

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

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

BETWEEN

AND

ALABAMA POWER COMPANY

Dated as of _____

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

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

WITNESSETH:

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

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

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

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

ARTICLE 1

DEFINITIONS AND INTERPRETATION

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

“**AC**” means alternating current.

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

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

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

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

“Annual Period” means each period during which a given revision to Rate CPE is effective, each of which shall commence upon the first Day of the Month for which a given revised Rate CPE is made effective by the APSC and end on the last Day of the Month for which such revised Rate CPE is effective.

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

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

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

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

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

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

“Day” means a calendar day.

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

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

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

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

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

“Environmental Attributes” means, whether existing as of the Effective Date or in the future, any fuel-related, emissions-related, air quality-related or other environmental-related aspects, claims, characteristics, benefits, credits, reductions, offsets, savings, allowances, efficiencies, certificates, tags, attributes or similar products or rights (including all of those relating to greenhouse gases and all green certificates, green tags, renewable certificates and renewable energy credits) (“Attributes”), howsoever entitled, whether known or unknown, whether or not such Attributes have been certified

or verified under any renewable energy standards or criteria or otherwise, and whether or not such Attributes could qualify or do qualify for application toward compliance with any public, private, local, state, federal and/or international renewable energy related standard, program, law, policy, or contract, that: (i) arise or result from the generation of electric, thermal or other energy by the Facility; (ii) are associated with fuel that is used to produce electric, thermal or other energy at the Facility (including any fuel that may serve a dual purpose of contributing both to energy production and another industrial process), including the procurement, collection or aggregation of such fuel; (iv) arise or result from the avoidance or reduction of the emission of any gas, chemical or other substance to the air, soil or water that is attributable to the generation of electric, thermal or other energy by the Facility or the use of a particular fuel by the Facility to generate electric, thermal or other energy; (vi) arise or result from the recycling, recovery or reuse of any wastes, products, co-products, byproducts or similar materials associated with the generation of electric, thermal or other energy by the Facility; or (vii) arise or result from the avoidance of water use that is associated with the generation of electric, thermal or other energy at the Facility. Environmental Attributes shall not include any tax credit (including federal investment tax credits) derived from the construction or ownership of the Facility.

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

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

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

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

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

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

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

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

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

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

“Interconnection Agreement” means an agreement by and between QF and the Interconnection Provider providing QF the right to interconnect the Facility to the Electric System and containing terms and conditions governing the interconnection and parallel operation of the Facility with such system.

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

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

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

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

“kW” means kilowatts, AC.

“kWh” means kilowatt hours, AC.

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

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

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

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

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

“MW” means megawatts, AC.

“MWh” means megawatt hours, AC.

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

“Party” or “Parties” means either Alabama Power or QF or both.

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

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

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

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

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

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

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

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

"RGB Rules" means the "Special Rules Governing the Application of Rate Rider RGB" of Alabama Power, or any successor in function, as filed by Alabama Power with the APSC and as may be modified from time to time.

"Rate Rider RGB" means "Rate Rider RGB, Supplementary, Back-up, or Maintenance Power", or any successor in function, as filed by Alabama Power with the APSC and as may be modified from time to time.

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

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

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

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

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

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

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

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

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

ARTICLE 2

DEVELOPMENT OF THE FACILITY

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

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

ARTICLE 3

INITIAL DELIVERY DATE; TERM AND TERMINATION; APSC APPROVAL

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

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

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

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

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

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

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

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

3.5 APSC Approval. This Agreement is subject to approval or prior authorization and ratification by the APSC in accordance with its approval of Rate CPE, and any modifications that may be ordered by the APSC at the time of approval or in the future.

ARTICLE 4

OPERATIONAL CONSIDERATIONS

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

contact information (including telephone number and email address) for such representatives.

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

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

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

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

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

ARTICLE 5

INTERCONNECTION AND METERING.

5.1 Interconnection.

5.1.1 QF shall maintain and use diligent efforts to pursue interconnection of the Facility to the Electric System in accordance with the interconnection process of the Interconnection Provider, including the timely execution and submission of all

required study agreements, fees, deposits and other charges. QF shall be responsible for all costs and expenses associated with all studies, fees, deposits and other charges in connection with such interconnection request.

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

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

5.2 Metering.

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

5.2.2 All meters and other such facilities, equipment and devices installed by Alabama Power shall be and remain the property of Alabama Power.

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

5.4 Inaccuracies. If any seal securing the metering is found broken, if the metering fails to register, or if the measurement made by a metering device is found upon testing to vary by more than the allowable margin of metering error (as reflected in

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

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

ARTICLE 6

PURCHASE AND SALE OF ENERGY

6.1 Sale and Purchase of Energy.

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

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

6.1.3 Notwithstanding any other provision of this Agreement, if QF has selected Monthly Payment Calculation Option 2, Alabama Power shall not be required

to receive energy, or purchase or compensate QF for energy, during any period during which, due to operational circumstances, Alabama Power reasonably expects that a purchase from QF will result in costs greater than those which Alabama Power would incur if it did not make such purchase, but instead generated an equivalent amount of energy itself, and Alabama Power has provided QF at least 10 (ten) minutes prior notice via electronic (e.g., email, text) or telephonic communication.

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

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

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

ARTICLE 7

REGULATORY AND COMPLIANCE

7.1 Incorporation of RGB Rules. The RGB Rules are hereby incorporated into and made a part of this Agreement by reference, and QF shall be deemed to be a "Customer" as such term is used under such RGB Rules. The operation of the Facility and the sale and delivery of energy under this Agreement shall be subject to the terms and conditions of the RGB Rules, including those provisions of the RGB Rules that permit Alabama Power to separate the Facility from the Electric System under a condition that is likely to result in imminent significant disruption of service to customers or is imminently likely to endanger life or property.

7.2 Qualifying Facility Status. Throughout the Term of this Agreement, QF shall cause the Facility to be a Qualifying Facility and shall obtain, and maintain, certification of the Facility as a Qualifying Facility pursuant to the requirements of FERC and other applicable Governmental Authorities. If at any time the Facility ceases to be a Qualifying Facility for any reason, then Alabama Power shall be entitled to immediately terminate this Agreement in its sole and absolute discretion. If Alabama Power so

terminates this Agreement, Alabama Power shall have no further obligation to purchase or receive, and QF shall have no further obligation to sell or provide, any energy under this Agreement.

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

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

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

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

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

ARTICLE 8

PAYMENT PROCEDURE

8.1 Billing and Payment.

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

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

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

8.2 Billing Disputes and Adjustments.

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

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

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

ARTICLE 9

REPRESENTATIONS AND WARRANTIES

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

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

9.3 Execution and Consummation. Each Party represents and warrants to the other Party that, as of the Effective Date, the execution and delivery of this Agreement, the consummation of the transactions contemplated under this Agreement, and the fulfillment of and compliance with the provisions of this Agreement do not and will not

conflict with any of the terms, conditions or provisions of its organizational documents or any Legal Requirement applicable to it.

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

ARTICLE 10

EVENTS OF DEFAULT

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

- (i) QF fails to pay any amount payable by QF to Alabama Power under this Agreement when due, which failure has continued for thirty (30) Days after notice thereof has been given by Alabama Power to QF;
- (ii) QF fails to perform or comply with any other material term or condition of this Agreement and fails to conform to said term and condition within sixty (60) Days after a demand by Alabama Power to do so;
- (iii) QF fails to comply with the terms and conditions of Section 13.1;
- (iv) QF becomes insolvent, becomes subject to bankruptcy or receivership proceedings, or dissolves as a legal business entity;
- (v) any representation or warranty of QF to Alabama Power is false or misleading in any material respect when made and QF fails to conform to said representation or warranty within sixty (60) Days after a demand by Alabama Power to do so; or
- (vi) the Interconnection Agreement is terminated due to an event of default of QF.

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

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

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

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

ARTICLE 11

INDEMNIFICATION

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

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

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

ARTICLE 12

FORCE MAJEURE

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

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

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

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

ARTICLE 13

MISCELLANEOUS

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

Information in accordance with the terms hereof and who need to know the Confidential Information for purposes of performance under this Agreement.

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

13.3 Taxes.

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

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

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

13.4 Variable Interest Entity.

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

new standards adopted which supersede the standards at the time of execution of this Agreement, then **Appendix F** shall be modified accordingly for QF and Alabama Power to account for this arrangement appropriately in their respective books and records.

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

13.5 Governing Law; Venue; Waiver of Jury Trial.

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

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

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

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

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

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

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

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

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

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

(i) **To Alabama Power:**

Alabama Power Company
Attn: Executive Vice President and Chief Financial Officer and Treasurer
600 18th Street North
Birmingham, AL 35291

with copies to:

Alabama Power Company
Attn: Director of Forecasting and Resource Planning
600 18th Street North
Birmingham, AL 35291

(ii) **To QF:**

with a copy to:

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

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

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

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

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

[The next page is the signature page.]

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

ALABAMA POWER COMPANY

By: _____

Name: _____

Title: _____

[QF]

By: _____

Name: _____

Title: _____

APPENDIX A

CALCULATION OF MONTHLY PAYMENTS

By no later than sixty (60) Days prior to the commencement of the Initial Period, QF shall provide notice to Alabama Power electing either Option 1 or Option 2 under Section 2 below for the pricing (and associated terms and conditions) that shall apply for the Initial Period. In addition, in each notice (if any) from QF that extends the Term for an Annual Period pursuant to Section 3.2 of this Agreement, QF shall elect either Option 1 or Option 2 under Section 2 below for the pricing (and associated terms and conditions) that shall apply for the Annual Period to which such notice applies. After QF provides a notice electing either Option 1 or Option 2 for the Initial Period or a given Annual Period, such notice shall be irrevocable for the entirety of such period.

1. Definitions.

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

“**AIER**” means the “Associated Interchange Energy Rate” or “AIER” (or applicable successor(s) rate thereto) (in \$/MWh), as determined under the IIC.

“**IIC**” means that certain document, the Southern Company System Intercompany Interchange Contract, as filed pursuant to 119 FERC 61,065 (2007) and designated as Southern Company Services, Inc., Second Revised Rate Schedule FERC Number 138, by and among Alabama Power and certain of its Affiliates, including the Allocation Methodology and Periodic Rate Computation Manual attached to, and incorporated in, the IIC, and excluding periodic informational filings, as the same may be amended and restated, or any successor contract filed with FERC among Alabama Power and certain of its Affiliates for coordinated operations.

“**Non-Summer**” means the Months included in the “Non-Summer” (or similar designation) period as set forth in Rate CPE.

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

“**Non-Summer Peak Period**” means, with respect to a given Non-Summer Month, all Hours of such Month occurring during the “Non-Summer Peak” (or similar designation) periods, as set forth in the Rate CPE that applies for such Month, including all portions of such periods when Delivered Energy is not provided by QF.

“**Summer**” means the Months included in the “Summer” (or similar designation) period as set forth in Rate CPE.

“Summer Intermediate Period” means, with respect to a given Summer Month, all Hours of such Month occurring during the “Summer Intermediate” (or similar designation) periods, as set forth in the Rate CPE that applies for such Month, including all portions of such periods when Delivered Energy is not provided by QF.

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

“Summer Peak Period” means, with respect to a given Summer Month, all Hours of such Month occurring during the “Summer Peak” (or similar designation) periods, as set forth in the Rate CPE that applies for such Month, including all portions of such periods when Delivered Energy is not provided by the QF.

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2. Options.

OPTION 1

If Option 1 is elected by QF, then Alabama Power shall pay to QF a Monthly Energy Payment (“MEP”) for each Month of the applicable period for which Option 1 is elected, determined as follows:

For each Summer Month, the MEP shall be calculated as follows:

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

Where:

Summer Peak
Delivered
Energy =

the total amount of Delivered Energy (in kWh) for all Hours of all Summer Peak Periods that occur during the applicable Month.

Summer Peak
Energy Price =

the applicable energy rate (in \$/kWh) for the Summer Peak Period, as set forth in the Rate CPE that applies for such Month.

Summer
Off-Peak
Delivered
Energy =

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

Summer
Off-Peak
Energy Price =

the applicable energy rate (in \$/kWh) for the Summer Off-Peak Period, as set forth in the Rate CPE that applies for such Month.

Summer
Intermediate
Delivered
Energy = the total amount of Delivered Energy (in kWh) for all Hours of all Summer Intermediate Periods that occur during the applicable Month.

Summer
Intermediate
Energy Price = the applicable energy rate (in \$/kWh) for the Summer Intermediate Period, as set forth in the Rate CPE that applies for such Month.

For each Non-Summer Month, the MEP shall be calculated as follows:

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

Where:

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

Non-Summer Peak
Energy Price = the applicable energy rate (in \$/kWh) for the Non-Summer Peak Period, as set forth in the Rate CPE that applies for such Month.

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

Non-Summer
Off-Peak
Energy Price = the applicable energy rate (in \$/kWh) for the Non-Summer Off-Peak Period, as set forth in the Rate CPE that applies for such Month.

OPTION 2

If Option 2 is elected by QF, then the following shall apply for the applicable period for which Option 2 is elected:

For each Month of the applicable period, Alabama Power shall pay to QF an “Estimated Monthly Energy Payment” (“EMEP”), each of which shall be determined in the same manner as the “Monthly Energy Payment” would be determined for such Month under Option 1 of this **Appendix A**. Subsequently, within six (6) Months after the end of the Initial Period and each subsequent Annual Period for which this Option 2 is applicable (or, if applicable, the earlier termination of this Agreement), Alabama Power shall calculate an “Actual Monthly Energy Payment” (“AMEP”) for each Month of such previous Initial Period and Annual Period as follows:

For each Summer Month, the AMEP shall be calculated as follows:

$$\text{AMEP} = \text{Summer Peak Delivered Energy} * [\text{Summer Peak Energy Price} * (1 + \text{Applicable Loss Factor})] + \text{Summer Off-Peak Delivered Energy} * [\text{Summer Off-Peak Energy Price} * (1 + \text{Applicable Loss Factor})] + \text{Summer Intermediate Delivered Energy} * [\text{Summer Intermediate Energy Price} * (1 + \text{Applicable Loss Factor})]$$

Where:

Summer Peak
Delivered
Energy =

the total amount of Delivered Energy (in MWh) for all Hours of all Summer Peak Periods that occur during the applicable Month.

Summer Peak
Energy Price =

the average AIER for all Hours of all Summer Peak Periods that occur during the applicable Month.

Summer
Off-Peak
Delivered
Energy =

the total amount of Delivered Energy (in MWh) for all Hours of all Summer Off-Peak Periods that occur during the applicable Month.

Summer
Off-Peak
Energy Price =

the average AIER for all Hours of all Summer Off-Peak Periods that occur during the applicable Month.

Summer Intermediate Delivered Energy = the total amount of Delivered Energy (in MWh) for all Hours of all Summer Intermediate Periods that occur during the applicable Month.

Summer Intermediate Energy Price = the average AIER for all Hours of all Summer Intermediate Periods that occur during the applicable Month.

Applicable Loss Factor = a loss factor determined by Alabama Power that is intended, if necessary, to adjust the energy prices above (which are determined at the transmission level voltage) to the same voltage level at the Interconnection Point, and which shall be the applicable loss factor determined from time-to-time for distribution or sub-transmission facilities of Alabama Power; provided that, if the voltage level of the Interconnection Point is equal to or greater than 115kV, then the Applicable Loss Factor shall be equal to zero (0).

For each Non-Summer Month, the AMEP shall be calculated as follows:

AMEP = Non-Summer Peak Delivered Energy * [Non-Summer Peak Energy Price * (1 + Applicable Loss Factor)] + Non-Summer Off-Peak Delivered Energy * [Non-Summer Off-Peak Energy Price * (1 + Applicable Loss Factor)]

Where:

Non-Summer Peak Delivered Energy = the total amount of Delivered Energy (in MWh) for all Hours of all Non-Summer Peak Periods that occur during the applicable Month.

Non-Summer Peak Energy Price = the average AIER for all Hours of all Non-Summer Peak Periods that occur during the applicable Month.

Non-Summer Off-Peak Delivered Energy =	the total amount of Delivered Energy (in MWh) for all Hours of all Non-Summer Off-Peak Periods that occur during the applicable Month.
Non-Summer Off-Peak Energy Price =	the average AIER for all Hours of all Non-Summer Off-Peak Periods that occur during the applicable Month.
Applicable Loss Factor =	a loss factor determined by Alabama Power that is intended, if necessary, to adjust the energy prices above (which are determined at the transmission level voltage) to the same voltage level at the Interconnection Point, and which shall be the applicable loss factor determined from time-to-time for distribution or sub-transmission facilities of Alabama Power; <u>provided that</u> , if the voltage level of the Interconnection Point is equal to or greater than 115kV, then the Applicable Loss Factor shall be equal to zero (0).

After the AMEPs are calculated for the Initial Period or an applicable Annual Period, Alabama Power shall calculate the difference of: (i) the total of the previously paid EMEPs for such period; minus (ii) the total of the calculated AMEPs for such period (such difference being referred to as the "True-up"). In the event that such True-up is positive (i.e., the sum of the previously paid EMEPs for the applicable Initial Period or Annual Period is higher than the sum of AMEPs for such period), then such True-up shall be paid by QF pursuant to Section 8.1.2 of the Agreement or credited to Alabama Power on subsequent Monthly Statements. In the event that such True-up is negative (i.e., the sum of the previously paid EMEPs for the applicable Initial Period or Annual Period is less than the sum of AMEPs for such period), then the absolute value of such True-up shall be paid by Alabama Power to QF. Notwithstanding any other provision of the Agreement, neither Party shall be required to pay interest on any such True-up that is required to be paid by or credited to either Party.

In addition, by no later than five (5) Business Days after QF elects Option 2 for any period pursuant to the applicable notice, QF shall be required to provide to Alabama Power, and thereafter maintain, performance security to secure QF's potential obligation to pay such True-up payment under this Option 2, which security shall at all times be either: (i) a letter of credit issued by a major U.S. commercial bank who has and

maintains assets of at least \$25 billion and a senior unsecured rating of at least A2 by Moody's and at least A by Standard & Poor's; (ii) cash security provided pursuant to a pledge agreement and control agreement; or (iii) other security acceptable to Alabama Power, in each case of (i), (ii) and (iii) in form and substance acceptable to Alabama Power. The amount of such performance security shall be subject to adjustment by Alabama Power from time to time throughout the Term in order to reflect Alabama Power's current estimate of such True-up payment. If such adjustment results in an increase in the amount of required performance security, within five (5) Business Days of a request from Alabama Power, QF shall provide and maintain additional performance security hereunder so that the total available undrawn amount of performance security then provided to and held by Alabama Power hereunder is equal to such increased amount. Alabama Power shall be entitled to draw upon and/or be paid upon such performance security: (i) for any obligation arising under the Agreement that is not paid when due; (ii) if such performance security is within ninety (90) Days of expiry, expiration or termination; and/or (iii) otherwise in compliance with the terms of such performance security.

APPENDIX B
[RESERVED]

APPENDIX C

MONTHLY ADMINISTRATION CHARGE

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

APPENDIX D

GENERAL SERVICES ADMINISTRATION FLOW-DOWN PROVISIONS

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

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

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

APPENDIX E

TRANSFER OF INFORMATION ACKNOWLEDGEMENT

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

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

Acknowledged on behalf of QF:

By: _____
Name: _____
Title: _____
Date: _____

APPENDIX F

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

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

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

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

_____ Yes
_____ No (please explain)

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

_____ Yes (please explain)
_____ No (please explain)

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

_____ Yes
_____ No

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

_____ Yes
_____ No

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

_____ Yes
_____ No

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

_____ Yes
_____ No

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

_____ Yes
_____ No

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

_____ Yes
_____ No

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

_____ %

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

_____ Yes
_____ No

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

[INSERT NAME OF QF]

By: _____

Name: _____

Title: _____

Date: _____