

**BGS-FP Supplier Forward Contract**

**By and Between**

\_\_\_\_\_,

**Central Illinois Light Company d/b/a AmerenCILCO,  
Central Illinois Public Service Company d/b/a AmerenCIPS,  
and Illinois Power Company d/b/a AmerenIP**

**Dated May \_\_, 2006**

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## BGS-FP Supplier Forward Contract

**THIS BGS-FP SUPPLIER FORWARD CONTRACT (“Agreement”)** is made and entered into this \_\_\_\_\_ day of May, 2006, by and between Central Illinois Light Company d/b/a AmerenCILCO, Central Illinois Public Service Company d/b/a AmerenCIPS, and Illinois Power Company d/b/a AmerenIP (each a “Company” and, collectively, the “Companies”), each a corporation and a public utility organized and existing under the laws of the State of Illinois, and \_\_\_\_\_ (the “BGS-FP Supplier”), a corporation organized and existing under the laws of the State of \_\_\_\_\_. Each Company and the BGS-FP Supplier are hereinafter sometimes referred to collectively as the “Parties”, or individually as a “Party”.

### WITNESSETH:

**WHEREAS**, the Companies are public utilities that, with limited exception, do not generate, but rather purchase, resell, transmit, and distribute Energy within their service territories located in the State of Illinois; and

**WHEREAS**, in its Order dated \_\_\_\_\_, 2006, in Docket No. \_\_\_\_\_, (the “\_\_\_\_\_ Order”), the Illinois Commerce Commission (“ICC”) has reviewed the structure and the rules governing the Auction, and found it appropriate for the Companies to base their determination of the market value of electric power and energy on the results of entering the Capacity and Energy markets and obtaining Forward Contracts pursuant to a bid process for the purchase of Capacity and Energy to resell to their Customers;

**WHEREAS**, in the \_\_\_\_\_ Order, the ICC approved for this purpose an auction design for the Companies to bid out three Basic Generation Service products, two fixed priced products termed Basic Generation Service – Fixed Pricing (“BGS-FP”) and Basic Generation Service – Large Customer Fixed Pricing (“BGS-LFP”), and one variable hourly priced product termed Basic Generation Service – Commercial and Industrial Energy Pricing (“BGS-LRTP”);

**WHEREAS**, between May \_\_, 2006 and May \_\_, 2006, a successful auction for bidding out BGS-FP, BGS-LFP and BGS-LRTP was held during which the Companies solicited bids for

over \_\_\_ Tranches of BGS-FP Supply for terms of 17, 29 and 41 months (the "Auction") that are to be supplied pursuant to separate Forward Contracts with each winning bidder;

**WHEREAS**, Capacity and Energy purchased by the Companies pursuant to these various Forward Contracts will be resold and distributed to thousands of residential, commercial, industrial, governmental and other Customers at blended rates, prices and charges based upon the rates, prices and charges paid by the Companies under those Forward Contracts;

**WHEREAS**, the BGS-FP Supplier was one of the winning bidders in the Auction for the provision of BGS-FP Supply; and

**WHEREAS**, the Companies and the BGS-FP Supplier desire to enter into this Agreement setting forth their respective obligations concerning the provision of BGS-FP Supply.

**NOW, THEREFORE**, in consideration of the mutual covenants and promises set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound, hereby covenant, promise and agree as follows:

## **ARTICLE 1. DEFINITIONS**

### **1.1 General Provisions**

Any capitalized or abbreviated term not elsewhere defined in this Agreement shall have the definition set forth in this Article 1. To the extent this Article 1 defines a term with reference to a document other than this Agreement: (i) if the definition of such term in that document changes, the definition of that term as it is used in this Agreement also shall change, and (ii) if that document no longer uses such term, the term as used in this Agreement shall be defined in accordance with common industry practice, unless otherwise specified herein.

A reference to any law, regulation, rule or tariff refers to such law, regulation, rule or tariff as it may be amended, modified, replaced or superseded from time to time.

## 1.2 Definitions

Alternative Retail Electric Supplier or "ARES" has the meaning ascribed to the term "Alternative Retail Electric Supplier" as set forth in Section 16-102 of the Illinois Public Utilities Act (220 ILCS 5/16-102).

AmerenCILCO means Central Illinois Light Company d/b/a AmerenCILCO.

AmerenCIPS means Central Illinois Public Service Company d/b/a AmerenCIPS.

AmerenIP means Illinois Power Company d/b/a AmerenIP.

Ancillary Services has the meaning ascribed to such term in the MISO Tariff but does not include Energy Losses or Energy Imbalance Service (to the extent the term "Ancillary Services" in the MISO Tariff includes Energy Losses or Energy Imbalance Service).

Ancillary Services Costs has the meaning set forth in Section 2.1.b(iii).

Applicable Legal Authorities means those federal and Illinois statutes and administrative rules, orders and regulations that govern the electric utility industry in Illinois.

Asset Owner has the meaning ascribed to such term in the MISO Business Practices Manual for Energy Markets.

Auction has the meaning set forth in the recitals above.

Auction and Administration Fee has the meaning set forth in Section 2.1.b(x).

Auction Date means the last day of the Auction.

Auction Price means the price in dollars-per-MWh, set forth in Appendix A, resulting from the Companies' competitive solicitation of the opportunity to supply BGS-FP. The Auction Price is the basis for financial settlement of BGS-FP Supply supplied by the BGS-FP Supplier to the Companies under this Agreement.

Auction Revenue Rights or "ARRs" has the same meaning ascribed to such term in the MISO Tariff.

Auction Website means the following internet address: [http://\\_\\_\\_\\_\\_](http://_____).

Bankruptcy Code means those laws of the United States of America related to bankruptcy, codified and enacted as Title 11 of the United States Code, entitled “Bankruptcy” and found at 11 U.S.C. § 101 et seq., as such laws may be amended, modified, replaced or superseded from time to time.

Basic Generation Service - Fixed Pricing or “BGS-FP” means electric generation service that is provided by a Company at retail to BGS-FP Customers pursuant to the Applicable Legal Authorities.

Basic Generation Service - Large Customer Fixed Pricing or “BGS-LFP” means electric generation service that is provided by a Company at retail to BGS-LFP Customers pursuant to the Applicable Legal Authorities.

Basic Generation Service – Large Service Real-Time Pricing or “BGS-LRTP” means electric generation service that is provided by a Company at retail to BGS-LRTP Customers pursuant to the Applicable Legal Authorities, at prices that include an energy charge component that varies on an hourly basis in accordance with changes in the MISO real-time LMP for Energy.

Basic Generation Service Supply or “BGS Supply” means BGS-FP Supply, BGS-LFP Supply or BGS-LRTP Supply.

BGS-FP Customer has the meaning set forth in Appendix G.

BGS-FP Load means the full Energy and Capacity (but not Ancillary Services) requirement of BGS-FP Customers, including Energy Losses assigned by the Companies, as measured and reported by the Companies to the MISO. The total BGS-FP Load shall be equal to the Companies’ aggregate Energy and Capacity requirements (including, without limitation, unaccounted-for Energy assigned to one or more of the Companies by the MISO) as determined by the MISO less the requirements of Wholesale Customers less the BGS-LFP Load less the BGS-LRTP Load less the Alternative Retail Electric Supplier requirements.

BGS-FP Peak Load Share means the portion of load attributable to BGS-FP Customers of the MISO-determined aggregate peak load of the Companies. The BGS-FP Peak Load Share is a single value measured, in MW, by taking the Companies’ peak load less the peak load of

Wholesale Customers less the peak load of BGS-LFP Customers less the peak load of BGS-LRTP Customers less the peak load of customers of Retail Electric Suppliers.

BGS-FP Supplier means an entity that has been selected through the Auction and has accepted the obligations and associated rights to provide BGS-FP Supply to the Companies in accordance with the Applicable Legal Authorities and has entered into this Agreement with the Companies as a Party.

~~BGS-FP Supplier Peak Load Share means the BGS-FP Supplier Responsibility Share multiplied by the BGS-FP Peak Load Share.~~

BGS-FP Supplier Responsibility Share means the fixed percentage share of the BGS-FP Load for which the BGS-FP Supplier is responsible, as set forth in Appendix A. The stated percentage share was determined by multiplying the number of Tranches won by the BGS-FP Supplier in the Auction by the Tranche size percentage share.

BGS-FP Supply means Energy and Capacity (including all Energy Losses, Energy Imbalance Service, and congestion costs associated with the provision of such services), as measured and reported by the Companies to the MISO, and such other services or products that the BGS-FP Supplier may be required by the MISO or other governmental body having jurisdiction to provide in order to meet the BGS-FP Supplier Responsibility Share under this Agreement, excluding Network Integration Transmission Service.

BGS-FP Supply Charge means the amount payable by the Companies to the BGS-FP Supplier each Billing Period, equal to the Auction Price multiplied by the applicable Seasonal Billing Factor multiplied by the PPEA for such Billing Period.

BGS-LFP Customer has the meaning set forth in Appendix G.

BGS-LFP Load means the full Energy and Capacity (but not Ancillary Services) requirement of BGS-LFP Customers, including Energy Losses assigned by the Companies, as measured and reported by the Companies to the MISO.

BGS-LFP Supplier means an entity that has been selected through the Auction and has accepted the obligations and associated rights to provide BGS-LFP Supply to the Companies in accordance with the Applicable Legal Authorities and has entered into an agreement with the Companies to provide BGS-LFP Supply.

BGS-LFP Supplier Responsibility Share means for each BGS-LFP Supplier, the fixed percentage share of the BGS-LFP Load for which such BGS-LFP Supplier is responsible.

BGS-LFP Supply means Energy and Capacity (including all Energy Losses, Energy Imbalance Service, and congestion costs associated with the provision of such services), as measured and reported by the Companies to the MISO, and such other services or products that BGS-LFP Suppliers may be required by the MISO or other governmental body having jurisdiction to provide in order to meet BGS-LFP Supplier Responsibility Shares, excluding Network Integration Transmission Service.

BGS-LRTP Customer has the meaning set forth in Appendix G.

BGS-LRTP Load means the full Energy and Capacity (but not Ancillary Services) requirement of BGS-LRTP Customers, including Energy Losses assigned by the Companies, as measured and reported by the Companies to the MISO, less, for purposes of determining BGS-LRTP Supply, QF Generation.

BGS-LRTP Supplier means an entity that has been selected through the Auction and has accepted the obligations and associated rights to provide BGS-LRTP Supply to the Companies in accordance with the Applicable Legal Authorities and has entered into an agreement with the Companies to provide BGS-LRTP Supply.

BGS-LRTP Supplier Responsibility Share means for each BGS-LRTP Supplier, the fixed percentage share of the BGS-LRTP Load for which such BGS-LRTP Supplier is responsible.

BGS-LRTP Supply means Energy and Capacity (including all Energy Losses, Energy Imbalance Service, and congestion costs associated with the provision of such services), as measured and reported by the Companies to the MISO, and such other services or products that BGS-LRTP Suppliers may be required by the MISO or other governmental body having jurisdiction to provide in order to meet BGS-LRTP Supplier Responsibility Shares, excluding Network Integration Transmission Service.

Billing Period has the meaning set forth in Section 9.1.

Broker means an intermediary between traders for physical, futures or over-the-counter deals.

Business Day has the meaning ascribed to such term in the MISO Tariff.

Capacity has the meaning ascribed to such term in the MISO Tariff; provided, however, that all Capacity provided by the BGS-FP Supplier must satisfy any applicable requirements of NERC and/or MAIN such that such Capacity can be used by the Companies to satisfy any capacity and/or reserve requirement obligations imposed on them by NERC, MAIN, or any Applicable Legal Authority.

Charge means any fee, charge or other amount that is billable by the Companies to the BGS-FP Supplier under this Agreement.

Competitive Electricity Supply means unbundled Energy, Capacity, and Network Integration Transmission Service, including all Energy Losses, Energy Imbalance Service, and/or congestion associated with the provision of the foregoing services, other obligations or responsibilities currently imposed or that may be imposed by the MISO, and such other services or products that are provided by a Retail Electric Supplier to fulfill its obligations to serve customer load. The provision of Competitive Electricity Supply by Retail Electric Suppliers entails fulfillment of all obligations associated with service to Customers, including the obligations of a Load Serving Entity under the MISO Agreements.

Connected Entity means an entity whose transmission system is directly or indirectly connected with a Company's transmission system.

Costs means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace this Agreement, and all reasonable attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with the termination of this Agreement.

CPT means Central Standard Time or Central Daylight Time as in effect in Springfield, Illinois on a given day.

Credit Limit means the maximum amount of unsecured credit the Companies are willing to grant the BGS-FP Supplier, calculated in accordance with Section 6.4.

Credit Limit Cap has the meaning set forth in Table A of Section 6.4.

Customer means a Company customer as defined in such Company's retail electric tariffs, eligible to receive Competitive Electricity Supply, BGS-FP Supply, BGS-LFP Supply or BGS-LRTP Supply, in accordance with the Applicable Legal Authorities.

Damages means financial compensation from the Defaulting Party to the Non-Defaulting Party associated with the occurrence of an Event of Default or an Early Termination of this Agreement. Damages shall be assessed in accordance with Article 5.

Defaulting Party has the meaning set forth in Section 5.1.

Delivery Period has the meaning set forth in Section 4.1.

Delivery Point means the load zone(s) recognized by the MISO as encompassing the BGS-FP Load of a given Company multiplied by the BGS-FP Supplier Responsibility Share and specific to the BGS-FP Supplier, as specified in Appendix A. The BGS-FP Supplier shall deliver BGS-FP Supply to each of three (3) Delivery Points – each tied to the BGS-FP Load of a given Company. The plural Delivery Points shall mean all three (3) Delivery Points.

Delivery Start Date means January 1, 2007, unless this Agreement is filed with FERC accompanied by a request by the BGS-FP Supplier under Section 205 of the Federal Power Act for the Agreement to be accepted and/or approved by FERC, in which case the Delivery Start Date shall be the later of: (i) January 1, 2007, or (ii) the "effective date", as that term is used by FERC, given to this Agreement by FERC in response to such a filing.

Early Termination has the meaning set forth in Section 4.1.a.

Early Termination Date has the meaning set forth in Section 4.1.a.

Effective Date means the date of execution of this Agreement, as set forth in the first paragraph above.

Emergency means (i) an abnormal system condition requiring manual or automatic action to maintain system frequency, or to prevent loss of firm load, equipment damage, or tripping of system elements that could adversely affect the reliability of an electric system or the safety of persons or property; or (ii) a fuel shortage requiring departure from normal operating procedures; or (iii) an Emergency, as that term is defined in the MISO Tariff; or (iv) any other condition or situation that a Company or the MISO deems imminently likely to endanger life or

property or to affect or impair a Company's electrical system or the electrical system(s) of a Connected Entity. Such a condition or situation may include, but shall not be limited to, potential overloading of a Company's transmission and/or distribution circuits, the MISO's minimum generation ("light load") conditions, or unusual operating conditions on either a Company's or a Connected Entity's electrical system, or conditions such that a Company is unable to accept Energy from the BGS-FP Supplier without jeopardizing such Company's electrical system or a Connected Entity's electrical system.

Energy means three-phase, 60-cycle alternating current electric energy, expressed in units of kilowatt-hours or megawatt-hours.

Energy Imbalance Service has the meaning ascribed to such term in Schedule 4 of the MISO Tariff.

Energy Losses means "System Losses", as such term is defined by the MISO Tariff, as well as distribution system real energy losses.

EPT means Eastern Standard Time or Eastern Daylight Time as in effect in New York, NY on a given day.

Event of Default has the meaning set forth in Section 5.1.

FERC means the Federal Energy Regulatory Commission or its successor.

Final Energy Adjustment Amount means the monetary amount due to the BGS-FP Supplier or the Companies, as the case may be, in order to reconcile any difference between the IPEA for a given Billing Period and the FPEA for such Billing Period. A Final Energy Adjustment Amount indicating a monetary amount due to the BGS-FP Supplier shall be represented as a positive number and a Final Energy Adjustment Amount indicating a monetary amount due to the Companies shall be represented as a negative number.

Final Period Energy Allocation or "FPEA" means a quantity in kWh which, for any Billing Period, is the corresponding IPEA adjusted for any billing or metering errors found subsequent to the calculation of such IPEA of which the MISO is notified within 50 days.

Financial Gains means, with respect to any Party, an amount equal to the present value of the financial benefit to it, if any (exclusive of Costs), resulting from an Early Termination of this Agreement, determined in a commercially reasonable manner.

Financial Losses means, with respect to any Party, an amount equal to the present value of the financial loss to it, if any (exclusive of Costs), resulting from an Early Termination of this Agreement, determined in a commercially reasonable manner.

Financial Transmission Rights or "FTRs" has the meaning ascribed to such term in the MISO Tariff.

Fitch means Fitch, Inc.

Forward Contract has the meaning ascribed to such term in Section 101(25) of the Bankruptcy Code.

Forward Contract Merchant has the meaning ascribed to such term in Section 101(26) of the Bankruptcy Code.

Forward Market Price means the price for a standardized energy trading product representing the delivery of electric power to given geographic location during On-Peak hours as determined by a Broker or Published Index.

Governmental Charges has the meaning set forth in Section 15.14.

~~GridAmerica means GridAmerica LLC.~~

Guarantor means any party who has the authority and may agree to guarantee the BGS-FP Supplier's financial obligations under this Agreement, recognizing that such a party will be obligated to meet the Companies' creditworthiness requirements for the BGS-FP Supplier.

Guaranty means a [payment](#) guaranty, hypothecation agreement, margins or security agreement or any other document (whether in the form attached to this Agreement or other form approved by the Companies).

HE means the hour ending.

ICC means the Illinois Commerce Commission or its successor.

Interest Index means the average Federal Funds Effective Rate for the period of time the funds are on deposit. The Federal Funds Effective Rate is published daily on the Federal Reserve website (<http://www.federalreserve.gov/releases/h15/update/>).

Intermediate Energy Adjustment Amount means the monetary amount due to the BGS-FP Supplier or the Companies, as the case may be, in order to reconcile any difference between the PPEA used for the purpose of calculating estimated payments made to the BGS-FP Supplier for a given Billing Period and the IPEA for such Billing Period. An Intermediate Energy Adjustment Amount indicating a monetary amount due to the BGS-FP Supplier shall be represented as a positive number and an Intermediate Energy Adjustment Amount indicating a monetary amount due to the Companies shall be represented as a negative number.

Intermediate Period Energy Allocation or "IPEA" means a quantity in kWh which, for any Billing Period, is the corresponding PPEA adjusted for any billing or metering errors found subsequent to the calculation of such PPEA of which the MISO is notified within 55 days.

Kilowatt or "kW" means a unit of measurement of useful power equivalent to 1000 watts.

Kilowatt-hour or "kWh" means one kilowatt of electric power used over a period of one hour.

Letter of Credit has the meaning set forth in Section 6.8.a.

Liquid MISO Cinergy Hub Adjusted Quote means a Liquid Quote applicable to the MISO Cinergy Hub as adjusted, based on the historical differences for the month at issue between LMP Prices at the MISO Cinergy Hub and the MISO Illinois Hub, to create a proxy for MISO Illinois Hub prices.

Liquid MISO Illinois Hub Quote means a Liquid Quote applicable to the MISO Illinois Hub.

Liquid Other Hub Adjusted Quote means a Liquid Quote applicable to a geographic location other than the MISO Illinois Hub or the MISO Cinergy Hub as adjusted, based on the historical differences for the month at issue between LMP Prices at such hub and the MISO Illinois Hub, to create a proxy for MISO Illinois Hub prices.

Liquid Quote means a quote for a Forward Market Price, from a Broker or Published Index, to sell or buy energy at a given geographic location over a given period of time based on reported trading volumes or open interest equaling or exceeding five hundred (500) MW.

LMP means locational marginal price.

LMP Market means an energy market operated by the MISO in which energy is bought and sold at prices that vary with the points of delivery.

LMP Price means the locational marginal price calculated and published by the MISO for a given point of delivery or collection of points of delivery.

Load Serving Entity or "LSE" has the meaning ascribed to such term in the MISO Tariff.

MAIN means the Mid-America Interconnected Network, or the regional reliability entity to which a Company belongs, or its successor.

Margin means the total amount of cash and/or Letters of Credit provided by a BGS-FP Supplier to satisfy Margin Calls from the Companies.

Margin Call has the meaning set forth in Section 6.6(i).

Margin Requirement means the amount by which the Total Exposure Amount exceeds the BGS-FP Supplier's Credit Limit.

Market Participant has the meaning ascribed to such term in the MISO Tariff.

Maximum Credit Limit means the maximum amount of unsecured credit the Companies are willing to grant the BGS-FP Supplier, calculated in accordance with Table A of Section 6.4.

Megawatt or MW means one thousand kilowatts.

Megawatt-hour or MWh means one megawatt of electric power used over a period of one hour.

Merger Event means when a Party consolidates or amalgamates with, or merges into or with, or transfers all or substantially all of its assets to another entity and either (i) the resulting entity fails to assume all of the obligations of such Party hereunder or (ii) the benefits of any credit support provided pursuant to Article 6 fail to extend to the performance by such resulting,

surviving or transferee entity of the Party's obligations hereunder, and the resulting entity fails to meet the creditworthiness standards of this Agreement. Transfer of all or substantially all of a Company's generation assets does not qualify as a Merger Event.

Meter Data and Management Agent has the meaning has the meaning ascribed to such term in the MISO Tariff.

~~Meter Read Date means the date on which a Company is scheduled, in accordance with its own established procedures and practices and its own regularly scheduled billing cycles, to read a meter for purposes of producing a Customer bill.~~

Meter Reading means the process whereby a Company takes notice of the information presented on a Customer's meter. A Meter Reading may be obtained manually, through telemetry, or by estimation, in accordance with such Company's established procedures and practices.

Minimum Rating has the meaning set forth in Section 6.4(i)(a).

MISO means the Midwest Independent Transmission System Operator, Inc. or its successor(s).

MISO Agreements means the MISO Tariff, any associated protocols, manuals, or procedures, and any other documents produced or maintained by the MISO.

~~MISO Allocation Period means the period of time for which MISO allocates FTRs, as the term "allocation period" is used in Section 43 of the MISO Tariff.~~

MISO Cinergy Hub means that financial trading hub referred to by the MISO as the "CINERGY HUB".

MISO Illinois Hub means that financial trading hub referred to by the MISO as the "ILLINOIS HUB" and whose creation was approved by MISO stakeholders on October 20, 2004.

MISO Invoice Reimbursement Amounts means those charges invoiced by the MISO to the Companies on a Transmission Service settlement invoice related to the delivery of BGS-FP Supply to the Delivery Points with the exception of those charges specifically identified as related to the MISO Tariff schedules identified in Appendix C hereto.

MISO Tariff means the Open Access Transmission Tariff and Energy Markets Tariff for the MISO, on file with FERC, which sets forth the rates, terms and conditions of transmission service over the MISO Transmission System.

MISO Transmission System has the meaning ascribed by the MISO Tariff to the term “Transmission System.”

Moody's means Moody's Investors Service, Inc.

MtM means mark-to-market.

MtM Exposure Amount means an amount calculated each Business Day for the BGS-FP Supplier reflecting the financial exposure to the Companies due to fluctuations in market prices for Energy as set forth in Section 6.3 and in Appendix D, minus amounts due pursuant to this Agreement to the BGS-FP Supplier for the delivery of BGS-FP Supply. If the calculation of the MtM Exposure Amount results in a negative number, the MtM Exposure Amount shall be zero.

Natural Termination Date means May 31 of the year indicated below:

2008       2009       2010.

NERC means the North American Electric Reliability Council or its successor.

Network Integration Transmission Service has the meaning ascribed to such term in the MISO Tariff. In the event the MISO Tariff is modified such that “Network Integration Transmission Service” is no longer offered, Network Integration Transmission Service shall mean the type of transmission service offered under the MISO Tariff that is accorded the highest level of priority for scheduling and curtailment purposes.

Non-Defaulting Party means (i) if a Company is the Defaulting Party, the BGS-FP Supplier; or (ii) if the BGS-FP Supplier is the Defaulting Party, each of the Companies.

Off-Peak means all hours not qualifying as On-Peak.

On-Peak has the meaning ascribed to such term in the MISO Tariff.

Other BGS Supplier means an entity that is defined as a BGS-FP Supplier, BGS-LFP Supplier or BGS-LRTP Supplier in an agreement with one or more Company other than this Agreement.

Preliminary Period Energy Allocation or "PPEA" means, for each Billing Period, the preliminary calculation of the product of: (i) the BGS-FP Supplier Responsibility Share multiplied by (ii) the Energy requirements portion of the BGS-FP Load for such Billing Period.

Published Index means a legitimate daily (or Business Day) publication, daily (or Business Day) online publication, news service, real-time and after-hour feeds, brokerage services, and trading platforms that surveys and reports price information related to the sale, purchase and/or delivery of electricity.

QF Generation means Capacity or Energy delivered to a Company from a Qualifying Facility as that term is defined in 83 Illinois Administrative Code Part 430.

Qualified Institution means a commercial bank or trust company organized under the laws of the United States or a political subdivision thereof, with: (i) a credit rating of at least (a) "A-" by S&P and "A3" by Moody's, if such entity is rated by both S&P and Moody's or (b) "A-" by S&P or "A3" by Moody's, if such entity is rated by either S&P or Moody's but not both, and (ii) having a capital and surplus of at least \$1,000,000,000.

Renewable Energy Portfolio Standards means those standards in effect on the Auction Date, if any, either imposed by the Applicable Legal Authorities or agreed to by a Company requiring that specified levels of electric power and energy sold for the provision of Basic Generation Service shall be produced from renewable resources.

Replacement BGS-FP Supplier has the meaning set forth in Section 4.2.

Resource Adequacy Requirements means those resource adequacy requirements (or equivalent requirements) set forth in the MISO Agreements, but does not include operating reserves (which is an Ancillary Service).

Retail Electric Supplier or "RES" means either: (i) an ARES certified by the ICC pursuant to Section 16-115 of the Illinois Public Utilities Act (220 ILCS 5/16-115), meeting all obligations of ARESs under the Public Utilities Act and applicable regulations, and authorized to provide electric power and energy supply services in a Company's Service Territory; or (ii) an

Illinois electric utility as defined in Section 16-102 of the Illinois Public Utilities Act (220 ILCS 5/16-102) meeting all obligations provided in Sections 16-115A and 16-116 of the Public Utilities Act (220 ILCS 5/16-115A, 220 ILCS 5/16-116).

S&P means Standard and Poor's Rating Services.

Safe Harbor Provisions of the Bankruptcy Code means Sections 101(25), 101(26), 362(b)(6), 546(e) and 556 of the Bankruptcy Code together with other sections pertaining or referring to any of them and any future amendments to the Bankruptcy Code which provide protections, rights or remedies to non-bankrupt Forward Contract Merchants against bankrupt counterparties under Forward Contracts.

Seasonal Billing Factor means a numerical factor set forth in Appendix B hereto, one amount applicable during the summer months of June through September, and one amount applicable during the non-summer months of October through May, applied to the Auction Price in accordance with the provisions of Article 9 and thereby used to shape the Companies' payments to BGS-FP Suppliers.

Security Instrument has the meaning set forth in Section 6.8.a.

Service Territory means the geographic areas of the State of Illinois in which a Company serves Customers.

Settlement Amount means with respect to a Non-Defaulting Party, the net amount of the Financial Losses or Financial Gains, and Costs, expressed in U.S. Dollars, which such Party incurs as a result of Early Termination, as set forth in Section 5.4.a. For the purposes of calculating the Termination Payment, the Settlement Amount shall be considered an amount due to the Non-Defaulting Party under this Agreement if total of the Financial Losses and Costs exceeds the Financial Gains and shall be considered an amount due to the Defaulting Party under this Agreement if the Financial Gains exceed the total of the Financial Losses and Costs.

Statement means a report prepared following each Billing Period by the Companies for the BGS-FP Supplier indicating the amount due to the BGS-FP Supplier in compensation for BGS-FP Supply supplied to the Companies by the BGS-FP Supplier during such Billing Period, in accordance with the BGS-FP Supplier's obligations under this Agreement.

Supply Day means any calendar day during the Delivery Period during which the BGS-FP Supplier is providing, or is obligated by this Agreement to provide, BGS-FP Supply to the Companies.

Tangible Net Worth or "TNW" means the total assets of the BGS-FP Supplier less intangible assets and total liabilities of the BGS-FP Supplier. For the purposes of this definition, intangible assets include benefits such as goodwill, patents, copyrights and trademarks.

Term has the meaning set forth in Section 4.1.

Termination Date means the earlier of the Early Termination Date or the Natural Termination Date.

Termination Payment has the meaning set forth in Section 5.4.b.

Total Exposure Amount means an amount calculated each Business Day for the BGS-FP Supplier reflecting the total credit exposure to the Companies and consisting of the sum of: (i) the MtM Exposure Amount arising under this Agreement and any other agreement for BGS-FP Supply or BGS-LFP Supply between the Companies and the BGS-FP Supplier; and (ii) the amount designated as the credit exposure under any agreement for BGS-LRTP Supply between the Companies and the BGS-FP Supplier; provided, however, that in the event the Total Exposure Amount calculated for any day is a negative number, the Total Exposure Amount shall be deemed to be zero (0) for such day. Any previously posted collateral will be netted against the Total Exposure Amount when determining collateral requirements.

Tranche means a fixed percentage share of the BGS-FP Load of the Companies as determined for the purposes of the Auction of the Companies' BGS-FP Load.

~~Transmission Customer has the meaning ascribed to such term in the MISO Tariff.~~

Transmission Service has the meaning ascribed to such term in the MISO Tariff.

Wholesale Customer means an entity (e.g., a municipality or cooperative) authorized to take electric service for resale to retail customers under a wholesale contract subject to FERC's jurisdiction.

### 1.3 Interpretation

In this Agreement, unless a different intention clearly appears:

- (i) the singular includes the plural and vice versa;
- (ii) the reference to any Party includes such Party's legal and/or permitted successors and assignees, and reference to a Party in a particular capacity excludes such Party in any other capacity or individually;
- (iii) the reference to any gender includes the other gender;
- (iv) reference to any document other than this Agreement refers to such documents as may be amended, modified, replaced or superseded from time to time, or any successor document(s) thereto;
- (v) reference to any Article, Section or Appendix means such Article, Section or Appendix of this Agreement, unless otherwise indicated;
- (vi) "hereunder", "hereof", "hereto", and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Section or other provision;
- (vii) "including" (and with correlative meaning "include"), when following any general statement or term, is not to be construed as limiting the general statement or term to the specific items or matters set forth or to similar items or matters, but rather as permitting the general statement or term to refer to all other items or matters that could reasonably fall within its broadest possible scope;
- (viii) relative to the determination of any period of time, "from" means "from and including", "to" means "to but excluding" and through means "through and including"; and
- (ix) reference to any law or regulation refers to such law or regulation as may be amended, modified, replaced or superseded from time to time, or any successor law(s) or regulation(s) thereto.

## ARTICLE 2. GENERAL TERMS AND CONDITIONS

### 2.1 Parties' Obligations

#### 2.1.a Common Obligations

Each Party hereby agrees as follows:

(i) It will cooperate with the ~~Other~~other Parties in any regulatory compliance efforts that may be required to maintain the ongoing lawfulness and enforceability of the terms of this Agreement and to fulfill any regulatory reporting requirement associated with the provision of BGS-FP Supply, before FERC or any other regulatory body asserting jurisdiction.

(ii) It will maintain all regulatory approvals and certifications necessary to permit its performance under this Agreement.

(iii) It will comply in a timely manner with all obligations imposed upon it by this Agreement.

(iv) It will comply with any and all information and data transfer protocols that may be adopted by the Companies or that are set by, and from time to time modified by, the ICC, FERC, or any other regulatory body; provided, however, that the ~~BGS-FP Supplier~~Parties shall be entitled to exercise ~~its~~their reserved right to challenge any such protocols in the appropriate forum.

(v) It will undertake all action reasonably necessary before FERC or any other regulatory body or court asserting jurisdiction to preserve the rates, terms, and conditions of this Agreement as agreed to herein.

(vi) It will comply with all obligations, rules and regulations, as established and interpreted by the MISO, that are applicable to it in connection with its performance under this Agreement.

#### 2.1.b Obligations of the BGS-FP Supplier

The BGS-FP Supplier hereby agrees as follows:

(i) The BGS-FP Supplier will deliver to each Delivery Point sufficient quantities of BGS-FP Supply on an instantaneous basis at all times to meet the BGS-FP Supplier Responsibility Share.

(ii) Without limitation, the BGS-FP Supplier shall procure those services provided by the MISO and perform such functions as may be required by the MISO that are necessary for the delivery of BGS-FP Supply required hereunder except to the extent that each Company is the LSE for BGS-FP Load located within its Service Territory and is responsible for procuring Network Integration Transmission Service.

(iii) The BGS-FP Supplier shall compensate the Companies for: (a) all charges paid by the Companies to the MISO for the procurement of such Ancillary Services that the MISO deems the Companies must procure from the MISO to provide BGS-FP Supply to the BGS-FP Load (the "Ancillary Services Costs") and (b) the MISO Invoice Reimbursement Amounts.

(iv) Except for those charges listed on Appendix C as the Companies' responsibility, the BGS-FP Supplier bears the risk of any changes in MISO products, tariffs, business rules and pricing, or any other changes in market conditions or market rules during the Term, as such changes related to the delivery of BGS-FP Supply to the Delivery Points, except for any changes related to Network Integration Transmission Service.

(v) Except for the circumstance in which physical impossibility, not due to any gross negligence or willful misconduct of the BGS-FP Supplier, prevents the delivery of Energy to a Delivery Point: (a) the BGS-FP Supplier's obligation to deliver Energy to such Delivery Point pursuant to this Agreement shall be absolute and unconditional and shall not be affected by any circumstances of any character, (b) the BGS-FP Supplier has assumed full, complete and sole responsibility, without reservation or condition, for the delivery of Energy to such Delivery Point pursuant to this Agreement, and (c) it is the intention of the Parties that no event or condition (whether foreseen or unforeseen and whether such event or condition might otherwise serve as a defense or relieve the BGS-FP Supplier of its obligations and liabilities hereunder) shall excuse the BGS-FP Supplier's performance pursuant to this Agreement. A lack of Energy offered in any LMP Market (forward or real-time) does not constitute a physical impossibility, as that term is used in the foregoing sentence.

(vi) The BGS-FP Supplier will be a Market Participant in good standing with the MISO, responsible for the provision of BGS-FP Supply for the BGS-FP Supplier Responsibility Share. The BGS-FP Supplier shall claim, at an appropriate time through the MISO registration process, the Delivery Points.

(vii) The BGS-FP Supplier shall designate Ameren Services Company as the Meter Data and Management Agent for each Delivery Point as such Delivery Point relates to the supply of BGS-FP Supply by the BGS-FP Supplier.

(viii) The BGS-FP Supplier shall identify to the Companies, no later than December 1 of each year of the Term, or as otherwise necessary to permit the Companies to satisfy MISO or MAIN resource adequacy requirements, the resource or resources that it will use the following calendar year to provide Capacity to the Companies pursuant to the terms of this Agreement. The BGS-FP Supplier shall notify the Companies within 24 hours of any change in the resource or resources that it will use (or is using) to provide Capacity to the Companies pursuant to the terms of this Agreement.

(ix) The BGS-FP Supplier will pay to the Companies (a) the Intermediate Energy Adjustment Amount for each Billing Period for which there exists a negative Intermediate Energy Adjustment Amount and (b) the Final Energy Adjustment Amount for each Billing Period for which there exists a negative Final Energy Adjustment Amount.

(x) The BGS-FP Supplier will pay to the Companies a charge of \$\_\_\_\_\_ per Tranche, which amount was announced prior to the Auction, for each Tranche comprising the BGS-FP Supplier Responsibility Share, in order to reimburse the Companies for the total costs of the Auction and related costs associated with providing BGS-FP administration (the "Auction and Administration Fee").

(xi) The BGS-FP Supplier will satisfy any Renewable Energy Portfolio Standards that may apply with respect to the BGS-FP Supplier Responsibility Share as of the Auction Date.

(xii) The BGS-FP Supplier will be solely responsible for payment of all charges due to the MISO associated with the BGS-FP Supplier's standing as a Market Participant and the provision of its share of BGS-FP Supply pursuant to this Agreement (including such charges associated with Energy Losses and Energy Imbalance Service).

(xiii) If the BGS-FP Supplier files this Agreement with FERC accompanied by a request by the BGS-FP Supplier under Section 205 of the Federal Power Act for the Agreement to be accepted and/or approved by FERC: (a) the BGS-FP Supplier shall submit such a filing no later than October 15, 2006, and (b) such filing shall contain a request that FERC permit this Agreement become effective as of January 1, 2007.

### 2.1.c Obligations of the Companies

The Companies hereby agree as follows.

(i) The Companies will accept delivery of BGS-FP Supply provided by the BGS-FP Supplier at each Delivery Point pursuant to Section 2.1.b(i).

(ii) The Companies will pay to the BGS-FP Supplier: (a) the BGS-FP Supply Charge for each Billing Period, (b) the Intermediate Energy Adjustment Amount for each Billing Period for which there exists a positive Intermediate Energy Adjustment Amount, and (c) the Final Energy Adjustment Amount for each Billing Period for which there exists a positive Final Energy Adjustment Amount.

(iii) The Companies will procure from the MISO those Ancillary Services needed to provide BGS-FP Supply to the BGS-FP Load, in such amounts as required by the MISO; provided, however, that the BGS-FP Supplier shall be responsible for the procurement of Energy Losses and Energy Imbalance Service.

(iv) The Companies will procure Network Integration Transmission Service ~~from the Delivery Points to BGS-FP Customers for the BGS-FP Supply and~~ sufficient to permit BGS-FP Load to be served from sources within MISO or from receipts at MISO border points. The Companies will be Load Serving Entities with respect to BGS-FP Load and will be responsible for congestion costs from the Delivery Points to the BGS-FP Customers.

(v) The Companies will provide to the BGS-FP Supplier their estimated aggregate load obligation for each Supply Day twenty (20) days prior to the Supply Day, and its final estimated load obligation for each Supply Day five (5) days prior to the Supply Day.

(vi) The Companies will transfer or assign to the BGS-FP Supplier, in accordance with the MISO Agreements, their rights and obligations to ARRs and FTRs to which they are entitled or obligated as LSEs pursuant to the MISO Agreements (including the rights of the

Companies to claim Market Participant status for the Delivery Points), provided that such rights or obligations are related to the BGS-FP Supplier Responsibility Share of the BGS-FP Supply. All rights and obligations associated with such ARR and FTRs will accrue to the BGS-FP Supplier through the transfer or assignment from the Companies to the BGS-FP Supplier including the ability of the BGS-FP Supplier to request or nominate such FTRs when applicable. The BGS-FP Supplier shall have the right to request and nominate FTRs if: (i) all Agreements for BGS-FP Supply have been executed and are in full force and effect; and (ii) the Delivery Period under each Agreement for BGS-FP Supply is inclusive of the entire MISO Planning Period for which the FTRs are being requested or nominated. Should the conditions above not be met, the entity recognized by the MISO as having the right to make the nominations at that time will nominate such FTRs for the upcoming MISO Planning Period and such FTRs (and associated ARRs) will be allocated to the BGS-FP Supplier based upon the BGS-FP Supplier Responsibility Share.

(vii) The Companies will, to the extent applicable and in addition to all other amounts due hereunder, pay the BGS-FP Supplier a percentage share equal to the BGS-FP Supplier Responsibility Share of all amounts received by a Company from a RES as damages, penalties or forfeited security due to the failure of such RES to provide adequate notice in conformance with applicable ICC requirements that a customer previously served by the RES is switching to BGS-FP service or forfeited as a result of an event of ~~Default~~default by a RES under a Retail Electric Supplier Agreement; provided, however, that the amounts paid to the BGS-FP Supplier shall be net of its pro rata share of any amounts retained by the Companies to offset costs or losses of the Companies associated with the failure of the RES to provide adequate notice or the occurrence of an event of ~~Default~~default; and further provided, that the Companies shall have no obligation to seek the recovery of any damages, penalties or forfeited security due from a RES through collection efforts, judicial procedures or otherwise.

(viii) The Companies shall use all reasonable efforts to ensure that Ameren Services Company serves as the Meter Data and Management Agent for each Delivery Point as such Delivery Point relates to the provision of BGS-FP Supply by the BGS-FP Supplier, to the extent the BGS-FP Supplier designates Ameren Services Company as such Meter Data and Management Agent. In the event Ameren Services Company does not serve in such a manner as Meter Data and Management Agent the Parties will nominate another mutually-agreed upon entity to serve as Meter Data and Management and designate such entity to the MISO.

(ix) The Companies will be Load Serving Entities and the Asset Owners of each Delivery Point, as registered with the MISO.

(x) The Companies shall have full responsibility for metering, billing and delivery with respect to Customers and the BGS-FP Supplier shall have no responsibility with respect thereto.

(xi) The Companies shall be responsible for distribution services and the BGS-FP Supplier shall not be responsible for distribution charges.

## **2.2 MISO Services**

The BGS-FP Supplier shall make all necessary arrangements for the delivery of BGS-FP Supply through the MISO [to the Delivery Points](#). The Companies will advise the MISO of the magnitude of the BGS-FP Supplier Responsibility Share, as required by the MISO, for the purpose of calculating the BGS-FP Supplier's Capacity obligation, Energy obligation, Resource Adequacy Requirements, or other requirements related to the provision of service under this Agreement by the BGS-FP Supplier arising under the MISO Agreements. The BGS-FP Supplier shall remain responsible to the MISO for the performance of its obligations associated with the provision of BGS-FP Supply under this Agreement until the effective date of the transfer of such obligations.

## **2.3 Communications and Data Exchange**

The BGS-FP Supplier and the Companies shall supply to each other all data, materials or other information that is specified in this Agreement, or that may otherwise reasonably be required by the BGS-FP Supplier or by the Companies in connection with the provision of BGS-FP Supply by the BGS-FP Supplier to the Companies, if required, in a thorough and timely manner.

Electronic information exchange between the BGS-FP Supplier and the Companies under this Agreement shall employ a BGS-FP Supplier identification number, assigned by the Companies, which shall be consistent with the BGS-FP Supplier's Dunn & Bradstreet Business number. The BGS-FP Supplier must be equipped with the communications capabilities necessary to comply with the communications and data exchange standards that are set by and as may, from time to time, be modified by the MISO, and must bear the costs of putting in place

and successfully testing all required information technology systems of the BGS-FP Supplier that will enable it to send data to and receive data from the Companies and the MISO and to satisfy its obligations under this Agreement, the MISO Agreements and all other relevant agreements.

## 2.4 Record Retention

The ~~Companies~~Parties shall retain for a period of at least two (2) years following the expiration of the Term, necessary records so as to permit ~~the BGS-FP Supplier~~each Party to confirm the validity of payments due hereunder; provided, however, that if ~~the BGS-FP Supplier~~a Party has provided written notice within ~~at least~~ two (2) years of the expiration of the Term that it disputes the validity of any payments, the ~~Companies~~Parties agree that they shall retain all records related to such dispute until the dispute is finally resolved.

## 2.5 Verification

In the event of a good faith dispute regarding any invoice issued or payment due under this Agreement, and provided that a mutually acceptable confidentiality agreement is executed by the Parties, each Party will have the right to verify, at its sole expense, the accuracy of the invoice or the calculation of the payment due by obtaining copies of relevant portions of the books and records of the other Party. The right of verification will survive the termination of this Agreement for a period of two (2) years after ~~termination~~expiration of the Term.

# ARTICLE 3. REPRESENTATIONS AND WARRANTIES

## 3.1 BGS-FP Supplier's Representations and Warranties

The BGS-FP Supplier hereby represents and warrants to each of the Companies as follows:

(i) It is a corporation, partnership, limited liability company or other legal entity, duly organized, validly existing and in good standing under the laws of the State of Illinois or, if another jurisdiction, is duly registered and authorized to do business and is in good standing in the State of Illinois.

(ii) It has all requisite power and authority to execute and deliver this Agreement and to carry on the business to be conducted by it under this Agreement and to enter into and perform its obligations hereunder.

(iii) The execution and delivery of this Agreement and the performance of its obligations hereunder have been duly authorized by all necessary action on its part and do not and will not conflict with, or constitute a breach of or default under, any of the terms, conditions, or provisions of its certificate of incorporation or bylaws or any indenture, mortgage, other evidence of indebtedness, or other agreement or instrument or any statute or rule, regulation, order, judgment, or decree of any judicial or administrative body to which it is a party or by which it or any of its properties is bound or subject.

(iv) All necessary and appropriate action that is required on its part to execute this Agreement has been completed.

(v) This Agreement is its legal, valid and binding obligation, enforceable in accordance with this Agreement's terms.

(vi) There are no actions at law, suits in equity, proceedings (including investigations, arbitrations and audits) or claims pending or, to its knowledge, threatened against it before any federal, state, foreign or local court, tribunal or governmental agency or authority that might materially delay, prevent or hinder its performance of its obligations under this Agreement.

(vii) It has entered into this Agreement with a full understanding of the material terms and risks of the same, and it is capable of assuming those risks.

(viii) It is, or will be as of the Delivery Start Date, a Market Participant in good standing with the MISO and is, or will be as of the Delivery Start Date, in compliance with all obligations, rules and regulations, as established and interpreted by the MISO, that are applicable to it in connection with its performance under this Agreement.

(ix) It is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other party in

so doing and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions, and risks of this Agreement.

(x) Unless determined by a court of competent jurisdiction to the contrary, it is, and will continue to be for the Term, a Forward Contract Merchant, both generally and with respect to the Energy supplied pursuant to this Agreement.

(xi) This Agreement is for the purchase and sale of the full electricity requirement (including, without limitation Energy, Resource Adequacy Requirements, Capacity and any charges and services that the MISO or the Applicable Legal Authorities may, at any time, impose on or require for the delivery of BGS-FP Supply, but excluding Network Integration Transmission Service) of the BGS-FP Load that will be delivered in quantities expected to be used or sold over a defined period(s) in the normal course of business. In addition, as provided in Section 2.1.b(iii), the BGS-FP Supplier shall be responsible for compensating the Companies for their Ancillary Services Costs and the MISO Invoice Reimbursement Amounts.

### **3.2 Companies' Representations and Warranties**

Each Company hereby represents and warrants to the BGS-FP Supplier as follows:

(i) It is an electric utility corporation duly organized, validly existing and in good standing under the laws of the State of Illinois.

(ii) It has all requisite power and authority to execute and deliver this Agreement and to carry on the business to be conducted by it under this Agreement and to enter into and perform its obligations hereunder.

(iii) The execution and delivery of this Agreement and the performance of its obligations hereunder have been duly authorized by all necessary action on its part and do not and will not conflict with, constitute a breach of or default under, any of the terms, conditions, or provisions of its certificate of incorporation or bylaws or any indenture, mortgage, other evidence of indebtedness, or other agreement or instrument or any statute or rule, regulation, order, judgment, or decree of any judicial or administrative body to which it is a party or by which it or any of its properties is bound or subject.

(iv) All necessary and appropriate action that is required on its part to execute this Agreement has been completed.

(v) This Agreement is its legal, valid and binding obligation, enforceable in accordance with this Agreement's terms.

(vi) There are no actions at law, suits in equity, proceedings (including investigations, arbitrations and audits) or claims pending or, to its knowledge, threatened against it before any federal, state, foreign or local court, tribunal or governmental agency or authority that might materially delay, prevent or hinder its performance of its obligations under this Agreement.

(vii) It has entered into this Agreement with a full understanding of the material terms and risks of the same, and it is capable of assuming those risks.

(viii) It is, or will be as of the Delivery Start Date, an LSE in good standing with the MISO and is, or will be as of the Delivery Start Date, in compliance with all obligations, rules and regulations, as established and interpreted by the MISO, that are applicable to it in connection with its performance under this Agreement.

(ix) It is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other party in so doing and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions, and risks of this Agreement.

(x) Unless determined by a court of competent jurisdiction to the contrary, it is, and will remain for the Term, a Forward Contract Merchant, both generally and with respect to the Energy purchased pursuant to this Agreement.

(xi) This Agreement is for the purchase and sale of the full electricity requirement (including, without limitation Energy, Resource Adequacy Requirements, Capacity and any charges and services that the MISO or the Applicable Legal Authorities may, at any time, impose on or require for the delivery of BGS-FP Supply, but excluding Network Integration Transmission Service) of the BGS-FP Load that will be delivered in quantities expected to be used or sold over a defined period(s) in the normal course of business.

(xii) Its performance under this Agreement is not contingent upon the performance of Customers or the ability of Customers to pay rates.

### **3.3 Survival of Obligations**

All representations and warranties contained in this Article 3 are of a continuing nature and shall be maintained during the Term. If a Party learns that any of the representations or warranties in this Agreement are no longer true during the Term, the Party shall immediately notify the other Party [in accordance with Section 15.1](#) via facsimile, with a hard copy of the notice delivered by overnight mail.

## **ARTICLE 4. COMMENCEMENT AND TERMINATION OF AGREEMENT**

### **4.1 Term and Delivery Period**

This Agreement shall become effective as of the Effective Date and shall continue in effect for a period ending at the end of HE 24 CPT on the Termination Date (the “Term”) provided, however, that: (i) termination of this Agreement for any reason shall not relieve the Companies or the BGS-FP Supplier of any obligation accrued or accruing prior to such termination, and (ii) applicable provisions of this Agreement shall continue in effect after termination to the extent necessary to provide for final billings, settlements, payments and adjustments, and as provided for in Sections 14.2 and 15.13(iii).

The provision of BGS-FP Supply shall commence at the beginning of HE 01 CPT on the Delivery Start Date and shall end at the end of HE 24 CPT on the Termination Date (the “Delivery Period”).

#### **4.1.a Early Termination**

This Agreement may be terminated prior to the Natural Termination Date (an “Early Termination”) pursuant to the following:

- (i) By mutual agreement of the Companies and the BGS-FP Supplier, as provided in Section 4.2; or
- (ii) By the Companies or the BGS-FP Supplier, as provided in Section 5.2.

If this Agreement is terminated pursuant to the provisions of clauses (i) or (ii) above, the effective date of such termination shall be deemed the “Early Termination Date”. Early Termination gives rise to the Non-Defaulting Party’s rights and remedies under Articles 4 and 5.

The Parties further agree that neither Party shall have the right to terminate this Agreement based solely on: (a) the BGS-FP Supplier's ability to sell the Capacity and/or Energy hereunder for a price greater than the price the Companies are paying the BGS-FP Supplier hereunder; or (b) the Companies' ability to purchase the Capacity and/or Energy hereunder at a price less than the price the Companies are paying the BGS-FP Supplier hereunder.

#### **4.1.b Termination of Right to Supply BGS-FP**

The BGS-FP Supplier agrees that, notwithstanding any provision of this Agreement to the contrary, termination of this Agreement for reason of an Event of Default shall terminate any right of the BGS-FP Supplier to provide BGS-FP Supply to the Companies pursuant to this Agreement and thereafter nullify any of the entitlements to which the BGS-FP Supplier became entitled as a result of being selected as a winning bidder in the Auction (including, without limitation, the right to register as a Market Participant for the Delivery Points). Provided, however, nothing in this Agreement shall be construed to prevent the BGS-FP Supplier from receiving the benefits of this Agreement, including the right to receive a Termination Payment due to the BGS-FP Supplier, upon termination.

#### **4.2 Mutual Termination**

The Companies and the BGS-FP Supplier may agree at any time during the Term to terminate their respective rights and obligations hereunder on such terms and under such conditions that they mutually deem to be appropriate as set forth in a mutual termination agreement acceptable in form and substance to the Companies and the BGS-FP Supplier ("Mutual Termination Agreement"); provided, however, that Companies agree that it shall enter into a ~~such~~ Mutual Termination Agreement, which will discharge the BGS-FP Supplier with respect to liabilities arising after the effective date of the Mutual Termination Agreement if the following conditions precedent are met: (i) the BGS-FP Supplier identifies a replacement supplier willing to assume all obligations of the BGS-FP Supplier hereunder for the remaining Term (the "Replacement BGS-FP Supplier"); (ii) the Replacement BGS-FP Supplier demonstrates to the satisfaction of the Companies its compliance with Article 6 as of the effective date of the Mutual Termination Agreement; (iii) the Replacement BGS-FP Supplier executes a counterpart signature page to this Agreement and thereby becomes a Party under this Agreement, effective immediately following the effective date of the Mutual Termination Agreement; and (iv) the BGS-FP Supplier is not, to the belief or knowledge of the Companies,

subject to an Event of Default as of the effective date of the Mutual Termination Agreement or, if the Companies believe that the BGS-FP Supplier may be subject to an Event of Default, either (a) the Companies have determined that, as of the effective date of the Mutual Termination Agreement, they have not incurred any Damages as a result of the Event of Default or (b) if the Companies have determined, as of the effective date of the Mutual Termination Agreement, that they may have incurred Damages as a result of the Event of Default, that the Replacement BGS-FP Supplier has agreed in writing to be responsible for the payment of such Damages or to otherwise cure the Event of Default, in either case to the satisfaction of the Companies.

### **4.3 Forward Contract**

The Parties acknowledge that the Agreement is a forward contract as that term is defined in Section 101(25) of the Bankruptcy Code, the Parties are Forward Contract Merchants, both generally and with respect to deliveries of Energy pursuant to this Agreement, and, accordingly, the Parties hereto are entitled to the protections of the Safe Harbor Provisions of the Bankruptcy Code. The Parties therefore agree that this Agreement may be terminated and the remedies hereunder exercised by either Party upon the commencement of a proceeding by the other Party under any chapter of the Bankruptcy Code in accordance with Section 5.2 and that the automatic stay of Section 362(a) of the Bankruptcy Code shall not apply to such termination.

## **ARTICLE 5. BREACH AND DEFAULT**

### **5.1 Events of Default**

An “Event of Default” under this Agreement shall occur if a Party (the “Defaulting Party”):

- (i) is the subject of a voluntary bankruptcy, insolvency or similar proceeding;
- (ii) makes an assignment of this Agreement for the benefit of its creditors;
- (iii) applies for, seeks consent to, or acquiesces in the appointment of a receiver, custodian, trustee, liquidator or similar official to manage all or a substantial portion of its assets;
- (iv) is dissolved (other than pursuant to a consolidation, amalgamation or merger) or is the subject of a Merger Event;

(v) has a secured party take possession of all or substantially all of its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets;

(vi) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);

(vii) is the subject of an involuntary bankruptcy or similar proceeding to secure creditors' rights;

(viii) in the case of the BGS-FP Supplier, loses its authority or ability to make purchases from or sales into the MISO markets or the MISO holds the Companies responsible for the provision of Energy, Resource Adequacy Requirements or Capacity to meet the BGS-FP Supplier Responsibility Share;

(ix) fails to comply with the Creditworthiness standards as set forth in Article 6, including, without limitation, compliance with the Creditworthiness requirements to cover the Margin calculated under Section 6.6 or post any Margin due under Section 6.6, within the time frames set forth in this Agreement;

(x) fails to pay the other Party when payment is due;

(xi) violates any federal, state or local code, regulation or statute applicable to the supply or receipt of Energy or Capacity in a manner that materially, and adversely, affects the Party's performance under this Agreement, including by way of failure to continually satisfy all applicable FERC requirements, defaults on any obligation or other failure to comply with MISO requirements under the MISO Agreements or fails to comply with the Renewable Energy Portfolio Standards, such as may apply, with respect to the BGS-FP Supplier Responsibility Share;

(xii) in the case of the Companies, fails to accept BGS-FP Supply properly tendered by BGS-FP Supplier under this Agreement or fails to procure transmission rights or Ancillary Services needed to ensure the Companies' performance under this Agreement; provided, however, that the Companies shall not be required to accept quantities of Energy, Capacity or any other component of BGS-FP Supply utilized by Customers on an instantaneous

basis as a function of electrical load, in excess of such Customer's instantaneous consumption of such component of BGS-FP Supply;

(xiii) fails to satisfy any other material obligation under this Agreement not listed above;

(xiv) makes a materially incorrect or misleading representation or warranty under this Agreement;

(xv) commits an act or makes an omission that constitutes an "Event of Default" under any other agreement(s) for the provision of BGS Supply between a Company and the BGS-FP Supplier;

(xvi) ~~in the case of the BGS-FP Supplier,~~ fails to have at the commencement of the Delivery Period or loses during the Delivery Period any authorization granted by the FERC or any other governmental entity, MAIN or NERC needed to ~~provide BGS-FP Supply to the Company pursuant to the~~ perform its obligations under this Agreement;

and fails to remedy such condition, event or delinquency herein above described such that the Non-Defaulting Party is completely made whole with respect to such condition, event or delinquency, within three (3) Business Days of receipt of written notice thereof from such Non-Defaulting Party; provided, however, that an Event of Default shall be deemed to have occurred immediately, without any need for the provision of notice thereof by the Non-Defaulting Party and without any right of cure on the part of the Defaulting Party, in the event of the occurrence of a condition, event or delinquency described in subsections (i), (ii), (iii), (iv), (v), (vi), (vii), (viii) or (ix) of this Section 5.1.

## 5.2 Rights Upon Default

Upon and during the continuation of an Event of Default, the Non-Defaulting Party shall be entitled to elect or pursue one or more of the following remedies:

- (i) pursue any and all available legal and equitable remedies;
- (ii) designate a day, no earlier than the day notice of such designation is effective and no later than twenty (20) days after notice of such designation is effective, as the Early Termination Date, by providing written notice to the Defaulting Party; provided, however,

that an Early Termination Date may be designated to occur concurrently with the Event of Default with respect to an Event of Default under subparagraphs in subsections (i), (ii), (iii), (iv), (v), (vi), (vii), (viii) or (ix) of Section 5.1;

- (iii) receive Damages in accordance with Section 5.3;
- (iv) to accelerate all amounts owing between the Parties;
- (v) to liquidate and terminate the undertakings set forth in this Agreement;
- (vi) subject to Section 5.4, withhold any payments due to the Defaulting Party under this Agreement; and
- (vii) suspend performance under this Agreement.

### **5.3 Damages Resulting from an Event of Default**

#### **5.3.a BGS-FP Supplier's Failure to Supply BGS-FP Supply or Declaration of Early Termination by the Companies**

Damages resulting from one or more of the following shall include all costs incurred by a Company, acting in a commercially reasonable manner consistent with any statutory or regulatory requirements imposed by the Applicable Legal Authorities, in obtaining replacement services or in obtaining a replacement supplier, which costs exceed the amounts that would have been payable to the defaulting BGS-FP Supplier under this Agreement, due to:

- (i) the BGS-FP Supplier's failure:
  - (a) to provide BGS-FP Supply in accordance with this Agreement, or
  - (b) to pay the MISO for purchases of any products or services from the MISO,
  - (c) to pay the MISO for the charges invoiced by the MISO to it, or
  - (d) to otherwise fail to comply with MISO requirements;

such that the MISO holds a Company responsible for the provision of Energy (including all charges for Energy Losses, Energy Imbalance

Service, and congestion), Resource Adequacy Requirements or Capacity to meet the BGS-FP Supplier Responsibility Share under this Agreement; or

(ii) the occurrence of any Event of Default attributable to the BGS-FP Supplier resulting in Early Termination.

Costs incurred by a Company for the purpose of calculating Damages include, but are not limited to, the following costs incurred by or assessed on a Company as a result of the failure of the BGS-FP Supplier to satisfy its obligations under this Agreement:

(i) the cost of Energy (including all charges for Energy Losses, Energy Imbalance Service, and congestion), Resource Adequacy Requirements, Capacity or other elements of BGS-FP Supply allocated to a Company by the MISO due to the failure of the BGS-FP Supplier to meet obligations owing to the MISO in connection with its obligations under this Agreement;

(ii) the cost of Energy (including all charges for Energy Losses, Energy Imbalance Service, and congestion), Resource Adequacy Requirements or Capacity purchased by a Company to replace BGS-FP Supply that the BGS-FP Supplier was obligated, but failed, to supply pursuant to this Agreement;

(iii) administrative and legal costs associated with procuring the replacement BGS-FP Supply identified in the foregoing clause; and

(iv) financial hedging costs incurred by a Company on behalf of BGS-FP Customers as a result of having to procure BGS-FP Supply that a BGS-FP Supplier was obligated, but failed, to supply pursuant to this Agreement.

Damages calculated hereunder shall constitute the ultimate liability of the BGS-FP Supplier in the event of an Early Termination caused by an Event of Default attributable to the BGS-FP Supplier regardless of the reason or basis for such Early Termination. The Parties recognize, however, the final calculation of Damages hereunder may not be known for some time since the level of such Damages may be dependant upon the arrangements made by a Company to obtain replacement services or a replacement supplier. The Companies and the BGS-FP Supplier agree that, until the calculation of Damages under this provision is completed,

the amount and payment to the Companies of the Settlement Amount in the event of an Early Termination as set forth in Section 5.4 shall be immediately due and owing as an estimate of all Damages ultimately determined to be due and owing. After Damages have been finally determined under this Section 5.3, the amounts of Damages due and owing will be reconciled with payments already made by the BGS-FP Supplier under Section 5.4.

**5.3.b Failure By the Companies to Accept BGS-FP Supply Tendered by the BGS-FP Supplier**

Damages resulting from the failure of a Company to accept BGS-FP Supply tendered by the BGS-FP Supplier necessary to meet the BGS-FP Supplier Responsibility Share of BGS-FP Load under this Agreement shall consist of the positive difference (if any) between the amounts that would have been payable to the BGS-FP Supplier hereunder had such Company accepted the BGS-FP Supply tendered by the BGS-FP Supplier necessary to the BGS-FP Supplier Responsibility Share of BGS-FP Load under this Agreement minus the amount realized by the BGS-FP Supplier in disposing, in a reasonable commercial manner, of the BGS-FP Supply not accepted by such Company; provided, however, that the Companies shall not be required to accept quantities of Energy, Capacity or any other component of BGS-FP Supply utilized by Customers on an instantaneous basis as a function of electrical load, in excess of such Customer's instantaneous consumption of such component of BGS-FP Supply.

**5.3.c Damages Resulting from Early Termination due to an Event of Default Attributable to the Companies**

Damages resulting from Early Termination due to an Event of Default attributable to a Company shall be as set forth in Section 5.4. Damages calculated in accordance with Section 5.4 shall be the exclusive remedy available to the BGS-FP Supplier in the event of Early Termination resulting from an Event of Default attributable to a Company.

**5.3.d Other Damages**

Damages for Events of Default not specified above shall consist of the direct damages incurred by the Non-Defaulting Party.

## **5.4 Calculation of Settlement Amount and Termination Payment**

### **5.4.a Settlement Amount**

The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount with respect to the obligations of the Defaulting Party under this Agreement. For the purposes of such determination, the quantities of Energy (including all charges for Energy Losses, Energy Imbalance Service, and congestion), Capacity and other services provided for under this Agreement for the period following the Early Termination Date through the Natural Termination Date shall be deemed to be those quantities that would have been delivered on an hourly basis had this Agreement been in effect during the previous calendar year, adjusted for such BGS-FP Load changes as may have occurred since the previous calendar year.

### **5.4.b Net Out of Settlement Amounts**

The Non-Defaulting Party shall calculate a "Termination Payment" by aggregating all Settlement Amounts due under this Agreement or any other agreement(s) between the Companies and the BGS-FP Supplier for the provision of BGS Supply into a single amount by: netting out (a) all Settlement Amounts that are due or will become due to the Defaulting Party, plus, at the option of the Non-Defaulting Party, any cash or other form of security then available to the Non-Defaulting Party and actually received, liquidated and retained by the Non-Defaulting Party, plus any or all other amounts due to the Defaulting Party under this Agreement or any other agreement(s) between a Company and the BGS-FP Supplier for the provision of BGS Supply against (b) all Settlement Amounts that are due or will become due to the Non-Defaulting Party, plus any or all other amounts due to the Non-Defaulting party under this Agreement or any other agreement(s) between a Company and the BGS-FP Supplier for the provision of BGS Supply, so that all such amounts shall be netted out to a single liquidated amount; provided, however, that if the BGS-FP Supplier is the Defaulting Party and the Termination Payment is due to the BGS-FP Supplier, the Companies shall be entitled to retain a commercially reasonable portion of the Termination Payment, which may be equal to the entire amount of the Termination Payment, as security for additional amounts that may be determined to be due and owing by the BGS-FP Supplier as Damages and further provided that any previously attached security interest of a Company in such retained amounts shall continue. The Termination Payment shall be due to or due from the Non-Defaulting Party as appropriate.

If the Termination Payment has been retained by the Companies as security for additional amounts that may be determined to be due and owing by the BGS-FP Supplier, and if, upon making a final determination of Damages, the Termination Payment, or any portion thereof, is to be made to the BGS-FP Supplier, the Companies will pay the retained portion of the Termination Payment to the BGS-FP Supplier. Simple interest will be calculated at the lower of the Interest Index or six (6) percent per annum.

#### **5.4.c Notice of Termination Payment**

As soon as practicable after calculation of a Termination Payment, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to or due from the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. Subject to the Companies' right to retain a commercially reasonable portion of the Termination Payment as set forth in Section 5.4.b, the Termination Payment shall be made by the Party that owes it within three (3) Business Days after such notice is effective.

#### **5.4.d Disputes with Respect to Termination Payment**

If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within three (3) Business Days of the effective date of notice of the Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute; provided, however, that if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall first provide commercially reasonable financial assurances to the Non-Defaulting Party in an amount equal to the Termination Payment.

#### **5.4.e Multiple BGS Service Agreements**

It is the intention of the Companies and the BGS-FP Supplier that, in the event the BGS-FP Supplier is a party to other agreements with a Company for the provision of BGS Supply that existed prior to the Effective Date or is entered into after the Effective Date, the **Companies** Non-Defaulting Party will calculate a single Termination Payment applicable to all such agreements as set forth herein. ~~If the BGS-FP Supplier is a party to such other agreements with a Company or the Companies for the provision of BGS Supply, the BGS-FP Supplier~~ Each

[Party](#) hereby agrees that such other agreements are deemed amended by this Agreement for the purpose of calculating a single Termination Payment as described herein.

#### **5.4.f Reliance on Netting**

(i) The Companies are making credit, default, collateral and other decisions and changes based upon and in reliance on the effectiveness of the default, early termination, setoff and netting provisions of this Agreement and other BGS Supply agreements, including and, in particular, the calculation of the Total Exposure Amount for purposes of determining when and how much Margin collateral must be posted. The Companies would not enter into this Agreement and would change their position with regard to netting to determine Total Exposure Amounts, Margin collateral requirements and other matters except for its reliance on and with the understanding that these netting terms will be effective.

(ii) Notwithstanding anything else in this Agreement or in any other agreement between the BGS-FP Supplier and one or more of the Companies to the contrary, if for any reason these terms or any right of offset or netting hereunder or under another BGS Supply agreement in favor of the Companies against a bankrupt BGS-FP Supplier is delayed from being exercised or is not enforceable in accordance with its terms because either Party asserts or is concerned that the Safe Harbor Provisions of the Bankruptcy Code do not apply to such rights of enforcement or for any other reason, the Companies may: (a) exercise their rights to effect a setoff under Section 553 of the Bankruptcy Code or other applicable provisions and law, and (b) withhold payments subject to a claim of offset under any obligations due the BGS-FP Supplier in respect of any transactions or deliveries under this Agreement or any other BGS Supply agreement until such setoff rights are exercised and effected.

#### **5.5 Setoff of Payment Obligations of the Non-Defaulting Party**

Any payment obligations of the Non-Defaulting Party to the Defaulting Party pursuant to this Agreement or any other agreement(s) between a Company (or Companies) and the BGS-FP Supplier for the provision of BGS Supply shall be set off: (i) first, to satisfy any payment obligations of the Defaulting Party to the Non-Defaulting Party pursuant to this Agreement or any other agreement(s) between such Company(ies) and the BGS-FP Supplier for the provision of BGS Supply that are unsecured and not subject to any Guaranty; (ii) second, to satisfy any payment obligations of the Defaulting Party to the Non-Defaulting Party pursuant to this Agreement or any other agreement(s) between such Company(ies) and the BGS-FP Supplier

for the provision of BGS Supply that are unsecured, but which are subject to a Guaranty; and (iii) third, to satisfy any remaining payment obligations of the Defaulting Party to the Non-Defaulting Party pursuant to this Agreement or any other agreement(s) between such Company(ies) and the BGS-FP Supplier for the provision of BGS Supply. Any setoff shall not be subject to the automatic stay by virtue of Section 362(b)(6) of the Bankruptcy Code.

## **5.6 Preservation of Rights of the Non-Defaulting Party**

The rights of the Non-Defaulting Party under this Agreement, including without limitation Sections 5.4 and 5.5, shall be supplemental to, and not in lieu of, any right of recoupment, lien, or set-off afforded by applicable law, and all such rights are expressly preserved for the benefit of the Non-Defaulting Party.

## **5.7 Forward Contract Merchant**

The Parties acknowledge that the BGS-FP Supplier and the Companies are Forward Contract Merchants. Margin payments, settlement payments, or posting of Margin collateral are not avoidable and the Non-Defaulting Party is otherwise entitled to the benefits of the Safe Harbor Provisions of the Bankruptcy Code with respect to such payments or collateral.

## **5.8 Integrated Transaction**

To the extent that Section 365 of the Bankruptcy Code applies to this Agreement, the Parties agree that all transactions under this Agreement constitute one integrated transaction that can only be assumed or rejected in its entirety.

# **ARTICLE 6. CREDITWORTHINESS**

## **6.1 Applicability**

The BGS-FP Supplier agrees that it shall meet the creditworthiness standards of this Article 6 at all times during the Term. Without limitation of the foregoing, the BGS-FP Supplier shall, upon written request by a Company, affirmatively demonstrate its compliance with the creditworthiness standards set forth hereunder. The Companies may establish less restrictive creditworthiness standards under this Article 6 in a non-discriminatory manner.

## **6.2 Creditworthiness Determination**

The BGS-FP Supplier may submit and maintain a security deposit in accordance with Sections 6.4 and 6.6 in lieu of submitting to or being qualified under a creditworthiness evaluation. The BGS-FP Supplier shall have the opportunity to petition the Companies to re-evaluate its creditworthiness whenever an event occurs that the BGS-FP Supplier believes would improve the determination made by the Companies of its creditworthiness. The Companies' credit re-evaluation must be completed as soon as possible but no later than thirty (30) days after receiving a fully documented request. The Companies must provide the rationale for its determination of the Credit Limit and any resulting security requirement. The Companies must perform their credit re-evaluation and associated security calculation in a non-discriminatory manner. The BGS-FP Supplier shall provide unrestricted access to audited financial statements; provided, however, that if audited financial statements are not available, the Companies may accept other types of financial statements. As set forth in Section 6.4, if a BGS-FP Supplier chooses to rely on a Guarantor, the creditworthiness evaluation will be conducted on the Guarantor.

## **6.3 Mark-to-Market Credit Exposure Methodology**

To calculate the daily exposure for the BGS-FP Supplier, the Mark-to-Market ("MtM") credit exposure methodology will be used. The initial "mark" for each month of the Delivery Period was determined on the Auction Date based on the available Forward Market Prices. At the time the auction was completed, the MTM credit exposure for the BGS-FP Supplier was equal to zero (0). Subsequently the differences between the "mark" derived from Forward Market Prices on the valuation date and the initial "mark" will determine daily exposure for the supplier. The total MTM credit exposure will be equal to 1.1 times the sum of the MTM credit exposures for each billing month. The methodology used by the Companies to calculate the MtM Exposure Amount is set forth in Appendix D.

## **6.4 Credit Limit**

The following criteria constitute the Companies' creditworthiness requirements for the BGS-FP Supplier to cover the Total Exposure Amount. In all instances, the most current senior unsecured debt rating (or, if unavailable, corporate issuer rating discounted one notch) will be used.

(i) The following requirements shall apply in the event the BGS-FP Supplier or its Guarantor has been incorporated or otherwise formed under the laws of the United States. If the BGS-FP Supplier cannot meet the following requirements, it shall be required to post cash or a Letter of Credit for the Total Exposure Amount.

(a) If the BGS-FP Supplier chooses not to rely on a Guarantor to satisfy the requirements of this Section 6.4(i), the requirements of this subsection 6.4(i)(a) shall apply. For the BGS-FP Supplier to be granted an unsecured line of credit, the BGS-FP Supplier: (1) must be rated by at least two of the following rating agencies: S&P, Moody's or Fitch, and (2) must have a minimum senior unsecured debt rating (or, if unavailable, corporate issuer rating discounted by one notch) of at least "BBB-" from S&P, "Baa3" from Moody's or "BBB-" from Fitch (each a "Minimum Rating"). If the BGS-FP Supplier is rated by only two rating agencies, and the ratings are split, the lowest rating will be used. If the BGS-FP Supplier is rated by three rating agencies, and the ratings are split, the lower of the two highest ratings will be used; provided, however, that in the event that the two highest ratings are common such common rating will be used. The level of the Credit Limit to cover the Total Exposure Amount will be determined in accordance with Table A:

**Table A**

Credit Rating of the BGS-FP Supplier or the Guarantor			Credit Limit (equals the Lesser of TNW % and Credit Limit Cap, as set forth below)	
S&P	Moody's	Fitch	TNW %	Credit Limit Cap
A- and above	A3 and above	A- and above	16% of TNW	\$80,000,000
BBB+	Baa1	BBB+	10% of TNW	\$60,000,000
BBB	Baa2	BBB	8% of TNW	\$40,000,000
BBB-	Baa3	BBB-	6% of TNW	\$20,000,000
Below BBB-	Below Baa3	Below BBB-	0% of TNW	\$0

The BGS-FP Supplier will be granted a single Credit Limit to be applied to all BGS Supply agreements between the BGS-FP Supplier and the Companies. The BGS-FP Supplier will be required to post cash or a Letter of Credit for the Margin due the Companies as set forth in Section 6.6.

(b) If the BGS-FP Supplier chooses to rely on a Guarantor to satisfy the requirements of this Section 6.4(i), the requirements of this subsection 6.4(i)(b) shall apply. If the BGS-FP Supplier has a Guarantor, the Guarantor (1) must be rated by at least two of the following rating agencies: S&P, Moody's or Fitch, and (2) must have a minimum senior unsecured debt rating (or, if unavailable, corporate issuer rating discounted one notch) equal to the Minimum Rating. If the Guarantor is rated by only two rating agencies, and the ratings are split, the lowest rating will be used. If the Guarantor is rated by three rating agencies, and the ratings are split, the lower of the two highest ratings will be used; provided, however, that in the event that the two highest ratings are common such common rating will be used. The maximum level of the Credit Limit to cover the Total Exposure Amount that could be provided through the financial Guaranty (will be determined in accordance with Table A.

The BGS-FP Supplier will be granted a Credit Limit equal to the lesser of: (i) the amount of the Guaranty as provided to the Companies at the time this Agreement is executed as such amount may be modified in any amended or substitute Guaranty provided to the Companies during the Term or (ii) the Maximum Credit Limit applicable to the Guarantor's credit rating. The BGS-FP Supplier, however, may not increase or substitute its Guaranty for the purpose of increasing its applicable Credit Limit during the time period after the Companies have made a Margin Call but before the BGS-FP Supplier has posted the required Margin. Notwithstanding anything herein to contrary, the BGS-FP Supplier may increase the limit of its Guaranty after satisfying a Margin call from the Companies and upon the Companies' receipt of an amended or substitute Guaranty increasing the limit of the Guaranty, the BGS-FP Supplier may request a return of Margin in accordance with Section 6.6(iii). The BGS-FP Supplier will be required to post cash or a Letter of Credit for the Margin due the Companies as set forth in Section 6.6.

(c) As an alternative to satisfying the requirements of subsections 6.4(i)(a) or 6.4(i)(b), the BGS-FP Supplier may post cash or Letter of Credit for the entire Total Exposure Amount.

(ii) The following standards shall apply in the event neither the BGS-FP Supplier nor its Guarantor has been incorporated or otherwise formed under the laws of the United

States. If the BGS-FP Supplier cannot meet the following requirements, the posting of cash or a Letter of Credit for the Total Exposure Amount will be required at the time of or prior to the execution of this Agreement.

(a) The BGS-FP Supplier shall supply such evidence of creditworthiness so as to provide the Company with comparable assurances of creditworthiness as is applicable above for BGS-FP Suppliers that have been incorporated or otherwise formed under the laws of the United States; provided, however, that the Company shall have sole and absolute discretion, without liability or recourse to the BGS-FP Supplier, to evaluate the evidence of creditworthiness submitted by the BGS-FP Supplier; or

(b) The BGS-FP Supplier's Guarantor shall supply such evidence of creditworthiness so as to provide the Company with comparable assurances of creditworthiness as is applicable above for Guarantors of BGS-FP Suppliers that have been incorporated or otherwise formed under the laws of the United States; provided, however, that the Company shall have sole and absolute discretion, without liability or recourse to the Guarantor or the BGS-FP Supplier, to evaluate the evidence of creditworthiness submitted by such Guarantor.

(iii) If neither the BGS-FP Supplier nor its Guarantor has been incorporated or otherwise formed under the laws of the United States, the BGS-FP Supplier or its Guarantor, in addition to all documentation required elsewhere in this Section 6.4, shall supply the following as a condition of being granted a Credit Limit.

(a) For the BGS-FP Supplier: (i) a legal opinion of independent counsel qualified to practice in the foreign jurisdiction in which the BGS-FP Supplier is incorporated or otherwise formed that this Agreement is, or upon the completion of execution formalities will become, the binding obligation of the BGS-FP Supplier in the jurisdiction in which it has been incorporated or otherwise formed; (ii) the sworn certificate of the corporate secretary (or similar officer) of the BGS-FP Supplier that the person executing the Agreement on behalf of the BGS-FP Supplier has the authority to execute the Agreement and that the governing board of the BGS-FP Supplier has approved the execution of the Agreement; and (iii) the sworn certificate of the corporate secretary (or similar officer) of the BGS-FP Supplier that

the BGS-FP Supplier has been authorized by its governing board to enter into agreements of the same type as this Agreement. The Company shall have full discretion, without liability or recourse to the BGS-FP Supplier, to evaluate the sufficiency of the documents submitted by the BGS-FP Supplier.

(b) For the BGS-FP Supplier's Guarantor: (i) a legal opinion of independent counsel qualified to practice in the foreign jurisdiction in which the Guarantor is incorporated or otherwise formed that this Guaranty is, or upon the completion of execution formalities will become, the binding obligation of the Guarantor in the jurisdiction in which it has been incorporated or otherwise formed; (ii) the sworn certificate of the corporate secretary (or similar officer) of such Guarantor that the person executing the Guaranty on behalf of the Guarantor has the authority to execute the Guaranty and that the governing board of such Guarantor has approved the execution of the Guaranty; and (iii) the sworn certificate of the corporate secretary (or similar officer) of such Guarantor that the Guarantor has been authorized by its governing board to enter into agreements of the same type as this Guaranty. The Company shall have sole and absolute discretion, without liability or recourse to the Guarantor or the BGS-FP Supplier, to evaluate the sufficiency of the documents submitted by such Guarantor.

## **6.5 Sample Guaranty**

A Sample Guaranty is provided in Appendix F. The Companies are willing to consider alternative forms of a Guaranty, subject to negotiation and final determination of acceptability by the Companies.

## **6.6 Posting Margin and Return of Margin**

(i) If at any time during the Term, the Total Exposure Amount exceeds the BGS-FP Supplier's Credit Limit, the Companies, on any Business Day, may request that BGS-FP Supplier provide Margin in the form of cash or a Letter of Credit, in an amount equal to the Margin Requirement (a "Margin Call"). The Margin Requirement will be rounded up to the nearest \$100,000.

(ii) If the BGS-FP Supplier receives written notice for Margin from the Companies by 1:00 p.m. EPT on a Business Day, then the BGS-FP Supplier shall post Margin

the next following Business Day if posting cash and the second Business Day if posting a Letter of Credit; provided, however, that the Companies may agree in writing to extend the period to provide Margin. If the BGS-FP Supplier receives notice for Margin from the Companies after 1:00 p.m. EPT on a Business Day, then the BGS-FP Supplier must post Margin the second Business Day following the date of notice unless the Companies agree in writing to extend the period to provide Margin. The Companies will not unreasonably deny a request for a one (1) Business Day extension of such period. In the event that the BGS-FP Supplier fails to provide Margin when due, then an Event of Default under Article 5 will be deemed to have occurred and the Companies will be entitled to the remedies set forth in Article 5.

(iii) Margin held by the Companies in excess of the required Margin, as determined above, will be returned to the BGS-FP Supplier upon receipt of a written request by the BGS-FP Supplier. If the BGS-FP Supplier posted cash and notice is received by 1:00 p.m. EPT on a Business Day, the Margin will be returned by the next following Business Day. If the BGS-FP Supplier posted cash and notice is received by the Companies after 1:00 p.m. EPT on a Business Day, the Margin shall be returned by the second Business Day following the date of notice. If the BGS-FP Supplier posted a Letter of Credit, the Margin shall be returned on the next Business Day following the Business Day on which the amendment to the Letter of Credit is received from the issuing bank. In the event that the Companies fail to return the Margin when due in accordance with this Article 6, then an Event of Default under Article 5 will be deemed to have occurred and the BGS-FP Supplier will be entitled to the remedies set forth in Article 5 unless the BGS-FP Supplier agrees in writing to extend such period for providing the Margin. The BGS-FP Supplier will not unreasonably deny a request for a one (1) Business Day extension of the period for returning the Margin.

## **6.7 Grant of Security Interest/Remedies**

To secure its obligations under this Agreement and to the extent that the BGS-FP Supplier delivered Margin or collateral hereunder, the BGS-FP Supplier hereby grants to the Companies a present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, the Companies. The BGS-FP Supplier and the Companies agree to take such action as reasonably required to perfect the secured Party's first priority security interest in, and

lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

Upon or any time after or during the occurrence of an Event of Default caused by the BGS-FP Supplier, the Companies may do any one or more of the following: (i) exercise any of the rights and remedies of the Companies with respect to all collateral, including any such rights and remedies under law then in effect; (ii) exercise their rights of setoff against any and all property of the BGS-FP Supplier in the possession of the Companies whether held in connection with this Agreement or any other agreement(s) between a Company and the BGS-FP Supplier for the provision of BGS Supply; (iii) draw on any outstanding letter of credit issued for the Companies' benefit; and (iv) liquidate all security held by or for the benefit of a Company free from any claim or right of any nature whatsoever of the BGS-FP Supplier, including any equity or right of purchase or redemption by the BGS-FP Supplier. The Companies shall apply the proceeds of the collateral realized upon the exercise of such rights or remedies to reduce the BGS-FP Supplier's obligation under this Agreement or any other agreement(s) between a Company and the BGS-FP Supplier for the provision of BGS Supply (the BGS-FP Supplier remaining liable for any amounts owing to the Companies after such application), subject to the Companies' obligation to the return of any surplus proceeds remaining after such obligations are satisfied in full.

All notices, demands or requests regarding credit requirements and credit related security or deposit transfers shall be in writing and shall be personally delivered or sent by overnight express mail, courier service or facsimile transmission (with the original transmitted by any of the other aforementioned delivery methods) addressed as follows:

If to the BGS-FP Supplier, as set forth on Appendix A hereto.

If to the Companies, to:

With a copy to:

or to such other person at such other address as a Party shall designate by like notice to the other Party. Notice received after the close of the Business Day shall be deemed received on

the next Business Day; provided, however, that notice by facsimile transmission shall be deemed to have been received by the recipient if the recipient confirms receipt telephonically or in writing.

## **6.8 Security Instruments**

### **6.8.a Provision of Security Instrument**

At the BGS-FP Supplier's choice, the following are deemed to be acceptable methods for posting security (each, a "Security Instrument"), if required:

- (i) Cash; or
- (ii) An irrevocable, transferable, standby letter of credit acceptable to the Companies issued by a bank or other financial institution with a minimum "A" senior unsecured debt rating (or, if unavailable, corporate issuer rating discounted one notch) from S&P or Moody's (a "Letter of Credit"). (A standard format for the Letter of Credit is provided in Appendix F.) The Letter of Credit shall state that it shall renew automatically for successive one-year or shorter periods until terminated upon at least ninety (90) days prior written notice from the issuing financial institution. If the Companies receive notice from the issuing financial institution that the Letter of Credit is being cancelled, the BGS-FP Supplier will be required to provide a substitute Letter of Credit from an alternative bank satisfying the minimum requirements. The receipt of the substitute Letter of Credit must be effective as of the cancellation date and delivered to the Companies at least thirty (30) days before the cancellation date of the original Letter of Credit. If the BGS-FP Supplier fails to supply a substitute Letter of Credit as required herein, then the Companies will have the right to draw on the existing Letter of Credit and to hold the amount as Margin.

If the credit rating of a bank or other financial institution from which the BGS-FP Supplier has obtained a Letter of Credit falls below levels specified in this Article 6, the BGS-FP Supplier shall have two (2) Business Days following written notice by the Companies to obtain a suitable Letter of Credit from another bank or other financial institution that meets those standards unless such period is extended in writing by Companies.

## 6.8.b BGS-FP Supplier Rights if Companies are Rated Below Investment Grade

If at any time during the Term the applicable rating of ~~any two (2) of the Companies~~ a Company is below the Minimum Rating, as determined in accordance with Section 6.4, the BGS-FP Supplier may provide written notification to the Companies requiring that the Companies transfer to a Qualified Institution, within two (2) Business Days, any cash in the Companies' possession or held on the BGS-FP Suppliers' behalf that had been posted as a Security Instrument by the BGS-FP Supplier related to the level of exposure that such downgraded Ameren Company has to the BGS-FP Supplier under the terms of this Agreement. The Qualified Institution will hold the cash collateral in an interest-bearing account pending release of the funds pursuant to the terms of this Agreement. Interest will be allocated pro rata to the BGS-FP Supplier. Collateral held by Ameren Companies that carry ratings at or above the Minimum Rating may continue to be held by them at their discretion. The BGS-FP Supplier will be entitled to the rights described in this Section 6.8.b only for so long as the applicable rating for ~~any two of the Companies~~ a Company is below the Minimum Rating.

## 6.9 Maintenance of Creditworthiness

### 6.9.a Reporting of Changes

The BGS-FP Supplier shall promptly notify the Companies: (i) of any changes in its credit rating or the credit rating of its Guarantor, (ii) if the BGS-FP Supplier or its Guarantor is placed on a credit watch with negative implications by any rating agency, and (iii) of any materially adverse change in its financial condition or in the financial condition of its Guarantor. The BGS-FP Supplier or Guarantor shall also furnish evidence of an acceptable credit rating or financial condition upon the request of the Companies. The Companies shall promptly notify the BGS-FP Supplier in the event the applicable rating of any Company is below the Minimum Rating, as determined in accordance with Section 6.4.

### 6.9.b Change in Credit Standing

The Companies will re-evaluate the creditworthiness of the BGS-FP Supplier whenever they become aware, through the provision of notice by the BGS-FP Supplier or otherwise, of a decrease in the BGS-FP Supplier's or Guarantor's credit rating. If the lowest credit rating (whether corporate issuer rating or unsecured senior debt rating) used to determine the BGS-FP Supplier's Credit Limit decreases, the BGS-FP Supplier shall provide an additional Security

Instrument to the Companies (or increase the value of the existing Security Instrument) in accordance with Section 6.4.

### **6.10 Calling on Security**

The Companies may call upon the Security Instrument posted by the BGS-FP Supplier if the BGS-FP Supplier fails to pay amounts due to the Companies pursuant to this Agreement or any other agreement(s) between a Company and the BGS-FP Supplier for the provision of BGS Supply after all of the following events occur:

- (i) Written Notice of Default is provided to the BGS-FP Supplier; and
- (ii) Any applicable cure period ends.

The foregoing notwithstanding, the Security Instrument posted by the BGS-FP Supplier shall become due automatically, and may be called upon by the Companies, without prior notice or right of cure in the case of any Event of Default arising under subsections (i), (ii), (iii), (iv), (v), (vi), (vii), (viii) or (ix) of Section 5.1.

### **6.11 Interest on Cash Held by Companies**

The Companies will pay simple interest (not compounded) calculated at the lower of the Interest Index or six (6) percent per annum on all cash posted by the BGS-FP Supplier with the Companies pursuant to this Agreement. Each Billing Period the Companies will prepare a statement of interest amounts due to the BGS-FP Supplier. The statement will be sent to the BGS-FP Supplier within three (3) Business Days after the end of the Billing Period via overnight mail, facsimile or other expeditious means. The Companies shall make interest payments on the first Business Day after the fifth (5<sup>th</sup>) day of each Billing Period.

### **6.12 Confidentiality**

Information supplied by the BGS-FP Supplier in connection with the creditworthiness process shall be deemed confidential and not subject to public disclosure, unless Applicable Legal Authorities require disclosure of the information. If information must be disclosed, then the confidentiality of the information shall be maintained consistent with the Applicable Legal Authority's rules and regulations pertaining to confidentiality. The BGS-FP Supplier will be

given prompt notice of any request by a third party to obtain confidential information related to the BGS-FP Supplier's creditworthiness.

### **6.13 No Endorsement of BGS-FP Supplier**

The Companies' determination that the BGS-FP Supplier is creditworthy pursuant to the process set forth above, shall not be deemed to constitute an express or implied warranty or guarantee of any kind with respect to the financial or operational qualifications of the BGS-FP Supplier. The Companies will treat all BGS-FP Suppliers in a non-discriminatory manner and shall provide no preference to any BGS-FP Supplier.

### **6.14 Multiple BGS Supply Agreements**

It is the intent of the Companies and the BGS-FP Supplier that, in the event the BGS-FP Supplier is a party to other agreements with a Company for the provision of BGS Supply, the Companies will calculate one (1) Margin applicable to all such agreements using the methodology set forth herein. The BGS-FP Supplier will have a single line of credit applicable to all BGS Supply agreements, and the Margin that is calculated is the Total Exposure Amount under all such contracts less the single line of credit.

## **ARTICLE 7. PROCEDURES FOR ENERGY SCHEDULING, CAPACITY RESOURCE SUBMISSION, TRANSMISSION PROCUREMENT AND FTR ALLOCATION**

### **7.1 Generally**

The Parties must adhere to any applicable operational requirements of the MISO necessary to protect the integrity of the MISO Transmission System and the transmission systems of interconnected control areas, and must satisfy any and all criteria of the MISO, MAIN and NERC, when applicable. The BGS-FP Supplier also must adhere, in connection with the BGS-FP Supplier's performance under this Agreement, to any applicable operational requirements of the Companies necessary to protect the integrity of the Companies' local distribution systems.

The BGS-FP Peak Load Share will be determined by the Companies based on the zonal peak load contributions utilized in the MISO determination of the zonal obligations for Capacity, adjusted for contributions associated with Customers served by Retail Electric Suppliers, BGS-

LFP Customers, BGS-LRTP Customers and Wholesale Customers. Contributions for RESs shall be calculated as set forth in the Companies' RES operating procedures found on the Companies' website [www.ameren.com](http://www.ameren.com).

## **7.2 Load Obligations**

The Companies and the BGS-FP Supplier acknowledge that the BGS-FP Customers are within the Companies' metered boundaries and that the BGS-FP Load must be divided into MISO obligations specific to the BGS-FP Supplier based on the BGS-FP Supplier Responsibility Share.

## **7.3 Data Transmission**

### **7.3.a Energy**

The procedures for transmitting load obligation data for the BGS-FP Supplier's hourly Energy obligations shall be as set forth by the MISO.

### **7.3.b Resource Adequacy**

The procedures for transmitting load obligation data for the BGS-FP Supplier's Resource Adequacy Requirements shall be as set forth by the MISO.

### **7.3.c Capacity**

The procedures for transmitting the BGS-FP Supplier Responsibility Share data to be used by the MISO to determine the BGS-FP Supplier's Capacity obligations shall be as set forth by the MISO.

### **7.3.d ARR and FTRs**

The procedures for transmitting the data regarding the allocation of ARRs and FTRs to the BGS-FP Suppliers shall be as set forth by the MISO.

## **7.4 Energy Scheduling**

The Companies will not provide load forecasting services. The BGS-FP Supplier shall schedule Energy resources to meet its obligations with the MISO as provided for in the MISO Agreements. The Energy obligations for the BGS-FP Supplier will be determined based on the

BGS-FP Supplier Responsibility Share. The total preliminary BGS-FP Energy obligation will be equal to the difference between the preliminary total Energy obligations for the Companies' Service Territories reduced by the sum of: (i) the preliminary wholesale load, (ii) the preliminary total Energy obligations of the Retail Electric Suppliers active in the Service Territories, and (iii) the preliminary total Energy obligations of the suppliers serving BGS-LFP Load and BGS-LRTP Load in the Service Territories.

## **7.5 FTR Allocation and Nomination**

The process for allocating and nominating ARRs and FTRs is set forth in Section 2.1.c(vi).

# **ARTICLE 8. THE ENERGY SETTLEMENT/RECONCILIATION PROCESS**

## **8.1 Energy Settlement by the MISO**

MISO will conduct the settlement process to reflect the BGS-FP Supplier's actual Energy obligations in a supply/usage reconciliation process. The Energy obligations for the BGS-FP Supplier will be determined based on the BGS-FP Supplier Responsibility Share. The reconciled total BGS-FP Energy obligation will be equal to the difference between the reconciled total Energy obligations for the Service Territories reduced by the sum of: (i) the wholesale load, (ii) the reconciled total Energy obligations of the Retail Electric Suppliers active in the Service Territories, and (iii) the reconciled total Energy obligations of the suppliers serving BGS-LFP Load and BGS-LRTP Load in the Service Territories. Any adjustments for billing and metering errors reported subsequent to the calculation of FPEA will be proportionally allocated by the Companies to the BGS-FP Suppliers.

## **8.2 Energy Settlement by the Companies**

In the event that actual BGS-FP Customer consumption data is not available until after the MISO deadline for conducting the final settlement, the Companies will conduct the settlement process with the BGS-FP Supplier. Should the MISO impose penalties against a Company as a result of the BGS-FP Supplier's transactions and/or failure to meet the MISO requirements, such penalties shall be passed through by the Companies, to the BGS-FP Supplier as part of this settlement process, in addition to such other charges as provided for in this Agreement.

## ARTICLE 9. BILLING AND PAYMENT

### 9.1 Billing Period

Except as provided in this Section 9.1, a Billing Period shall be each calendar month during the Delivery Period. If at any time during the Delivery Period, the applicable rating of any ~~two (2) of the Companies~~ Company is below the Minimum Rating, as determined in accordance with Section 6.4, (i) the Billing Period applicable to ~~the Companies (all three collectively)~~ shall be shortened in accordance with a mutually agreed upon that Company only shall be shortened to be each calendar half-month during the Delivery Period; (ii) a Statement will be prepared and sent to the BGS-FP Supplier promptly at each half-month; and (iii) payment will be made on the first Business Day after the ninth (9<sup>th</sup>) day after the end of each half-month period. Alternatively, the Companies and the BGS-FP Supplier may agree upon a schedule. The shortened Billing Period applicable to ~~the Companies~~ such Company shall be in effect only for so long as the applicable rating for ~~any two (2) of the Companies~~ that Company is below the Minimum Rating.

### 9.2 Payment Obligations

The Companies shall pay all amounts due to the BGS-FP Supplier hereunder, and the BGS-FP Supplier shall pay all amounts due to the Companies hereunder, in accordance with the following provisions:

(i) Each Billing Period, the Companies will prepare a Statement of amounts due to the BGS-FP Supplier by the Companies collectively.

(ii) The Statement shall include line items applicable to the Billing Period in question for, inter alia: (a) the quantity of Energy of BGS-FP Supply provided during the Billing Period, (b) the BGS-FP Supply Charge, (c) the Ancillary Services Costs, and (d) the MISO Invoice Reimbursement Amounts.

(a) The Statement shall also include: (i) a line item for the Intermediate Energy Adjustment Amount for any prior Billing Period for which all IPEA data has become available since the issuance of the prior Statement and (i) a line item for the Final Energy Adjustment Amount for any prior Billing Period for which all FPEA data has become available since the issuance of the prior Statement.

(b) A negative Intermediate Energy Adjustment Amount or Final Energy Adjustment Amount shall serve as an offset against charges to be paid by the Companies to the BGS-FP Supplier.

(c) The Ancillary Services Costs and the MISO Invoice Reimbursement Amounts shall serve as offsets against charges to be paid by the Companies to the BGS-FP Supplier.

(d) The first Statement shall also include a line item for the entire amount of the Auction and Administration Fee, which shall serve as an offset against charges to be paid by the Companies to the BGS-FP Supplier.

(iii) The Statement will be sent to BGS-FP Supplier within eight (8) Business Days after the end of the Billing Period via overnight mail or other expeditious means.

(iv) If the Statement shows a net amount owed by the Companies to the BGS-FP Supplier, the Companies shall pay such amount, unless disputed, by the first Business Day after the 19<sup>th</sup> day succeeding the Billing Period. If the Statement shows a net amount owed by the BGS-FP Supplier to the Companies, the BGS-FP Supplier shall pay such amount, unless disputed, by the first Business Day after the 19<sup>th</sup> day succeeding the Billing Period.

(v) Payments shall be subject to adjustment for any arithmetic errors, computation errors, meter reading errors, or other errors, provided that the errors become known within one (1) year of the Termination Date.

(vi) All payments of funds shall be made by electronic transfer to a bank designated by the recipient of such funds.

(vii) If payment is made by a Party after the due date shown on the Statement, a late fee will be added to the unpaid balance until the entire Statement is paid. This late fee will be calculated at the prime rate commercial borrowers are charged by J.P. Morgan Chase or its successor.

### **9.3 Billing Disputes**

(i) If a good faith dispute arises between the Companies and the BGS-FP Supplier regarding a Statement, the disputing Party shall be obligated to pay only the undisputed portion

of the Statement provided that the disputing Party: (a) presents the dispute in writing to the non-disputing Party within five (5) Business Days from the date payment on the Statement was otherwise due, accompanied by a brief explanation of the source of the dispute; and (b) submits documentation supporting the dispute to the non-disputing Party within thirty (30) calendar days from the date payment on the Statement was otherwise due.

(ii) Except as provided in Section 9.2(v) for correction of errors, a Party may dispute a Statement in good faith at any time within one (1) year after the date the Statement in dispute is issued, even if such Party has already paid amounts shown on such Statement in full. Except as provided in Section 9.2(v), a Statements shall become final, and not subject to dispute, on the date (1) year from the date such Statement is issued unless a Party: (a) presents the dispute in writing to the non-disputing Party accompanied by a brief explanation of the source of the dispute; and (b) submits documentation supporting the dispute to the non-disputing Party within thirty (30) calendar days thereafter.

#### **9.4 Billing for BGS-FP Supplier's Obligations to Other Parties**

The Companies shall have no responsibility for billing between: the BGS-FP Supplier and the MISO; the BGS-FP Supplier and any Energy or Capacity source; or the BGS-FP Supplier and any other third party.

### **ARTICLE 10. SYSTEM OPERATION**

#### **10.1 Disconnection and Curtailment by the Companies**

The Companies shall have the right, without incurring any liability to the BGS-FP Supplier, to disconnect (or otherwise curtail, interrupt or reduce deliveries from) the BGS-FP Supplier or to disconnect (or otherwise curtail, interrupt or reduce deliveries to) any Customer whenever the Companies determine in the exercise of their good faith discretion, or when a Company is directed by the MISO (directly or indirectly), that such a disconnection, curtailment, interruption or reduction is necessary to facilitate construction, installation, maintenance, repair, replacement or inspection of any of a Company's facilities; or due to any other reason affecting the safe and reliable operation of a Company's or a Customer's facilities, including Emergencies, forced outages or potential overloading of a Company's transmission and/or distribution circuits, potential damage to any Customer's facilities or any risk of injury to persons.

The Companies shall have the right to implement the MISO load response programs and emergency energy programs.

## 10.2 Inadvertent Loss of Service to BGS-FP Customers

The Parties agree and acknowledge that service to BGS-FP Customers may be inadvertently lost due to storms, weather, accidents, breakage of equipment or other events beyond the reasonable control of the Companies affecting the transmission and distribution of the Companies. Neither Party will have any liability to the other Party for the occurrence of such events except for the Companies' obligation to pursue steps for the resumption of the disrupted service as set forth in Section 10.3. In no event will an inadvertent loss of service affect a Party's obligation to make any payments then due or becoming due with respect to performance rendered prior to such inadvertent loss of service.

## 10.3 Good Faith Efforts

The Companies shall use good faith efforts to: (i) minimize any curtailment, interruption or reduction to the extent practicable under the circumstances; (ii) provide the BGS-FP Supplier with prior notification of any curtailment, interruption or reduction, to the extent practicable; and (iii) resume service as promptly as practicable.

## 10.4 MISO Requirements

~~The BGS-FP Supplier~~ Each party acknowledges and agrees that, as a ~~members~~ member of the MISO (directly or indirectly), the ~~Companies~~ other Parties are bound by all MISO operating instructions, policies and procedures as are currently set forth in the MISO Operating Manual, which are available through the Internet on the MISO Home Page (<http://www.midwestiso.org>), as may be revised from time to time, which are needed to maintain the integrity of the MISO system. ~~The BGS-FP Supplier~~ Each Party acknowledges and agrees that it will cooperate with the ~~Companies~~ other Parties so that ~~the Companies~~ such other Parties will be in compliance with all MISO Emergency Operations Procedures, which include, but are not limited to, those procedures pertaining to minimum and maximum generation Emergencies, and measures requiring involuntary Customer participation, such as supply voltage reduction or full interruption of Customer load by either manual or automatic means.

## **10.5 Compliance with Governmental Directives**

The BGS-FP Supplier ~~also~~ acknowledges and agrees that the Companies may need to act in response to governmental or civil authority directives which may affect BGS-FP Customer load. ~~The BGS-FP Supplier~~ Each Party agrees to cooperate with the ~~Companies~~ other Parties in order to comply with said directives.

## **ARTICLE 11. DISPUTE RESOLUTION**

### **11.1 Informal Resolution of Disputes**

The Companies and the BGS-FP Supplier shall use good faith and reasonable commercial efforts, for at least 30 days, to informally resolve all disputes arising out of the implementation of this Agreement. The BGS-FP Supplier's point of contact for all information, operations, and questions shall be \_\_\_\_\_, or its successor, and the Auction Website. Any dispute between the Companies and the BGS-FP Supplier under this Agreement may be referred to a designated senior representative of each of the Parties for resolution on an informal basis as promptly as practicable.

### **11.2 Recourse to Agencies or Courts of Competent Jurisdiction**

Nothing in this Agreement shall restrict the rights of either Party to file, at any time, a complaint with the FERC under relevant provisions of the Federal Power Act ("FPA"), with the ICC under relevant provisions of the Applicable Legal Authorities, with an Illinois state court of competent jurisdiction, or with a federal court of competent jurisdiction situated in the State of Illinois. The Parties' agreement hereunder is without prejudice to any Parties' right to contest the jurisdiction of the agency or court to which a complaint is brought or the appropriateness of such forum.

## **ARTICLE 12. REGULATORY AUTHORIZATIONS AND JURISDICTION**

### **12.1 Compliance with Applicable Legal Authorities**

The Companies and the BGS-FP Supplier are subject to, and shall comply with, all existing or future federal, state and local laws, all existing or future duly promulgated orders or other duly-authorized actions of the MISO or of Applicable Legal Authorities, to the extent such laws, orders, or actions affect a Party's performance under this Agreement.

## 12.2 FERC Jurisdictional Matters

The inclusion herein of descriptions of procedures or processes utilized by the MISO or otherwise subject to the jurisdiction of FERC is intended solely for informational purposes. If anything stated herein is found by the FERC to conflict with or be inconsistent with any provision of the FPA, or any rule, regulation, order or determination of the FERC under the FPA, or if any existing procedures or processes utilized by the MISO are duly modified, the applicable FERC rule, regulation, order, determination or modification shall control.

## ARTICLE 13. LIMITATION OF LIABILITY

### 13.1 Limitations on Liability

Except to the extent expressly set forth in this Agreement, the BGS-FP Supplier shall be liable to the Companies, and vice versa, for direct damages incurred as a result of such Party's failure to comply with this Agreement and no Party shall have any liability to the other Party for consequential, indirect, special or punitive damages, including lost profits or lost revenues, arising out of such Party's failure to comply with its obligations under this Agreement. Notwithstanding anything to the contrary in this Agreement, this Agreement does not impose on the BGS-FP Supplier any obligation towards or liability to any Other BGS Supplier.

### 13.2 Risk of Loss and Changes in Market Rules and Conditions

Until the BGS-FP Supply is delivered to the Companies at the Delivery Points, the BGS-FP Supplier shall bear all risk of loss associated with the procurement and delivery of BGS-FP Supply. Title to and risk of loss related to BGS-FP Supply shall transfer from the BGS-FP Supplier to the Companies at the Delivery Points. The BGS-FP Supplier warrants that it will deliver to the Companies BGS-FP Supply free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Delivery Points.

The Companies will bear the risk of any changes in the charges and requirements associated with delivery service and Network Integration Transmission Service. The BGS-FP Supplier will bear the risk of all other changes in market rules or conditions, whatever the cause or source of those changes, that result in the imposition of new, additional or increased charges, services or products being required in order to effect the delivery of BGS-FP Supply, ~~whether~~

~~those changes occur before~~ to the Delivery Points. Subject to the provisions of Section 15.14, should any such charges, services, responsibilities or products be imposed on or allocated to the Companies by any Applicable Legal Authority, the Companies shall allocate or assign such charges, services or products to the BGS-FP Supplier, and the BGS-FP Supplier agrees to accept such allocation or assignment.

## ARTICLE 14. INDEMNIFICATION

### 14.1 Indemnification

(i) Should a Company or the Companies become the defendant in, or obligor for, any third party's claims and/or liabilities for losses, penalties, expenses, damage to property, injury to or death of any person including a Party's employees or any third parties, including, without limitation, damages as provided in Section 16-125 of the Illinois Public Utilities Act and implementing rules, that were caused by or occur in connection with an act or omission of the BGS-FP Supplier with respect to performance of an obligation arising under or in connection with this Agreement, or for which the BGS-FP Supplier has otherwise assumed liability under the terms of this Agreement, the BGS-FP Supplier shall defend (at the Companies' option), indemnify and hold harmless the Companies, their shareholders, board members, directors, officers and employees and agents, from and against any and all such third party claims and/or liabilities, except to the extent that a court of competent jurisdiction determines that the losses, penalties, expenses or damages were caused wholly or in part by the gross negligence or willful misconduct of a Company. The Companies may, at their own expense, retain counsel and participate in the defense of any such suit or action.

(ii) Should the BGS-FP Supplier become the defendant in, or obligor for, any third party's claims and/or liabilities for losses, penalties, expenses, damage to property, injury to or death of any person including a Party's employees or any third parties, that were caused by or occur in connection with an act or omission of a Company with respect to performance of an obligation arising under or in connection with this Agreement, or for which a Company has otherwise assumed liability under the terms of this Agreement, such Company shall defend (at the option of the BGS-FP Supplier), indemnify and hold harmless the BGS-FP Supplier, its shareholders, board members, directors, officers and employees and agents, from and against any and all such third party claims and/or liabilities, except to the extent that a court of competent jurisdiction determines that the losses, penalties, expenses or damages were caused

wholly or in part by the gross negligence or willful misconduct of the BGS-FP Supplier. The BGS-FP Supplier may, at its own expense, retain counsel and participate in the defense of any such suit or action.

#### **14.2 Survives Agreement**

The obligation of a Party to defend, indemnify, and hold harmless another Party under this Article 14 shall survive termination of this Agreement.

### **ARTICLE 15. MISCELLANEOUS PROVISIONS**

#### **15.1 Notices**

Unless otherwise stated herein, all notices, demands or requests required or permitted under this Agreement shall be in writing and shall be personally delivered or sent by overnight express mail, courier service or facsimile transmission (with the original transmitted by any of the other aforementioned delivery methods) addressed as follows:

If to the BGS-FP Supplier, as set forth on Appendix A hereto.

If to the Companies, to:

With a copy to:

or to such other person at such other address as a Party shall designate by like notice to the other Party. Notice shall be effective when received. Notice received after the close of the Business Day shall be deemed received on the next Business Day; provided, however, that notice by facsimile transmission shall be deemed to have been received by the recipient if the recipient confirms receipt telephonically or in writing.

#### **15.2 No Prejudice of Rights**

The failure of a Party to insist on any one or more instances upon strict performance of any provisions of this Agreement, or to take advantage of any of its rights hereunder, shall not

be construed as a waiver of any such provisions or the relinquishment of any such right or any other right hereunder, which shall remain in full force and effect. No term or condition of this Agreement shall be deemed to have been waived and no breach excused unless such waiver or consent to excuse is in writing and signed by the Party claimed to have waived or consented to excuse.

### **15.3 Assignment**

Parties shall not assign any of their rights or obligations under this Agreement without obtaining (a) any necessary regulatory approval(s) and (b) the prior written consent of the non-assigning Party, which consent shall not be unreasonably withheld; provided, however, that the Companies agree that they shall grant their consent to a proposed assignment by the BGS-FP Supplier if the proposed assignee meets all of the Companies' creditworthiness requirements then in effect under Article 6. No assignment of this Agreement shall relieve the assigning Party of any of its obligations under this Agreement until such obligations have been assumed by the assignee and all necessary consents have been obtained. Any assignment in violation of this Section 15.3 shall be void; provided, however, a Company may assign any or all of its rights and obligations under this Agreement, without the BGS-FP Supplier's consent, to any entity succeeding to all or substantially all of the assets of such Company, if such assignee agrees, in writing, to be bound by all of the terms and conditions and all necessary regulatory approvals are obtained. The BGS-FP Supplier may, with prior written notice to the Companies but without obtaining the approval of the Companies, assign the accounts, revenues or proceeds under this Agreement to a third party. The Companies agree that, following receipt of such notice of the assignment of accounts, revenues or proceeds and such other documentation that the Companies may reasonably request, the Companies will pay amounts becoming due to the BGS-FP Supplier under this Agreement directly to the designated assignee; provided, however, that nothing herein shall enlarge or expand the rights of such designated assignee beyond the rights granted to the BGS-FP Supplier and the right of such designated assignee to receive payments shall be subject to all defenses, offsets and claims of the Companies arising under this Agreement. The Companies further agree that, in the event necessary regulatory approvals to effectuate an assignment have been sought in good faith but that action by the regulatory body is pending, the Companies shall accept the performance of the proposed assignee as a Party to this Agreement, as co-obligor with the BGS-FP Supplier proposing to assign its interest, until such approvals are obtained; provided, however, that, in the event the regulatory body declines to grant its approval (or, in the discretion of the Companies, in the event the application

seeking approval is still pending without action by the regulatory body after ninety (90) days), the request for approval of the assignment shall be deemed to have been rejected for good reason.

#### **15.4 Governing Law and Venue**

To the extent not subject to the jurisdiction of the FERC, questions, including those concerning the formation, validity, interpretation, execution, amendment, termination and construction of this Agreement, shall be governed by the laws of the State of Illinois, without regard to principles of conflicts of law. Any lawsuit arising in connection with this Agreement shall be brought before the FERC, the ICC, or in the State or federal courts of Illinois.

#### **15.5 Headings**

The headings and subheadings contained in this Agreement are used solely for convenience and do not constitute a part of the Agreement between the Parties hereunto, nor should they be used to aid in any manner in the construction of this Agreement.

#### **15.6 No Presumption of Construction For or Against Any Party**

The Parties have each been represented by counsel of their choosing in connection with entering into this Agreement. Any rule of construction or interpretation requiring this Agreement to be construed or interpreted for or against any Party shall not apply to the construction or interpretation of this Agreement.

#### **15.7 Presumption of LMP Market**

This Agreement has been drafted with the presumption that, during the Delivery Period, there will exist a real-time LMP Market encompassing the Delivery Points. In the event such an LMP Market fails to exist during the Delivery Period, the Parties will revise this Agreement in an effort to provide for its effective implementation and application, without altering the balance of risks, rewards, and costs currently set forth in this Agreement.

#### **15.8 Changes in Rules or Tariffs**

In the event of a material change during the Term of any rules or tariffs affecting any Parties' obligations under this Agreement, from the state of such rules or tariffs on the Effective

Date, the Parties' obligations under this Agreement shall change as well in a manner in keeping with the balance of risks, rewards, and costs currently set forth in this Agreement including, above all, the principle that the BGS-FP Supplier bears the risk of changes related to the delivery of BGS-FP Supply to the Delivery Points and the Companies bear the risk of changes related to the delivery of BGS-FP Supply from the Delivery Points to BGS-FP Customers. If deemed necessary by any Party, the Parties shall revise this Agreement to reflect such change(s).

### **15.9 Entire Agreement**

This Agreement supersedes all previous representations, understandings, negotiations and agreements either written or oral between the Parties hereto or their representatives with respect to the subject matter and constitutes the entire agreement of the Parties with respect to the subject matter.

### **15.10 Exhibits**

Appendices A through G referred to herein and attached hereto are made a part of this Agreement for all purposes.

### **15.11 Third Party Beneficiaries**

This Agreement is intended solely for the benefit of the Parties. Nothing in this Agreement shall be construed to create any duty, or standard of care with reference to, or any liability to, any person not a Party to this Agreement.

### **15.12 Successors and Assignees**

This Agreement shall inure to the benefit of and be binding upon the successors and permitted assignees of the Parties.

### **15.13 General Miscellaneous Provisions**

(i) This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between the Parties, or to impose any partnership or other fiduciary obligation or liability upon any Party. No Party shall have any right, power, or

authority to enter into any agreement or undertaking for, or on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the any other Party.

(ii) The Companies shall not be jointly or severally liable to the BGS-FP Supplier.

(iii) Cancellation, expiration or Early Termination of this Agreement shall not terminate the rights, liabilities and obligations of the Parties that by their nature survive such cancellation, expiration or termination, including those set forth in Articles 3 through 6, 8 through 9, 11 and 13 through 15, such as warranties, remedies (including rights of set-off), promises of indemnity, rights and powers of the Non-Defaulting Party in the event of bankruptcy of the Defaulting Party, ability to call on security and confidentiality.

(iv) Should any provision of this Agreement be held invalid or unenforceable, such provision shall be invalid or unenforceable only to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable any other provision of this Agreement unless such invalidity or unenforceability materially changes the balance of risks, rewards, and costs agreed to by the parties as set forth in this Agreement in which case this Agreement shall be deemed null and void ab initio.

(v) Each of the Parties acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms.

(vi) This Agreement is intended by the Parties as a final expression of their agreement.

(vii) It is the intention at the inception and throughout the Term that the fulfillment of the BGS-FP Supplier's obligation under Section 2.1.b(i) will result in physical delivery of BGS-FP Supply and not financial settlement.

(viii) The quantity of BGS-FP Supply that it must deliver and that the Companies must accept for delivery will be determined by the requirements of the BGS-FP Load, and, as such, this Agreement does not provide for an option by any Party with respect to the quantity of BGS-FP Supply to be delivered or received during performance of the Agreement.

## 15.14 Taxes

[\(i\)](#) The BGS-FP Supplier shall pay or cause to be paid all taxes imposed by any government authority (“Governmental Charges”) on or with respect to the BGS-FP Supply arising prior to the Delivery Points. The Companies shall pay or cause to be paid all Governmental Charges on or with respect to the BGS-FP Supply at and from the Delivery Points (other than any taxes, including but not limited to franchise, income, value-added or gross receipts taxes, if any, which are imposed on or related to the sale, at wholesale, of the BGS-FP Supply and are, therefore, the responsibility of the BGS-FP Supplier).

[\(ii\)](#) In the event the BGS-FP Supplier is required by law or regulation to remit or pay Governmental Charges that are the Companies’ responsibility hereunder, the Companies shall promptly reimburse the BGS-FP Supplier for such Governmental Charges. If the Companies are required by law or regulation to remit or pay Governmental Charges that are the BGS-FP Supplier’s responsibility hereunder, the Companies may deduct the amount of any such Governmental Charges from the sums due to the BGS-FP Supplier under Article 9.

[\(iii\)](#) Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the law.

[\(iv\)](#) Upon written notice of the BGS-FP Supplier to the Companies as provided in Section 15.1, the Companies shall provide to the BGS-FP Supplier, within ten (10) business days or as soon as reasonably possible thereafter, a copy of any applicable valid tax exemption certificates. Upon written notice of one or more Companies to the BGS-FP Supplier as provided in Section 15.1, the BGS-FP Supplier shall provide to the Companies, within ten (10) business days or as soon as reasonably possible thereafter, a copy of any applicable valid tax exemption certificates.

## 15.15 Registered Agent

The BGS-FP Supplier and any Guarantor shall maintain a registered agent for service of process in the State of Illinois.

## 15.16 Binding Terms

This Agreement and the rates, terms and conditions herein shall remain in effect for the entire Term. Absent the agreement of the Companies and the BGS-FP Supplier to a proposed

change to this Agreement, the Parties agree that the standard of review for any change to this Agreement, whether proposed by a Party, a non-party, the ICC or FERC acting sua sponte, will be the “public interest” standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956).

#### **15.17 Amendment**

Unless ordered by FERC, this Agreement, including the appendices hereto, cannot be amended without the written agreement of all Parties and the approval of the FERC, if necessary, prior to such amendment becoming effective.

#### **15.18 Counterparts**

This Agreement may be executed in counterparts, each of which will be considered an original, but all of which shall constitute one instrument.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first set forth above.

ATTEST:

**Central Illinois Light Company d/b/a AmerenCILCO**

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

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

**Central Illinois Public Service Company d/b/a AmerenCIPS**

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

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

**Illinois Power Company d/b/a AmerenIP**

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

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

**[BGS-FP Supplier]**

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

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

**APPENDIX A – BGS-FP SUPPLIER**

**[BGS-FP SUPPLIER NAME]**

<b>Anticipated Delivery Period (as indicated)</b>	<b>Number of Tranches</b>	<b>BGS-FP Supplier Responsibility Share</b>	<b>Auction Price</b>
January 1, 2007 through <input type="checkbox"/> May 31, 2008 <input type="checkbox"/> May 31, 2009 <input type="checkbox"/> May 31, 2010			

The address for any notice to the above-referenced BGS-FP Supplier provided pursuant to Sections 6.7 and 15.1 of the BGS-FP Supplier Forward Contract shall be the following:

For Credit Related Issues, Section 6.7:

For Notices, Section 15.1:

## **APPENDIX B – SEASONAL BILLING FACTOR**

The Seasonal Billing Factor is as follows:

June through September: \_\_\_\_\_

October through May: \_\_\_\_\_

**APPENDIX C – MISO CHARGES FOR WHICH COMPANIES ARE ULTIMATELY  
RESPONSIBLE**

Schedule 7: Long-Term Firm and Short-Term Firm Point-To-Point Transmission Service

Schedule 8: Non-Firm Point-To-Point Transmission Service

Schedule 9: Network Integration Transmission Service

Schedule 10: ISO Cost Recovery Adder

Schedule 11: Wholesale Distribution Service

Schedule 12: Gross Receipts Tax Adder

## APPENDIX D – MTM EXPOSURE AMOUNT CALCULATION INFORMATION

Each Business Day during the Term, the Companies shall calculate the MtM Exposure Amount which shall be equal to the sum over the Delivery Period of the difference between the Forward Market Prices for Energy deliverable to the MISO Illinois Hub or MISO Cinergy Hub during remaining months of the Term and the Forward Market Prices for comparable Energy as of the Auction Date multiplied by the forecast load for each month as described in detail in this Appendix D.

If the calculation of the Mark-to-Market Exposure Amount results in a negative number, the Mark-to-Market Exposure Amount shall be zero (0).

The total MTM that will be used to calculate the MTM exposure amount will be equal to the sum of the MTM for each remaining billing month times 1.1.

Table 1 contains Forward Market Prices for all months of the Delivery Period of this and other BGS-FP Agreements as of the Auction Date. Only those Forward Market Prices for months included in the Delivery Period will be used to calculate the MtM Exposure Amount for the BGS-FP Supplier. The Forward Market Prices contained in Table 1 are based on the following methodology:

1. For each month, if the Companies were able to obtain Liquid MISO Illinois Hub Quotes for at least four (4) data points (bid and offer prices from at least two ~~brokers~~[Brokers](#) or published indices) required to complete the table for such month, the Companies included such Liquid MISO Illinois Hub Quotes in the table, otherwise, the Companies used Liquid MISO Cinergy Hub Adjusted Quotes for the data points, if available, or, if not available, Liquid Other Hub Adjusted Quotes for the data points. If Liquid Quotes for at least four (4) data points were not available for a particular month, the Companies set the initial Forward Market Price based on a proprietary method that utilized industry best practices. Such indicative pricing utilizing this methodology was provided to interested parties at least 14 days prior to the Auction.
2. For a given data point, the Companies used Liquid Quotes either specific to that month, a two (2) month block including that month, a seasonal block including that month, a quarterly block including that month, or an annual strip including

that month, in that order of preference based on availability of a Liquid Quote. If the Companies were unable to obtain a Liquid Quote specific to that month, but could “back out” a monthly quote proxy from a two-month, seasonal, quarterly, or annual Liquid Quote that included the month at issue, based on the weighted average of On-Peak hours for the relevant month against the On-Peak hours for other months where pricing is available, the “backed out” price was be utilized.

Table 2 contains data comparable to that shown in Table 1 as of the Effective Date. This data was developed initially on the first Business Day following the Auction Date, and updated each Business Day thereafter, using the same methodology for selecting Liquid Quotes used for the data in Table 1, with the following addition:

3. If Liquid Quotes for four (4) data points for a given month were not available on a given Business Day (the “Current Day”), the Forward Market Prices for these months were determined through a methodology that: (i) looked to the average change in Forward Market Prices between the prior Business Day (the “Prior Business Day”) and the Current Day for those months during the Delivery Period for which there existed Liquid Quotes for at least four (4) data points and (ii) applied a similar change to the month for which four (4) Liquid Quotes were not available.

The following is an example for the month of March 2008:

- a. Average Prior Business Day price for months with quotations on the current day = \$50
- b. Average Current Day price for same months with quotations = \$51
- c. Average change for all months with available quotations on both days = +2%
- d. Therefore, adjustment of +2% to March 2008 Forward Market Price made between Table 2 for Prior Business Day and the Current Day.

The Companies will update the data in Table 2 each Business Day throughout the Term to reflect changes in Forward Market Prices. Such updated data will be provided to the BGS-FP Supplier upon request.

Table 3 contains historical data on the ratio of On-Peak to Off-Peak energy prices at the MISO Illinois Hub.

Table 4 contains historical data reflecting the basis between the MISO Cinergy Hub and the MISO Illinois Hub.

Table 5 contains the forecast BGS-FP Load (in MWh per Tranche) for each month during the Delivery Period, divided into On-Peak and Off-Peak components. The Companies will update these data on a monthly basis throughout the Term.

The Companies will, each Business Day throughout the Term, recalculate the MtM Exposure Amount based on the data in Tables 1 and 3 and, as revised throughout the Term, the data reflected in Tables 2, 4 and 5. Table 6 demonstrates the calculations that will be used to calculate the MtM Exposure Amount in this manner, based on the data contained in Table 2 as shown in this Agreement. The MtM Exposure Amount is equal to 1.1 times the sum of the MtM exposures for each month remaining in the Term.

**TABLE 1 – INITIAL ON-PEAK “MARK” DATA**

**Broker/Published Index Sheets (Quotes from Auction Date)**

Broker Bid/Offer	Broker/Published Index 1		Broker/Published Index 2		Broker/Published Index 3		Simple Average
	Bid	Offer	Bid	Offer	Bid	Offer	
Jan-2007							
Feb-2007							
Mar-2007							
Apr-2007							
May-2007							
Jun-2007							
Jul-2007							
Aug-2007							
Sep-2007							
Oct-2007							
Nov-2007							
Dec-2007							
Jan-2008							
Feb-2008							
Mar-2008							
Apr-2008							
May-2008							
Jun-2008							
Jul-2008							
Aug-2008							
Sep-2008							
Oct-2008							
Nov-2008							
Dec-2008							
Jan-2009							
Feb-2009							
Mar-2009							
Apr-2009							
May-2009							
Jun-2009							
Jul-2009							
Aug-2009							
Sep-2009							
Oct-2009							
Nov-2009							
Dec-2009							
Jan-2010							
Feb-2010							
Mar-2010							
Apr-2010							
May-2010							

**TABLE 2 – CURRENT ON-PEAK DATA**

**Broker/Published Index Sheets (Quotes from Effective Date)**

Broker	Broker/Published Index 1		Broker/Published Index 2		Broker/Published Index 3		Simple Average
	Bid	Offer	Bid	Offer	Bid	Offer	
Jan-2007							
Feb-2007							
Mar-2007							
Apr-2007							
May-2007							
Jun-2007							
Jul-2007							
Aug-2007							
Sep-2007							
Oct-2007							
Nov-2007							
Dec-2007							
Jan-2008							
Feb-2008							
Mar-2008							
Apr-2008							
May-2008							
Jun-2008							
Jul-2008							
Aug-2008							
Sep-2008							
Oct-2008							
Nov-2008							
Dec-2008							
Jan-2009							
Feb-2009							
Mar-2009							
Apr-2009							
May-2009							
Jun-2009							
Jul-2009							
Aug-2009							
Sep-2009							
Oct-2009							
Nov-2009							
Dec-2009							
Jan-2010							
Feb-2010							
Mar-2010							
Apr-2010							
May-2010							

**TABLE 3 – HISTORICAL RATIO OF OFF-PEAK TO ON-PEAK PRICES**

<b>Month</b>	<b>Historical On-Peak Average Price</b>	<b>Historical Ratio of Off-Peak to On-Peak Price</b>
January		
February		
March		
April		
May		
June		
July		
August		
September		
October		
November		
December		

**TABLE 4 – HISTORICAL BASIS OF MISO CINERGY HUB TO MISO ILLINOIS HUB**

<b>Month</b>	<b>Historical On-Peak MISO Cinergy Average Price</b>	<b>Historical On-Peak MISO Illinois Average Price</b>	<b>Difference in On-Peak Price (Basis)</b>
January			
February			
March			
April			
May			
June			
July			
August			
September			
October			
November			
December			

**TABLE 5 – FORECAST LOAD VOLUMES (MWH/TRANCHE)**

<b>Month</b>	<b>On-Peak</b>	<b>Off-Peak</b>
Jan-2007		
Feb-2007		
Mar-2007		
Apr-2007		
May-2007		
Jun-2007		
Jul-2007		
Aug-2007		
Sep-2007		
Oct-2007		
Nov-2007		
Dec-2007		
Jan-2008		
Feb-2008		
Mar-2008		
Apr-2008		
May-2008		
Jun-2008		
Jul-2008		
Aug-2008		
Sep-2008		
Oct-2008		
Nov-2008		
Dec-2008		
Jan-2009		
Feb-2009		
Mar-2009		
Apr-2009		
May-2009		
Jun-2009		
Jul-2009		
Aug-2009		
Sep-2009		
Oct-2009		
Nov-2009		
Dec-2009		
Jan-2010		
Feb-2010		
Mar-2010		
Apr-2010		
May-2010		

**TABLE 6 – MTM EXPOSURE AMOUNT CALCULATION BASED ON DATA ON EFFECTIVE DATE**  
**(Applicable to Agreement with 41-Month Term)**

	On-Peak Load (MWh/Tranche)	Off-Peak Load (MWh/Tranche)	“Mark” On-Peak Price	Current On-Peak Price	Change in On-Peak Price	“Mark” Off-Peak Price <sup>1</sup>	Current Off-Peak Price <sup>2</sup>	Change in Off-Peak Price	MtM per Tranche
	Table 4	Table 4	Table 1	Table 2					
	(A)	(B)	(C)	(D)	$E = D - C$	(F)	(G)	$H = G - F$	$(A * E) + (B * H)$
Jan-2007									
Feb-2007									
Mar-2007									
Apr-2007									
May-2007									
Jun-2007									
Jul-2007									
Aug-2007									
Sep-2007									
Oct-2007									
Nov-2007									
Dec-2007									
Jan-2008									
Feb-2008									
Mar-2008									
Apr-2008									
May-2008									
Jun-2008									
Jul-2008									
Aug-2008									
Sep-2008									
Oct-2008									

<sup>1</sup> “Mark” On-Peak price multiplied by ratio of off-peak price to on-peak prices.

<sup>2</sup> Current On-Peak price multiplied by ratio of off-peak price to on-peak prices.

	On-Peak Load (MWh/Tranche) Table 4 (A)	Off-Peak Load (MWh/Tranche) Table 4 (B)	"Mark" On-Peak Price Table 1 (C)	Current On-Peak Price Table 2 (D)	Change in On-Peak Price $E = D - C$	"Mark" Off-Peak Price <sup>1</sup> (F)	Current Off-Peak Price <sup>2</sup> (G)	Change in Off-Peak Price $H = G - F$	MtM per Tranche $(A * E) + (B * H)$
Nov-2008									
Dec-2008									
Jan-2009									
Feb-2009									
Mar-2009									
Apr-2009									
May-2009									
Jun-2009									
Jul-2009									
Aug-2009									
Sep-2009									
Oct-2009									
Nov-2009									
Dec-2009									
Jan-2010									
Feb-2010									
Mar-2010									
Apr-2010									
May-2010									
								Subtotal	\$
								Multiplier	1.1
								<b>Total MtM per Tranche</b>	<b>\$</b>

**APPENDIX E – SAMPLE BGS-FP LETTER OF CREDIT**

\_\_\_\_\_ (Date)

Letter of Credit No. \_\_\_\_\_

To: [One or more of the following: Central Illinois Light Company d/b/a AmerenCILCO, Central Illinois Public Service Company d/b/a AmerenCIPS, and Illinois Power Company d/b/a AmerenIP]

[address]

Attention: \_\_\_\_\_

1. We hereby establish in your favor this irrevocable transferable standby Letter of Credit (this “Letter of Credit”) in your favor for the account of \_\_\_\_\_ (including its successors and assigns, the “Applicant”), in the amount of \$\_\_\_\_\_ (the “Stated Amount”), effective immediately and available to you at sight upon demand at our counters at \_\_\_\_\_(location) and expiring 364 days after date of issuance (the “Initial Expiration Date”), unless terminated earlier in accordance with the provisions of Paragraph 7 hereof or otherwise extended in accordance with the provisions of Paragraph 8 hereof (the “Extended Expiration Date”; the latest of the Initial Expiration Date and any Extended Expiration Date being referred to herein as the “Expiration Date”).
2. This Letter of Credit is issued at the request of the Applicant, and we hereby irrevocably authorize you to draw on us, in accordance with the terms and conditions hereof, up to the Stated Amount, subject to reduction as provided in Paragraph 13 hereof. This Letter of Credit may be drawn upon an Event of Default under the BGS-FP Supplier Forward Contract(s) between the Applicant and you, dated \_\_\_\_\_, 20\_\_ (as such agreements may be amended, modified or extended from time to time).

3. A partial or full drawing hereunder may be made by you on any Business Day on or prior to the Expiration Date by delivering, by no later than 11:00 AM (New York, NY time<sup>1</sup>) on such Business Day to \_\_\_\_\_ (Bank), \_\_\_\_\_ (address), (a) a notice executed by you in the form of Annex 1 hereto, appropriately completed and duly signed by your Authorized Officer and (b) your draft in the form of Annex 2 hereto, appropriately completed and duly signed by your Authorized Officer.
4. We may, but shall not be obligated to, accept any request to issue a substitute Letter of Credit. Such request shall be made pursuant to an Availability Certificate in the form of Annex 3 hereto executed by your Authorized Officer and delivered by you to us for exchange for a new Letter of Credit in the amount set forth in such Availability Certificate, which amount shall not exceed the Stated Amount less any amounts drawn under this Letter of Credit at or before the time of submission of such Availability Certificate, and expiring on the then current Expiration Date. Upon acceptance by us of any such request to issue a substitute Letter of Credit for exchange, the new Letter of Credit shall be issued in the amount as set forth in the Availability Certificate.
5. We hereby agree to honor a drawing hereunder made in compliance with the terms and provisions of this Letter of Credit by transferring in immediately available funds the amount specified in the draft delivered to us in connection with such drawing to such account at such bank in the United States as you may specify in your draft delivered to us pursuant to Paragraph 3 hereof, by 3:00 PM (New York, NY time) on the date of such drawing, if delivery of the requisite document is made prior to 11:00 AM (New York, NY time) on a Business Day pursuant to Paragraph 3 hereof, but at the opening of business on the first Business Day next succeeding the date of such drawing if delivery of the requisite document is made on or after 11:00 AM (New York, NY time) on any Business Day pursuant to Paragraph 3 hereof.
6. If a demand for payment made by you hereunder does not, in any instance, conform to the terms and conditions of this Letter of Credit, we shall give you prompt notice (not exceeding three (3) Business Days following the date of our receipt of the documents)

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<sup>1</sup> If the issuer of the Letter of Credit is located in an area that is not in the Eastern time zone, this time and all other times in this Letter of Credit, and the definition of a Business Day should be adjusted accordingly

that the demand for payment was not effected in accordance with the terms and conditions of this Letter of Credit, stating the reasons therefor and that we will upon your instructions hold any documents at your disposal or return the same to you. Upon being notified that the demand for payment was not effected in conformity with this Letter of Credit, you may attempt to correct any such non-conforming demand for payment to the extent that you are entitled to do so, provided, however, in such event a conforming demand for payment must be timely made in accordance with the terms of this Letter of Credit.

7. This Letter of Credit shall automatically terminate and be delivered to us for cancellation on the earliest of (a) the making by you of drawings in an aggregate amount equal to the Stated Amount, (b) the date we issue a substitute Letter of Credit in exchange for this Letter of Credit in accordance with Paragraph 4 hereof, (c) the date we receive from you a Certificate of Expiration in the form of Annex 4 hereto, or (d) 5:00 PM (New York, NY time) on the Expiration Date.
8. We may, but shall not be obligated to, extend the Initial Expiration Date or any Extended Expiration Date to a later Extended Expiration Date by giving you a Notice of Extension in the form of Annex 5 hereto. Upon issuance by us of any such Notice of Extension, the Expiration Date in effect prior to the issuance of such Notice of Extension shall be extended to the later Extended Expiration Date stated in such Notice of Extension, and for all purposes of this Letter of Credit thereafter, the Expiration Date shall be the Expiration Date stated in such Notice of Extension, unless and until we have issued a subsequent Notice of Extension extending the Expiration Date to a later date.
9. As used herein:

“Authorized Officer” shall mean President, Treasurer, any Vice President or any Assistant Treasurer.

“Availability Certificate” shall mean a certificate substantially in the form of Annex 3 hereto, appropriately completed and duly signed by your Authorized Officer.

“Business Day” shall mean any day on which commercial banks are not authorized or required to close in New York, New York and any day on which payments can be effected on the Fedwire system.

10. This Letter of Credit is assignable and transferable pursuant to an instrument of assignment and transfer in the form of Annex 6 hereto, to an entity you identify to us in such instrument as your assignee, and we hereby consent to such assignment or transfer. Any and all transfer fees, expenses and costs shall be borne by the Applicant. Except as otherwise expressly stated herein, this Letter of Credit may not be amended or modified without consent from us, you, and the Applicant. This Letter of Credit is subject to and shall be governed by the International Standby Practices 1998 (International Chamber of Commerce Publication No. 590), or any successor publication thereto (the “ISP”), except to the extent that the terms hereof are inconsistent with the provisions of the ISP, in which case the terms of this Letter of Credit shall govern. This Letter of Credit shall, as to matters not governed by the ISP or matters inconsistent with the ISP, be governed and construed in accordance with New York law, without regard to principles of conflicts of law.
11. This Letter of Credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, changed, amplified or limited by reference to any document, instrument or agreement referred to herein, except for Annexes 1 through 6 hereto and the notices referred to herein; and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except as set forth above.
12. We certify that as of \_\_\_\_\_(date) our senior unsecured debt is rated “A” or better by Standard & Poor’s Rating Service.
13. Partial drawings are permitted hereunder and multiple drawings are permitted hereunder. The amount which may be drawn by you under this Letter of Credit shall be automatically reduced by the amount of any drawings paid through us referencing this Letter of Credit and the Letter of Credit Number stated above. The aggregate amount paid to you under this Letter of Credit shall not exceed the Stated Amount. Presentation of demands for drawings in amounts that exceed the amount available to be drawn hereunder shall not be deemed a failure to comply with the requirements of Paragraph 3

hereof, provided that the amounts payable on any such demand shall not exceed the amount then available to be drawn under this Letter of Credit.

14. Faxed document(s) are acceptable. Presentation by fax must be made to fax number \_\_\_\_\_ confirmed by telephone to \_\_\_\_\_.
15. In the event of an act of God, riot, civil commotion, insurrection, war, terrorism or by any strikes or lock outs, or any cause beyond our control, that interrupts our business, and causes the place for presentation of this Letter of Credit to be closed for business on the last day of presentation, the Expiration Date shall be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business, and we agree to effect payment, if this Letter of Credit is drawn against, otherwise in accordance with its terms, within such thirty (30) calendar day period.
16. This original Letter of Credit has been delivered to you as beneficiary in accordance with the Applicant's instructions. Any demands or communications in the form of the attached Annexes (except for Annex 5) or other communications directed to us under this Letter of Credit must be signed by your Authorized Officer. Acceptance or rejection of any amendments to this Letter of Credit must be signed by your Authorized Officer.

Very truly yours,

(Bank)

\_\_\_\_\_

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

**ANNEX 1 TO LETTER OF CREDIT**

DRAWING UNDER LETTER OF CREDIT NO. \_\_\_\_\_

\_\_\_\_\_, 20\_\_

To: (Bank)  
(Address)

Attention: Standby Letter of Credit Unit

Ladies and Gentlemen:

The undersigned is making a drawing under the above-referenced Letter of Credit in the amount specified below and hereby certifies to you as follows:

1. Capitalized terms used herein that are not defined herein shall have the meanings ascribed thereto in the above-referenced Letter of Credit.
2. Pursuant to Paragraph 2 of the Letter of Credit No. \_\_\_\_\_, dated \_\_\_\_\_, 20\_\_, the undersigned is entitled to make a drawing under the Letter of Credit in the amount of \$\_\_\_\_\_, inasmuch as there is an Event of Default under any BGS-FP Supplier Forward Contract(s) between the Applicant and us, to which reference is made in the Letter of Credit.
3. We acknowledge that, upon your honoring the drawing herein requested, the amount of the Letter of Credit available for drawing shall be automatically decreased by an amount equal to this drawing.

Very truly yours,

[Central Illinois Light Company d/b/a AmerenCILCO, Central Illinois Public Service Company d/b/a AmerenCIPS, and/or Illinois Power Company d/b/a AmerenIP]

By \_\_\_\_\_

Name:

Title:

Date:

cc: \_\_\_\_\_ (Applicant)

**ANNEX 2 TO LETTER OF CREDIT**

DRAWING UNDER LETTER OF CREDIT NO. \_\_\_\_\_

\_\_\_\_\_, 20\_\_

ON [Business Day immediately succeeding  
date of presentation]

PAY TO: [Central Illinois Light Company d/b/a AmerenCILCO, Central Illinois Public Service  
Company d/b/a AmerenCIPS, or Illinois Power Company d/b/a AmerenIP]

Attn:

\$ \_\_\_\_\_

For credit to the account of \_\_\_\_\_.

FOR VALUE RECEIVED AND CHARGE TO ACCOUNT OF LETTER OF CREDIT NO.  
\_\_\_\_\_ OF \_\_\_\_\_ (Bank),  
\_\_\_\_\_ (Address)

[Central Illinois Light Company d/b/a  
AmerenCILCO, Central Illinois Public Service  
Company d/b/a AmerenCIPS, and/or Illinois Power  
Company d/b/a AmerenIP]

By \_\_\_\_\_

Name:

Title:

**ANNEX 3 TO LETTER OF CREDIT**

AVAILABILITY CERTIFICATE  
UNDER LETTER OF CREDIT NO. \_\_\_\_\_

\_\_\_\_\_, 20\_\_

To: (Bank)  
(Address)

Attention: Standby Letter of Credit Unit

Ladies and Gentlemen:

Each of the undersigned hereby requests that, in exchange for the above-referenced Letter of Credit, a substitute Letter of Credit be issued in the amount of \$\_\_\_\_\_ (the "New Amount") and to expire on \_\_\_\_\_(date), but otherwise in the form of the above-referenced Letter of Credit.

Please acknowledge your agreement to issue such substitute Letter of Credit in the New Amount upon the surrender of the above-referenced Letter of Credit by signing the attached acknowledgment copy hereof and forwarding it to:

[Central Illinois Light Company d/b/a AmerenCILCO, Central Illinois Public Service Company d/b/a AmerenCIPS, and/or Illinois Power Company d/b/a AmerenIP]  
(Address)

Very truly yours,

[Central Illinois Light Company d/b/a AmerenCILCO, Central Illinois Public Service Company d/b/a AmerenCIPS, and/or Illinois Power Company d/b/a AmerenIP]

By \_\_\_\_\_

Name:

Title:

Date:

Agreed and Accepted:

(Bank)

By \_\_\_\_\_

Name:

Title:

Date:

**ANNEX 4 TO LETTER OF CREDIT**

CERTIFICATE OF EXPIRATION  
OF LETTER OF CREDIT NO. \_\_\_\_\_

\_\_\_\_\_, 20\_\_

To: (Bank)  
(Address)

Attention: Standby Letter of Credit Unit

Ladies and Gentlemen:

The undersigned hereby certifies to you that the above-referenced Letter of Credit may be cancelled without further payment. Attached hereto is the original Letter of Credit, marked cancelled.

[Central Illinois Light Company d/b/a  
AmerenCILCO, Central Illinois Public Service  
Company d/b/a AmerenCIPS, and/or Illinois Power  
Company d/b/a AmerenIP]

By \_\_\_\_\_

Name:

Title:

Date:

cc: \_\_\_\_\_ (Applicant Name)

**ANNEX 5 TO LETTER OF CREDIT**

NOTICE OF EXTENSION  
OF LETTER OF CREDIT NO. \_\_\_\_\_

\_\_\_\_\_, 20\_\_

To: [Central Illinois Light Company d/b/a AmerenCILCO, Central Illinois Public Service Company d/b/a AmerenCIPS, and/or Illinois Power Company d/b/a AmerenIP]

[Address]

Attention: \_\_\_\_\_

Re: Our Letter of Credit no. \_\_\_\_\_ presently in the amount of USD \_\_\_\_\_ issued for the account of \_\_\_\_\_ and expiring on \_\_\_\_\_.

We hereby irrevocably agree to extend the expiration date of the above-referenced Letter of Credit no. \_\_\_\_\_ to expire on \_\_\_\_\_ (date), which date, for all purposes of the above-referenced Letter of Credit, shall be the Expiration Date of the Letter of Credit from and after the issuance of this Notice of Extension, unless and until we issue a subsequent Notice of Extension extending the Expiration Date to a later date.

Very truly yours,

BANK \_\_\_\_\_

By \_\_\_\_\_

Name:

Title:

Date:

cc: \_\_\_\_\_ (Applicant Name)

**ANNEX 6 TO LETTER OF CREDIT**

NOTICE OF TRANSFER  
OF LETTER OF CREDIT NO. \_\_\_\_\_

\_\_\_\_\_, 20\_\_

To:

Bank

Bank Address

To Whom It May Concern:

Re: Credit \_\_\_\_\_

Issued by \_\_\_\_\_

Advice No \_\_\_\_\_

For value received, the undersigned beneficiary hereby irrevocably assigns and transfers to:

\_\_\_\_\_  
(Name of Transferee)

\_\_\_\_\_  
(Address)

all rights of the undersigned beneficiary to draw under the above-referenced Letter of Credit in its entirety.

By this transfer, all rights of the undersigned beneficiary in such Letter of Credit are transferred to the transferee, and the transferee shall have the sole rights as beneficiary thereof, including sole rights relating to any amendments, whether increases or extensions or other amendments and whether now existing or hereafter made. All amendments are to be advised directly to the transferee without necessity of any consent of or notice to the undersigned beneficiary.

The original Letter of Credit is returned herewith, and we ask you to endorse the transfer thereon and forward it directly to the transferee at the address indicated above with your customary notice of transfer.

Pursuant to the Letter of Credit and your agreement with the Applicant, your transfer commission and any other expenses that may be incurred by you in conjunction with this transfer are payable by the Applicant.

Very truly yours,

[Central Illinois Light Company d/b/a AmerenCILCO, Central Illinois Public Service Company d/b/a AmerenCIPS, and/or Illinois Power Company d/b/a AmerenIP]

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

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

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

The above signature with title as stated conforms to that on file with us and is authorized for the execution of said instruments.

(Name of authenticating bank)

\_\_\_\_\_

(Authorized signature of authenticating party)

Name

Title

## APPENDIX F – SAMPLE GUARANTY

THIS GUARANTY (this “Guaranty”), dated as of \_\_\_\_\_, 20\_\_, is made by \_\_\_\_\_ (the “Guarantor”), a \_\_\_\_\_ organized and existing under the laws of \_\_\_\_\_, in favor of Central Illinois Light Company d/b/a AmerenCILCO, Central Illinois Public Service Company d/b/a AmerenCIPS, and/or Illinois Power Company d/b/a AmerenIP (each a “Guaranteed Party” and collectively, “Guaranteed Parties”), a corporation organized and existing under the laws of the State of Illinois.

Terms not defined herein shall have the meanings given to them in the BGS-FP Supplier Forward Contract(s) dated \_\_\_\_\_, 20\_\_(as amended, modified or extended from time to time, the “Agreement(s)”), between the Guaranteed Parties and \_\_\_\_\_, a \_\_\_\_\_ organized and existing under the laws of \_\_\_\_\_ (the “BGS-FP Supplier”). This Guaranty is made by Guarantor in consideration for, and as an inducement for the Guaranteed Parties to enter into, the Agreements with the BGS-FP Supplier. Guarantor, subject to the terms and conditions hereof, hereby unconditionally, irrevocably and absolutely guarantees to the Guaranteed Parties the full and prompt payment and performance when due, subject to any applicable grace period, all obligations of the BGS-FP Supplier to the Guaranteed Parties arising out of the Agreement(s). Without limiting the generality of the foregoing, Guarantor further agrees as follows:

1. The Guarantor, as primary obligor and not merely as surety, hereby irrevocably and unconditionally guarantees the full and prompt payment when due (whether by acceleration or otherwise) of any sums due and payable by the BGS-FP Supplier as a result of an Event of Default under the Agreement(s) (including, without limitation, indemnities, damages, fees and interest thereon, pursuant to the terms of the Agreements). Notwithstanding anything to the contrary herein, the maximum aggregate liability of the Guarantor under this Guaranty shall *Option 1* [in no event exceed \_\_\_\_\_.] *Option 2* [in no event exceed the lesser of [the credit limit amount] or the sum of the Total Exposures Amounts under the Agreement(s).] All such principal, interest, obligations and liabilities, collectively, are the “Guaranteed Obligations”. This Guaranty is a guarantee of payment and not of collection.

2. The Guarantor hereby waives diligence, acceleration, notice of acceptance of this Guaranty and notice of any liability to which it may apply, and waives presentment and all demands whatsoever except as noted herein, notice of protest, notice of dishonor or nonpayment of any such liability, suit or taking of other action by any Guaranteed Parties against, and any other notice to, any party liable thereon (including the Guarantor or any other guarantor), filing of claims with a court in the event of the insolvency or bankruptcy of the BGS-FP Supplier, and any right to require a proceeding first against the BGS-FP Supplier.
3. The Guaranteed Parties may, at any time and from time to time, without notice to or consent of the Guarantor, without incurring responsibility to the Guarantor and without impairing or releasing the obligations of the Guarantor hereunder, upon or without any terms or conditions: (a) take or refrain from taking any and all actions with respect to the Guaranteed Obligations, any Document or any person (including the BGS-FP Supplier) that the Guaranteed Parties determine in their sole discretion to be necessary or appropriate; (b) take or refrain from taking any action of any kind in respect of any security for any Guaranteed Obligation(s) or liability of the BGS-FP Supplier to the Guaranteed Parties; or (c) compromise or subordinate any Guaranteed Obligation(s) or liability of the BGS-FP Supplier to the Guaranteed Parties including any security therefor.
4. Subject to the terms and conditions hereof, the obligations of the Guarantor under this Guaranty are absolute, irrevocable and unconditional and, without limiting the generality of the foregoing, shall not be released, discharged or otherwise affected by: (a) any extension, renewal, settlement, compromise, waiver, consent, discharge or release by the BGS-FP Supplier concerning any provision of the Agreement(s) in respect of any Guaranteed Obligations of the BGS-FP Supplier; (b) the rendering of any judgment against the BGS-FP Supplier or any action to enforce the same; (c) the existence, or extent of, any release, exchange, surrender, non-perfection or invalidity of any direct or indirect security for any of the Guaranteed Obligations; (d) any modification, amendment, waiver, extension of or supplement to any of the Agreement(s) or the Guaranteed Obligations agreed to from time to time by the BGS-FP Supplier and the Guaranteed Parties; (e) any change in the corporate existence (including its constitution, laws, rules, regulations or powers), structure or ownership of the BGS-FP Supplier or the Guarantor, or any insolvency, bankruptcy, reorganization or other similar proceedings

affecting the BGS-FP Supplier or its assets, the Guarantor or any other guarantor of any of the Guaranteed Obligations; (f) the existence of any claim, set-off or other rights which the Guarantor may have at any time against the BGS-FP Supplier, the Guaranteed Parties or any other corporation or person, whether in connection herewith or in connection with any unrelated transaction; provided that nothing herein shall prevent the assertion of any such claim by separate suit or compulsory counterclaim; (g) the invalidity, irregularity or unenforceability in whole or in part of the Agreement(s) or any Guaranteed Obligations or any instrument evidencing any Guaranteed Obligations or the absence of any action to enforce the same, or any provision of applicable law or regulation purporting to prohibit payment by the BGS-FP Supplier of amounts to be paid by it under the Agreement(s) or any of the Guaranteed Obligations; and (h) except for a failure to comply with any applicable statute of limitations, any other act or omission to act or delay of any kind of the BGS-FP Supplier, any other guarantor, the Guaranteed Parties or any other corporation, entity or person or any other event, occurrence or circumstance whatsoever which might, but for the provisions of this paragraph, constitute a legal or equitable discharge of the Guarantor's obligations hereunder.

5. The Guarantor hereby irrevocably waives (a) any right of reimbursement or contribution, and (b) any right of salvage against the BGS-FP Supplier or any collateral security or guaranty or right of offset held by the Guaranteed Parties therefor.
6. The Guarantor will not exercise any rights, which it may acquire by way of subrogation until all Guaranteed Obligations to the Guaranteed Parties pursuant to the Agreement(s) have been paid in full.
7. Subject to the terms and conditions hereof, this Guaranty is a continuing one and all liabilities to which it applies or may apply under the terms hereof shall be conclusively presumed to have been created in reliance hereon. Except for a failure to comply with any applicable statute of limitations, no failure or delay on the part of the Guaranteed Parties in exercising any right, power or privilege hereunder, and no course of dealing between the Guarantor and a Guaranteed Party, shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights, powers and remedies herein expressly provided are cumulative and not exclusive of any rights, powers or remedies, which a Guaranteed Party would otherwise

have. No notice to or demand on the Guarantor in any case shall entitle the Guarantor to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of a Guaranteed Party to any other or further action in any circumstances without notice or demand.

8. This Guaranty shall be binding upon the Guarantor and upon its successors and assigns and shall inure to the benefit of and be enforceable by the Guaranteed Parties and their successors and assigns; provided, however, that the Guarantor may not assign or transfer any of its rights or obligations hereunder without the prior written consent of the Guaranteed Parties. The assignment rights of the Guaranteed Parties will be in accordance with any applicable terms of the Agreement(s).
9. Neither this Guaranty nor any provision hereof may be changed, waived, discharged or terminated except upon written agreement of the Guaranteed Parties and the Guarantor.
10. The Guarantor's liability as guarantor shall continue and remain in full force and effect in the event that all or any part of any payment made hereunder or any obligation or liability guaranteed hereunder is recovered (as a fraudulent conveyance, preference or otherwise) rescinded or must otherwise be reinstated or returned due to bankruptcy or insolvency laws or otherwise. If claim is ever made upon the Guaranteed Parties for repayment or recovery of any amount or amounts received from the Guarantor or the BGS-FP Supplier in payment or on account of any of the Guaranteed Obligations and the Guaranteed Parties repay all or part of such amount by reason of (a) any judgment, decree or order of any court or administrative body having jurisdiction over such payee or any of its property, or (b) any settlement or compromise of any such claim effected by such payee with any such claimant (including the Guarantor), then and in such event the Guarantor agrees that any such judgment, decree, order, settlement or compromise shall be binding upon it, notwithstanding any revocation hereof or the cancellation of the Agreement(s) or other instrument evidencing any liability of the Guarantor, and the Guarantor shall be and remain liable to the Guaranteed Parties hereunder for the amount so repaid or recovered to the same extent as if such amount had never originally been received by the Guaranteed Parties.
11. Subject to Paragraph 10, this Guaranty shall remain in full force and effect until all Guaranteed Obligations have been fully and finally performed, at which point it will

expire. The Guarantor may terminate this Guaranty upon thirty (30) days prior written notice to the Guaranteed Parties which termination shall be effective only upon receipt by the Guaranteed Parties of alternative means of security or credit support, as specified in the Agreement(s) and in a form reasonably acceptable to the Guaranteed Parties. Upon the effectiveness of any such expiration or termination, the Guarantor shall have no further liability under this Guaranty, except with respect to the Guaranteed Obligations arising or created prior to the time the expiration or termination is effective, which Guaranteed Obligations shall remain guaranteed pursuant to the terms of this Guaranty until finally and fully performed.

12. All notices and other communications hereunder shall be made at the addresses by hand delivery, by the next day delivery service effective upon receipt, or by certified mail return receipt requested (effective upon scheduled weekday delivery day) or telefacsimile (effective upon receipt of evidence, including telefacsimile evidence, that telefacsimile was received)

If to the Guarantor:

[To be completed]

If to the Guaranteed Parties:

[To be completed]

13. The Guarantor represents and warrants that: (a) it is duly organized and validly existing under the laws of the jurisdiction in which it was organized and has the power and authority to execute, deliver, and perform this Guaranty; (b) no authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over the Guarantor is required on the part of the Guarantor for the execution, delivery and performance of this Guaranty except for those already made or obtained; (c) this Guaranty constitutes a valid and legally binding agreement of the Guarantor, and is enforceable against the Guarantor; (d) the execution, delivery and performance of this Guaranty by the Guarantor have been and remain duly authorized by all necessary corporate or comparable action and do not contravene any provision of its \_\_\_\_\_ [insert appropriate corporate organizational document, such

as Declaration of Trust, Limited Liability Company Agreement, Articles of Incorporation and by-laws] or any law, regulation or contractual restriction binding on it or its assets; and (e) the Guarantor satisfies the Minimum Rating requirement as defined in the Agreement(s).

14. This Guaranty and the rights and obligations of the BGS-FP Supplier and the Guarantor hereunder shall be construed in accordance with and governed by the laws of the State of Illinois. The Guarantor and Guaranteed Parties jointly and severally agree and irrevocably submit to the exclusive jurisdiction of state and federal courts located in the State of Illinois over any disputes arising or relating to this Guaranty and waive and agree not to assert as a defense any objections to venue or inconvenient forum. The Guarantor and the Guaranteed Parties consent to and grant any such court jurisdiction over the person of such party and over the subject matter of such dispute and agree that summons or other legal process in connection with any such action or proceeding shall be deemed properly and effectively served when sent by certified U.S. mail, return receipt requested, to the address of the other party set forth in Paragraph 12 hereof, or in such other manner as may be permitted by law. The Guarantor and the Guaranteed Parties each hereby irrevocably waives any and all rights to trial by jury with respect to any legal proceeding arising out of or relating to this Guaranty.
15. This writing is the complete and exclusive statement of the terms of this Guaranty and supersedes all prior oral or written representations, understandings, and agreements between the Guaranteed Parties and the Guarantor with respect to subject matter hereof. The Guaranteed Parties and the Guarantor agree that there are no conditions to the full effectiveness of this Guaranty.
16. Every provision of this Guaranty is intended to be severable. If any term or provision hereof is declared to be illegal or invalid for any reason whatsoever by a court of competent jurisdiction, such illegality or invalidity shall not affect the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable.
17. If the Guarantor is a trust: no trustee of the Guarantor shall be held to any liability whatsoever for any obligation under this Guaranty, and this Guaranty shall not be enforceable against any such trustee in their or its, his or her individual capacities or capacity; and this Guaranty shall be enforceable against the trustees of the Guarantor

only as such, and every person, firm, association, trust or corporation having any claim or demand arising under this Guaranty and relating to the Guarantor or any trustee of the Guarantor shall look solely to the trust estate of the Guarantor for the payment or satisfaction thereof.

IN WITNESS WHEREOF, the Guarantor has caused this Guaranty to be executed and delivered as of the date first written above to be effective as of the earliest effective date of any of the Agreement(s).

[GUARANTOR]

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

Title:

Accepted and Agreed to:

[Central Illinois Light Company d/b/a AmerenCILCO, Central Illinois Public Service Company d/b/a AmerenCIPS, and/or Illinois Power Company d/b/a AmerenIP]

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

Title:

\_\_\_\_\_ (Date)

## APPENDIX G – COMPANIES’ RETAIL TARIFFS

On January 1, 2007:

- (1) The term BGS-FP Customer means a customer served under:
  - a. AmerenCILCO’s Rate 1, Rate 2, Rate 7, Rate 13, Rate 22, or Rate 29;
  - b. AmerenCILCO’s Rate 21 that has peak load of less than 1 MW;
  - c. AmerenCIPS’ Rate 1, Rate 1I, Rate 2B, Rate 2I, Rate 5I, Rate 6I, Rate 10, Rate 11, Rate 13, Rate SC-1, or Rate SC-2;
  - d. AmerenCIPS’ Rate 6T, Rate 9T, or Rate SC-3 that has peak load of less than 1 MW;
  - e. AmerenCIPS’ Rate 3I or Rate 4I that has a peak load of at least 1 MW and has agreed to receive power supply from AmerenIP for at least one year;
  - f. AmerenIP’s Rate 2, Rate 3, Rate 10, Rate 11, Rate 12, Rate 13, Rate 14, Rate 15, Rate 19, Rate 39, Rate 41, Rate 42, or Rate 45; or
  - g. AmerenIP’s Rate SC110-Res that has peak load of less than 1 MW.
- (2) The term BGS-LFP Customer means a customer served under:
  - a. AmerenCILCO’s Rate 21 or Rate 32 that has a peak load of at least 1 MW and has agreed to receive power supply from AmerenCILCO for at least one year;
  - b. AmerenCIPS’ Rate 3I, Rate 4I, Rate 6T, Rate 7I, Rate 9B, Rate 9T, Rate SC-3, or Rate SC4 that has a peak load of at least 1 MW and has agreed to receive power supply from AmerenCIPS for at least one year; or
  - c. AmerenIP’s Rate 8, Rate 21, Rate 22, Rate 24, Rate 26, Rate 35, or Rate SC110-Res that has a peak load of at least 1 MW and has agreed to receive power supply from AmerenIP for at least one year.
- (3) The term BGS-LRTP Customer means a customer served under:
  - a. AmerenCILCO’s Rate 21 or Rate 32 that has a peak load of at least 1 MW and has *not* agreed to receive power supply from AmerenCILCO for at least one year;
  - b. AmerenCIPS’ Rate 3I, Rate 4I, Rate 6T, Rate 7I, Rate 9B, Rate 9T, Rate SC-3, or Rate SC4 that has a peak load of at least 1 MW and has *not* agreed to receive power supply from AmerenCIPS for at least one year; or

- c. AmerenIP's Rate 8, Rate 21, Rate 22, Rate 24, Rate 26, Rate 35, or Rate SC110-Res that has a peak load of at least 1 MW and has *not* agreed to receive power supply from AmerenIP for at least one year.

From January 2, 2007 through the Termination Date:

- (1) The term BGS-FP Customer means a customer served under:
  - a. AmerenCILCO's Rider BGS or Rider RTP,
  - b. AmerenCIPS' Rider BGS or Rider RTP, or
  - c. AmerenIP's Rider BGS or Rider RTP.
- (2) The term BGS-LFP Customer means a customer served under:
  - a. AmerenCILCO's Rider BGS-L,
  - b. AmerenCIPS' Rider BGS-L, or
  - c. AmerenIP's Rider BGS-L.
- (3) The term BGS-LRTP Customer means a customer served under:
  - a. AmerenCILCO's Rider RTP-L,
  - b. AmerenCIPS' Rider RTP-L, or
  - c. AmerenIP's Rider RTP-L.