Seller shall be responsible for representing and offering the Contract Energy into the SPP Integrated Marketplace in accordance with SPP Market Protocols. All payments to Seller for items outside of those referenced in Section 8.1 shall be paid to Seller directly by SPP in accordance with the Transmission Tariff and SPP Market Protocols.

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### 8.3 Certain Penalties and Bonuses.

(A) Notwithstanding anything else in this PPA to the contrary, if during the Term, Seller cannot provide all or any part of the Contract Capacity to Company at such time as the Transmission Authority (or any successor thereof during the Term) may require the Company to make such Contract Capacity available on the Transmission System, Seller shall indemnify and hold Company harmless, without limitation, from any and all costs, penalties or other Losses in excess of the Capacity Payment otherwise due and owing under this PPA during the term of such occurrence. For example, and without intending in any way to limit Seller's liability pursuant to this Section 8.3:

1. if a failure by Seller pursuant to this Section 8.3 causes Company to be unable to resolve a capacity deficiency for the purpose of meeting the Resource Adequacy Requirement (as such term is defined in the Transmission Tariff) by May 15 of any applicable Commercial Operation Year, Seller shall be liable, in addition to any payments required pursuant to Section 8.1 of this PPA, for any Deficiency Capacity Payment (as such term is defined in the Transmission Tariff) or other fine or penalty that may be required to permit Company to comply with its obligations under the Resource Adequacy Requirement; or

2. if Seller as the Market Participant under this PPA, fails to provide on Company's behalf (or to ensure that Company provides on its own behalf) the necessary data to permit the Transmission Authority to verify Company's compliance with the Resource Adequacy Requirement.

(B) Except as provided in Section 14.4(2)(b) of Attachment AA to the Transmission Tariff, Seller shall not be entitled to any bonus or revenue otherwise payable by the Transmission Authority to Seller that is related to Company's individual "LRE Excess Capacity" (as such term is defined in the Transmission Tariff).

(C) For purposes hereof, for any period of time during the Term as to which EMCC, NERC, the ERO or the Transmission Authority formally declares an elevated concern regarding system capacity, reliability or operating reserves with respect to the Transmission Authority's System or any directly interconnected transmission system, Seller shall indemnify and hold Company harmless, without limitation, from any and all costs, penalties or other Losses in excess of the Capacity Payment otherwise due and owing under this PPA during the term of such occurrence.

## Article 9 - Billing and Payment

### 9.1 Billing.

(A) The billing period under this PPA shall be the calendar month.

(B) Within fifteen (15) Business Days following the end of each month in a Commercial Operation Year, Seller shall submit an invoice to Company in a form and by a method to be determined by the Parties, showing the amount due Seller for the

## OGE Model Capacity Purchase Agreement

relevant month, specifying the products and services provided, all billing parameters, rates and factors, and any other data relevant to the calculation of payments due to Seller. Such invoice shall include an explanation of any items in dispute, as well as all supporting documentation upon which Seller relies.

9.2 Payment. All payments shall be remitted via electronic funds transfer, as designated by the owed Party, on or before the thirtieth (30<sup>th</sup>) Business Day following receipt of the invoice. Remittances received by mail will be considered to have been paid when due if the postmark indicates the payment was mailed on or before the thirtieth (30<sup>th</sup>) Business Day following receipt of the billing invoice. Company at any time may offset against amounts owed to Seller, any liquidated amounts, accrued damages and other payments, and undisputed billing errors and adjustments, which are owed by Seller to Company.

9.3 Billing Disputes. Either Party may dispute invoiced amounts pursuant to Section 13.1, but shall pay to the other Party at least the portion of invoiced amounts that is not disputed, on or before the invoice due date. When the billing dispute is resolved, the owing Party shall pay the amount owed within five (5) Business Days of the date of such resolution.

### Article 10 - Operations and Maintenance

10.1 Operation and Administration. Seller shall staff, control, and operate the Facility consistent with Good Utility Practices and Applicable Law, including the Transmission Tariff and the SPP Market Protocols, Exhibit I – Operating Standards and this PPA. *add one of the following [no ¶ break]* :

*simple cycle facilities*: Personnel of Seller shall be available 24x7 via telephone or other electronic means with (i) the capability of remotely starting, operating and stopping the Facility within ten (10) minutes, and (ii) the ability to be physically present at the Site within thirty (30) minutes, to start, operate and stop the Facility on-Site.

*combined cycle facilities*: Personnel of Seller capable of starting, operating, and stopping the Facility shall be physically present at the Facility 24x7 during Commercial Operation.

10.2 Facility Maintenance. Seller shall maintain the Facility in accordance with Good Utility Practices. Scheduled Outages/Deratings shall comply with the requirements of Exhibit L – Maintenance.<sup>3</sup> Absent the prior written consent of

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<sup>3</sup> **Note to Bidders:** Company expects that each bidder will provide with its bid a fully formulated Exhibit L that contains schedules, notice requirements, advance change and late change requirements and SMEs.

## OGE Model Capacity Purchase Agreement

Company, Seller shall schedule no Outages/Deratings during the months of January, February, June, July, August, September and December.

### 10.3 Forced Outages.

(A) When Forced Outages occur, Seller shall notify the Company of the existence, nature, start time, and expected duration of the Forced Outage as soon as practicable, but in no event later than thirty (30) minutes after the Forced Outage occurs. Thereafter Seller shall immediately inform Company of any changes in the expected duration of the Forced Outage except to the extent relieved of this obligation by Company with respect thereto.

(B) In addition to the foregoing notification, for any Forced Outage, shutdown or derating of the Facility, Seller shall conduct a root cause analysis, immediately provide the root cause analysis to the Company, and take corrective action to prevent reoccurrences as soon as practicable thereafter, at Seller's sole expense. Such corrective action includes weather protective modifications to the Facility, additional operating or maintenance procedures and other appropriate preventative measures in accordance with Good Utility Practices. Seller shall diligently complete such analysis and corrective actions as soon as possible and provide to Company a written report containing such analysis and a summary of the corrective action taken or to be taken as soon as diligently possible.

### 10.4 Post-COD Testing.

(A) Following the Commercial Operation Date, Seller shall conduct capacity testing of the Facility as and when contemplated by Exhibit J - Capacity Testing and such other testing of the Facility as may be required by this PPA, Applicable Law (including any accreditation testing mandated by the ERO, the Transmission Authority or the Transmission Tariff and any resource adequacy testing required by the Transmission Authority or the Transmission Tariff, in each case whether or not required to satisfy Seller's obligations under Section 8.1) and any testing required by Good Utility Practices. Seller shall fulfill all reporting requirements arising from such testing.

(B) Company shall have no obligation to purchase energy generated during post-COD testing of the Facility. All energy actually dispatched by Transmission Authority in connection therewith shall be treated by Seller as Contract Energy hereunder.

(C) For purposes hereof, "Post-COD Test Energy" means energy generated by the Facility following COD, reasonably required to satisfy the post-COD testing of the Facility required by this PPA.

10.5 Forecasting. Seller shall provide such forecasts of available capacity as the EMCC, ERO or Transmission Authority may require from time to time. Seller concurrently shall provide to Company a copy of each such forecast.

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### 10.6 Books and Records.

(A) Seller shall maintain an accurate and up-to-date hourly operating log for the Facility, in electronic format, that identifies real-time operating information for each Generating Unit, including levels of capacity availability; energy production; changes in operating status; Forced Outages; Scheduled Outages/Deratings; information required by Governmental Authorities in the prescribed format; and other information reasonably requested by Company.

(B) Seller shall deliver to Company information on Facility performance during each calendar month within five (5) Business Days after the end of the month. For each Generating Unit, and using definitions provided by (or consistent with) the NERC Generation Availability Data System ("GADS") Manual, or any successor document, the data reported shall include planned and unplanned derated hours [with separate calculations for gas and fuel oil *if applicable*], average derated kW from Net Capability during the derated hours, scheduled maintenance hours, average derated kW during scheduled maintenance hours, the number of successful and unsuccessful turbine starts, hours on-control, hours on-line, and the monthly operating log of the Facility.

(C) Seller and Company shall each keep complete and accurate records and all other data required by each of them for the purposes of proper administration of this PPA, including metering, billing and payment records, and such records as may be required by Governmental Authorities.

(D) Originals or copies of all Operating Records shall be maintained at the Facility or such other Oklahoma location as may be specified by Seller from time to time. Company may examine and make copies of such Operating Records from time to time upon request, during normal business hours.

10.7 Access to Facility. Representatives of Company shall have access to the Facility from time to time, on prior notice, to read meters, perform inspections and take such other actions as may be appropriate to facilitate Company's performance of this PPA. While at the Facility, such representatives shall observe Seller's standard safety precautions and shall conduct themselves in a manner that will not interfere with operation of the Facility.

### 10.8 Operating Committee and Operating Procedures.

(A) Company and Seller shall each appoint one representative and one alternate representative to act as the Operating Committee in matters relating to the Parties' performance obligations under this PPA and to develop operating arrangements for the generation and delivery of Contract Energy from and the availability of Contract Capacity at the Facility. The Parties' initial representatives on the Operating Committee are set forth in Exhibit D - Notices.

(B) The Operating Committee may develop mutually agreeable written Operating Procedures consistent with the requirements of this PPA, to address matters

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such as day-to-day communications; key personnel; operations-center interface; metering, telemetering, telecommunications, and data acquisition procedures; operations and maintenance scheduling and reporting; reports; operations log; testing procedures; and such other matters as may be mutually agreed upon by the Parties.

(C) The Operating Committee shall have authority to act in all technical and day-to-day operational matters relating to performance of this PPA and to attempt to resolve potential disputes, *provided, however*, that except as explicitly provided herein, the Operating Committee shall have no authority to amend or waive any provision of this PPA.

### Article 11 - Security for Performance

#### 11.1 Security Fund.

(A) During the Term of this PPA, Seller shall fund and maintain security in favor of Company, at Seller's expense, to secure Seller's obligations to Company under this PPA (the "Security Fund"), in accordance with this Article 11.

(B) Seller shall establish and fund the initial Security Fund in an amount equal to the sum, for each of the first five (5) Commercial Operation Years of the PPA, of (i) the Capacity Price, multiplied by (ii) the Reference Capacity Amount for such Commercial Operation Year (such five (5) year sum, the "Security Fund Amount"). The Security Fund Amount shall be adjusted at the end of each Commercial Operation Year to reflect, on a rolling basis, the next five (5) Commercial Operation Years provided that that the number of Commercial Operation Years taken into account after Commercial Operation Year twenty-six (26) shall step down each year by one Commercial Operation Year (e.g., only three (3) Commercial Operation Years shall be taken into account in determining the Security Fund Amount at the end of Commercial Operation Year twenty-seven (27)).

(C) Company may draw from the Security Fund such amounts as are necessary to recover amounts owing to Company pursuant to this PPA, including any Liquidated Delay Damages, Actual Damages, liquidated damages for failure to achieve COD, and any amounts for which Company is entitled to indemnification under this PPA. Company may, in its sole discretion, draw all or any part of such amounts from any form of security to the extent available pursuant to this Article 11 and in any sequence Company may select. Company's failure or delay to draw any amount from the Security Fund in any instance shall not prejudice Company's rights to subsequently recover such amount from the Security Fund or in any other manner.

(D) Company shall notify Seller within five (5) Business Days following any draw on the Security Fund by Company, including the amount thereof and the basis therefor.

11.2 Replenishment. Seller shall replenish the Security Fund to the applicable levels set forth in Section 11.1(B) within five (5) Business Days after Company makes a draw on the Security Fund. Notwithstanding the foregoing, within five (5) Business

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Days after Company makes a draw on the Security Fund associated with the damages described in Section 12.4(B), Seller shall replenish all amounts drawn from the Security Fund.

### 11.3 Form.

(A) The Security Fund may be in the form of an irrevocable standby letter of credit substantially in the form of Exhibit G – Form of Letter of Credit (a “Letter of Credit”) from a financial institution acceptable to Company (“Issuer”).

1. The Issuer of the Letter of Credit shall have and maintain a Credit Rating equivalent to A- (or better) by Standard & Poors and A3 (or better) from Moodys. If such Credit Rating is A- or A3, the Issuer must not be on credit watch by any rating agency.

2. The Letter of Credit must be for a minimum term of one (1) year. Seller shall give Company at least sixty (60) Days advance notice prior to any expiration or earlier termination of the Letter of Credit. Seller shall cause the renewal or extension of the Letter of Credit for additional consecutive terms of one (1) year or more (or, if shorter, the remainder of the Term) more than sixty (60) Days prior to each expiration date of the security. If the Letter of Credit is not renewed or extended at least sixty (60) Days prior to its expiration date or otherwise is terminated early, Company shall have the right to draw immediately upon the Letter of Credit and to place the amounts so drawn, at Seller’s cost and with Seller’s funds, in an Escrow Account in accordance with paragraph (B) below, until and unless Seller provides a substitute form of security meeting the requirements of this Section 11.3.

(B) The Security Fund may be in the form of U.S. currency deposited into an escrow account with a state- or federally-chartered commercial bank with an office in the State of Oklahoma, with net assets of at least One Billion Dollars (\$1,000,000,000) (the “Escrow Account”).

1. The Escrow Account shall be governed by an escrow and account control agreement in form mutually satisfactory to Seller, Company and the escrow agent, provided that (a) Company shall hold a first and exclusive perfected security interest in the funds in the Escrow Account, (b) Company shall be permitted unilaterally to draw down any amount therein, regardless of any protest by Seller or any other party liable thereon (*provided* that nothing in the Escrow Agreement shall preclude any protest against Company by Seller, following any draw, that such draw did not comply with this PPA), and (c) Seller shall pay all fees and expenses of the escrow agent.

2. Funds held in the Escrow Account may be invested as Seller may direct in any of the following:

- a money-market fund sponsored by the escrow agent;

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- U.S. treasury obligations with a maturity of ninety (90) Days or less;
- commercial paper rated “A” or better, with a maturity of ninety (90) Days or less; and
- other liquid investment-grade investments with maturities of three months or less, approved by Company in advance (such approval not to be unreasonably withheld or delayed).

3. All investment income on the Escrow Account shall be taxable to, and accrue for the benefit of, Seller. After the Commercial Operation Date, periodic sweeps by Seller for recovery of interest earned by the escrowed funds shall be allowed, and if at any time the balance in the Escrow Account exceeds the required amount of security, the escrow agent may remit the excess to Seller.

(C) Company shall negotiate in good faith any needed escrow and account control agreement and, upon request by Seller, immaterial changes to Exhibit G – Form of Letter of Credit, provided that Seller shall pay or reimburse Company for the direct expenses (including the fees and expenses of counsel) incurred by Company in connection therewith.

(D) Seller may change the form of the Security Fund at any time and from time to time upon Commercially Reasonable prior notice to Company, *provided, however*, that the Security Fund must at all times satisfy the requirements of this Article 11.

11.4 Replacement. In the event that the Security Fund ever fails to comply with the requirements of this Article 11 or Company determines that an event has occurred or circumstances have developed that threaten to cause the Security Fund to fail to comply with the requirements of this Article 11, Seller shall be required to replace the Security Fund with security in compliance with this Article 11 within five (5) Days following notice thereof from Company.

11.5 Survival. The Security Fund shall survive termination of this PPA to be available to pay any amounts owed to Company arising prior to or upon termination. Promptly following (i) the end of the Term and the full and complete discharge and performance by Seller of all Seller’s obligations under this PPA, or (ii) termination of this PPA for any reason prior to the Scheduled Termination Date, Company shall determine the amount, if any, owed by Seller for any obligations or damages arising out of this PPA. Company may draw such amount and shall release the balance of the Security Fund (including any accumulated interest, if applicable) to Seller.

11.6 Expenses. Seller shall reimburse Company for its direct expenses (including the fees and expenses of counsel) incurred by Company in connection with the preparation, negotiation, execution and/or release (including making a draw of funds) of the Security Fund under this Article 11.

**Article 12 - Default and Remedies**

12.1 Default by Seller: General.

(A) Events. Any of the following events shall constitute a default by Seller under this PPA. If no cure period is provided below, such default shall be deemed an Event of Default by Seller immediately upon its occurrence. If a cure period is provided below, such default shall mature into an Event of Default if not cured within the indicated cure period, subject to Section 13.3 below.

1. Seller's application for, or consent (by admission of material allegations of a petition or otherwise) to, the appointment of a receiver, trustee or liquidator for Seller or for all or substantially all of its assets, or its authorization of such application or consent; or the commencement of any proceedings seeking such appointment without such authorization, consent or application, which proceedings continue undismissed or unstayed for a period of sixty (60) Days from inception.

*Cure Period:* None.

2. Seller's authorization or filing of a voluntary petition in bankruptcy or application for or consent (by admission of material allegations of a petition or otherwise) to the application of any bankruptcy, reorganization, readjustment of debt, insolvency, dissolution, liquidation or other similar law of any jurisdiction; or the institution of such proceedings against Seller without such authorization, application or consent, which proceedings remain undismissed or unstayed for sixty (60) Days from inception or which result in adjudication of bankruptcy or insolvency within such time.

*Cure Period:* None.

3. Seller's assignment of this PPA or the Facility, or any Change of Control, not permitted by Section 19.1.

*Cure Period:* None.

4. Any representation or warranty by Seller in this PPA is proven to have been false in respect when made.

*Cure Period:* Five (5) Business Days after Company provides notice of breach.

5. Seller's failure to establish and maintain the Security Fund as and in the amounts required under Article 11.

*Cure Period:* Five (5) Business Days after Company provides notice of Seller's failure.

6. Seller's failure to obtain and maintain insurance in scope and amounts required under Article 16.

*Cure Period:* Five (5) Business Days after Company provides notice of Seller's failure.

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7. Seller's failure to make any payment to Company as and when required by this PPA, including Liquidated Delay Damages, Actual Damages, and any required indemnification.

*Cure Period:* Five (5) Business Days after the date Seller receives notice from Company that the amount is overdue.

8. A breach by Seller of the Interconnection Agreement, which breach (i) interferes with in any way with Seller's obligation to provide Contract Capacity at the Point of Delivery, or (ii) otherwise materially and adversely effects the Company.

*Cure Period:* Ten (10) Days from the breach.

9. Beginning with the second Commercial Operation Year, a failure of the Facility to achieve a CAF of at least ninety five percent (95%) during any twelve (12) consecutive month period, on a rolling average basis.

*Cure:* Seller shall be deemed to have cured this default if the Facility achieves a CAF for the following Commercial Operation Year of ninety seven percent (97%) or more.

10. The failure by Seller to perform or observe any other material obligation to Company under this PPA, (other than failure to achieve COD, which is addressed in Section 12.2 below).

*Cure Period:* Ten (10) Days after notice thereof shall have been given by Company; *provided*, that if such default is not reasonably capable of cure within such ten (10) Day period, Seller shall have such additional period of time (not to exceed thirty (30) Days in any event) as is reasonably necessary for cure, so long as Seller initiates cure within such ten (10) Day period and diligently prosecutes the cure to conclusion thereafter.

(B) Remedies for Default. In connection with any default by Seller under this Section 12.1 (whether or not cured by Seller), Company may

1. Seek damages (whether or not Actual Damages) in such amounts and on such basis for the default as authorized by this PPA;
2. Offset against any payments due to Seller, any damages (whether or not Actual Damages) and other amounts due from Seller; and/or
3. Draw any damages (whether or not Actual Damages) and other amounts due from Seller, from the Security Fund.

(C) Termination for Event of Default. Upon and at any time following an Event of Default by Seller under this Section 12.1, in addition to its rights under Section 12.1(B) above, Company may terminate this PPA immediately upon notice to Seller, without penalty or further obligation to Company. In connection with any such

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termination, Company may collect from Seller all damages (whether or not Actual Damages) arising from such Event of Default through the Scheduled Termination Date.

(D) Specific Performance. In addition to the other remedies specified herein, upon any Event of Default of Seller under this Section 12.1, Company may elect to treat this PPA as being in full force and effect and Company shall have the right to specific performance.

### 12.2 Default by Seller: Failure to Achieve COD.

(A) COD Delay. Seller shall be in default under this PPA if the Facility fails to achieve COD by the Target COD ("COD Delay"). Seller shall be liable to pay [\_\_\_\_\_ dollars (\$\_\_\_\_\_)] per Day ("Liquidated Delay Damages") to Company as a liquidated damage and not a penalty, in lieu of Actual Damages, for any COD Delay. Except as provided in Section 12.2(C) below, the payment of Liquidated Delay Damages shall be Company's sole and exclusive remedy for a COD Delay. Liquidated Delay Damages shall begin to accrue on the Day after the Target until the first to occur of COD or termination of this PPA pursuant to Section 12.2(C) below.

(B) Cure. Seller shall have a cure period of fifteen (15) Days for its failure to achieve Commercial Operation by the Target COD, *provided, however*, that if during such period Seller provides a written opinion from a mutually-agreeable independent engineer that COD can reasonably be achieved within an additional fifteen (15) Day period, then the cure period shall be thirty (30) Days after the Target COD to achieve Commercial Operation. The payment of accrued Liquidated Delay Damages shall be a condition to any such cure.

(C) Termination. Failure to cure a COD Delay within the applicable cure period set forth in Section 12.2(B) shall be an Event of Default by Seller. Upon such an Event of Default, Company may (i) terminate this PPA immediately upon notice to Seller, without penalty or further obligation to Seller except as to costs and balances incurred prior to the effective date of such termination, and (ii) in connection therewith, in addition to accrued Liquidated Delay Damages but in lieu of Actual Damages for the balance of the Term, collect from Seller liquidated damages therefor in the amount of [\_\_\_\_\_ dollars (\$\_\_\_\_\_)] ("Termination LDs").

### 12.3 Default by Company.

(A) Events. Any of the following events shall constitute a default by Company under this PPA. If no cure period is provided below, such default shall be deemed an Event of Default by Company immediately upon its occurrence. If a cure period is provided below, such default shall mature into an Event of Default if not cured within the indicated cure period, subject to Section 13.3 below.

1. Company's application for, or consent (by admission of material allegations of a petition or otherwise) to, the appointment of a receiver, trustee or liquidator for Company or for all or substantially all of its assets, or its authorization of such application or consent, or the commencement of any proceedings seeking

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such appointment without such authorization, consent or application, which proceedings continue undismissed or unstayed for a period of sixty (60) Days from inception.

*Cure Period:* None.

2. Company's authorization or filing of a voluntary petition in bankruptcy or application for or consent (by admission of material allegations of a petition or otherwise) to the application of any bankruptcy, reorganization, readjustment of debt, insolvency, dissolution, liquidation or other similar law of any jurisdiction or the institution of such proceedings against Company without such authorization, application or consent, which proceedings remain undismissed or unstayed for sixty (60) Days from inception or which result in adjudication of bankruptcy or insolvency within such time.

*Cure Period:* None.

3. Company's assignment of this PPA, not permitted by Section 19.2.

*Cure Period:* None.

4. Any representation or warranty by Company in this PPA is proven to have been false in any material respect when made, the result of which is a Material Adverse Effect on Company's ability to perform this PPA.

*Cure Period:* Ten (10) Business Days after the date Company receives notice from Seller of such breach.

5. Company's failure to make any payment to Seller as and when required by this PPA, including invoiced amounts, Actual Damages and any required indemnification.

*Cure Period:* Sixty (60) Business Days after the date Company receives notice from Seller that the amount is overdue.

6. Any representation or warranty by Company in this PPA a breach of which would have a Material Adverse Effect on Company's ability to perform this PPA ceases to remain true during the Term, other than due to a change of law.

*Cure Period:* Thirty (30) Days after Seller provides notice of such breach.

7. The failure by Company to perform or observe any other material obligation to Seller under this PPA, unexcused by Force Majeure.

*Cure Period:* Thirty (30) Days after notice thereof shall have been given by Seller; *provided*, that if such default is not reasonably capable of cure within such thirty (30) Day period, Company shall have such additional period of time (not to exceed one hundred twenty (120) Days in any event) as is reasonably necessary for cure, so long as Company

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initiates cure within such (30) Day period and diligently prosecutes the cure to conclusion thereafter.

(B) Remedies for Default. In connection with any default by Company (whether or not cured by Company), Seller may

1. Seek Actual Damages in such amounts and on such basis for the default as authorized by this PPA; and/or
2. Offset against any payments due to Company, any Actual Damages and other amounts due from Company.

(C) Termination for Event of Default. Upon an Event of Default by Company, in addition to its rights under Section 12.3(B) above, Seller may terminate this PPA immediately upon notice to Company, without penalty or further obligation to Company, and in connection therewith, collect from Company all Actual Damages arising from such Event of Default through the Scheduled Termination Date.

### 12.4 Limitations on Damages.

(A) The Parties confirm that the express remedies and measures of damages provided in this PPA satisfy the essential purposes hereof. If no remedy or measure of damages is expressly herein provided, the obligor's liability shall be limited to all direct damages proximately caused by such default ("Actual Damages") incurred by the non-defaulting Party, provided that if Seller is the defaulting Party, Actual Damages recoverable by Company hereunder may include any and all costs described in Section 8.1 and Section 8.3. **In no event shall Company be liable to Seller for consequential, incidental, punitive, exemplary, special, treble, equitable or indirect damages, lost profits or other business interruption damages, regardless of whether the relevant cause of action arises from statute, tort or contract** (except to the extent expressly provided herein); *provided, however*, that if either Party is held liable to a third party for such damages and the Party held liable for such damages is entitled to indemnification from the other Party hereto, the indemnifying Party shall be liable for, and obligated to reimburse the indemnified Party for all such damages.

(B) To the extent damages required to be paid hereunder are liquidated, the Parties acknowledge that actual damages would be substantial but 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.

### 12.5 Step-In Rights.

(A) Upon the occurrence of a default by Seller following COD that could be cured by Company if Company obtains possession of the Facility, Company shall have the right, but not the obligation, to assume control and operate the Facility as agent for Seller (whether voluntary or involuntary) in accordance with Seller's rights,

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obligations, and interest under this PPA ("Step-In Rights"). Company shall give Seller and the Facility Lender at least ten (10) Days' notice in advance of exercising Company's Step-In Rights. Exercise of Step-In Rights *per se* shall not be deemed to cure the associated default, and shall not preclude or limit Company's right to exercise its other remedies against Seller under this PPA.

(B) Seller irrevocably appoints Company as Seller's attorney-in-fact for the exclusive purpose of executing such documents and taking such other actions as Company may reasonably deem necessary, appropriate or prudent to implement its Step-In Rights.

(C) Company acknowledges that Company may be required and shall relinquish or delay exercise of its Step-In Rights in the event that the Facility Lender elects to appoint a receiver, foreclose and/or otherwise obtain possession of the Facility under the Financing Documents. Seller shall not grant any person, other than the Facility Lender, a right to possess, assume control of, or operate the Facility in derogation of Company's Step-In Rights.

(D) Seller shall reimburse Company for its expenses and costs (including the fees and expenses of counsel) incurred by Company in connection with exercising its Step-In Rights ("Step-In Costs").

(E) During the period of Company's exercise of its Step-In Rights:

1. Company shall implement its Step-In Rights and operate the Facility in conformance with Good Utility Practice.
2. Company shall perform Seller's obligations in a manner consistent with Seller's duties under this PPA.
3. Seller shall retain legal title to and ownership of the Facility.
4. Seller shall make available at the Facility all documents, contracts, books, manuals, reports, and records required for Company to operate, and maintain the Facility.
5. Seller shall give Company, its employees and contractors, unrestricted access to the Site and the Facility.
6. Seller shall cooperate in the implementation of Company's Step-In Rights.

(F) During the period of Company's exercise of its Step-In Rights, Company shall purchase the Contract Capacity from the Facility as provided herein, *provided* that Company may withhold its Step-In Costs from payments due to Seller hereunder. In the event that net revenues due to Seller are insufficient to cover such Step-In Costs, Company may draw upon the Security Fund to cover such Step-In Costs.

(G) Company may relinquish its Step-In Rights at any time, on at least fifteen (15) Days' notice to Seller and the Facility Lender. Company shall relinquish its

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Step-In Rights on the earliest of (i) termination of this PPA, or (ii) Seller's cure of the default that led to exercise of Company's Step-In Rights within the applicable cure period set forth herein.

(H) This Section 12.5 shall be specifically enforceable by Company, without bond and without the need to prove irreparable harm.

(I) Exercise of its Step-In Rights shall not constitute an assumption by Company of any liability of Seller and, so long as Company complies with this Section 12.5 in connection with the exercise of its Step-In Rights, Seller shall indemnify and hold harmless Company with respect to any and all Losses incurred by Company or the Facility during Company's exercise of such Step-In Rights.

12.6 Bankruptcy. This PPA grants each Party the contractual right to "cause the liquidation, termination or acceleration" of the transactions within the meaning of Sections 556, 560 and 561 of the U.S. Bankruptcy Code, as they may be amended superseded or replaced from time to time. Upon a bankruptcy, a non-defaulting Party shall be entitled to exercise its rights and remedies under this PPA in accordance with the safe harbor provisions of the Bankruptcy Code set forth in, *inter alia*, §362(b)(6), §362(b)(17), §362(b)(27), §362(o), §546(e), §548(d)(2), §556, §560 and §561, as they may be amended, superseded or replaced from time to time.

12.7 Cumulative Remedies. Except as explicitly provided to the contrary in this PPA, each right or remedy of the Parties provided for in this PPA shall be cumulative of and shall be in addition to every other right or remedy provided for in this PPA, and the exercise of one or more of the rights or remedies provided for herein shall not preclude the simultaneous or later exercise by such Party of any other rights or remedies provided for herein

12.8 Duty to Mitigate. Each Party shall use Commercially Reasonable Efforts to mitigate any damages it may incur as a result of a default by the other Party under this PPA.

## Article 13 - Dispute Resolution

### 13.1 Negotiation.

(A) In the event of any dispute arising under or associated with the Parties' performance of this PPA (a "Dispute"), within ten (10) Business Days following notice by either Party (a "Dispute Notice"), (i) each Party shall appoint a representative, and (ii) the representatives shall meet, negotiate and attempt in good faith to resolve the Dispute quickly, informally and inexpensively.

(B) In the event the Parties' representatives cannot resolve the Dispute within thirty (30) Days after the first meeting, either Party may request that consideration and resolution of the Dispute be transferred to senior management. Within ten (10) Days following such a request, each Party shall submit a written summary of the Dispute describing the issues and claims to a senior officer of each Party designated to

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address the Dispute. Within ten (10) Business Days after receipt of each Party's Dispute summaries, the designated senior managers for both Parties shall negotiate in good faith to resolve the Dispute. If such senior managers are unable to resolve the Dispute thereafter, either Party may seek available legal remedies, subject to Sections 13.3 and 19.3.

13.2 [Reserved].

13.3 No Termination Pending Dispute Resolution. Notwithstanding Section 12.1 or Section 12.3 to the contrary:

(A) An Event of Default by Company shall not be deemed to have occurred (and hence Seller may not terminate this PPA) for failure by Company to pay any amount(s) allegedly due, if:

1. such amount(s) are disputed by Company in good faith;
2. Company promptly commences and diligently pursues resolution of the Dispute pursuant to Section 13.1;
3. Company either holds an Investment Grade Credit Rating, or posts cash collateral to secure its obligations (if any) with respect to the disputed amount(s), in an amount equal to the amount(s) in dispute, under a mutually agreeable third-party escrow agreement; and
4. the owed amount (if any) is paid by Company within ten (10) Business Days after all dispute resolution mechanisms are completed with respect thereto.

13.4 Governing Law. The interpretation and performance of this PPA, and all actions related hereto (whether sounding in contract, tort or otherwise), shall be governed and construed in accordance with the laws of the State of Oklahoma, exclusive of conflict of laws principles.

13.5 Venue. The Parties submit to the exclusive jurisdiction of the state courts of the State of Oklahoma for purposes of resolving any Dispute hereunder, except as provided in Section 19.3. Venue for any court proceedings shall lie exclusively in the Oklahoma District Court for the County of Oklahoma or, if jurisdictionally available, the U.S. District Court for the Western District of Oklahoma.

13.6 Waiver of Jury Trial. **Seller and Company each hereby 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 PPA or any course of conduct, course of dealing, statements (whether oral or written) or actions of Seller and Company related hereto and expressly agree to have any Disputes be adjudicated by a judge of the court having jurisdiction, without a jury, subject only to Section 19.3.

**Article 14 - Force Majeure**

14.1 Definition. For purposes hereof, “Force Majeure” means an event or circumstance that prevents a Party from performing its obligations under this PPA, which event or circumstance (i) was not anticipated as of the date of this PPA, (ii) is not within the control of or the result of the fault or negligence of the Party claiming excuse, and (iii) which by exercise of due diligence and foresight could not reasonably have been avoided; *provided, however*, that Force Majeure shall not include:

- a. inability, or excess cost, to procure any equipment necessary to perform this PPA;
- b. acts or omissions of a third party (including vendors and contractors to Seller), unless such acts or omissions are themselves excused by reason of Force Majeure;
- c. failure timely to apply for, or diligently pursue, the Permits set forth on Exhibit F –Required Permits;
- d. a restriction in any Permit that precludes or limits the generation or delivery of Contract Energy below the Planned Permitted Energy;
- e. mechanical or equipment breakdown or inability to operate, attributable to circumstances occurring within design criteria and normal operating tolerances of similar equipment;
- f. Environmental Contamination at the Site;
- g. changes in market conditions or changes in Applicable Law; or
- h. labor strikes, slowdowns, work stoppages, or other labor disruptions.

By way of example only, “Force Majeure” includes any delay or failure by the Transmission Authority to perform its obligations under the Interconnection Agreement but does not include any change in market condition or Applicable Law that would preclude Seller from permitting the Contract Capacity to be available at the Delivery Point when required by the Transmission Authority.

14.2 Applicability of Force Majeure. A Party shall be relieved of its obligations to perform this PPA and shall not be considered to be in default with respect to any obligation under this PPA if and to the extent such Party is prevented from fulfilling such obligation by Force Majeure, *provided, however*, that: (i) such Party gives prompt notice describing the circumstances and impact of the Force Majeure; (ii) the relief from its obligations sought by such Party is of no greater scope and of no longer duration than is required by the Force Majeure; (iii) such Party proceeds with due diligence to overcome the Force Majeure and resumes performance of its obligations under this PPA as soon as practicable thereafter; and (iv) such Party provides notice upon conclusion of the Force Majeure.

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### 14.3 Limitations on Effect of Force Majeure.

(A) Force Majeure shall only relieve a Party of such obligations as are actually precluded by the Force Majeure.

(B) In no event will the existence of Force Majeure extend this PPA beyond its stated Term.

(C) If Force Majeure affecting Seller continues for a period of thirty (30) consecutive Days or any sixty (60) non-consecutive Days, Company may, at any time following the end of such period, terminate this PPA upon notice to Seller, without further obligation by either Party except as to costs and balances incurred prior to the effective date of such termination.

## **Article 15 - Representations and Warranties**

Each Party hereby represents and warrants to the other as follows, which representations and warranties shall be deemed to be repeated, if applicable, by each Party throughout the Term:

(A) Such Party is a valid separate legal entity, duly organized, validly existing and in good standing under Applicable Law. It is qualified to do business in the State in which the Facility is located and each other jurisdiction where the failure to so qualify would have a Material Adverse Effect on the business or financial condition of the other Party. It has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this PPA.

(B) The Party's execution, delivery, and performance of all of its obligations under this PPA have been duly authorized by all necessary organizational action, and do not and will not:

1. require any consent or approval by any governing corporate or management body, other than that which has been obtained and is in full force and effect (evidence of which shall be delivered to the other Party upon its request);
2. violate any Applicable Law, the violation of which could have a Material Adverse Effect on the representing Party's ability to perform its obligations under this PPA;
3. result in a breach or constitute a default under the representing Party's formation documents, bylaws or equivalent, or under any agreement relating to its management or affairs, any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which it is a party or by which it 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 representing Party's ability to perform its obligations under this PPA; or

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4. 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 PPA) upon or with respect to any of the assets or properties of the representing Party now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a Material Adverse Effect on the representing Party's ability to perform its obligations under this PPA.

(C) This PPA is a valid and binding obligation of the representing Party.

(D) The execution and performance of this PPA will not conflict with or constitute a breach or default under any contract or agreement of any kind to which the representing Party is a party or any judgment, order, or Applicable Law, applicable to it or its business.

(E) Within the meaning of the U.S. Bankruptcy Code, (i) this PPA constitutes a "master netting agreement," (ii) all transactions pursuant to this PPA constitute "forward contracts" or a "swap agreement," (iii) the representing Party is a "forward contract merchant" and "master netting agreement participant," and (iv) all payments made or to be made pursuant to this PPA constitute "settlement payments."

(F) Such Party is (i) an "eligible contract participant" as defined in the Commodity Exchange Act, as amended, 7 U.S.C. §1a(12), (ii) a "market participant" under applicable exchange and market rules; (iii) a producer, processor, or commercial user of, or a merchant handling, the commodity which is the subject of this PPA, or the products or by products thereof; and (iv) entering into this PPA solely for purposes related to its business as such.

### Article 16 - Insurance

16.1 Evidence of Insurance. No later than commencement of construction and thereafter at least five Days prior to each applicable expiration date, Seller shall provide Company with two copies of insurance certificates acceptable to Company evidencing that insurance coverages for the Facility are in force and in compliance with the specifications for insurance coverage set forth in Exhibit E - Insurance to this PPA. Such certificates shall

(A) name Company as an additional insured (except worker's compensation);

(B) provide that Company shall receive thirty (30) Days prior written notice of non-renewal, cancellation of, or significant modification to any of the corresponding policies (except that such notice may be ten (10) Days for non-payment of premiums);

(C) provide a waiver of any rights of subrogation against Company, its Affiliates and their officers, directors, agents, subcontractors, and employees; and

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(D) indicate that the Commercial General Liability policy has been endorsed as described above.

16.2 Policy Requirements. All policies shall be written with insurers with an AM Best rating of at least A-VII or a Standard & Poor's rating of at least A. All policies shall be written on an occurrence basis, except as provided in Section 16.4. All policies shall contain an endorsement that Seller's policy shall be primary in all instances regardless of like coverages, if any, carried by Company. Seller may satisfy its insurance requirements using any reasonable combination of primary and secondary coverage.

16.3 No Implied Limitation. Seller's liability under this PPA is not limited to the amount of insurance coverage required herein.

### 16.4 Term and Modification of Insurance.

(A) All insurance required under this PPA shall cover occurrences during the Term and for a period of two (2) years after the Term. In the event that any insurance as required herein is commercially available only on a "claims-made" basis, such insurance shall provide for a retroactive date not later than the date of this PPA and such insurance shall be maintained by Seller for a minimum of six (6) years after the Term.

(B) Company shall have the right, at times deemed appropriate to Company during the Term, to request Seller to modify the insurance minimum limits specified in Exhibit E - Insurance in order to maintain Commercially Reasonable coverage amounts. Seller shall comply with any such request.

(C) If any insurance required to be maintained by Seller hereunder ceases to be reasonably available and commercially feasible in the commercial insurance market, Seller shall provide notice to Company, accompanied by a certificate from an independent insurance advisor of recognized national standing, certifying that such insurance is not reasonably available and commercially feasible in the commercial insurance market for electric generating plants of similar type, geographic location and capacity. Upon receipt of such notice, Seller shall obtain other insurance that would provide comparable protection against the risk to be insured.

16.5 Application of Proceeds. Except to the extent otherwise required by the Financing Documents, Seller shall apply any casualty insurance proceeds to reconstruction of the Facility following any material casualty to the Facility that occurs more than eighteen (18) months prior to the Scheduled Termination Date.

## Article 17 - Indemnity

17.1 Indemnification: General. Each Party (the "Indemnifying Party") shall indemnify, defend and hold the other Party (the "Indemnified Party") harmless from and against all claims, demands, lawsuits (including citizen suits), losses, liabilities, fines, penalties, and expenses (including attorneys' fees) (generally, Losses"), to the extent proximately caused by

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- a default under this PPA by the Indemnifying Party;
- a violation or alleged violation of Applicable Law by the Indemnifying Party; and
- the negligence, intentional acts and other misconduct of the directors, officers, employees, or agents of the Indemnifying Party.

17.2 Indemnification: Environmental. Seller shall indemnify, defend and hold Company harmless from and against all Losses arising out of any claim by any Governmental Authority or other third party alleging Environmental Contamination at the Site and/or illegal disposal of Hazardous Materials off-Site, regardless of merit and regardless of Seller's responsibility therefor.

### 17.3 Limitations.

(A) The foregoing indemnification obligations shall apply notwithstanding any contributory misconduct of the Indemnified Party, but the Indemnifying Party's liability to indemnify the Indemnified Party shall be reduced in proportion to the percentage by which the Indemnified Party's misconduct caused the damages.

(B) These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy. Nothing in this Section 17.3 shall enlarge or relieve Seller or Company of any liability to the other for any breach of this PPA.

### 17.4 Procedures.

(A) Promptly after receipt by a Party of any claim or notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article 17 may apply, the Indemnified Party shall provide notice thereof to the Indemnifying Party; *provided* that a delay in providing such notice shall limit the obligations of the Indemnifying Party only to the extent that such delay actually prejudices the ability of the Indemnifying Party to contest the claim or defend the proceeding.

(B) The Indemnifying Party shall assume the defense thereof with counsel designated by such Party and satisfactory to the Indemnified Party, *provided, however,* if the defendants in any such action include both the Indemnified Party and the Indemnifying Party, and the Indemnified Party shall reasonably conclude that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party's expense.

(C) If an Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may contest, settle, or pay such claim at the expense of the Indemnifying Party, *provided, however, that* settlement or full

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payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or otherwise warrants settlement.

17.5 Amounts Owed. In the event that a Party is obligated for indemnification under this Article 17, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's actual Losses net of any insurance proceeds received by the Indemnified Party following a Commercially Reasonable effort by the Indemnified Party to obtain such insurance proceeds.

### Article 18 - [Reserved]

### Article 19 - Assignment

#### 19.1 Assignment by Seller.

(A) Seller shall not sell, exchange or otherwise transfer the Facility or any material portion thereof to any third party, nor shall Seller undergo any Change of Control (whether voluntary or by operation of law), absent the prior written consent of Company which may be given or withheld by the Company in its sole discretion. Notwithstanding the foregoing sentence, in no event shall Company have any obligation to provide any consent under this Section unless:

1. Seller has complied with Sections 19.3 and 19.4, if and as applicable;
2. Seller has provided to Company such information concerning the transferee's direct and indirect ownership as Company reasonably requests;
3. the transferee has substantial experience in the operation of power generation facilities akin to the Facility, either directly, through its affiliates or through an operator acceptable to Company;
4. the transferee (together with its parents and affiliates) enjoys an Investment Grade Credit Rating or other creditworthiness satisfactory to Company;
5. Seller has provided to Company at least sixty (60) Days' prior notice of the transaction; and
6. Seller pays or reimburses Company for the direct expenses (including the fees and expenses of counsel) incurred by Company in connection with the transaction.

(B) Any Change of Control or sale, transfer, or assignment of any interest in the Facility effected without fulfilling the requirements of this PPA shall be null, void and a breach of this PPA.

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(C) Seller may assign this PPA to any successor owner of the Facility only when such successor assumes all obligations of Seller (accrued and prospective) hereunder via a writing satisfactory to Company in Company's sole discretion. Seller also may, subject to Company's prior written consent, (i) assign this PPA for collateral purposes to any Facility Lender, and (ii) subcontract some or all of its duties under this PPA.

(D) Except as permitted in this Section 19.1, Seller may not assign this PPA or any portion hereof. No assignment shall relieve Seller of its obligations under this PPA, nor impair any security posted by Seller unless such security is replaced in accordance with Article 11. Before this PPA is assigned by Seller, the assignee must first obtain such approvals as may be required by all applicable Governmental Authorities.

### 19.2 Assignment by Company.

(A) Company may assign this PPA to any Affiliate, or to any successor that provides retail electric service in all or substantially all of Company's service territory and is subject to rate and quality service regulation under the jurisdiction of the PUC. Any other assignment of this PPA by Company shall require the prior written consent of Seller, not to be unreasonably withheld or delayed.

(B) Upon any assignment by Company pursuant to this Section 19.2, Seller shall release Company from its obligations hereunder if so requested by Company.

(C) Any assignee of Company shall assume all obligations of Company (accrued and prospective) hereunder via a writing reasonably satisfactory to Seller. Before this PPA is assigned by Company, the assignee must first obtain such approvals as may be required by all applicable Governmental Authorities.

### 19.3 ROFO.

(A) At any time:,

- (1) if Seller proposes to sell the Facility to an unaffiliated third party, Seller shall first offer to sell the Facility to Company via notice to Company,
- (2) if Seller's parent proposes to sell a majority of the equity interests in Seller to an unaffiliated third party, Seller shall cause its parent first to offer to sell such equity interests to Company via notice to Company, and
- (3) if Seller's parent owns no assets other than its equity interests in Seller and the parent of Seller's parent proposes to sell a majority of the equity interests in Seller's parent to an unaffiliated third party, Seller shall cause its parent's parent first to offer to sell

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such equity interests to Company via notice to Company (in each case, a “ROFO Notice”). Any ROFO Notice shall describe the proposed transaction, including the minimum price, status of title to the Site, liabilities to be assumed and other terms which Seller or its relevant parent (as applicable) is willing to accept to proceed with the contemplated transaction. The contents of a ROFO Notice shall be deemed Confidential Information for purposes of Section 20.19 below.

(B) Following issuance of a ROFO Notice, Seller shall allow Company one hundred twenty (120) Days to investigate the proposed transaction and conduct due diligence. Due diligence shall include such physical inspections, surveys and operating tests of the Facility and the Site, such reviews of Seller’s contracts, books and records, and interviews of such personnel, as Company may reasonably request. All information obtained by Company from such investigations shall be deemed Confidential Information subject to Section 20.19 below. Within such one hundred twenty (120) Day period, Company may elect to purchase the Facility or the relevant equity interests (as applicable) on substantially the same terms as set forth in the ROFO Notice. If Company fails to notify Seller of Company’s election within such one hundred twenty (120) Day period, Company shall be deemed to have rejected the transaction.

(C) If Company elects to purchase the Facility or the specified equity interests (as applicable), the Parties shall negotiate and execute a definitive contract for the transaction (a “PSA”). The PSA shall include the price and other terms set forth in the ROFO Notice and such other terms as are set forth in Exhibit P – PSA Provisions. In the event that the Parties cannot agree on the final form of PSA, (i) the issue shall be submitted to “baseball” arbitration in Oklahoma City, Oklahoma before one arbitrator appointed by the Arbitration Service, i.e. each Party shall submit to the arbitrator a form of proposed PSA, and the arbitrator shall be required to select one of the two forms to be used as the PSA in the transaction, without compromise, as the arbitral award, (ii) the period for closing of the transaction shall be extended for the period required to complete arbitration, and (iii) the Party whose form PSA is rejected shall pay the fees and costs of the Arbitration Service.

(D) If Company rejects the transaction described in a ROFO Notice, Seller shall have the right to sell the Facility (or Seller’s relevant parent shall have the right to sell the specified equity interests, as applicable) on terms not more favorable to Seller or its parent than the terms set forth in the ROFO Notice, at any time within the twelve-month period following issuance of the ROFO Notice. If Seller or its relevant parent fails to close a transaction on such terms within such twelve (12) month period, any sale of the Facility or equity interests in Seller shall again be subject to this Section 19.3.

(E) This Section 19.3 shall be specifically enforceable by Company, without bond and without the need to prove irreparable harm.

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(F) Seller shall cooperate in all respects reasonably necessary for Company to exercise its ROFO rights, and shall operate the Facility in the ordinary course of business following the date of issuance of a ROFO Notice.

### 19.4 PFT.

(A) Seller shall give Company at least ninety (90) Days' prior notice (a "PFT Notice") of any Pending Facility Transaction that does not otherwise trigger Company's ROFO rights under Section 19.3, in order to provide Company with an opportunity to discuss and negotiate with Seller the possible sale of the Facility to Company. Any PFT Notice shall include a fair summary of Seller's plans with respect to the Facility in connection with the proposed Pending Facility Transaction, to the extent then known by Seller. The contents of a PFT Notice shall be deemed Confidential Information for purposes of Section 20.19 below.

(B) Seller shall have no obligation to sell nor shall Company have any obligation to purchase the Facility, following any PFT Notice. Issuance of a PFT Notice shall not relieve Seller of its obligation to offer a ROFO to Company if and when applicable pursuant to Section 19.3. In the event that the transaction giving rise to the PFT Notice has not been completed within twelve months following a PFT Notice, Seller shall be required to resubmit a PFT Notice for such transaction.

(C) Any breach of this Section 19.4 shall entitle Company to liquidated damages from Seller in the amount of [\_\_\_\_\_ dollars (\$\_\_\_\_\_)].

(D) For purposes hereof, a "Pending Facility Transaction" or "PFT" means:

1. any Change of Control of Seller;
2. the issuance by Seller or any of its Affiliates of a request for proposals or the response by Seller or any of its Affiliates to a request for proposal or similar process (e.g., auction) for the purchase or sale to any unaffiliated third party of any equity interests in Seller or the Facility, or any group(s) of assets or equity interests that includes the Facility;
3. the commencement by Seller or any of its Affiliates of substantive negotiations with any unaffiliated third party with respect to the sale of any equity interests in Seller or the Facility, or any group(s) of assets or equity interests that includes the Facility; or
4. the execution by Seller or any of its Affiliates of any letter of intent, memorandum of understanding or similar document, whether or not legally binding, which contemplates the sale or lease to an unaffiliated third party of any equity interests in Seller or the Facility or any group(s) of assets or equity interests that includes the Facility;

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*provided, however,* that a PFT does not include (i) any financing or refinancing of the Facility Debt, (ii) any transaction among Affiliates of Seller, and/or (iii) any transaction for which Seller offers ROFO rights to Company under Section 19.3.

### Article 20 - Miscellaneous

#### 20.1 Notices.

(A) Notices required by this PPA shall be in writing and addressed to the other Party at the addresses noted in Exhibit D - Notices, as either Party updates such addresses from time to time by notice to the other Party. Notices shall be deemed effective when receipt is acknowledged in writing by the counterparty (or absent such acknowledgement, when delivered via third-party messenger or via FedEx or other reputable overnight courier service). Any notice shall be deemed to have been received by the close of the Business Day on which it was delivered. Real-time or routine communications concerning Facility operations shall be exempt from this Section 20.1(A).

(B) The Parties recognize the need for accurate communications between them. Each Party consents to the recording of telephone conversations between their employees and representatives, related to the performance and administration of this PPA.

#### 20.2 Taxes.

(A) Seller shall be solely responsible for sales, use and value-added taxes imposed with respect to the purchase of fuel by Seller for consumption by the Facility to produce the Contract Energy dispatched from the Facility.

(B) As between the Parties, Seller shall be solely responsible for the payment of (1) any sales, use or equivalent taxes imposed by Governmental Authorities, whether now in existence or hereafter enacted, on the purchase of Contract Energy hereunder at the Point of Delivery, and (2) any taxes imposed by Governmental Authorities, whether now in existence or hereafter enacted, on the transmission of Contract Energy beyond the Point of Delivery.

(C) Subject to Section 20.2(B) and (C) above and Section 20.4 below, Seller shall be solely responsible for any and all present and future taxes and other impositions of Governmental Authorities relating to the construction, ownership or leasing, operation or maintenance of the Facility and the Site (including *ad valorem* taxes on the Facility and the Site), and any taxes imposed at or prior to the Point of Delivery with respect to the products and services to be sold and delivered to Company hereunder, whether calculated based upon cost, value, labor, capital, production, savings, green attributes or other parameters. Seller's prices under Article 8 are inclusive of such taxes and impositions during the Term, and Seller assumes the risk of changes in such taxes after the date hereof.

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(D) The Parties shall cooperate to minimize tax exposure, *provided, however,* that neither Party shall be obligated to incur any financial burden to reduce taxes for which the other Party is responsible hereunder.

### 20.3 Applicable Laws.

(A) Each Party shall comply with all Applicable Laws (including the Transmission Tariff) in connection with its performance of this PPA, at its own expense, except for any non-compliance that (individually or in the aggregate) could not reasonably be expected to have a Material Adverse Effect on the other Party or on such Party's ability to perform this PPA.

(B) As applicable, each Party shall give all required notices, shall procure and maintain all Permits necessary for performance of this PPA, and shall pay its respective charges and fees in connection therewith.

(C) Each Party shall promptly disclose to the other Party, any violation of Applicable Laws arising out of performance of this PPA.

(D) Upon permanent cessation of generation from the Facility, Seller shall decommission and remove the Facility and remediate the Site as, if and when required by Applicable Laws.

(E) Seller acknowledges that as a government contractor Company is subject to Applicable Laws regarding equal employment opportunity and affirmative action, including 41 C.F.R. §60-1.4(a)(1-7). Such Applicable Laws may also be applicable to Seller as a subcontractor to Company. All such Applicable Laws shall be deemed to be incorporated herein as required by Applicable Law.

### 20.4 Change of Law.

(A) As between the Parties, Seller shall be solely responsible for the payment of any taxes enacted by Governmental Authorities that are imposed based upon the quantity of CO<sub>2</sub> emissions from the Facility resulting from the production of Contract Energy during the Term of this PPA.

(B) If Governmental Authorities enact any enforceable limits or other enforceable compliance obligations restricting CO<sub>2</sub> emissions, such limits or obligations are imposed on and restrict all or substantially all of Seller's generation portfolio (inclusive of the Facility), and such limits or obligations can be mitigated by the acquisition or application by Seller of allowances, credits and/or eligible offsets, then

1. Seller shall offer one hundred percent (100%) of the Facility's output into the SPP Integrated Marketplace, or otherwise dispatch the Facility, in accordance with such limits and obligations; and

## OGE Model Capacity Purchase Agreement

2. Seller at its cost shall acquire, apply and manage such allowances, credits and/or offsets as necessary to mitigate or offset CO<sub>2</sub> emissions resulting from the production of Contract Energy during the Term of this PPA.

(C) Except as specifically set forth in this Section 20.4 and elsewhere in this PPA, each Party assumes the risk of changes in Applicable Laws following the date hereof, that affect such Party's costs of ownership and operation of its assets, and its performance of this PPA. Nothing in this Section 20.4 shall be construed to require Company to make or reimburse Seller for any capital expenditures with respect to the Facility.

20.5 Fines and Penalties. Seller shall pay when due all fees, fines, penalties and costs incurred by Company, Seller and/or their agents, employees or contractors arising from noncompliance by Seller, its employees, or subcontractors with any provision of this PPA, or any contractual obligation, Permit or requirements of Applicable Law, except for such fines, penalties and costs that are being actively contested in good faith and with due diligence by Seller and for which adequate financial reserves have been set aside to pay such fines, penalties or costs in the event of an adverse determination.

### 20.6 Rate Changes.

(A) The terms and conditions and the rates for service specified in this PPA shall remain in effect for the Term hereof. Neither Party shall seek (nor support any third party seeking) any prospective or retroactive change to the rates or terms of service under this PPA pursuant to §205, §206 or §306 of the Federal Power Act.

(B) The standard of review for changes to this PPA whether proposed by a Party, a non-party, or FERC acting *sua sponte* shall be the "public interest" standard of review set forth in *United Gas Pipe Line v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (aka the "Mobile-Sierra doctrine"), as interpreted in *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1*, 128 S. Ct. 2733 (2008).

20.7 Certifications. Each Party shall deliver or cause to be delivered to the other Party certificates of its officers, accountants, engineers or agents as to matters as may be reasonably requested, and shall make available personnel and records relating to the Facility to the extent that the requesting Party requires the same in order to fulfill any regulatory reporting requirements, or to assist the requesting Party in litigation, including administrative proceedings before the PUC.

20.8 Disclaimer of Third Party Beneficiaries. In executing this PPA, Company does not and does not intend to extend its credit or financial support for the benefit of any Facility Lender or any other third party transacting with Seller. Nothing in this PPA shall be construed to create any duty to, or standard of care with reference to, or any liability to, any person not a party to this PPA.

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### 20.9 Relationship of the Parties.

(A) This PPA shall not be interpreted to create an association, joint venture, or partnership between the Parties, nor to impose any partnership obligation or liability upon either Party. Except as specifically provided for in this PPA to the contrary, neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, the other Party.

(B) Seller shall be solely liable for the payment of all wages, taxes, and other costs related to the employment of persons to perform such services, including all federal, state, and local income, social security, payroll, and employment taxes and statutorily mandated workers' compensation coverage. None of the persons employed by Seller shall be considered employees of Company for any purpose; nor shall Seller represent to any person that he or she is or shall become a Company employee.

20.10 Survival of Obligations. Cancellation, expiration, or earlier termination of this PPA shall not relieve the Parties of obligations, including warranties, remedies, or indemnities, that by their nature should survive such cancellation, expiration, or termination, which obligations shall survive for the period of the applicable statute(s) of limitation.

20.11 Severability. In the event any of the terms, covenants, or conditions of this PPA, its Exhibits, or the application of any such terms, covenants, or conditions, shall be held invalid, illegal, or unenforceable by any court or administrative body having jurisdiction, all other terms, covenants, and conditions of the PPA and their application not adversely affected thereby shall remain in force and effect; *provided, however, that* Company and Seller shall negotiate in good faith to attempt to implement an equitable adjustment in the provisions of this PPA with a view toward effecting the purposes of this PPA 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.

20.12 Complete Agreement; Amendments. The terms and provisions contained in this PPA constitute the entire agreement between Company and Seller with respect to the Facility and shall supersede all previous communications, representations, or agreements, either verbal or written, between Company and Seller with respect to the purchase and sale of Contract Capacity, Contract Energy and other products and services from the Facility. Any amendment of this PPA, or any waiver of any provision hereof, shall be evidenced by a writing signed by the Party/ies to be bound thereby.

20.13 Waiver. The failure of either Party to enforce or insist upon compliance with or strict performance of any of the terms or conditions of this PPA, or to take advantage of any of its rights hereunder, shall not constitute a waiver or relinquishment of any such terms, conditions, or rights, but the same shall be and remain at all times in full force and effect.

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20.14 Binding Effect. This PPA is binding upon and shall inure to the benefit of the Parties hereto and their respective successors, legal representatives, and assigns.

20.15 Headings. Captions and headings used in this PPA are for ease of reference only and do not constitute a part of this PPA.

20.16 Counterparts. This PPA may be executed in counterparts, and each executed counterpart shall have the same force and effect as an original instrument.

20.17 Press Release. Upon the request of either Party, the Parties shall develop a mutually agreed joint press release to be issued describing the location, size and nature of the Facility, the term of this PPA, and other relevant factual information about the relationship.

20.18 Exhibits. Either Party may change the information in Exhibit D - Notices at any time by notice without the approval of the other Party. All other Exhibits may be changed to the extent allowed by specific provisions of this PPA or with the mutual consent of both Parties.

### 20.19 Confidentiality.

(A) For purposes hereof, "Confidential Information" means

1. information specifically designated as Confidential Information in this PPA; and

2. written information delivered by one Party to the other from time to time during the Term, which information is labeled prominently as "Confidential," "Proprietary" or the like and specifically references this PPA.

*provided, however,* that "Confidential Information" shall not include information that

(x) is publicly available as of the date hereof, or becomes publicly available during the Term through no fault of the recipient Party;

(y) can be documented was independently developed by the recipient Party; and/or

(z) is disclosed to the recipient Party from an ultimate source other than the protected Party, without breach of this PPA by the recipient Party.

(B) The recipient Party shall (i) maintain the confidentiality of all Confidential Information of the protected Party, using the same degree of care used by the recipient Party to protect its own Confidential Information (and in any event not less than a reasonable degree of care), and (ii) shall use Confidential Information only in connection with its performance of this PPA. Confidential Information may be disclosed by the recipient Party to its agents, employees, directors, officers, consultants, auditors, lenders and equity investors, subject to their acceptance of the obligations of

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confidentiality imposed hereby and for whose violations of this Section 20.19 the recipient Party shall be responsible.

(C) In the event that Confidential Information is disclosed to a PUC, its staff, intervenors or consumer counsel in any regulatory or administrative proceedings before a PUC, the disclosing Party shall submit such Confidential information in accordance with applicable PUC confidentiality rules and procedures. In the event that Confidential Information must otherwise be disclosed by Applicable Law (e.g. pursuant to subpoena or civil discovery), the Party required to make disclosure shall notify the protected Party sufficiently in advance to allow the protected Party a reasonable opportunity to obtain a protective order or seek other remedies, prior to disclosure by the recipient Party.

### 20.20 Accounting Treatment.

(A) If and when Company reasonably determines that Company must consolidate financial information of Seller into Company's financial statements under FASB ASC 810 or other accounting standard applicable to Company:

1. the Parties shall use Commercially Reasonable Efforts to amend this PPA and/or the Parties' protocols for operation of the Facility to avoid such treatment, at the least possible cost to the Parties, consistent with the intent of this PPA to the extent possible; or

2. if such avoidance is not reasonably feasible, Seller shall provide to Company from time to time upon request such quarterly and annual financial information as may be needed for Company to comply with such standard, in such format and within such time frames as Company may reasonably request.

(B) If and when Company reasonably determines that Company must treat this PPA as a "capital lease" under FASB ASC 840 or other accounting standard applicable to Company, the Parties shall use Commercially Reasonable Efforts to amend this PPA and/or the Parties' protocols for operation of the Facility to avoid such treatment, at the least possible cost to the Parties, consistent with the intent of this PPA to the extent possible, if so requested by Company.

*[remainder of this page intentionally left blank]*

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IN WITNESS WHEREOF, the Parties have executed this PPA as of the date first set forth above.

*Seller:*  
\_\_\_\_\_ [LLC]

By: \_\_\_\_\_  
[name and title]

*Company:*  
**Oklahoma Gas and Electric Company, an  
Oklahoma corporation**

By: \_\_\_\_\_  
[name and title]

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**EXHIBIT A**

(to PPA)

**DEFINITIONS**

The following terms shall have the meanings set forth herein:

“Acceptable Fuel Oil” means fuel oil meeting the quality specifications set forth in Exhibit R – Fuel Oil to this PPA at the time that such fuel oil is delivered to Seller’s Fuel Oil Supply Facilities. *if applicable*

“Acceptable Natural Gas Fuel” means

(i) natural gas fuel procured from the Upstream Pipeline that complies with the tariff of the Upstream Pipeline (as such tariff may be amended from time to time);

(ii) other natural gas fuel delivered to a Fuel Delivery Point, the actual quality of which meets or exceeds the natural gas quality specifications, requirements and minimum delivery pressures in Exhibit Q – Natural Gas Fuel Specifications; or

(iii) natural gas fuel that otherwise complies with the turbine manufacturer’s natural gas fuel quality specifications, requirements and delivery pressures of the manufacturer of the Facility’s combustion turbines, and that would not otherwise void such manufacturer’s warranties.

“Accredited Capacity Amount” has the meaning set forth in Section 8.1(B).

“Actual Damages” has the meaning set forth in Section 12.4(C).

“Affiliate” of any designated person or entity means any person or entity that directly or indirectly controls, is under the control of, or is under common control with, the designated person or entity by the power to direct or cause the direction of the management of the policies of designated person or entity, whether through ownership interest, by contract or otherwise.

“AGC” or “Automatic Generation Control” means the equipment and capability of an electric generation facility automatically to adjust the generation quantity within the applicable Balancing Authority with the purpose of interchange balancing and specifically, the Facility’s capability of accepting an AGC Set-Point electronically, and the automatic adjustment and regulation of the Facility’s energy production via the SCADA System.

“AGC Set-Point” means the Transmission Authority -generated analog or digital signal sent by the SCADA System to the Facility, representing the quantity of Contract Energy to be generated by the Facility. The AGC Set-Point will be calculated by Transmission Authority and communicated electronically to the Facility via the SCADA System.

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“Applicable Law” means all laws, statutes, treaties, codes, ordinances, regulations, certificates, orders, licenses, tariffs, protocols and permits of any Governmental Authority that are applicable to a Party, the business of a Party or the Facility, now in effect or hereafter enacted, including amendments to or 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 and/or like actions.

“Arbitration Service” means Judicial Arbitration and Mediation Services, Inc. (aka JAMS).

“Balancing Authority” means the system of electrical generation, distribution and transmission facilities within which generation is regulated in order to maintain interchange schedules with other such systems which in respect of this PPA is currently the SPP Consolidated Balancing Authority.

“Btu” means British thermal unit.

“Business Day” means any Day that is not a Saturday, a Sunday, or a NERC recognized holiday.

“CAF” or “Capacity Availability Factor” means:

$(AEG + SME) \div PE$ , where

AEG = Available Energy - Gas for any period, stated in Megawatt-hours (MWh), means the amount of Contract Energy that is available from the Facility for dispatch on natural gas fuel, regardless of the extent to which SPP actually dispatches the Facility, during such period. For purposes of calculating AEG:

- The Facility shall be derated for Forced Outages (regardless of whether caused by Force Majeure) and ambient conditions. By way of example for the month of June, [year], if (I) the Facility is fully mechanically available, (II) no maintenance is scheduled for the month, but (III) due to summer conditions, the average Contract Capacity actually available from the Facility for the month is \_\_ MWh, *then* CAF for such month shall be \_\_ MWh [AEG]  $\div$  \_\_ MWh [PE] = \_\_%.
- Contract Capacity that is unavailable for dispatch by Company on natural gas fuel nevertheless shall be considered to be available for the purposes of determining AEG when (and only when):
  - (i) the Facility is disconnected from the Transmission Authority’s System pursuant to the Interconnection Agreement, and the disconnection is not caused by actions of Seller or problems with the Facility;
  - (ii) the Contract Capacity cannot be delivered by Seller or received by Company (and the Contract Energy cannot be delivered by Seller generally) due to an

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Emergency or an event of Force Majeure affecting the Transmission Authority's System at or beyond the Point of Delivery;

- (iii) Seller fails or is unable to cause Acceptable Natural Gas Fuel to be delivered to the Fuel Delivery Point, for any reason;
- (iv) Company has contracted for non-firm transmission service, and the Contract Capacity cannot be received at the Point of Delivery due to transmission constraints affecting the Transmission Authority's System; and/or
- (v) the Facility cannot operate because its emissions have exhausted the annual limits of its Permits, but the Facility has generated the Planned Permitted Energy for such year.

By way of example only, the Contract Capacity shall be deemed unavailable for purposes of this Section 8.1:

- if, to the extent and for so long as the Facility is subject to a Forced Outage, including an outage caused by Force Majeure at the Site or prior to the Point of Delivery;
- if Company has contracted for Firm Transmission service, but the Contract Capacity cannot be received by Company at the Point of Delivery due to transmission constraints affecting the Transmission Authority's System; and/or
- in a cumulative amount equal to the Permit Deficiency for each year, if any.

SME = Scheduled Maintenance Energy for any period, stated in MWh, means the amount of energy that is not available from the Facility for dispatch by SPP on natural gas fuel during such period, due to Scheduled Outages/Deratings that meet the requirements for credited Scheduled Maintenance Energy under Exhibit L - Maintenance.

PE = Period Energy for any period, stated in MWh, means the product of the Net Capability and the total number of hours in such period.

"Capacity Resource" means the amount of net generating capacity associated with the Facility for which accredited capacity credit or Firm Power credit may be obtained under applicable ERO or Transmission Authority planning reserve procedures and requirements, including the procedures and requirements currently set forth in Attachment AA of the Transmission Tariff.

"Change of Control" means the occurrence of any one of the following events with respect to Seller or any direct or indirect owner of a majority of the ownership interests in Seller: (a) a transfer of a majority of the ownership interests in Seller or such owner; (b) any consolidation or merger of Seller or such owner in which Seller or such owner, as the case may be, is not the continuing or surviving entity; or (c) a sale

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or conveyance of any direct or indirect ownership interest in Seller following which [ ] (“Ultimate Parent”) is no longer the direct or indirect owner of at least 50% of the ownership interests of Seller, *provided, however*, that a Change of Control shall not be deemed to have occurred as a result of

- (i) any exercise by the Facility Lender of its rights and remedies under the Financing Documents, or
- (ii) any change of economic and/or voting rights triggered in Seller’s organizational documents arising from a tax equity financing of the Facility.

“COD Conditions” means all of the requirements that must be satisfied by Seller as a prerequisite to achieving Commercial Operation. The COD Conditions are set forth in Section 4.5.

“Commercial Operation” means the period beginning on the Commercial Operation Date and continuing through the balance of the Term.

“Commercial Operation Date” or “COD” shall have the meaning set forth in Section 4.5.

“Commercial Operation Year” shall have the meaning set forth in Section 4.5(E).

“Commercially Reasonable” or “Commercially Reasonable Efforts” means, with respect to any action to be taken or attempted by a Party under this PPA, the level of effort in light of the facts known to such Party at the time a decision is made that: (a) can reasonably be expected to accomplish the desired action at a reasonable cost; (b) is consistent with Good Utility Practices; and (c) takes into consideration the amount of advance notice required to take such action, the duration and type of action, and the competitive environment in which such action occurs.

“Confidential Information” shall have the meaning set forth in Section 20.19(A).

“Construction Milestones” means the dates set forth in Exhibit B – Construction Milestones.

“Contract Capacity” shall have the meaning set forth in Section 7.1.

“Contract Energy” shall have the meaning set forth in Section 7.1.

“Credit Rating” of any person or entity means the lowest rating assigned to such person or entity’s long-term debt or deposit obligations (unenhanced by third-party support) by Standard & Poors and Moody’s. If such person or entity has no outstanding long-term debt or deposit obligations, or if no rating is assigned to such obligations, “Credit Rating” shall mean the lowest general corporate credit rating or long-term issuer rating assigned to such person or entity by Standard & Poors or Moody’s.

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“Day” means a calendar day.

“Deliverable Capacity” shall have the meaning set forth in Section 2.0 of Attachment AA to the Transmission Tariff.

“Dispute” shall have the meaning set forth in Article 13.

“Effective Date” shall have the meaning set forth in Article 2.

“Electric Metering Devices” means revenue quality meters, metering equipment and data processing equipment used to measure, record and transmit data with respect to the output of Contract Energy from the Facility, including metering current transformers and metering voltage transformers. The Electric Metering Devices must transmit to Company five minute revenue quality meter data.

“Emergency” means any event or occurrence that results in the declaration of an Emergency Condition under and as defined in the Interconnection Agreement.

“Energy Markets Control Center” or “EMCC” means Seller’s merchant representatives responsible for offering the output of Seller-represented resources, including the Facility, into the SPP Integrated Marketplace or for otherwise dispatching the Company’s resources, including the Facility.

“Environmental Contamination” shall have the meaning set forth in Section 4.2.

“ERO” means the Electric Reliability Organization certified by FERC pursuant to Section 215 of the Federal Power Act or any successor organization. The certified ERO as of the date of this PPA is the [Midwest Reliability Organization and the SERC Reliability Corporation.

“Event of Default” shall have the meaning set forth in Article 12.

“Expected Ramp Rate” with respect to the regulating range of the Facility between Minimum Loading and maximum output means [\_\_\_\_] kW/minute (increasing) or [\_\_\_\_] kW/minute (decreasing), as applicable, established in a manner consistent with the Transmission Tariff and SPP Market Protocols.

“Facility” means Seller’s electric generating facilities, associated balance of plant, parts, fixtures and equipment, and all equipment necessary to interconnect to the Transmission Authority’s System, all as further described in Exhibit C - Facility Description, including Seller’s rights to the Site and all of the following: buildings, turbines, generators, step-up transformers, output breakers, facilities necessary to connect to the Interconnection Point, protective and associated equipment, fuel interconnection facilities, [Fuel Oil Storage Facilities,] above-ground and underground piping, gas compression, heating and filter/separation equipment, control systems, improvements, and other tangible and intangible assets, contract rights, Permits, easements, rights of way, surface use agreements and other interests or rights in real

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estate, owned or used for construction, operation, maintenance, generation and delivery of the capacity and energy subject to this PPA.

“Facility Debt” means the obligations of Seller or its Affiliates to any lender or tax equity investor pursuant to the Financing Documents, including principal of, 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 fees or interest due with respect to any of the foregoing.

“Facility Lender” means, collectively, any lenders or tax equity investors providing Facility Debt, including any successors or assigns thereof.

“Federal Power Act” means the provisions of 16 U.S.C. §791(A) *et seq.* and amendments or supplements thereto.

“FERC” means the Federal Energy Regulatory Commission or any successor agency.

“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 or permanent debt financing and/or tax equity financing for the Facility, 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 Facility.

“Firm Capacity” shall have the meaning set forth in Section 2.0 of Attachment AA to the Transmission Tariff.

“Firm Power” means the purchase and sale of power deliverable with Firm Transmission service to serve native load customers with capacity, energy, and planning reserves, such that the power will be continuously available in a manner comparable to power delivered to native load customers.

“Firm Transmission” means that “Network Integrated Transmission Service” as defined in and provided under Part II of the Transmission Tariff.

“Forced Outage” means any condition at the Facility that requires the immediate and unplanned removal of the Facility, or any portion thereof, from service, another outage state, or a reserve shutdown state, resulting from immediate mechanical/electrical/hydraulic control system trips and operator-initiated trips in response to abnormal Facility conditions or alarms.

“Fuel Delivery Point” means the natural gas delivery system point at which Seller obtains the natural gas fuel consumed by the Facility to produce the Contract Energy dispatched by Company, as described in Section 5.4.

## OGE Model Capacity Purchase Agreement

“Fuel Oil Storage Facilities” means Seller’s fuel oil storage tanks and related fuel oil pipelines, interconnection equipment, unloading facilities and metering equipment necessary to receive and store Acceptable Fuel Oil at the Facility and deliver such fuel oil for combustion within the Units as described in Section 5.5. *if applicable*

“Generating Unit” means an individual turbine-generator set at the Facility. For example, a 2x1 combined cycle facility would have three Generating Units.

“Good Utility Practice” means those practices, methods, standards and acts engaged in or approved by a significant portion of the applicable segment of the electric power generation industry pertaining to facilities of the type, similar size and location to the Facility that, at a particular time, in light of the facts that are known (or reasonably should have been known) at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with Applicable Law, Permits, codes, standards, equipment manufacturer’s recommendations, reliability, safety, environmental protection, economy, and expedition. Good Utility Practices is not limited to the optimum practice, method, standard or act to the exclusion of all others, but rather to those practices, methods, standards and acts generally acceptable or approved by a significant portion of the applicable segment of the electric power generation industry in the relevant region, during the relevant period.

“Governmental Authority” means any federal, state, local or municipal governmental body; any governmental, quasi-governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power; and/or any court or governmental tribunal. By way of example only, “Governmental Authorities” include NERC, the ERO, an applicable PUC, the Transmission Authority, FERC, and successor organizations.

“Interconnection Agreement” means the separate contract for interconnection of the Facility to the Transmission Authority’s System, as such agreement may be amended from time to time. For purposes of this PPA, the Interconnection Agreement shall be interpreted to include any third party facility construction agreement or other agreement required by the Transmission Authority to interconnect the Facility in accordance with the Transmission Tariff. For the avoidance of doubt, “Interconnection Agreement” excludes any temporary or provisional interconnection agreement or any agreement where the Transmission Provider may limit the operational output of the Facility.

“Interconnection Facilities” means those facilities designated in the Interconnection Agreement for the direct purpose of interconnecting the Facility at the Interconnection Point, along with any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of such facilities, whether owned by Seller, a

## OGE Model Capacity Purchase Agreement

Transmission Owner or another entity. This equipment is conceptually depicted in Exhibit C - Facility Description to this PPA.

“Interconnection Point” means the physical point within the operational authority of the Transmission Authority as specified in the Interconnection Agreement as project [\_\_\_\_], at which electrical interconnection is made between the Facility and the Transmission Authority’s System in accordance with the Transmission Tariff and the Interconnection Agreement.

“Investment Grade” means a Credit Rating of both (a) Baa3 or higher by Moody’s, and (b) BBB- or higher by Standard & Pools.

“kW” means kilowatt, and “kWh” means kilowatt hour.

“Local Provider” shall have the meaning set forth in Section 1.2.

“Maintenance Schedule” has the meaning set forth in Exhibit L - Maintenance.

“Material Adverse Effect” means any effect (or effects taken together) that is materially adverse to the present or future business, operations, assets, liabilities, properties, results in operations or condition (financial or otherwise), prospects, or property of a Party, its business, or this PPA.

“Minimum Loading” means the minimum capacity of the Facility that can be scheduled for continuous operation consistent with Good Utility Practices, including equipment manufacturer’s warranties and performance standards.

“MW” means megawatt or one thousand kW, and “MWh” means megawatt hours.

“NERC” means the North American Electric Reliability Council or any successor organization.

“Net Capability” or “NC” of the Facility shall have the meaning set forth in Section 3.2(C).

“Network Resource Interconnection Service” means the type of interconnection service that allows Seller (i) to connect the Facility to the Transmission Authority’s System as a “Network Resource” as defined in the Transmission Tariff, and (ii) to be eligible to designate an amount of Contract Capacity for the Facility as a “Network Resource” under the Transmission Tariff.

“Operating Committee” means one representative each from Company and Seller, pursuant to Section 10.8.

“Operating Procedures” means those procedures developed by the Operating Committee pursuant to Section 10.8, if any.

## OGE Model Capacity Purchase Agreement

“Operating Records” means all agreements associated with the Facility, operating logs, blueprints for construction, operating manuals, all warranties on equipment, and all documents, whether in printed or electronic format, that Seller uses or maintains for the operation of the Facility.

“Party” and “Parties” shall have the meanings set forth in the introductory paragraph.

“Pending Facility Transaction” or “PFT” shall have the meaning set forth in Section 19.4.

“Permit” shall have the meaning set forth in Section 4.3.

“PFT Notice” shall have the meaning set forth in Section 19.4.

“Planned Permitted Energy” shall have the meaning set forth in Section 7.3(D).

“Point of Delivery” means the physical point within the operational authority of Transmission Authority and deliverable within the service territory of Company at which Seller makes available and delivers to Company the Contract Capacity being provided by Seller to Company under this PPA. The Point of Delivery is specified in Exhibit C - Facility Description to this PPA.

“Post-COD Test Energy” shall have the meaning set forth in Section 10.4(C).

“Pre-COD Test Energy” shall have the meaning set forth in Section 4.6.

“Project Contracts” shall have the meaning set forth in Section 4.1.

“PUC” means a state utility commission with jurisdiction over Company’s retail electricity services and rates, including the Oklahoma Corporation Commission or any successor agency and the Arkansas Public Service Commission or any successor agency.

“PUC Approval” shall have the meaning set forth in Section 6.1(D).

“Reference Capacity Amount” means, for each Commercial Operation Year during the Term, that number of MWs set forth in the column entitled “Reference Capacity Amount” on Exhibit M.

“ROFO” and “ROFO Notice” shall have the meanings set forth in Section 19.3.

“SCADA” means supervisory control and data acquisition.

“Scheduled Outage/Derating” means a planned interruption/reduction of the Facility’s generation that (i) has been coordinated in advance with Company, per Exhibit L - Maintenance, (ii) is required for inspection, or preventive or corrective

## OGE Model Capacity Purchase Agreement

maintenance, and (iii) complies with the scheduling requirements of the Transmission Authority.

“Scheduled Termination Date” shall have the meaning set forth in Article 2.

“Security Fund” shall have the meaning set forth in Section 11.1.

“Site” means the parcel of real property on which the Facility will be located, including any easements, rights of way, surface use agreements and other interests or rights in real estate necessary for the construction, operation and maintenance of the Facility. The Site is more specifically described in Exhibit C - Facility Description to this PPA.

“SPP” means Southwest Power Pool, Inc.

“SPP Integrated Marketplace” means the regional energy market that governs Company’s loads and resources, which is currently the regional energy market operated by SPP, which is composed of the Day-Ahead Market, the Real-Time Balancing Market, the Transmission Congestion Rights Market and the Reliability Unit Commitment processes as set forth in Attachment AE of the SPP Transmission Tariff and the SPP Market Protocols, or any future.

“SPP Market Protocols” means the detailed procedures that implement SPP’s governing documents relating to the operation and administration of the SPP Integrated Marketplace, including market settlements, billing, accounting, and market mitigation requirements.

“Station Power” shall have the meaning set forth in Section 1.2.

“Step-In Rights” shall have the meaning set forth in Section 12.5.

“Successful Start” means, in response to a request from Company to start a Generating Unit [on natural gas or fuel oil, as designated by Company *if applicable*], Seller’s start and operation of such Unit that:

(i) achieves the Minimum Loading level for the requested operating configuration within thirty (30) minutes for single-cycle starts (90 minutes for combined cycle starts) after the time Company requests the turbine start to begin, and

(ii) upon achieving such Minimum Loading level, generates continuously for a period of not less than one hour while synchronized to Transmission Authority’s System at or above such Minimum Loading level without experiencing any abnormal operating conditions.

“Target COD” shall have the meaning set forth in Section 4.5(A).

“Term” means the period of time during which this PPA remains in full force and effect, as further defined in Article 2.

OGE Model Capacity Purchase Agreement

“Termination LDs” shall have the meaning set forth in Section 12.2.

“Transmission Authority” means the entity whose Open Access Transmission Tariff governs transmission service to Company’s load, which is currently SPP.

“Transmission Authority’s System” means the contiguously interconnected electric transmission and sub-transmission facilities, over which the Transmission Authority has rights (by ownership or contract) to provide bulk transmission of capacity and energy from the Interconnection Point.

“Transmission Owner” shall mean those entities owning the interconnected transmission system applicable to Seller and the Facility pursuant to a Transmission Tariff, including (i) Oklahoma Gas and Electric Company and such other entities operating under and in accordance with the Transmission Tariff that have transferred operational control of their transmission facilities to the Transmission Authority, and (ii) all entity(s) other than Seller responsible under the Interconnection Agreement for providing the transmission lines, any Interconnection Facilities and other equipment and facilities with which the Facility interconnects at the Interconnection Point and transmission system.

“Transmission Tariff” means the Open Access Transmission Tariff, as amended from time to time, that governs transmission service to Company’s load, which is currently the SPP Open Access Transmission Tariff.

“Upstream Pipeline” means the interstate or intrastate natural gas pipeline [to be] interconnected to the Facility at the Fuel Delivery Point. The initial Upstream Pipeline is [\_\_\_\_\_].

\* \* \* \* \*

OGE Model Capacity Purchase Agreement

**EXHIBIT B**

(to PPA)

**CONSTRUCTION MILESTONES**

**[Bidders to supplement]**

<b>Construction Milestone</b>	<b>Outcome</b>
<b>[Date]</b>	Seller and all required counterparties shall have executed such Project Contracts as are needed to construct the Facility.
<b>[Date]</b>	Seller, Transmission Owner and the Transmission Authority shall have executed the Interconnection Agreement.
<b>[Date]</b>	Seller shall have achieved closing on financing for the Facility or provided Company with proof of financial capability to construct the Facility.
<b>[Date]</b>	Seller shall have laid the foundation for all Facility buildings, generating facilities and step-up transformation facilities.
<b>[Date]</b>	The Generating Units and step-up transformer shall have been delivered and installed at the Site.
<b>[Date]</b>	All fuel supply and transportation arrangements have been put in place, and the Fuel Interconnection Facilities have been constructed and are operational.
<b>[Date]</b>	Seller and Transmission Owner shall have constructed the Interconnection Facilities and such facilities are capable of being energized.
<b>[Date]</b>	Start-up testing of the Facility commences.
<b>[Date]</b>	Target COD.

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**EXHIBIT C**

(to PPA)

**FACILITY DESCRIPTION AND SITE MAPS**

***[This Exhibit shall include a description of the Facility and all material components thereof, including map, aerial pictures, one-line diagram, Point of Delivery and (if different) the Interconnection Point.]***

The Facility shall be located on the Site and shall be identified as Seller's [\_\_\_\_\_] Generation Facility. Maps and one-line diagrams of the Facility and associated equipment are included as part of this Exhibit.

The address of the Facility is [\_\_\_\_\_].

**[Bidders to provide]**

OGE Model Capacity Purchase Agreement

**EXHIBIT D**  
(to PPA)

**NOTICES AND CONTACT INFORMATION**

Company	Seller
<p><b>Notices:</b></p> <p>_____</p> <p>_____</p> <p>_____</p> <p>e-mail: _____@_____.com</p> <p><i>with a cc to:</i></p> <p>_____</p> <p>_____</p> <p>_____</p> <p>e-mail: _____@_____.com</p>	<p><b>Notices:</b></p> <p>_____</p> <p>_____</p> <p>_____</p> <p>e-mail: _____@_____.com</p> <p><i>with a cc to:</i></p> <p>_____</p> <p>_____</p> <p>_____</p> <p>e-mail: _____@_____.com</p>
<p><b>Operating Committee Representative:</b></p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>e-mail: _____@_____.com</p> <p><b>Alternate:</b></p> <p>_____</p> <p>_____</p> <p>_____</p> <p>e-mail: _____@_____.com</p>	<p><b>Operating Committee Representative:</b></p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>e-mail: _____@_____.com</p> <p><b>Alternate:</b></p> <p>_____</p> <p>_____</p> <p>_____</p> <p>e-mail: _____@_____.com</p>
<p><b>Real-Time Contact Information</b></p> <p><u>EMCC</u> (24 hour coverage):</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>e-mail: _____@_____.com</p> <p><u>[Transmission Ops:]</u></p> <p>_____</p> <p>_____</p> <p>_____</p> <p>e-mail: _____@_____.com</p>	<p><b>Real-Time Contact Information</b></p> <p><u>[Operations Command Center]</u></p> <p>(24 hour coverage):</p> <p>Phone: _____</p> <p>E-mail: _____@_____.com</p>

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**EXHIBIT E**

(to PPA)

**INSURANCE COVERAGE**

<b>Type of Insurance</b>	<b>Minimum Limits of Coverage</b>
Commercial General Liability (CGL) and commercial umbrella	\$11,000,000 combined single limit each occurrence and the aggregate, where applicable. If CGL insurance contains a general aggregate limit, it shall apply separately to the Facility.

CGL insurance shall be written on ISO occurrence form CG 00 01 01 96 (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, products/completed operations, contracts, property damage, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract), all with limits as specified above. CGL insurance shall include ISO endorsement CG 24 17 (or an equivalent endorsement) which modifies the definition of "Insured contract" to eliminate the exclusion of easement or license agreements in connection with construction or demolition operations on or within 50 feet of a railroad. There shall be no endorsement or modification of the CGL insurance limiting the scope of coverage for liability arising from explosion, collapse, or underground property damage.

Company shall be included as an insured under the CGL policy, using ISO additional insured endorsement CG 20 10 (or a substitute providing equivalent coverage), and under the commercial umbrella insurance. The commercial umbrella insurance shall provide coverage over the top of the CGL insurance, the Business Automobile Liability insurance, and the Employers Liability insurance. The CGL and commercial umbrella insurance to be obtained by or on behalf of Seller shall be endorsed as follows:

Such insurance as afforded by this policy for the benefit of Company shall be primary as respects any claims, losses, damages, expenses, or liabilities arising out of this PPA, and insured hereunder, and any insurance carried by Company shall be excess of and noncontributing with insurance afforded by this policy.

Business Automobile Liability	\$2,000,000 combined single limit (each accident), including all Owned, Non-Owned, Hired and Leased Autos.
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Business Automobile Liability insurance shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.

Workers Compensation	Statutory Requirements. Seller may comply with these requirements through the use of a qualified self-insurance plan.
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**OGE Model Capacity Purchase Agreement**

[Exhibit E - continued]

Type of Insurance	Minimum Limits of Coverage
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Employers Liability	\$2,000,000 each accident for bodily injury by accident, or \$2,000,000 each employee for bodily injury by disease.
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Builder's Risk	Replacement value of the Facility.
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Builder's Risk insurance, or an installation floater, shall include coverage for earthquake and flood, collapse, faulty workmanship, materials and design, testing of machinery or equipment, freezing or changes in temperature, debris removal, and partial occupancy.

Environmental Impairment Liability	\$5,000,000 each occurrence.
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All-Risk Property insurance covering physical loss or damage to the Facility	Full replacement value of the Facility. A deductible may be carried which deductible shall be the absolute responsibility of Seller.
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All-Risk Property insurance shall include: (i) coverage for fire, flood, wind and storm, tornado and earthquake with respect to facilities similar in construction, location and occupancy to the Facility, with sublimits of no less than \$10,000,000 each for flood and earthquake; and (ii) Boiler and Machinery insurance covering all objects customarily subject to such insurance, including boilers and turbines, in an amount equal to their full replacement value.

Business Interruption insurance	Amount required to cover Seller's continuing or increased expenses, resulting from full interruption, for a period of 12 calendar months.
---------------------------------	---

Business Interruption insurance shall cover loss of revenues or the increased expense to resume operations attributable to the Facility by reason of total or partial suspension or delay of, or interruption in, the operation of the Facility as a result of an insured peril covered under Property insurance as set forth above, to the extent available on Commercially Reasonable terms as determined by Company, subject to a Commercially Reasonable deductible that shall be the responsibility of Seller. Notwithstanding any other provision of this PPA, Seller shall not be required to have Business Interruption insurance until the Commercial Operation Date.

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**EXHIBIT F**  
(to PPA)

**REQUIRED PERMITS**  
**[Bidders to provide]**

<u>Permit</u>	<u>Status</u>	<u>Date / Projected Date of Grant</u>

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**EXHIBIT G**

(to PPA)

**FORM OF LETTER OF CREDIT**

[LETTERHEAD OF ISSUING BANK]

Irrevocable Standby Letter of Credit  
No: \_\_\_\_\_

Date of Issuance: \_\_\_\_\_

Beneficiary: Oklahoma Gas and  
Electric Company

Initial Expiration Date: [Must be at least  
one year after date of issuance]

Applicant:

As the Issuing Bank ("Issuer"), we, [Name of Issuing Bank], hereby establish this irrevocable Standby Letter of Credit No. \_\_\_\_\_ (this "Letter of Credit") in favor of the above-named beneficiary ("Beneficiary") for the account of the above-named applicant ("Applicant") in the amount of US\$ \_\_\_\_\_ (\_\_\_\_\_ Million U.S. Dollars).

Beneficiary may draw all or any portion of this Letter of Credit at any time and from time to time, and Issuer will make funds immediately available to Beneficiary upon presentation of Beneficiary's draft(s) at sight in substantially the form attached hereto as Exhibit "A" ("Sight Draft"), drawn on Issuer and accompanied by this Letter of Credit. All Sight Drafts must be signed on behalf of Beneficiary, and the signatory must indicate his or her title or other official capacity. No other documents will be required to be presented. Issuer will effect payment under this Letter of Credit within twenty-four (24) hours after presentment of any Sight Draft. Payment shall be made in U.S. Dollars with Issuer's own funds in immediately available funds.

Issuer will honor any Sight Draft presented in substantial compliance with the terms of this Letter of Credit at the Issuer's letterhead office, the office located at \_\_\_\_\_ or any other full service office of the Issuer on or before the above-stated expiration date, as such expiration date may be extended hereunder. Partial and multiple draws and presentations are permitted on any number of occasions. Following any partial draw, Issuer will endorse this Letter of Credit and return the original to Beneficiary.

This Letter of Credit is issued pursuant to the provisions of that certain Power Purchase Agreement between Beneficiary and Applicant dated as of \_\_\_\_\_, 20\_\_ (as the same may have been or may be amended from time to time, the "PPA"). Notwithstanding any reference in this Letter of Credit to the PPA or any other documents, instruments or agreements, or references in the PPA or any other documents, instruments or agreements to this Letter of Credit, this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

**OGE Model Capacity Purchase Agreement**

This Letter of Credit will be automatically extended each year without amendment for a period of one (1) year from the expiration date hereof, as extended, unless at least sixty (60) days prior to the expiration date, Issuer notifies Beneficiary by registered mail that it elects not to extend this Letter of Credit for such additional period. Notice of non-extension will be given by Issuer to Beneficiary at Beneficiary's address set forth herein or at such other address as Beneficiary may designate to Issuer in writing at Issuer's letterhead address.

This Letter of Credit is freely transferable by Beneficiary in whole or in part, and the number of transfers is unlimited. Issuer shall effect any transfers immediately upon presentation to Issuer of this Letter of Credit and a completed written transfer request substantially in the form attached hereto as Exhibit "B." Such transfer will be effected at no cost to Beneficiary. Any transfer fees assessed by Issuer will be payable solely by Applicant, and the payment of any transfer fees will not be a condition to the validity or effectiveness of the transfer of this Letter of Credit.

Issuer waives any rights it may have, at law or otherwise, to subrogate to any claims which Beneficiary may have against Applicant or Applicant may have against Beneficiary.

This Letter of Credit is subject to the uniform customs and practice for documentary credits (2007 Revision), International Chamber of Commerce publication No. 600 (the "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. With respect to Article 14(b) of the UCP, Issuer shall have a reasonable amount of time, not to exceed three (3) banking days following the date of Issuer's receipt of documents from Beneficiary (to the extent required herein), to examine the documents and determine whether to take up or refuse the documents and to inform Beneficiary accordingly.

In the event of an act of God, riot, civil commotion, insurrection, war or any other cause beyond Issuer's control that interrupts Issuer's business and causes the place for presentation of this Letter of Credit to be closed for business on the last day for presentation, the expiry date of this Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

ISSUER:

By: \_\_\_\_\_  
Authorized Signature

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**EXHIBIT "A"**  
TO LETTER OF CREDIT

**SIGHT DRAFT**

Draft Number \_\_\_\_\_  
\$ \_\_\_\_\_

At sight, pay to the order of [Name of Beneficiary to be inserted], the amount of USD \$ \_\_\_\_\_ ( \_\_\_\_\_ and 00/100ths U.S. Dollars).

Value received and charged to the account of: [Name of Issuer and address].  
Drawn under [Name of Issuer to be inserted] Standby Letter of Credit No.  
\_\_\_\_\_.

Dated: \_\_\_\_\_

Oklahoma Gas and Electric Company

By: \_\_\_\_\_  
[name and title]

Account: [Applicant to be inserted]

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**EXHIBIT "B"**  
TO LETTER OF CREDIT

**FORM OF TRANSFER REQUEST**

Irrevocable Standby Letter of Credit No. \_\_\_\_\_

Current Beneficiary:

Applicant:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To: [Name of Issuer] ("Issuer")

The undersigned, as the current "Beneficiary" of the above-referenced Letter of Credit, hereby requests that you reissue the Letter of Credit in favor of the transferee named below [insert transferee name and address below]:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

From and after the date this transfer request is delivered to Issuer, the transferee shall be the "Beneficiary" under the Letter of Credit for all purposes and shall be entitled to exercise and enjoy all of the rights, privileges and benefits thereof.

Dated: \_\_\_\_\_

Oklahoma Gas and Electric Company

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

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

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

[Notary Acknowledgement]

To be signed by a person purporting to be an authorized representative of Beneficiary and indicating his or her title or other official capacity, and acknowledged by a notary public.

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**EXHIBIT H**  
(to PPA)

**[Reserved]**

**EXHIBIT I**  
(to PPA)  
**OPERATING STANDARDS**  
**[Bidders to propose]**

**Ramp Rate**

- (A) Equipment.
- (B) Testing.

**AGC**

- (A) Equipment
- (B) Testing.

\* \* \* \* \*

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**EXHIBIT J**  
(to PPA)

**CAPACITY TESTING**  
**[Bidders to propose]**

General Capacity Testing Criteria:

Combustion Turbine, Internal Combustion and Combined Cycle Unit Tests:

\* \* \* \* \*

OGE Model Capacity Purchase Agreement

**EXHIBIT K**  
(to PPA)  
**[Reserved]**

\* \* \* \* \*

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**EXHIBIT L**  
(to PPA)

**MAINTENANCE**

**[Bidders to propose]**

- A. Schedules.
- B. Advance Changes.
- C. Late Changes.
- D. SME.

\* \* \* \* \*

OGE Model Capacity Purchase Agreement

**EXHIBIT M**

(to PPA)

**PRICING**

*This entire Exhibit shall be deemed Confidential Information subject to Section 20.19.*

Commercial Operation Year	Capacity Price (\$/MW)	Reference Capacity Amount (MWs)
1	\$ _____	_____
2	\$ _____	_____
3	\$ _____	_____
4	\$ _____	_____
5	\$ _____	_____
6	\$ _____	_____
7	\$ _____	_____
8	\$ _____	_____
9	\$ _____	_____
10	\$ _____	_____
11	\$ _____	_____
12	\$ _____	_____
13	\$ _____	_____
14	\$ _____	_____
15	\$ _____	_____

Commercial Operation Year	Capacity Price (\$/MW)	Reference Capacity Amount (MWs)
16	\$ _____	_____
17	\$ _____	_____
18	\$ _____	_____
19	\$ _____	_____
20	\$ _____	_____
21	\$ _____	_____
22	\$ _____	_____
23	\$ _____	_____
24	\$ _____	_____
25	\$ _____	_____
26	\$ _____	_____
27	\$ _____	_____
28	\$ _____	_____
29	\$ _____	_____
30	\$ _____	_____

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**EXHIBIT N**

(to PPA)

**[Reserved]**

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**EXHIBIT O**  
(to PPA)

**[Reserved]**

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**EXHIBIT P**  
(to PPA)  
**PSA PROVISIONS**

Any PSA executed to implement exercise of Company’s ROFO rights will include provisions substantially as follows:

**[Bidders to propose]**

\* \* \* \* \*

OGE Model Capacity Purchase Agreement

**EXHIBIT Q**  
(to PPA)

**NATURAL GAS FUEL SPECIFICATIONS**

Specifications:

- O<sub>2</sub>: ≤ \_\_\_ % by volume
- H<sub>2</sub>S: ≤ \_\_\_ grains / Ccf
- Total Sulphur: ≤ \_\_\_ grains / Ccf
- CO<sub>2</sub>: ≤ \_\_\_ % by volume
- H<sub>2</sub>O: ≤ \_\_\_ lbs / MMcf
- Heating Value: ≥ \_\_\_ Btu / ft<sup>3</sup>
- Temperature: ≤ \_\_\_ ° F

Pressure:

- Minimum: \_\_\_ psi
- Maximum: \_\_\_ psi

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**EXHIBIT R**

(to PPA)

**FUEL OIL**

*[if applicable]*

Fuel Oil Storage Facilities. The Fuel Oil Storage Facilities included in the Facility shall include one or more active storage tanks for Fuel Oil sufficient to operate the Facility at its full capacity exclusively on Fuel Oil for a period of at least 72 and no more than 96 consecutive hours.

Fuel Oil Management Plan. *[insert manufacturer's requirements for periodic testing of the Facility on fuel oil, and for use of fuel oil sufficiently frequently to avoid degradation below Acceptable Fuel Oil standards]*

Specifications for Acceptable Fuel Oil. *[insert manufacturer's requirements for Acceptable Fuel Oil – e.g. ASTM D975-10C Low Sulfur fuel oil; or list specs]*