

**STANDARD OFFER CONTRACT FOR THE PURCHASE OF  
CONTRACTED CAPACITY AND ASSOCIATED ENERGY FROM  
A RENEWABLE GENERATING FACILITY OR A SMALL QUALIFYING FACILITY**

This standard offer contract ("Contract") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by and between \_\_\_\_\_, the owner and/or operator of a Facility, as defined below, hereinafter referred to as the "Capacity and Energy Provider" or "CEP" and Tampa Electric Company, a private utility corporation organized under the laws of the State of Florida (hereinafter referred to as the "Company"). The following documents are attached to this Contract and incorporated herein by reference: Appendix I, Evaluation Procedure for Standard Offer Contracts; Appendix II, COG -2 Standard Offer Contract Rate for Purchase of Contracted Capacity and Associated Energy, including all attached appendices thereto; and Appendix III, Interconnection Agreement. The CEP and the Company are also identified hereinafter individually, as a "Party" and collectively, as the "Parties". This Contract may also be referred to herein as the "Standard Offer Contract."

**WITNESSETH:**

**WHEREAS**, the CEP is the owner and/or operator of a Facility; and

**WHEREAS**, the CEP desires to sell Contracted Capacity and Associated Energy, as those terms are defined below; and

**WHEREAS**, the Company desires to purchase Contracted Capacity and Associated Energy in accordance with Chapter 366.91 F.S. and Florida Public Service Commission (FPSC) Rules 25-17.080 through 25-17.310, Florida Administrative Code (F.A.C.) and the Company's Rate Schedule COG-2; and

**WHEREAS**, the CEP has signed an Interconnection Agreement with the transmission service provider that serves the CEP's Facility, as defined below; and

**WHEREAS**, such Interconnection Agreement is attached and incorporated hereto as Appendix III; and

**WHEREAS**, the Florida Public Service Commission ("FPSC") has approved the form of this Contract for the purchase of Contracted Capacity and Associated Energy from the CEP;

**NOW, THEREFORE**, in consideration of the mutual covenants and promises set forth herein and other good and valuable considerations the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. **Definitions:**

- a. **Actual Capacity:** “Actual Capacity” shall mean the amount of Anticipated Capacity, as defined below, that can be made available to the Company at the Delivery Point and which the CEP has confirmed: (1) through performance testing prior to the Commercial In-Service Date, as defined below; and (2) at any time thereafter upon the Company’s request.
- b. **Anticipated Capacity:** “Anticipated Capacity” shall mean the amount of capacity that the CEP intends to make available to the Company at the Delivery Point in \_\_\_\_\_ kW or in \_\_\_\_\_ MW from the Facility beginning on or before \_\_\_\_\_, the in-service date of the Designated Avoided Unit, as defined below.
- c. **Associated Energy:** “Associated Energy” shall mean the energy generated at the Facility, as defined below, by the generating source designated to supply Contracted Capacity and which is delivered to the Company at the Delivery Point, as defined below.
- d. **Company Transmission Service:** “Company Transmission Service” shall mean the network transmission service required through the Company’s transmission system to deliver Associated Energy from the Delivery Point to the Company’s native load customers.
- e. **Construction Commencement Date:** “Construction Commencement Date” shall mean the date on which the CEP’s: (1) on-site activity is coordinated and continuous; and (2) active construction efforts are undertaken and on-going relative to the actual construction of major project features other than site preparation work; provided, however, that such date shall occur no later than \_\_\_\_\_.
- f. **Contracted Capacity:** “Contracted Capacity” shall mean the amount of Actual Capacity in \_\_\_\_\_ kW or in \_\_\_\_\_ MW that the CEP commits to reserve, make available and supply to the Company from its Facility on a firm, first-call, subordinate-to-no-other-entity-or-party, on-call, as-needed basis, and for which the Company commits to pay the CEP.
- g. **Delivery Point:** “Delivery Point” shall mean: (1) the Interconnection Point, as described below, if the Facility is directly interconnected to the Company’s transmission system; or (2) a point on the Company’s transmission system, mutually agreed to by the Parties, at which the CEP shall deliver Contracted Capacity and Associated Energy via a third-party transmission service provider, if the Facility is not directly interconnected to the Company’s transmission system.
- h. **Designated Avoided Unit:** “Designated Avoided Unit.” shall mean the generating unit, from among those units identified in the Appendices C through F to the Company’s COG-2 Tariff as the Company’s avoided units, selected by the CEP as the unit the CEP wishes to help avoid, or defer, and upon which capacity and energy payments to the CEP will be based. The CEP selects the Designated Avoided Unit from Appendix \_\_\_\_\_ of Rate Schedule COG-2.

- i. **Eastern Prevailing Time:** “Eastern Prevailing Time” or “EPT” shall mean the time in effect in the Eastern Time Zone of the United States of America, whether Eastern Standard Time or Eastern Daylight Time.
- j. **Evaluation Procedure:** “Evaluation Procedure” shall mean the procedure used by the Company to evaluate each eligible standard offer contract received by the Company as to its technical reliability, viability and financial stability, as well as other relevant information, in accordance with FPSC Rule 25-17.0832, F.A.C., and the Company’s Procedure for Processing Standard Offer Contracts as defined in Rate Schedule COG-2. The criteria used to evaluate standard offer contracts are attached hereto as Appendix I.
- k. **Extended Facility In-Service Date:** “Extended Facility In-Service Date” shall mean an extension of the Facility In-Service Date, as defined below, for a period not to exceed five (5) months which may be granted in accordance with Section 7 below.
- l. **Facility:** “Facility” shall mean the CEP’s proposed generating facility described in greater detail in Section 2, below.
- m. **Facility In-Service Date:** “Facility In-Service Date” shall mean the date on which the Facility is available to supply Contracted Capacity and deliver Associated Energy to the Company (also referred to in the electric power industry as the commercial in-service date or commercial operation date).
- n. **FERC:** “FERC” shall mean the Federal Energy Regulatory Commission or any similar or successor governmental body exercising the same or equivalent jurisdiction.
- o. **Interconnection Point:** “Interconnection Point” shall mean the plant busbar connection to the high side of the Facility’s step-up transformer(s) where Contract Capacity and Associated Energy shall be delivered to the transmission service provider that serves the Facility. The Interconnection Point shall be specified in detail in the Interconnection Agreement (see Appendix III).
- p. **Non-Dispatched Capacity:** “Non-Dispatched Capacity” shall mean the amount of Contracted Capacity that the Company declines to schedule or request during any given hour, due to an emergency condition, or any other condition/reason. The Company shall adjust the Dispatch Schedule, as defined below, as soon as practical to reflect the amount of Non-Dispatched Capacity, or ignore scheduled capacity levels altogether (if conditions require immediate action to protect the integrity and/or reliability of the Company’s generating system and/or transmission system); however, the Company shall make reasonable efforts to minimize departures from the Dispatch Schedule.
- q. **Non-Dispatched Energy:** “Non-Dispatched Energy” shall mean the energy associated with Non-Dispatched Capacity and which the Company declines to accept during any given hour, due to an emergency condition, or any other condition/reason.

- r. **Qualifying Facility:** "Qualifying Facility" shall mean a cogeneration facility, or small power production facility, that satisfies the definition of, and qualifies as, a Qualifying Facility in accordance with the provisions of Subpart B of Subchapter K, Part 292 of Chapter I, Title 18, Code of Federal Regulations (C.F.R.), promulgated by the FERC, as the same may be amended from time to time, and must be "new capacity" pursuant to the Public Utilities Regulatory Policies Act of 1978 (PURPA), construction of which began on or after November 9, 1978.
  - s. **Renewable Generating Facility:** "Renewable Generating Facility" shall mean a generating facility that satisfies the definition of, and qualifies as, a renewable generating facility in accordance with the provisions of Section 366.91, Florida Statutes and Rule 25-17.210 (1), F.A.C.
  - t. **Small Qualifying Facility:** "Small Qualifying Facility" shall mean a Qualifying Facility with a design capacity of 100 kW or less, as defined by subsection 25-17.080(3), F.A. C.
  - u. **Third-Party Transmission Services:** "Third-Party Transmission Services" shall mean the firm transmission service(s) and ancillary services required to deliver Contracted Capacity and Associated Energy from the Facility to the Company's transmission system if the Facility is not directly interconnected to the Company's transmission system.
2. **CEP's Proposed Facility:** The CEP contemplates installing and operating a Facility designed to produce a maximum of \_\_\_\_\_ kilowatts (kW) to be located at \_\_\_\_\_, which shall be and remain the specific site of the Facility providing Contracted Capacity and Associated Energy under this Contract throughout the Term, as described below, of this Contract. The Facility is designed, operated and controlled to satisfy the interconnection requirements of the Company's transmission system or the third-party transmission service provider that serves the Facility, as applicable. The Facility shall: (a) satisfy the Company's Open Access Transmission Tariff ("OATT") requirements and/or all non-FERC jurisdictional interconnection and/or transmission service agreements required by the CEP to deliver Contracted Capacity and Associated Energy to the Company, as applicable, to be designated a Company network resource and receive network transmission service from the Company; (b) be fully dispatchable in the manner set forth in Appendix \_\_\_\_ of Rate Schedule COG-2; and (c) be an existing Renewable Generating Facility or a Small Qualifying Facility **or** a Renewable Generating Facility or a Small Qualifying Facility that the CEP proposes to construct and operate.
3. **Term:** The "Term" of this Contract shall commence immediately upon its execution by the Parties and shall terminate at 12:01 A.M. on the later of: (a) the last day of the tenth year following the in-service date of the avoided unit, or (b) \_\_\_\_\_ (a date selected by the CEP provided that such date is no later than the day after the last day of the life of the avoided unit identified in Section 1h above).

4. **Company's Capacity and Energy Purchase Commitment:** The Company agrees to purchase all Contracted Capacity and Associated Energy, excluding Non-Dispatched Energy, generated at the Facility and provided to the Company at the Delivery Point by the CEP pursuant to this Contract, excluding the amount of capacity and energy consumed by the Facility's station service equipment (such as generator auxiliaries, emissions control and monitoring equipment, fuel handling equipment, etc.) and all transmission system losses incurred by the CEP to effect delivery of Contracted Capacity and Associated Energy to the Delivery Point.
5. **Non-Dispatched Capacity and Non-Dispatched Energy Restriction:** To the extent that there is Non-Dispatched Capacity and Non-Dispatched Energy during a given hour, such Non-Dispatched Capacity and Non-Dispatched Energy shall not be made available or sold by the CEP, or otherwise used in any way or disposed of, without the Company's prior written consent.
6. **Responsibilities for Interconnection Service, Third-Party Transmission Service and Company Transmission Service:** It is the responsibility of the CEP to request and secure the required interconnection service from the transmission service provider that serves the CEP's Facility, whether a third-party transmission service provider or the Company transmission service provider. If the Facility is not located within the Company's transmission system, it is the responsibility of the CEP to request and secure the required third-party transmission service(s) required to deliver Contracted Capacity and Associated Energy to the Company's transmission system. It is the responsibility of the CEP to: (i) satisfy the third-party transmission provider's, or the Company's, OATT requirements and/or all non-FERC jurisdictional interconnection and/or transmission service agreements required by the CEP to deliver Contracted Capacity and Associated Energy to the Company, as applicable; (ii) arrange and pay to interconnect the Facility to the third-party transmission service provider; (iii) become and continue to be an eligible customer under the third-party transmission provider's OATT, or the Company's OATT, as applicable, during the Term; and (iv) request and purchase all required firm Third-Party Transmission Services and interconnection service, if applicable, in a timely manner to satisfy the provisions of this Contract.

If the Facility is located within the Company's transmission system, it is the responsibility of the Company to request and secure the network transmission service required to deliver Contracted Capacity and Associated Energy from the Delivery Point to the Company's native load customers. It is the responsibility of the Company to request and secure network transmission service in a timely manner to satisfy the provisions of this Contract.

7. **Extension of Facility In-Service Date:** The CEP may request and the Company may grant, at its sole discretion, an Extended Facility In-Service Date provided, however, that the CEP shall be subject to the applicable provisions of the Completion Security subsection of the Security Guarantees section of this Contract. If the Facility In-Service Date is delayed and an Extended Facility In-Service Date has not been granted, or the Extended Facility In-Service Date is not satisfied, the CEP shall be subject to the applicable provisions of the Completion Security subsection of the Security Guarantees section of this Contract, which may be requested by the CEP and may be granted by the Company, at its sole discretion.

8. **Billing Methodology:** The billing methodology applicable to the Company's purchase, and the CEP's sale, of Contract Capacity and Associated Energy pursuant to this Contract shall be: (i) (\_\_\_\_\_) Net Billing Arrangement; or (ii) (\_\_\_\_\_) Simultaneous Purchase and Sale Arrangement, such purchases being arranged from the interconnecting utility and sales being made to the Company. Once made, the selection of a billing methodology may only be changed in accordance with FPSC Rule 25-17.082, F.A.C., and shall be in accordance with the following provisions:
- a. upon at least 30 days advance written notice to the Company; and
  - b. upon installation by the Company of any additional metering equipment reasonably required to effect the change in billing methodology; and
  - c. upon payment by the CEP for such metering equipment and its installation; and
  - d. upon the Company's approval and completion of any alterations to the Interconnection Point that are reasonably required to effect the change in billing methodology and upon payment by the CEP for such alterations.

The Parties agree that the CEP's obligation to generate and sell Contract Capacity and Associated Energy from the Facility is subject to both scheduled and unscheduled outages of the Facility and the transmission service(s) required to effect delivery of same to the Delivery Point. Neither Party shall be required to compensate the other Party for Contract Capacity and Associated Energy which from time to time may not be generated and sold by the CEP, or received and purchased by the Company, as a result of such scheduled and unscheduled outages. The Parties agree to use best efforts to minimize the duration of any scheduled or unscheduled outages which from time to time may interrupt the purchase and sale of Contract Capacity and Associated Energy under this Contract.

9. **Payment:**

- a. **Associated Energy Payment:** The Company agrees to pay the CEP for Associate Energy delivered to the Company at the Delivery Point in accordance with the energy payment options, rates, and procedures contained in Rate Schedule COG-2 attached hereto as Appendix II.

- i. **Standard Energy Payments:** Associated Energy payments made prior to \_\_\_\_\_, shall be based on the Company's actual avoided energy costs as defined in Appendix B of Rate Schedule COG-2.

Beginning \_\_\_\_\_, to the extent that the Designated Avoided Unit would have been operated had it been installed by the Company, the CEP's Associated Energy payments will be based on the Company's Designated Avoided Unit's energy costs as calculated in Appendix \_\_\_\_ of Rate Schedule COG-2, otherwise the CEP's Associated Energy payment will be based on the Company's actual avoided energy costs. The determination of which energy cost shall be applied will be made hourly.

- ii. **Fixed Energy Payments:** The CEP does \_\_\_ does not \_\_\_ request fixed Associated Energy payments as follows:

\_\_\_ Yes \_\_\_ No, as to Associated Energy payments made prior to \_\_\_\_\_, which, if requested, shall be based on the Company's year-by-year projection of system incremental fuel costs prior to hourly economy energy sales to other utilities, based on normal weather and fuel market conditions, plus a fuel market volatility risk premium mutually agreed to by Tampa Electric and the CEP, which projected system incremental fuel costs will be provided by the Company within 30 days of the date of request by the CEP. The CEP and Tampa agree to the following fuel market volatility risk premium(s): \_\_\_\_\_.

\_\_\_ Yes \_\_\_ No, as to Associated Energy payments, calculated as follows: Subsequent to the determination of full avoided cost and subject to the provisions of paragraphs 25-17.0823(3)(a) through (d) F.A.C., a portion of the base energy costs associated with the avoided unit, mutually agreed upon by the Company and the CEP, shall be fixed and amortized on a present value basis over this Contract commencing, at the election of the CEP, as early as the in-service date of the CEP's Facility. "Base energy costs associated with the avoided unit" means the energy costs of the avoided unit to the extent that the Designated Avoided Unit would have been operated.

The stream of Fixed Energy Payments to the CEP, calculated as stated above, will be provided by the Company within 30 days of the date of request by the CEP.

b. **Contracted Capacity Payment:**

- i. **Dispatch Requirements:** In order to receive a Contracted Capacity Payment for each calendar month that the Facility is to be dispatched, the CEP must meet or exceed both the minimum Monthly Availability and Monthly Capacity Factor requirements.
- ii. **Commencement of Contracted Capacity Payments:** The CEP elects to receive, and the Company agrees to commence calculating, Contracted Capacity payments in accordance with this Contract starting with the first Monthly Period following \_\_\_\_\_.
- iii. **Contracted Capacity Payment Options:** The following five (5) options are available to the CEP for payment of Contracted Capacity delivered by the CEP:
1. Value of Deferral Capacity Payments;
  2. Early Capacity Payments;
  3. Levelized Capacity Payments;
  4. Early Levelized Capacity Payments; or

5. Other Contracted Capacity Payment Option agreed upon by the Parties that best satisfies the financing requirements of the Facility. Such Other Contracted Capacity Payment Option is described as follows:

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

The CEP elects to receive Contracted Capacity payments pursuant to option \_\_\_\_\_ above.

The CEP \_\_\_\_ does \_\_\_\_ does not elect to have Early Capacity Payments consisting of the capital component of the Company's Designated Avoided Unit commence on \_\_\_\_\_ (a date any time after the actual Facility In-Service date and before the anticipated in-service date of the Company's Designated Avoided Unit).

Regardless of the Contracted Capacity Payment Option elected by the CEP, the cumulative present value of payments for the Contracted Capacity made to the CEP over the Term shall not exceed the cumulative present value of payments for the Contracted Capacity which would have been made to the CEP had such payments been made pursuant to subparagraph 25-17.0832(4)(g)1., F.A.C. All fixed operation and maintenance expense shall be calculated in conformance with subsection 25-17.0832(6), F.A.C.

At the end of each Monthly Period, beginning with the Monthly Period specified in Section 9.b.ii, the Company will calculate the CEP's Monthly Availability and Capacity Factor. During the Term, if the CEP's Monthly Availability and Capacity Factor equals or exceeds the Minimum Performance Standards (MPS) as set forth for in Rate Schedule COG-2, Appendix \_\_\_\_\_, then the Company agrees to pay the CEP a Monthly Capacity Payment as calculated in paragraph 5 of the section entitled Basis for Monthly Capacity Payment Calculation in Appendix \_\_\_\_\_ of Rate Schedule COG-2.

The Contracted Capacity payment for a given month during the Term will be added to the Associated Energy payment for such month and tendered by the Company to the CEP as a single payment as promptly as possible, normally by the 20<sup>th</sup> business day following the day the meter is read or the amount of Associated Energy delivered via the third-party transmission service provider is confirmed by the Company.

10. **Other Contracted Capacity Payment Security Guarantees:** If the CEP selects Option 5 under the Contracted Capacity Payment Options, the following security guarantees will be required: \_\_\_\_\_.
11. **Construction and Performance Security Guarantees:** The Company requires certain security guarantees to ensure the completion of construction and performance under this Contract in order to protect its ratepayers in the event the CEP fails to deliver Contracted Capacity and Associated Energy in the amount and times specified in this Contract, which shall be in form and substance as described herein. Such security may



be refunded in the manner described in Sections 11.a. and 11.b. Pursuant to FPSC Rule 25-17.091, F.A.C., a utility may not require security guarantees from a Municipal Solid Waste Facility as required in FPSC Rule 25-17.0832(2)(d) and (3)(f)(1), F.A.C. However, at its option, a Municipal Solid Waste Facility may provide such risk-related guarantees.

- a. **Completion Security:** If the CEP or its guarantor, if any, does not qualify for unsecured credit in Company's reasonable sole discretion, the CEP shall pay to the Company a security deposit equal to \$30.00 per kilowatt (\$30.00/kW) of Contracted Capacity as security for the CEP's completion of the Facility by the Facility In-Service Date. Such security will be required within sixty (60) days of execution of this Contract. Such security shall be in the form of cash deposited in an interest bearing escrow account mutually acceptable to the Company and the CEP; an unconditional and irrevocable direct pay letter of credit in form and substance satisfactory to the Company; or a performance bond in form and substance satisfactory to the Company. The form of security required will be in the sole discretion of the Company and will be in such form as to allow the Company immediate access to the funds in the event that the CEP fails to complete the construction and achieve commercial in-service status by the Facility In-Service Date.

If the Facility In-Service Date is achieved, then the entire deposit and any interest therein, if applicable, shall be refunded to the CEP upon payment by the CEP of the Performance Security as required in Section 11.b.

If the Facility In-Service Date is delayed, the Company may, upon the request of the CEP, at its sole discretion, agree to an Extended Facility In-Service Date, in which case the Company shall be entitled to retain or draw down on an amount equal to twenty percent (20%) of the original deposit amount for each month (or portion thereof) that the Facility In-Service Date is delayed. If the Facility In-Service Date is delayed and an Extended Facility In-Service Date has not been granted or the Extended Facility In-Service Date is not satisfied or delayed beyond the Extended Facility In-Service Date, the Company shall retain all of the deposit and terminate this Contract.

Notwithstanding the foregoing if the CEP does not satisfy the Construction Commencement Date or the Facility In-Service Date as defined in COG-2 in accordance with the terms and conditions of this Contract, this Contract shall be rendered of no force and effect, except for those provisions of this Agreement that provide the Company rights and remedies as against CEP because of its failure to meet the Construction Commencement Date or the Facility In-Service Date.

- b. **Performance Security:** Within 60 days after the later of the Facility In-Service Date or the in-service date of the Designated Avoided Unit, the CEP shall pay the Company a deposit in the amount of \$30.00/kW of Contracted Capacity as security for the CEP's performance under this Contract. Such security deposit shall be provided in the same manner as the Completion Security deposit as described in Section 11.a. Such Performance Security shall be retained by the Company for 12 months from the later of the Facility In-Service Date or the in-service date of the Designated Avoided Unit.

If, at the end of the 12-month period so described, the Facility's 12-month average of each month's numerical value for both the monthly Availability Factor and the Monthly Capacity Factor meet the Minimum Performance Standards (MPS) for as set forth in Rate Schedule COG-2, Appendix \_\_\_\_\_, then the CEP shall be entitled to a refund of such deposit. However, if at the end of the first 12-month period, the Facility's 12-month average of each month's numerical value for both the Monthly Availability Factor and the Monthly Capacity Factor fail to meet the MPS, then the Company shall be entitled to retain or draw down 50% of such deposit and retain the remainder of the security for an additional 12-month period.

If, at the end of the 24<sup>th</sup> month, the Facility's 12-month average of each month's numerical value for both the Monthly Availability Factor and the Monthly Capacity Factor again fail to achieve the MPS, for the most recent 12-month period, then the Company shall be entitled to retain the remainder of the security and to terminate this Contract. However, if at the end of the 24<sup>th</sup> month, the Facility's 12-month average of each month's numerical value for both the Monthly Availability Factor and the Monthly Capacity Factor meet the MPS, for the most recent 12-month period, then the CEP shall be entitled to a refund of the remaining deposit.

For the purpose of this calculation, the 12-month average of a parameter shall be defined to equal the sum of each month's average numerical value for that parameter, for the most recent 12-month period, divided by 12.

12. **Liquidated Damages:** The Parties hereto agree that the Company would be substantially damaged in amounts that would be difficult or impossible to ascertain in the event that the CEP fails to satisfy the Facility In-Service Date or to provide a Facility which meets the MPS. In the event that the Company terminates this Contract for the CEP's failure to achieve the Facility In-Service Date or achieve the MPS once in service, the Company may retain all of the Completion or Performance Security as liquidated damages, not as penalty, in lieu of actual damages and the CEP hereby waives any defenses as to the validity of any such liquidated damages. In the event the CEP defaults, it forfeits the aforesaid Completion or Performance Security. In addition thereto, the Company shall be entitled to pursue such equitable remedies against the CEP as may be available.

13. **Production and Maintenance Schedule:** During the Term, the CEP agrees to the following:
- a. The CEP shall provide the Company in writing prior to April 1st of each calendar year an estimate of the amount of electricity to be generated by the CEP and delivered to the Company for each month of the following calendar year, including the time, duration and magnitude of any planned outages of the Facility or reductions to the amount of Contracted Capacity that the CPE can make available at the Delivery Point.
  - b. By July 1st of each calendar year, the Company shall notify the CEP in writing whether the requested scheduled maintenance period(s) for the Facility are acceptable. If the Company cannot accept any of the requested period(s), the Company shall advise the CEP of the time period closest to the requested period(s) when the outage(s) can be scheduled. The CEP shall only schedule outages during periods approved by the Company and such approval shall not be unreasonably withheld. Once the schedule has been established and approved, either Party requesting a subsequent change in such schedule, except when such event is due to Force Majeure, must obtain approval for such change from the other Party. Such approval shall not be unreasonably withheld or delayed.
  - c. During the Term, the CEP shall employ qualified personnel for managing, operating and maintaining the Facility and for coordinating such with the Company. The CEP shall ensure that operating personnel are on duty at all times, twenty-four (24) clock hours per calendar day and seven (7) calendar days per week. Additionally, during the Term, the CEP shall operate and maintain the Facility in such a manner as to ensure compliance with its obligations hereunder.
  - d. The Company shall not be obligated to purchase and may require curtailed or reduced deliveries of Associated Energy, to the extent necessary to maintain the reliability and integrity of any part of the Company's system, or if the Company determines that a failure to do so is likely to endanger life or property, or is likely to result in significant disruption of electric service to the Company's Customers. The Company shall give the CEP prior notice, if practicable, of its intent to refuse, curtail or reduce the Company's acceptance of Associated Energy pursuant to this subsection and will act to minimize the frequency and duration of such occurrences.
  - e. The Company shall not be required to accept or purchase Associated Energy during any period in which, due to operational circumstances, acceptance or purchase of such Associated Energy would result in the Company's incurring costs greater than those which it would incur by generating an equal additional amount of energy with its own resources. The Company shall give the CEP as much prior notice as practicable of its intent not to accept Associated Energy pursuant to this subsection.
  - f. The CEP shall promptly update the yearly generation schedule and maintenance schedule of the Facility as soon as any change to such schedules are determined to be necessary;

- g. The CEP shall comply with reasonable requirements of the Company regarding day-to-day or hour-by-hour communications between the Parties relative to the performance of this Contract.
14. **Dispatch Procedure:** Commencing on the calendar day prior to the Facility In-Service Date or the Extended Facility In-Service Date, as applicable, and continuing each calendar day thereafter during the Term, by 7:00 A.M. EPT, the CEP shall electronically transmit the hour-by-hour amounts of Contracted Capacity expected to be available from the Facility the next day ("Available Schedule"). Commencing on the calendar day prior to the Facility In-Service Date or the Extended Facility In-Service Date, as applicable, and continuing each calendar day thereafter during the Term, by 3:00 P.M. EPT, the Company shall electronically transmit the hour-by-hour amounts of Contracted Capacity that the Company desires the CEP to dispatch from the Facility the next day based on the Available Schedule supplied at 7:00 A.M. EPT by the CEP ("Dispatch Schedule"). The CEP's Available Schedule and the Company's Dispatch Schedule for Fridays will include Saturday, Sunday, and Monday schedules. The CEP's Available Schedule and the Company's Dispatch Schedule during holiday periods will be similarly adjusted to include the holiday period. The CEP shall control and operate the Facility in accordance with the Company's Dispatch Schedule.

From time to time, the Company may be required to adjust the Dispatch Schedule, as described in the definition of Non-Dispatched Capacity, and/or the CEP may be required to adjust the Dispatch Schedule due to an unscheduled or forced outage of all, or a portion of, the Facility; however, each Party shall make reasonable efforts to minimize departures from the Dispatch Schedule.

15. **Additional Criteria:** The CEP shall comply with the reasonable requests of the Company regarding daily or hourly communications. Commencing on the calendar day prior to the Facility In-Service Date or the Extended Facility In-Service Date, as applicable, and continuing during the Term:
- a. The CEP shall provide monthly generation estimates for the Facility by December 1 for the next calendar year; and
  - b. The CEP shall promptly update its yearly generation schedule for the Facility when any changes are determined necessary; and
  - c. The CEP shall agree to reduce generation from the Facility or take other appropriate action as requested by the Company for safety reasons or to preserve system integrity; and
  - d. The CEP shall coordinate scheduled outages of the Facility with the Company.
16. **Automatic Generation Control:** At the Company's discretion, the CEP will operate the Facility with Automatic Generation Control (AGC) equipment, speed governors, and voltage regulators in-service, except at such times when operational constraints of the equipment prevent AGC operation.

17. **CEP's Obligation if the CEP Receives Payments Pursuant to Contracted Capacity Payment Options 2, 3, 4, or 5:** The Parties recognize that Rule 25-17.0832, F. A. C., may require the repayment by the CEP of all, or a portion of any, Capacity Payments made to the CEP pursuant to Contracted Capacity Payment Options 2, 3, 4, or 5 of Section 9.b.iii if the CEP fails to perform pursuant to the terms and conditions of this Contract. To ensure that the CEP will satisfy its obligation to make any such repayments, the following provisions will apply:

The Company shall establish a Repayment Account to accrue the sum of the capacity payments that may have to be repaid by the CEP to the Company. Amounts shall be added to the Repayment Account each month through \_\_\_\_\_, in the amount of the Company's payments to the CEP for capacity delivered prior to \_\_\_\_\_. Beginning on \_\_\_\_\_, the difference between the Contracted Capacity payment made to the CEP and the "normal" Contracted Capacity payment calculated pursuant to Contracted Capacity payment option 1 (Value of Deferral Payments) in COG-2 will also be added each month to the Repayment Account, so long as the payment made to the CEP is greater than the monthly payment the CEP would have received if it had selected Contracted Capacity Payment Option 1 in Section 6.b.iii. The annual balance in the Repayment Account shall accrue interest at an annual rate of 6.976%.

Also beginning on \_\_\_\_\_ at such time that the Monthly Contracted Capacity Payment made to the CEP, pursuant to the Contracted Capacity Payment Option selected, is less than the "normal" Monthly Contracted Capacity Payment in Capacity Payment Option 1 in COG-2, there shall be debited from the Repayment Account an Early Payment Offset Amount to reduce the balance in the Repayment Account. Such Early Payment Offset Amount shall be equal to the amount which the Company would have paid for capacity in that month if Contracted Capacity payments had been calculated pursuant to Contracted Capacity Payment Option 1 in COG-2 and the CEP had elected to begin receiving Contracted Capacity payments on \_\_\_\_\_, minus the Monthly Contracted Capacity Payment the Company makes to the CEP (assuming the MPS are met or exceeded), pursuant to the Contracted Capacity Payment Option chosen by the CEP in Section 6.b.ii.

The CEP shall owe the Company and be liable for the current balance in the Repayment Account. The Company agrees to notify the CEP monthly as to the current Repayment Account balance.

In the event of default by the CEP, the total Repayment Account balance shall become due and payable within twenty (20) business days of receipt of written notice, as reimbursement for the Early Contracted Capacity Payments made to the CEP by the Company. The CEP's obligation to reimburse the Company in the amount of the balance in the Repayment Account shall survive the termination of the CEP's Contract with the Company. Such reimbursement shall not be construed to constitute liquidated damages and shall in no way limit the right of the Company to pursue all its remedies at law or in equity against the CEP.

Prior to receipt of Contracted Capacity Payments pursuant to Contracted Capacity Payment Options 2, 3, 4, or 5, the CEP shall secure its obligation to repay any balance in the Repayment Account in the event the CEP defaults pursuant to this Contract. Such security shall be in the form of cash deposited in an interest bearing escrow account mutually acceptable to the Company and the CEP; an unconditional and irrevocable direct pay letter of credit in form and substance satisfactory to the Company; or a performance bond in form and substance satisfactory to the Company. The form of security required will be in the sole discretion of the Company and will be in such form as to allow the Company immediate access to the funds in the event of default by the CEP. Florida Statute 377.709(4) requires the local government to refund Early Contracted Capacity Payments should a Municipal Solid Waste Facility owned, operated by or on the behalf of a local government be abandoned, closed down or rendered illegal. Therefore a utility may not require risk-related guarantees from a Municipal Solid Waste Facility as required in FPSC Rule 25-17.0832(2)(c) and (3)(e)(8), F.A.C. However, at its option, a Municipal Solid Waste Facility may provide such risk-related guarantees.

18. **Ownership and Offering For Sale of Renewable Energy Attributes:** A CEP that owns and/or operates a Renewable Generating Facility retains any and all rights to own and sell any and all environmental attributes associated with the electrical generation of such Renewable Generating Facility, including but not limited to any and all renewable energy certificates, “green tags”, or other tradeable environmental interests (collectively “RECs”), of any description. In the event that the CEP decides to sell any such environmental attributes during the term of this Contract, the CEP shall provide notice to the Company of its intent to sell such environmental attributes and provide the Company a reasonable opportunity to offer to purchase such environmental attributes.
19. **Changes in Environmental and Governmental Regulations:** This Contract may be re-opened, at the election of either Party, as a result of new environmental and other regulatory requirements enacted during the Term that affect the Company’s full avoided costs of the unit on which this Contract is based.
20. **Non-Performance Provisions:** The CEP shall not receive a Contracted Capacity payment during any month during the Term in which the CEP fails to meet the MPS for Monthly Availability and Monthly Capacity Factor of the Company’s Designated Avoided Unit as defined in Rate Schedule COG-2, Appendix \_\_\_\_\_. In addition, if for any month starting \_\_\_\_\_, the CEP fails to achieve the MPS, and the Monthly Contracted Capacity Payment that would have been made to the CEP pursuant to the Contracted Capacity payment option selected is less than the “normal” Monthly Contracted Capacity Payment had the CEP selected Option 1, then the CEP shall be liable for and shall pay the Company an amount equal to the Early Payment Offset Amount for the month; provided, however, that such calculation shall assume that the CEP satisfied the MPS. Any payments thus required of the CEP shall be separately invoiced by the Company to Energy Provider after each month for which such payment is due and shall be paid by the CEP within twenty (20) business days after receipt of such invoice by the CEP. Such payment shall be debited from the Capacity Account as an Early Payment Offset Amount provided that any such payment will not exceed the current balance in the Capacity Account.

21. **Default:**

- a. **Mandatory Default:** The CEP shall be in default under this Contract if it:
- i. is dissolved (other than pursuant to a consolidation, amalgamation or merger); or
  - ii. becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; or
  - iii. makes a general assignment, arrangement or composition with or for the benefit of its creditors; or
  - iv. institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition (a) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (b) is not dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation thereof; or
  - v. seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets; or
  - vi. has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter; or
  - vii. fails to perform in accordance with Section 11.b.
  - viii. fails to maintain its status as a Renewable Energy Facility or small Qualifying Facility as required herein; or
  - ix. fails to achieve, on both accounts, a minimum Monthly Availability Factor of fifty percent (50%) and fails to achieve a minimum Monthly Capacity Factor of fifty percent, during the same month, for twelve (12) consecutive months starting .
- b. **Optional Default:** The Company may declare the CEP to be in default if:
- i. at any time prior to \_\_\_\_\_, and after Monthly Contracted Capacity Payments have begun, the Company has sufficient reason to believe that the CEP is unable to deliver the entire amount of Contracted Capacity; or

- ii. after Monthly Capacity Payments have begun, the CEP fails each month, for twenty-four (24) consecutive months, to meet the MPS; or
  - iii. the CEP refuses, is unable or anticipatorily breaches its obligation to deliver the entire amount of Contracted Capacity after \_\_\_\_\_.
- c. **Default Remedy:** In the event of default by the CEP, the total Repayment Account balance shall become due and payable within 20 business days of receipt of written notice, as reimbursement for the Early Capacity Payments made to the CEP by the Company. The CEP's obligation to reimburse the Company in the amount of the balance in the Repayment Account shall survive the termination of this Contract. Such reimbursement shall not be construed to constitute liquidated damages and shall in no way limit the right of the Company to pursue all its remedies at law or in equity against the CEP.

## 22. General Provisions:

- a. **Permits:** The CEP hereby agrees to seek to obtain any and all governmental permits, certifications, or other authority the CEP is required to obtain as a prerequisite to engaging in the activities provided for in this Contract. The Company hereby agrees to seek to obtain, at the CEP's expense, any and all governmental permits, certifications or other authority the Company is required to obtain as a prerequisite to engaging in the activities described in this Contract
- b. **Indemnification:** The Company and the CEP shall each be responsible for its own facilities in ensuring adequate safeguards for other Company customers, the Company and Energy Provider personnel and equipment, and for the protection of its own generating system. The Company and the CEP shall each indemnify and save the other harmless from any and all claims, demands, costs, or expense for loss, damage, or injury to persons or property of the other caused by, arising out of, or resulting from:
- i. any act or omission by a Party or that Party's contractors, agents, servants and employees in connection with the installation or operation of that Party's generation system or the operation thereof in connection with the other Party's system; and
  - ii. any defect in, failure of, or fault related to a Party's generation system; and
  - iii. the negligence of a Party or negligence of that Party's contractors, agents servants and employees; and
  - iv. any other event or act that is the result of, or proximately caused by a Party.
- c. **Insurance:** The CEP shall deliver to the Company, at least fifteen (15) days prior to the start of any interconnection work, a certificate of insurance certifying the CEP's coverage under a liability insurance policy issued by a reputable insurance company authorized to do business in the State of Florida naming the CEP as named insured, and the Company as an additional named insured, which policy shall contain a



broad form contractual endorsement specifically covering the liabilities accepted under this Contract arising out of the interconnection to the Facility, or caused by operation of any of the Facility's equipment or by the CEP's failure to maintain its equipment in satisfactory and safe operating condition.

- i. In subsequent years, a certificate of insurance renewal must be provided annually to the Company indicating the CEP's continued coverage as described herein. Renewal certification shall be sent to:

Tampa Electric Company  
c/o Director of Risk Management  
Tampa Electric Company  
702 North Franklin Street (33602)  
P. O. Box 111  
Tampa, FL 33601

- ii. The policy providing such coverage shall provide public liability insurance, including coverage for personal injury, death and property damage, in an amount not less than \$1,000,000 for each occurrence; provided however, if the CEP has insurance with limits greater than the minimum limits required herein, the CEP shall set any amount higher than the minimum limits required by the Company to satisfy the insurance requirements of this Contract.
  - iii. The above required policy shall be endorsed with a provision whereby the insurance company to notify the Company thirty (30) days prior to the effective date of any cancellation or material change in said policy.
  - iv. The CEP shall pay all premiums and other charges due on said policy and keep said policy in force during the entire period of interconnection with the Company or the Term if the Facility is not interconnected to the Company's transmission system.
- d. **Force Majeure:** If either Party shall be unable, by reason of Force Majeure, to carry out its obligations under this Contract, either wholly or in part, the Party so failing shall give written notice and full particulars of such cause or causes to the other Party as soon as possible after the occurrence of any such cause; and such obligations shall be suspended during the continuance of such hindrance, which, however, shall be remedied with all possible dispatch; and the obligations, terms and conditions of this Contract shall be extended for such period as may be necessary for the purpose of making good any suspension so caused. The term "Force Majeure" shall be taken to mean all acts of God, strikes, lockouts or other industrial disturbances at the manufacturing site of the major equipment components or the construction site, wars, blockades, insurrections, riots, arrests and restraints of rules and people, explosions, fires, floods, lightning, wind, perils of the sea, accidents to equipment or machinery or similar occurrences; provided, however that no occurrence may be claimed to be a Force Majeure occurrence if it is caused by the negligence or lack of due diligence on the part of the Party attempting to make such claim and specifically does not include interruption in fuel supply. The CEP agrees to pay the costs necessary to reactivate the Facility and/or the interconnection with

the Company's system if the same are rendered inoperable due to actions of the CEP, its agents, or Force Majeure events affecting the Facility or the interconnection with the Company.

If the Facility is interconnected to the Company's transmission system, the Company agrees to reactivate at its own cost the interconnection with the Facility in circumstances where any interruptions to such interconnections are caused by the Company or its agents.

**e. Representations, Warranties, and Covenants of the CEP**

*The CEP represents and warrants that as of the date this Contract is executed:*

- i. **Organization, Standing and Qualification:** The CEP is a (corporation, partnership, or other, as applicable) duly organized and validly existing in good standing under the laws of and has all necessary power and authority to carry on its business as presently conducted, to own or hold under lease its properties and to enter into and perform its obligations under this Contract and all other related documents and agreements to which it is or shall be a Party. The CEP is duly qualified or licensed to do business in the State of Florida and in all other jurisdictions wherein the nature of its business and operations or the character of the properties owned or leased by it makes such qualification or licensing necessary and where the failure to be so qualified or licensed would impair its ability to perform its obligations under this Contract or would result in a material liability to or would have a material adverse effect on the Company.
- ii. **Due Authorization, No Approvals, No Defaults, etc.:** Each of the execution, delivery and performance by the CEP of this Contract has been duly authorized by all necessary action on the part of the CEP, does not require any approval, except as has been heretofore obtained, of the (shareholders, partners, or others, as applicable) of the CEP or any consent of or approval from any trustee, lessor or holder of any indebtedness or other obligation of the CEP, except for such as have been duly obtained, and does not contravene or constitute a default under any law, the (articles of incorporation, bylaws, or other as applicable) of the CEP, or any agreement, judgment, injunction, order, decree or other instrument binding upon the CEP, or subject the Facility or any component part thereof to any lien other than as contemplated or permitted by this Contract.
- iii. **Compliance with Laws:** The CEP has knowledge of all laws and business practices that must be followed in performing its obligations under this Contract. The CEP is in compliance with all laws, except to the extent that failure to comply therewith would not, in the aggregate, have a material adverse effect on the CEP or the Company. By entering into this Contract, the CEP represents and warrants that Facility is a renewable facility pursuant to Rule 25-17.210(1) and(2) F.A.C. or a QF with a design capacity of 100 kW, or less, pursuant to Rule 17.080 F.A.C. and confirms such representation and warranty with the signature of the CEP's authorized representative on this Contract.

- iv. **Governmental Approvals:** Except as expressly contemplated herein, neither the execution and delivery by the CEP of this Contract, nor the consummation by the CEP of any of the transactions contemplated thereby, requires the consent or approval of, the giving of notice to, the registration with, the recording or filing of any document with, or the taking of any other action in respect of governmental authority, except in respect of permits (a) which have already been obtained and are in full force and effect or (b) are not yet required (and with respect to which the CEP has no reason to believe that the same will not be readily obtainable in the ordinary course of business upon due application therefore).
- v. **No Proceedings:** There are no actions, suits, proceedings or investigations pending or, to the knowledge of the CEP, threatened against it at law or in equity before any court or tribunal of the United States or any other jurisdiction which individually or in the aggregate could result in any materially adverse effect on the CEP's business, properties, or assets or its condition, financial or otherwise, or in any impairment of its ability to perform its obligations under this Contract. The CEP has no knowledge of a violation or default with respect to any law which could result in any such materially adverse effect or impairment. CEP is not bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming bankrupt;
- f. **Conditions Precedent:** Notwithstanding any other provisions of this Contract including the provisions of Section 20.b, the Company shall have the right to terminate this Contract by notice to the CEP, without cause, liability or obligation, if one or more of the following conditions, after reasonable effort by the CEP, shall not have been or cannot be satisfied in the Company's good faith judgment, and in the time periods described below. The Company in its sole discretion may extend the CEP's time for satisfying these conditions if one or more of the events described below is pending as of such date and it is reasonable to expect that such event will be accomplished within sixty (60) days:
  - i. The CEP satisfies the Construction Commencement Date;
  - ii. If the Facility is a small Qualifying Facility, on or before the Facility In-Service Date: The CEP secures certification of the Facility as a Qualifying Facility as defined herein and as certified by the FERC.
  - iii. If the Facility is a small Qualifying Facility, on or before the Facility In-Service Date, and at all times throughout the remaining Term, such Facility shall maintain its status as a Qualifying Facility as defined herein and as certified by the FERC. By the end of the first quarter of each calendar year, the CEP shall furnish the Company a notarized certificate by an officer of the CEP certifying that the Facility has continuously maintained qualifying status on a calendar year basis since the commencement of the Term.

- iv. Within 9 months after the effective date of this Contract: The CEP secures any and all land use and zoning approvals reasonably necessary to obtain construction financing and authorizes the commencement of construction of the Facility on a basis not substantially adverse to the Company;
  - v. Within 9 months after the effective date of this Contract: The CEP has secured all other environmental and construction permits and other governmental approvals reasonably necessary to obtain construction financing and to begin construction of the Facility on a basis not substantially adverse to the Company;
  - vi. Within 9 months after the effective date of this Contract: The CEP achieves closing of financing for construction of the Facility;
  - vii. On or before \_\_\_\_\_, the CEP provides to the Company written evidence of the rights to adequate fuel supply for the Facility in a form satisfactory to the Company;
  - viii. Within 9 months after the effective date of this Contract: The CEP provides evidence in writing in a form satisfactory to the Company indicating and substantiating the ownership of or the right to use the real property at the specific site upon which the Facility will be located; and
  - ix. Within 9 months after the effective date of this Contract: The CEP provides sufficient information satisfactory to the Company describing the technical capability and experience of the Facility's technology, including the environmental performance of the Facility.
- g. **Assignment:** The Company and the CEP shall have the right to assign its benefits under this Contract, but the CEP shall not have the right to assign its obligations and duties without the Company's prior written consent and such consent shall not be unreasonably withheld.
- h. **Disclaimer:** In executing this Contract, the Company does not, nor should it be construed, to extend its credit or financial support for the benefit of any third parties lending money to or having other transactions with the CEP or any assignee of this Contract.
- i. **Notification:** For purposes of making any and all non-emergency oral and written notices, payments or the like required under the provisions of this Contract, the Parties designate the following to be notified or to whom payment shall be sent until such time as either Party furnishes the other Party written instructions changing such designate.

For: the CEP

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

For: the Company

c/o Manager-Wholesale Contracts,  
Wholesale Marketing and Sales  
Tampa Electric Company  
702 North Franklin Street (33602)  
P.O. Box 111  
Tampa, Florida 33601

- j. **Governing Law and Jurisdiction:** This Contract shall be governed by and construed and enforced in accordance with the laws, rules, and regulations of the State of Florida and the Company's Tariff as may be modified, changed, or amended from time to time. With respect to any suit, action or proceedings relating to this Contract, each party irrevocably submits to the exclusive jurisdiction of the courts of the State of Florida and the United States District Court located in Hillsborough County in Tampa, Florida; and waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court, waives any claim that such Proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over such party. Nothing shall prevent the Beneficiary from enforcing any related judgment against the Guarantor in any other jurisdiction.
- k. **Waiver of jury trial:** Each party waives, to the fullest extent permitted by applicable law, any and all rights it may have to a trial by jury in respect of any suit, action or proceeding relating to this agreement or any credit support document. Each party (i) certifies that no representative, agent or attorney of the other party or any credit support provider has represented, expressly or otherwise, that such other party would not, in the event of such a suit, action or proceeding, seek to enforce the foregoing waiver and (ii) acknowledges that it and the other party have been induced to enter into this agreement and provide for any credit support document, as applicable, by, among other things, the mutual waivers and certifications in this section.
- l. **Taxation:** In the event that the Company becomes liable for additional taxes, including interest and/or penalties arising from an Internal Revenue Services determination, through audit, ruling or other authority, that the Company's payments to the CEP for capacity under Options B, C, or D are not fully deductible when paid (additional tax liability), the Company may bill the CEP monthly for the costs, including carrying charges, interest and/or penalties, associated with the fact that all or a portion of these capacity payments are not currently deductible for federal and/or state income tax purposes. The Company, at its option, may offset these costs against amounts due the CEP hereunder. These costs would be calculated so as to place the Company in the same economic position in which it would have been if the entire capacity payments had been deductible in the period in which the payments were made. If the Company decides to appeal the Internal Revenue Service's determination, the decision as to whether the appeal should be made through the administrative or judicial process or both, and all subsequent decisions pertaining to the appeal (both substantive and procedural), shall rest exclusively with the Company.

- m. **Severability:** If any part of this Contract, for any reason, be declared invalid, or unenforceable by a court or public authority of appropriate jurisdiction, then such decision shall not affect the validity of the remainder of this Contract, which remainder shall remain in force and effect as if this Contract had been executed without the invalid or unenforceable portion.
- n. **Complete Contract and Amendments:** All previous communications or agreements between the Parties, whether verbal or written, with reference to the subject matter of this Contract are hereby abrogated. No amendment or modification to this Contract shall be binding unless it shall be set forth in writing and duly executed by both Parties to this Contract.
- o. **Incorporation of Rate Schedule:** The Parties agree that this Contract shall be subject to all of the provisions contained in the Company's published Rate Schedule COG-2 as approved and on file with the FPSC. The Rate Schedule is incorporated herein by reference.
- p. **Survival of Contract:** This Contract, as it may be amended from time to time, shall be binding and inure to the benefit of the Parties' respective successors-in-interest and legal representatives.
- q. **Record Retention:** The CEP agrees to retain for a period of five (5) years from the date of termination hereof all records relating to the performance of its obligations hereunder, and to cause all CEP entities to retain for the same period all such records.
- r. **No Waiver:** No waiver of any of the terms and conditions of this Contract shall be effective unless in writing and signed by the Party against whom such waiver is sought to be enforced. Any waiver of the terms hereof shall be effective only in the specific instance and for the specific purpose given. The failure of a Party to insist, in any instance, on the strict performance of any of the terms and conditions hereof shall not be construed as a waiver of such Party's right in the future to insist on such strict performance.
- s. **Set-off:** The Company may at any time, but shall be under no obligation to, set off any and all sums due from the CEP against sums due to the CEP hereunder.
- t. **Assistance With the Company FIN 46R Compliance:** Accounting rules set forth in Financial Accounting Standards Board Interpretation No. 46 (Revised December 2003) ("FIN 46R"), as well as future amendments and interpretations of those rules, may require the Company to evaluate whether the CEP must be consolidated, as a variable interest entity (as defined in FIN 46R), in the financial statements of the Company. The CEP agrees to fully cooperate with the Company and make available to the Company all financial data and other information, as deemed necessary by the Company, to perform that evaluation on a timely basis at inception of the PPA and periodically as required by FIN 46R. If the result of a the evaluation under FIN 46R indicates that the CEP must be consolidated in the financial statements of the Company, the CEP agrees to provide financial statements,

together with other required information, as determined by the Company, for inclusion in disclosures contained in the footnotes to the financial statements and in the Company's required filings with the Securities and Exchange Commission ("SEC"). The CEP shall provide this information to the Company in a timeframe consistent with the Company's earnings release and SEC filing schedules, to be determined at the Company's discretion. The CEP also agrees to fully cooperate with the Company and the Company's independent auditors in completing an assessment of the CEP's internal controls as required by the Sarbanes-Oxley Act of 2002 and in performing any audit procedures necessary for the independent auditors to issue their opinion on the consolidated financial statements of the Company. The Company will treat any information provided by the CEP in satisfying Section 22(s) as confidential information and shall only disclose such information to the extent required by accounting and SEC rules and any applicable laws.

**IN WITNESS WHEREOF**, CEP and the Company have executed this Contract the day and year first above written.

**WITNESSES:**

\_\_\_\_\_  
Name of Capacity and Energy Provider

\_\_\_\_\_

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

\_\_\_\_\_

**Its:** \_\_\_\_\_

**WITNESSES:**

**Tampa Electric Company**

\_\_\_\_\_

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

\_\_\_\_\_

**Its:** \_\_\_\_\_