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Exhibit B

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FPSC-COMMISSION CLERK

ENERGY PURCHASE AND SALE AGREEMENT #2

THIS ENERGY PURCHASE AND SALE AGREEMENT (this "Agreement"), dated as of ~~December~~ 12 2007 is by and between the following Parties:

- **BG&E of Florida, LLC d/b/a Biomass Gas and Electric of Florida ("Seller"),**
- and
- **Florida Power Corporation d/b/a Progress Energy Florida, Inc ("Buyer").**

WHEREAS:

- (A) Seller desires to develop, own and operate a biomass-fueled electric generating facility #2 located in Florida, capable of production of a maximum net electrical output of approximately 75 MW.
- (B) Seller and Buyer have not established, as of the date of this Agreement, the physical Delivery Point for Net Electric Energy. Subject to the availability of interconnection service and, if necessary to deliver Energy to the Delivery Point, transmission service on terms, including pricing and system upgrade cost responsibility terms, satisfactory to Seller in its sole discretion, Seller intends to obtain interconnection service, and if necessary, transmission service for the Facility from the Transmission Provider.
- (C) Seller desires to sell and Buyer desires to purchase electricity to be generated at the Facility #2 consistent with FPSC Rules 25-17.080 through 25-17.091 and 25-17.200 through 25-17.310 F.A.C. in effect as of the Effective Date. The Parties recognize that pursuant to FPSC Rule 25-17.220 the Facility will be a Qualifying Facility under applicable statutes and regulations in force as of the Effective Date.
- (D) Parties understand that this Agreement requires the approval of the FPSC.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing and the mutual covenants and agreements contained in this Agreement, and for other good and valuable consideration the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

Article 1
Definitions

1.1 Definitions. As used in this Agreement, the following terms will have the meanings set out or referred to below, unless the context requires otherwise:

“Affiliate” – with respect to any person or entity, any other person or entity that controls, is controlled by, or is under common control with that person or entity, and includes any officer or director of that person or entity.

“Agreement” – this Agreement, including all Schedules and Exhibits, as any of them may be amended or supplemented from time to time.

“Annual Billing Factor” – *see* Section 8.1.2.

“Applicable Law” – all applicable provisions of any constitution, statute, law, ordinance, code, rule, regulation, decision, order, decree, judgment, release, license, Permit, stipulation or other official pronouncement enacted, promulgated or issued by any Governmental Authority.

“As-Available Rate” means the costs calculated by Buyer in accordance with FPSC Rule 25-17.0825, F.A.C.

“Assignment for Security” – *see* Section 16.4.

“Business Day” – any day Monday through Friday that banks are open for business in St. Petersburg, Florida and Atlanta, Georgia.

“Buyer” – *see* the opening paragraph of this Agreement.

“Buyer Indemnified Parties” – *see* Section 14.1.

“Capacity” means the total continuous generating net MW capability of the Facility as determined from time to time in accordance with Article 3.

“Change(s) in Law(s)” – *see* Section 12.5.

“Claiming Party” – *see* Section 15.1.

“Claims” – any claims, demands, losses, liabilities, penalties (civil or criminal), fines and expenses (including reasonable attorneys’ fees and expenses), including but not limited to (i) personal injury or death to persons, damage to any property or facilities of any person or entity, (ii) environmental, health or safety matters or conditions (including on-Site or off-Site contamination), and (iii) financial responsibility for corrective or remedial action under any Environmental Law or fines or penalties imposed under any Environmental Law.

“Commercial Operation Date” – *see* Section 3.1.

“Commercially Reasonable Efforts” – the efforts that a prudent person desiring to achieve a result would use in similar circumstances to achieve that result as expeditiously as practicable; provided, however, that a person required to use Commercially Reasonable Efforts will not be required to undertake extraordinary or unreasonable measures or incur expenses in excess of normal and usual expenses based on the circumstances.

“Conditions Precedent” – *see* Section 2.3.

“Confidential Information” – any written data or information (or an oral communication if the Party requesting confidentiality for such oral communication promptly confirms such communication in writing) that is privileged, confidential or proprietary, and that is marked in a conspicuous manner indicating that such data or information is confidential (or, in the case of an oral communication, is accompanied or promptly followed by a written designation of confidentiality), except information that (1) is a matter of public knowledge at the time of its disclosure or is thereafter published in or otherwise ascertainable from any source available to the public without breach of this Agreement, (2) is obtained from a third party (other than an Affiliate of one of the Parties) other than by or as a result of unauthorized disclosure, or (3) had been independently developed, prior to the time of disclosure, by the receiving Party or its Affiliates not utilizing improper means.

“Construction Contract” – means, collectively, contract(s) entered into between Seller and the entity(ies) selected by Seller to manage and complete the engineering, procurement and construction of the Facility.

“Delay Damages” – *see* Section 11.3.

“Delivery Point” – *see* Section 5.1.

“Demonstration Period” – *see* Section 3.3.1.

“Dispute” – *see* Section 16.13.

“Eastern Prevailing Time” means the time in effect in the Eastern Time Zone of the United States of America, whether Eastern Standard Time or Eastern Daylight Savings Time.

“Effective Date” – *see* Section 2.1.

“Electrical Interconnection Point” – means the physical point at which the Facility is connected with the Transmission System or such other physical point on which Seller and Buyer may agree.

“Electrical Interconnection and Operating Agreement” – means the separate contract(s) between Seller and a Transmission Provider for interconnection of the Facility and, if necessary, transmission of Energy from the Electric Interconnection Point to the Delivery Point.

“Eligible Collateral” – means (i) a Letter of Credit from a Qualified Institution or (ii) cash deposited into a Seller Security Account by Seller for the benefit of Buyer or a combination of (i) and/or (ii) in an aggregate amount required by Section 10.1.

“Emission Reduction Credits” means any offset, allowance, or credit of any kind created or administered under any current or future statutory and/or regulatory regime, under which the generation of units of electric energy using a renewable fuel source is recognized as preventing the emission of nitrogen oxide (NO_x), sulfur dioxide (SO₂), or other “greenhouse gas,” by displacing the production of units of electric energy using fossil fuels. For purposes of this Agreement, the term “Emission Reduction Credits” specifically excludes carbon emissions credits.

“Energy” means megawatt-hours generated by the Facility of the character commonly known as three-phase, sixty hertz electric energy that is delivered at a nominal voltage at the Electrical Interconnection Point.

“Environmental Attributes” – *see* Section 4.2. (b).

“Environmental Law(s)” – all Applicable Laws relating to pollution, protection, preservation or restoration of human health, the environment or natural resources, including laws relating to releases or threatened releases of hazardous substances or hazardous waste, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of hazardous substances or hazardous waste, including the Clean Water Act, the Clean Air Act, the Resource Conservation and Recovery Act, and the Comprehensive Environmental Response Compensation and Liability Act, in each case as amended, and their state and local counterparts and all regulations thereunder.

“Event of Default” – *see* Section 11.1.

“Facility” – means, collectively, Seller’s biomass-fueled electric generating facility located on the Site and Seller’s interconnection equipment for such Facility, the purpose of which is to produce electricity from gasified biomass feedstock and deliver such electricity to the Delivery Point, including all of the following: Seller’s equipment, buildings, turbines, generators, step-up transformers, output breakers, facilities necessary to connect to the Delivery Point, protective and associated equipment, improvements, Fuel stock, gasifier, and all other tangible assets, contract rights, real property, easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation (including purchase of and transportation for Fuel), and maintenance of the electric generating facility that produces the Energy that is the subject of this Agreement.

“**FERC**” – the Federal Energy Regulatory Commission or its successor organization.

“**Force Majeure**” – is defined as an event or circumstance that is not reasonably foreseeable, is beyond the reasonable control of and is not caused by the negligence or lack of due diligence of the Party claiming Force Majeure – including the Party’s negligence or lack of due diligence regarding its agents, contractors or suppliers – and that adversely affects the performance by that Party of its obligations under or pursuant to this Agreement. Such events or circumstances may include, but are not limited to, actions or inactions of civil or military authority (including courts and governmental or administrative agencies), acts of God, war, riot or insurrection, blockades, embargoes, sabotage, epidemics, explosions and fires (excluding any caused by Seller’s negligent operation of the Facility), hurricanes, floods, strikes, lockouts or other labor disputes or difficulties (not caused by the failure of the affected Party to comply with the terms of a collective bargaining agreement). Force Majeure shall not include either Party’s failure to obtain on a timely basis and maintain a necessary Permit or other regulatory approval. Equipment breakdown or inability to use equipment caused by its design, construction, operation, maintenance or inability to meet regulatory standards, or otherwise caused by an event originating in the Facility, shall not be considered an event of Force Majeure, unless the Claiming Party can demonstrate that: (1) the event is not caused by the Claiming Party’s failure to act in accordance with Prudent Industry Practice, (2) that the event was not reasonably foreseeable, (3) that the event was beyond the Claiming Party’s reasonable control, (4) that the event was not caused by the negligence or lack of due diligence of the Claiming Party – including the Claiming Party’s negligence or lack of due diligence regarding its agents, contractors or suppliers – and (5) that the event adversely affects the performance by the Claiming Party of its obligations under or pursuant to this Agreement.

“**Forced Outage**” – a unit outage that requires the unit to be removed from service with no warning which is not a Planned Outage or Maintenance Outage, but may or may not be the result of Force Majeure.

“**FPSC**” – the Florida Public Service Commission.

“**Fuel**” – biomass fuel meeting the requirements of FPSC Rules 25-17.080, 25-17.210, and 25-17.220 so as to qualify the Facility under such rules as of the Effective Date as a Renewable Generating Facility.

“**Governmental Authority**” – any federal, state or local legislative, executive, judicial, quasi-judicial or other public authority, agency, department, bureau, division, unit, court, tribunal, or other public body, person or entity having jurisdiction over a Party, the Facility or this Agreement, which shall include, but not be limited to, in appropriate context, FERC, the FPSC, the NERC, the Florida Reliability Coordinating Council, or their respective successor organizations.

“**Increased Costs**” – *see* Section 12.5.2.

“Letter of Credit” – means a stand-by letter of credit from a Qualified Institution that is acceptable to Buyer whose approval may not be unreasonably withheld.

“Maintenance Outage” – an outage that can be deferred beyond the next weekend, but does not require that the unit be removed from service immediately. A Maintenance Outage does not necessarily have to be deferred beyond the next weekend, but rather has the potential to be delayed past the next weekend. For the purposes of Maintenance Outage determination, the next weekend shall mean the period from 2400 on the next Friday until 2400 on the next Sunday, Eastern Prevailing Time.

“Material Adverse Change” – means as to Seller, that Seller has defaulted in the payment of amounts owed to any entity (including Buyer) in an aggregate amount of the lesser of (i) fifty million dollars (\$50,000,000) or (ii) five percent (5%) of Seller’s equity.

“Meters” – see Section 7.1.

“Monthly Billing Period” – the period beginning at 12:01 a.m. on the first calendar day of a calendar month and ending at 12:00 a.m. on the last calendar day of such month, except that the initial Monthly Billing Period shall consist of the period beginning 12:01 a.m. on the Commercial Operation Date and ending at 12:00 a.m. on the last calendar day of such month.

“Mutually Agreed Outage” – see Section 9.6.

“MW” – one or more megawatts of electricity, as the context requires.

“MWh” – one or more whole megawatt-hours of electric energy, as the context requires.

“NERC” – the North American Electric Reliability Council, or any successor to its functions.

“Net Electric Energy” – Energy produced by the Facility in the form of electricity expressed in megawatt-hours (MWh), as measured at the Delivery Point.

“On-Peak Hours” – shall mean those hours occurring April 1 through October 31, from 11:00 a.m. to 10:00 p.m., and November 1 through March 31, from 6:00 a.m. to 12:00 noon and 5:00 p.m. to 10:00 p.m. Eastern Prevailing Time.

“Operating Representative” – see Section 9.12.

“Party” or **“Parties”** – Buyer or Seller, or both, as the context may require

“Permit” – any license, approval, order, permit or similar document or action issued or taken by any Governmental Authority, including FERC authorization to engage in the wholesale sale of electric capacity, energy and related products.

“Planned Outage” – an outage that is scheduled well in advance, is of a predictable duration, lasts for several weeks, occurs no more than twice a year, and is scheduled to occur only during the months of November and February-April.

“Planned Outage Schedule” *see* Section 9.4.1.

“Production Tax Credits” – production tax credits under Section 45 of the Internal Revenue Code of the United States as in effect on the date of this Agreement or any successor or other provision providing for a federal tax credit determined by reference to renewable electric energy.

“Project Energy Payment” – *see* Section 8.1.

“Prudent Industry Practice” – any of the practices, methods, standards and acts (including practices, methods, standards and acts engaged in or adopted by a significant portion of the electric power generation industry in the United States during the applicable period) which, in the exercise of reasonable judgment in light of the facts known at the time, could be expected to accomplish the desired result consistent with reliability, economy, safety, and expedition. Prudent Industry Practice is not intended to be limited to any particular set of optimum practices, methods, standards or acts to the exclusion of all others, but rather is intended to include practices, methods, or acts generally accepted in the United States, having due regard for, among other things, manufacturers’ recommendations and warranties, contractual obligations, Applicable Law and requirements or guidance of Governmental Authorities and NERC.

“Qualified Institution” – means the domestic office of a United States commercial bank or trust company or a foreign bank with a United States branch with total assets of at least ten billion dollars (\$10,000,000,000) (which is not an Affiliate of either Party) having a general long-term senior unsecured debt rating of A- or higher (as rated by Standard & Poor’s Ratings Group), A3 or higher (as rated by Moody’s Investor Services) or A- or higher (as rated by Fitch Ratings).

“REC” – renewable energy credits, green tags, green tickets, renewable certificates, tradable renewable energy credits, or any potentially tradable certificate that is produced by a renewable generator in addition to and in proportion to the production of electrical energy.

“Representatives” – *see* Section 16.2.

“Seller” – *see* the opening paragraph of this Agreement.

“Seller Indemnified Parties” – *see* Section 14.2.

“Seller Security Account” – means a deposit escrow account designated by Seller for the benefit of Buyer, free and clear of all liens arising on account of Seller (including liens of any lenders) to be established and maintained at a Qualified Institution pursuant

to a control agreement in a form and substance acceptable to Buyer whose approval may not be unreasonably withheld.

“Seller Performance Security” – *see* Section 10.1.

“Site” – the property to be determined as appropriate as the location of the Facility for delivery under this Agreement.

“Specified Rate” – for each calendar month, the thirty (30) day highest grade commercial paper rate as published in *The Wall Street Journal* under the heading “Money Rates” on the first day of such month that such rates are published.

“Station Service” means the Energy required to operate the Facility auxiliaries, including, without limitation, cooling towers, heat exchangers, and other equipment used in connection with the operation and maintenance of the Facility.

“Stipulated Commercial Operation Date” – *see* Section 3.2.

“Targeted Capacity” – *see* Section 3.3.3.

“Targeted Capacity Test” – means the testing of the Capacity of the Facility performed in accordance with the procedures set forth in Section 3.

“Targeted Capacity Test Period” – *see* Section 3.3.2.

“Tax” or **“Taxes”** – all taxes, assessments, charges, duties, fees, levies or other governmental charges, including all federal, state, local, foreign or other income, profits, unitary, business, franchise, capital stock, real property, personal property, intangible, withholding, FICA, unemployment compensation, disability, transfer, sales, use, excise and other taxes, assessments, charges, duties, fees, or levies of any kind whatsoever (whether or not requiring the filing of returns) and all deficiency assessments, additions to tax, penalties and interest.

“Term” – *see* Section 2.2.

“Transmission Provider” means the operator(s) of the Transmission System(s) or any successor thereof or any other entity or entities authorized to transmit Energy on behalf of Seller from the Electrical Interconnection Point.

“Transmission System” – means the system of electric lines comprised wholly or substantially of high voltage lines, associated system protection, system stabilization, voltage transformation, and capacitance, reactance and other electric plant used for conveying electricity from a generating station to a substation, from one generating station to another, from one substation to another, or to or from any Electrical Interconnection Point or to ultimate consumers and shall include any interconnection facilities owned by the Transmission Provider.

- 1.2 Interpretation. The headings of Articles and Sections in this Agreement are provided for convenience only and will not affect the construction or interpretation of this Agreement. All references to “Articles,” “Sections,” “Schedules” or “Exhibits” refer to the corresponding Articles, Sections, Schedules or Exhibits of or to this Agreement. All Schedules and Exhibits to this Agreement are hereby incorporated by reference. All words used in this Agreement will be construed to be of such gender or number as the circumstances require. Unless otherwise expressly provided, the word “including” does not limit the preceding words or terms. Unless otherwise stated, any reference in this Agreement to any person shall include its permitted successors and assigns and, in the case of any Governmental Authority, any person succeeding to its functions and capacities.
- 1.3 Construction. In the event of a conflict between the terms of this Agreement and those of any Exhibit or Schedule, the terms of the Agreement shall prevail. Each Party acknowledges that it and its counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement.

Article 2 Term and Conditions Precedent

- 2.1 Effective Date. This Agreement will become effective upon the date of its execution and delivery by each of the Parties.
- 2.2 Term. This Agreement will continue in effect until the 20th anniversary of the Commercial Operation Date, subject to earlier termination pursuant to Sections 2.3.1, 2.6(iii), 11.1, 11.4, 12.5.4, or 15.2 (the period from the Commercial Operation Date until such time, the “**Term**”).
- 2.3 Conditions Precedent.
- 2.3.1 Conditions Precedent. Either Party may terminate this Agreement effective upon written notice to that effect, and neither Party will have any further obligation to the other Party, except as provided in Section 2.4, if any of the following events by the other Party has not occurred by [REDACTED] following the Effective Date:
- (a) Seller has executed an agreement for the ownership or lease of a Site that is acceptable to Seller in its sole discretion. In the event Seller leases a Site then the term of the lease shall be not less than the Term stated in Section 2.2;
 - (b) Seller shall have obtained such firm transmission service, on terms acceptable to Seller in its sole discretion, as may be necessary to deliver Capacity and Energy from the Facility to the Electrical Interconnection Point;

- (c) All Permits that are necessary for the ownership, development, construction, operation and maintenance of the Facility on terms and conditions that are acceptable to Seller in its sole discretion have been issued; and
- (d) Seller has obtained bank loans or other source of financing for the purpose of developing, constructing and operating the Facility on terms and conditions that are acceptable to Seller in its sole discretion.
- (e) A Construction Contract has been executed by Seller that specifies a facility capable of producing a net electrical output of [REDACTED].
- (f) Seller has entered into an agreement for electric service pursuant to which the appropriate provider is obligated to provide, and Seller is obligated to purchase and pay for, such Station Service for the Facility as Seller may elect to purchase from time to time, on terms and conditions, including pricing terms, acceptable to Seller in its sole discretion.
- (g) Seller and Transmission Provider have entered into an Electrical Interconnection and Operating Agreement on terms and conditions that are acceptable to Seller in its sole discretion.
- (h) Seller has obtained insurance policies or coverage in compliance with Section 9.11.

2.3.2 Certification of Satisfaction. Promptly upon satisfaction (or written waiver by Buyer) of the Conditions Precedent to be satisfied by Seller, Seller shall deliver to Buyer a certificate evidencing such satisfaction.

2.4 Exercise of Termination Right. Any election by a Party to terminate this Agreement pursuant to Section 2.3.1 must be communicated in writing to the other Party within thirty (30) days after the date specified in Section 2.3.1. Failure to give such notice timely shall constitute a waiver of the termination right otherwise provided by that section.

2.5 Effect of Early Termination. Any expiration or termination of this Agreement shall not relieve either Party of any liability accrued or arising from conduct or activities prior to the effective date of the expiration or termination, and such expiration or termination shall not affect the continued operation or enforcement of any provision of this Agreement which by its express terms or by reasonable implication is to survive any expiration or termination. Upon any early termination of this Agreement pursuant to Sections 2.3.1, 2.6(iii), 12.5.4, or 15.2, neither Party shall have any liability to the other with respect to performance obligations for the remainder of the Term.

- 2.6 FPSC Approval. The obligations of the Parties hereunder, including but not limited to Buyer's obligation to purchase Capacity and Energy at the rates specified in Section 8 hereto, shall be conditioned upon the receipt of any regulatory approvals required by any Party hereto in connection with its execution and performance of this Agreement. In particular:
- (i) To the extent required by, and consistent with, applicable legal and regulatory authority, Buyer shall timely submit a copy of this Agreement to FPSC, and shall timely petition the FPSC for approval of this Agreement. Buyer agrees to use all necessary efforts to request and obtain FPSC approval, and Seller agrees to cooperate with and assist Buyer in these efforts as Buyer may reasonably request.
 - (ii) FPSC approval shall be considered received when the FPSC issues its final written order that is no longer subject to appeal, (a) approving this Agreement, (b) finding that no FPSC approval is required, or (c) approving this Agreement in part or subject to conditions, provided that each of Seller and Buyer agrees, subject to its reasonable discretion, to accept those conditions or such partial approval as sufficient.
 - (iii) If the FPSC disapproves this Agreement and/or either Party elects not to accept any partial or conditioned approval as described in clause (c) above, or if the FPSC refuses to enter an order upon the request for approval within 180 days of the Effective Date by both Parties, Seller or Buyer may elect to terminate this Agreement with no further obligation or liability to the other Party or to any other Person.

Article 3 Commercial Operation Date; Testing

- 3.1 Commercial Operation Date. The respective rights and obligations of Seller and Buyer relating to the commercial operation of the Facility and the obligation of Buyer to make payments under Article 8 will commence on the Commercial Operation Date. The "**Commercial Operation Date**" for the Facility will be the date on which Seller notifies Buyer that each of the following have occurred:
- (a) Permits. Seller has obtained, pursuant to final orders, all Permits required for the operation of the Facility and the production of Net Electric Energy and such Permits are effective;
 - (b) Tests. Seller has successfully completed the initial performance test, in accordance with Section 3.3; and
 - (c) No Legal Restraints. There are no suits, proceedings, judgments, rulings or orders by or before any Governmental Authority that could reasonably be expected to materially and adversely affect the ability of the Facility to operate and produce Energy.

- 3.2 Stipulated Commercial Operation Date. The Stipulated Commercial Operation Date, subject to day-for-day extension due to Force Majeure, shall be June 1, 2011.
- 3.3 Testing.
- 3.3.1 Coordination of Initial Test. Seller will coordinate with Buyer the production and delivery of Net Electric Energy during initial testing. The initial Targeted Capacity Test must be completed successfully within a sixty-hour period (the "Demonstration Period"), which period, including the approximate start time of the Targeted Capacity Test, shall be selected and scheduled by Seller by means of a written notice to Buyer delivered at least thirty (30) calendar days prior to the start of such period. Seller may extend the Demonstration Period upon at least one day's notice to Buyer. The provisions of the foregoing sentence shall not apply to any Targeted Capacity Test requested by Buyer under any of the provisions of this Agreement. Buyer shall have the right to be present onsite to monitor firsthand any Targeted Capacity Test required or permitted under this Agreement.
- 3.3.2 Testing Requirements. All Targeted Capacity Test results shall be based on a test period of twenty four (24) consecutive hours (the "Targeted Capacity Test Period"). The Targeted Capacity Test shall be performed according to standard industry testing procedures for the appropriate technology of Seller. During testing, the Facility will be operated within the normal design limits, consistent with continuous operation, in compliance with all Permit requirements, and in accordance with Prudent Industry Practices, as confirmed by available unit operating data. The unit will be operated with routine control set points at normal full load conditions for the duration of the test. Blowdown flows, makeup flows, steam turbine extractions, Station Service and all auxiliary systems will be operated in a routine mode as appropriate for the actual ambient conditions existing during the test period. On the date of the Performance Test, the Facility shall be brought to normal full load output capacity. Normal Station Service use of unit auxiliaries, including, without limitation, cooling towers, heat exchangers, and other equipment required by law, shall be in service during the Targeted Capacity Test Period. The Targeted Capacity Test Period shall commence at the time designated by Seller as coordinated with the Transmission Provider.
- 3.3.3 Targeted Capacity. The Capacity of the Facility (the "Capacity") shall be the minimum average hourly net capacity (generator output minus auxiliary) measured over the Targeted Capacity Test Period. The Capacity must be no less than ■■■ MW nor greater than ■■■ MW.
- 3.3.4 Test Results. The results of any Targeted Capacity Test, including all data related to Facility performance during testing, shall be submitted to Buyer by Seller within seven (7) calendar days of the conclusion of the Targeted Capacity Test. Seller shall certify that all such data is accurate and complete.

- 3.3.5 Payment for Test Energy. If the Facility is in Buyer’s control area, Buyer will purchase and receive all Net Electric Energy generated during initial testing at a price per MWh equal to Buyer’s As-Available Rate. If the Facility is not in Buyer’s control area, Buyer can purchase and receive all Net Electric Energy generated during initial testing at a per MWh equal to Buyer’s As-Available Rate if it so chooses. If in such event Buyer does not choose to purchase all Net Electric Energy generated during initial testing, then Seller shall be free to sell such Energy at its discretion.

- 3.3.6 Additional Tests. Buyer shall have the right to require that Seller, not more than once in any twelve (12) Month period beginning with the Commercial Operation Date, perform a Targeted Capacity Test of the Facility within sixty (60) days of the demand; provided, however, that such demand shall be coordinated with Seller so that sixty (60) day period avoids previously notified periods of a Planned Outage, Maintenance Outage or Mutually-Agreed Outage. Seller, at its option, may, upon at least 10 days’ notice to Buyer, conduct Targeted Capacity Tests from time to time.

- 3.3.7 Failure to Test at Minimum Targeted Capacity. If any Targeted Capacity Test conducted in accordance with Section 3.3.6 reflects a Capacity below ■■■ MW, Seller shall have 60 days to address the cause of the Facility’s failure to test at the Targeted Capacity level, and on or before the 60th day, Seller shall provide Buyer with a reasonable cure plan describing the cause of the deficiency and setting forth a plan and timetable for curing the deficiency within a period not to exceed twelve (12) months. During this diagnostic and cure period, Seller shall, at its sole expense, have the right to schedule and conduct (within commercially reasonable scheduling limitations) such additional Targeted Capacity Tests as are necessary to demonstrate that any deficiency in attaining the Targeted Capacity has been cured.

Article 4

Purchase and Sale of Net Electric Energy and Associated Attributes

- 4.1 Purchase and Sale of Net Electric Energy. Seller will deliver and sell to Buyer and Buyer will purchase and receive all Net Electric Energy.

- 4.2 Environmental Credits.
 - (a) The Parties understand and agree that the Facility is a “renewable” electricity generation source under applicable state and federal laws and regulations in effect as of the Effective Date.

(b) 

[REDACTED]

(c) [REDACTED]

(d) [REDACTED]

(e) [REDACTED]

[REDACTED]

**Article 5
Delivery Point; Delivery**

- 5.1 Delivery Point. The physical point for the delivery by Seller to Buyer of Net Electric Energy shall be determined as either the Electrical Interconnection Point or, if Seller interconnects with a Transmission System other than Buyer's, Buyer's interconnection with the Transmission Provider's Transmission System, or such other physical point on which Seller and Buyer agree ("**Delivery Point**").
- 5.2 Title. Title to and risk of loss of Net Electric Energy shall pass from Seller to Buyer at the Delivery Point.
- 5.3 Responsibility. Seller shall be responsible for delivery of Net Electric Energy to the Delivery Point and, as between the Parties, shall be responsible for all costs, liabilities, Taxes, losses, and charges of any kind imposed or assessed with respect to the delivery of

Net Electric Energy to the Delivery Point. Except as otherwise provided in the Electrical Interconnection and Operating Agreement, Buyer shall be responsible for providing or obtaining transmission and distribution service from the Delivery Point and, as between the Parties, Buyer shall be responsible for all costs, liabilities, Taxes, losses, and charges of any kind imposed or assessed at and after the delivery of Net Electric Energy at the Delivery Point.

Article 6 Interconnection

- 6.1 Interconnection Facilities. The Parties' respective responsibilities, if any, with respect to interconnection and transmission facilities shall be as provided in the Electrical Interconnection and Operating Agreement.

Article 7 Metering

- 7.1 Location and Ownership. Net Electric Energy will be measured by Buyer's electricity metering equipment, which will include telemetry equipment electronically accessible by Seller ("Meters"), located as near as practicable to the Electrical Interconnection Point. As between the Parties, Buyer will be responsible for the installation and maintenance of the Meters in accordance with Prudent Industry Practice and FPSC Rule 25-17.087.
- 7.2 Check Meters. Either Party may, at its option and expense, install, operate and maintain one or more check meters in accordance with Prudent Industry Practice. Check meters will not be used for measurement of Net Electric Energy except as provided in Section 7.3.2. Check meters will be subject to inspection and testing by the other Party at all reasonable times.
- 7.3 Testing and Adjustment of Meters.
- 7.3.1 Inspection and Testing. The Buyer will inspect and test all Meters in accordance with Prudent Industry Practice.
- 7.3.2 Adjustment for Inaccurate Measurements. If the Meters fail to register, or the measurement made by Meters during a test varies by more than one percent from the measurement made by the standard meter used in the test, they will be adjusted, repaired or replaced in order to provide accurate metering, and an adjustment to previous billings will be made to correct all inaccurate measurements for the amount and the duration of the inaccuracy. In such a case, if either Party had installed a check meter and such check meter is registering accurately, the adjustment will be made to accord with the check meter (or the average of both Parties' check meters, if applicable). If no check meters have been installed or any installed check meters are not registering accurately, or the Parties cannot agree on the amount or duration of the inaccuracy, the adjustment will be made for the amount of inaccuracy as measured by the test, for the period immediately preceding the test that is equal to one half of the time from the date

of the last previous test of the Meters, provided that the period subject to adjustment will not exceed six months. In no case shall an adjustment to previous billings be corrected more than two (2) years from the date that the Net Electric Energy was received by Buyer.

Article 8 Charges And Payments

8.1 Project Energy Payment. Beginning on the Commercial Operation Date, Buyer shall pay Seller, [REDACTED] for each MWh of Net Electric Energy delivered to the Delivery Point (“Project Energy Payment”).

8.1.1 Project Energy Payment Escalation. Beginning on January 1, 2012 and continuing each year after, the Project Energy Payment shall be increased by [REDACTED] over the proceeding year amount.

8.1.2 Project Energy Payment Adjustment. Beginning on the Commercial Operation Date, the Annual Billing Factor will be calculated monthly. In the event that the Annual Billing Factor in any month is less than [REDACTED], the Project Energy Payment for such month shall be reduced by [REDACTED].

The Annual Billing Factor for each Monthly Billing Period shall equal the ratio, expressed as a percentage, of the total Net Electric Energy delivered during the On-Peak Hours for the twelve most recently completed Monthly Billing Periods divided by the sum of the products of the Capacity multiplied by the total On-Peak Hours for each of the twelve most recently completed Monthly Billing Periods. Periods during a Force Majeure Event shall be excluded from calculations of the Annual Billing Factor. For each of the first 11 Monthly Billing Periods after the Commercial Operation Date, the Annual Billing Factor shall be computed based on the Net Electric Energy delivered, On-Peak Hours and Capacity for the then most recently completed Monthly Billing Periods. The Capacity utilized in calculating each Net Electric Energy Payment Adjustment shall be the Capacity reflected in the then most recently completed Targeted Capacity Test.

8.2 Statements and Payment.

8.2.1 Invoices. By the tenth day of each month following a month in which Net Electric Energy was delivered, Seller shall provide Buyer with an invoice setting forth the quantity of Net Electric Energy that was delivered, the price established for such Net Electric Energy and the total Net Electric Energy Payment due from Buyer. Buyer shall remit the amount due by wire transfer, pursuant to Seller’s invoice instructions, on or before twenty Business Days after Buyer’s receipt of Seller’s invoice.

8.2.2 Interest. If Buyer fails to pay any amount payable under this Agreement when due, then Buyer also will pay interest at the Specified Rate on the amount that is

not paid from the date that the amount was due to the date on which Seller receives payment.

8.2.3 Netting. The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date pursuant to this Agreement through netting, in which case all amounts owed by each Party to the other Party during the Monthly Billing Period under this Agreement, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

8.2.4 Disputes. Invoices and payments will be subject to Dispute for a period of two years from the end of the month in question. If Buyer in good faith Disputes the amount of any invoice or any part thereof, Buyer shall pay to Seller such amount as it concedes to be correct and, upon Seller's reasonable request, place the remainder into an escrow account for Seller's benefit. The escrow account shall be established as a separate trust account in the name of Buyer f/b/o Seller at a federally insured banking or other depository institution acceptable to Seller. If it is ultimately determined that Buyer owes all or a portion of the disputed amount, Buyer shall pay Seller that amount, with interest at the Specified Rate from the date that amount would have been due in the absence of any Dispute.

**Article 9
Maintenance and Operation**

9.1 Initial Operations. Seller will use Commercially Reasonable Efforts in accordance with Prudent Industry Practice to cause the Commercial Operation Date for the Facility to occur on or before the Stipulated Commercial Operation Date.

9.2 Operation and Maintenance. Seller will at all times operate and maintain the Facility in accordance with Prudent Industry Practice.

9.3 Permits and Compliance with Law.

9.3.1 Seller will obtain and maintain in full force and effect all applicable Permits that are necessary for the ownership, development, construction, operation and maintenance of the Facility and the generation and delivery of Net Electric Energy, except to the extent that failure to do so would not materially adversely affect the operation of the Facility or generation and delivery of Net Electric Energy. Buyer shall cooperate with Seller's efforts to obtain all such Permits.

9.3.2 Seller will, at all times during the Term, comply with all Applicable Law related to the operation and maintenance of the Facility and Seller's performance of its obligations under this Agreement, including all applicable Environmental Laws in effect at any time during the Term.

9.3.3 Buyer will, at all times during the Term, comply with all Applicable Law necessary for Buyer to perform its obligations under this Agreement, including all applicable Environmental Laws in effect at any time during the Term.

9.3.4 Seller agrees that, in the permitting of the Facility, it will not seek to utilize any environmental offsets or increment available from Buyer's existing or future electric generation facilities.

9.4 Planned and Maintenance Outages.

9.4.1 Seller shall annually provide Buyer with a rolling five (5) year Planned Outage Schedule for review. The initial Planned Outage Schedule will be provided no later than ninety (90) days prior to the Commercial Operation Date. This schedule will show all anticipated Planned Outages for the five (5) years of operation following the Commercial Operation Date. On or before October 1 of each year, Seller will update the Planned Outage Schedule to reflect any changes in the schedule for years 1-4 and to add the new year 5. In addition to the annual revisions, Seller shall provide an updated Planned Outage Schedule for the current calendar year (January to December) as soon as the need for changes in the Planned Outage Schedule are known. Buyer shall have thirty (30) calendar days to review the Planned Outage Schedule and to provide Seller with concurrence or requested modifications to the Planned Outage Schedule. To the extent possible without risking material damage to any component of the Facility, Seller will modify the Planned Outage Schedule to meet Buyer's needs. If, during a Planned Outage, Seller identifies that the Planned Outage will last longer than scheduled, Seller shall immediately notify Buyer of such delay. In no event shall the Maintenance Outages in any one calendar year exceed 25 days.

9.4.2 At the point where Seller is aware that a Maintenance Outage is required, Seller shall immediately notify Buyer and coordinate the date and time in which the Maintenance Outage will occur. Buyer agrees to schedule such Maintenance Outage in a manner that allows Seller to remove the unit from service as soon as practical without unduly impacting Buyer's system operations.

9.5 Forced Outages. Should Seller identify the need to remove the unit from operation due to a Forced Outage, Seller shall provide Buyer with as much advance notice as possible of the Forced Outage. As soon as possible following the commencement of the Forced Outage, Seller shall provide Buyer with information pertaining to the cause of the outage and the anticipated return to service date.

9.6 Mutually Agreed Outages. In addition to the foregoing, Seller may remove a unit from service to perform work at such other times and for such durations as Seller and Buyer may agree ("**Mutually Agreed Outage**"). The Parties acknowledge and agree that neither Party will have any obligation to agree to a Mutually Agreed Outage.

- 9.7 Records. Seller will during the Term of this Agreement maintain appropriate books and records with respect to the operation and maintenance of the Facility consistent with Prudent Industry Practice and Applicable Law. Subject to the confidentiality requirements of Section 16.2, Seller will make such books and records available to Buyer for inspection and copying as Buyer may reasonably request to verify the accuracy of any statement, charge or computation made pursuant to this Agreement.
- 9.8 Reports. Subject to the confidentiality requirements of Section 16.2, each of the Parties will provide to the other Party all information that such other Party shall reasonably request in connection with the performance of this Agreement, including all relevant technical information required for the purchase and sale and delivery and acceptance of Net Electric Energy. Such reports shall include, but not be limited to, monthly construction reports beginning the first month after the Construction Contract is awarded.
- 9.9 Qualified Personnel. Seller will employ or contract with qualified personnel for the purpose of operating and maintaining the Facility.
- 9.10 Inspection. Buyer will have the right reasonably to inspect the Facility, upon reasonable prior notice to Seller, during normal business hours and subject to the safety rules and regulations of Seller. Neither any inspections by Buyer, nor any testing monitored by Buyer, shall relieve Seller of its obligation to maintain the Facility. In no event shall any Buyer statement, representation, or lack thereof, either express or implied, relieve Seller of its exclusive responsibility for the Facility. Any Buyer inspection of property or equipment owned or controlled by Seller shall not be construed as endorsing the design, fitness or operation of the Facility equipment nor as a warranty or guarantee.
- 9.11 Insurance. Seller shall carry and maintain no less than the insurance coverages described in the following sentence, applicable to all operations undertaken by Seller, in the minimum amounts indicated in the following sentence, and all such liability insurance shall name Buyer as an additional insured. The minimum required insurance coverages are: Commercial General Liability insurance written on an occurrence basis, with a minimum limit of [REDACTED] and a combined single limit of [REDACTED], and All Risk Property insurance covering the Facility against physical loss or damage, with a minimum limit sufficient to cover replacement of the Facility. Such minimum amounts may be satisfied either by primary insurance or by any combination of primary and excess/umbrella insurance. All such insurance is to be placed with Florida-admitted insurers rated B+ or better by A.M. Best Rating Service. The required insurance coverages shall be maintained in effect throughout the Term.

Seller shall cause its insurers or agents to provide Buyer with certificates of insurance evidencing the policies and endorsements required by this Section 9.11.

If Seller is unable to obtain the insurance coverage required by this Section 9.11, it shall promptly notify Buyer.

Failure by Seller to obtain the insurance coverages or certificates of insurance required by this Section 9.11 shall not in any way relieve or limit obligations and liabilities of Seller under any provision of this Agreement.

If Seller should fail to procure or maintain any insurance required pursuant to this Section 9.11, then Buyer shall have the right, but not the obligation, to procure such insurance and shall be entitled to recover the premiums paid for such insurance as if the same were a debt due and payable against any amounts owed to Seller pursuant to the terms of this Agreement.

- 9.12 Operating Representatives. Each Party shall maintain one designated representative (the “**Operating Representative**”), who shall have authority to act for its principal in all technical, real-time or routine matters relating to operation of the Facility and performance of this Agreement and to attempt to resolve disputes or potential disputes; provided, however, that the Operating Representatives, in their capacity as representatives, shall not have the authority to amend or modify any provision of this Agreement.

9.13 Fuel Availability and Cover Damages. During the Term of this Agreement, Seller shall maintain sufficient Fuel, [REDACTED]

[REDACTED]. At Buyer's request from time to time, Seller shall demonstrate this capability to Buyer's reasonable satisfaction. If Seller determines that the supply of Fuel on the Site [REDACTED] without cure, then upon making such determination, Seller shall promptly notify Buyer of the deficiency, shall provide Buyer with a plan to cure the deficiency without disruption to the Facility's normal operations, and (if not already commenced) shall promptly commence Commercially Reasonable Efforts to implement such plan.

Notwithstanding the foregoing, if at any time during the Term of this Agreement the quantity of Fuel at the Site falls below that necessary to deliver the Energy associated with the Capacity for an uninterrupted [REDACTED], then for each day that the quantity of Fuel at the Site remains below such [REDACTED], Seller shall pay Buyer a replacement contingency fee of the greater of [REDACTED] per day or [REDACTED]

[REDACTED]. Seller shall not be obligated to make any such payments to the extent that any such shortage of Fuel at the Site is due to Force Majeure. At Buyer's request from time to time, Seller shall demonstrate the presence of such [REDACTED] Fuel supply at the Site to Buyer's reasonable satisfaction.

9.14 Seller Notification of Energy Estimate. By 8:00 a.m. Eastern Prevailing Time on each Business Day, Seller shall submit a good faith estimate of the quantity of Net Electric Energy to be supplied to Buyer for the next three (3) subsequent Business Days, including any days during that period that are not Business Days.

If, at any time following submission of a good faith estimate to Buyer on the Business Day preceding the next subsequent Business Day, Seller becomes aware of any change to any of the values contained in the good faith estimate or predicts that such values will be subject to change before the end of the next subsequent Business Day, then Seller shall promptly notify Buyer of such change or predicted change. Notwithstanding the foregoing, Seller shall have no liability to Buyer beyond Seller's obligation in this Agreement for any deviations between actual delivery of Net Electric Energy and any such Energy estimate or update thereto submitted to Buyer.

Article 10
Security for Performance

10.1 Seller Performance Security: On or before the date that Seller gives Buyer written notice that the Conditions Precedent in Section 2.3.1 are satisfied, Seller shall establish, fund, deliver to Buyer and maintain until the fifth anniversary of the Commercial Operation Date performance security in the form of Eligible Collateral ("Seller Performance Security") in an amount equal to [REDACTED]. From and after the fifth anniversary of the

Commercial Operation Date, Seller shall maintain throughout the remainder of the Term Seller Performance Security in an amount equal to [REDACTED]. In the event that a Material Adverse Change occurs in respect of Seller, then within two (2) Business Day(s) Seller shall deliver to Buyer additional Eligible Collateral equal to 50 percent of the then current Seller Performance Security amount; provided however, that in Buyer's sole discretion, based on a review of the overall circumstances of Seller's Material Adverse Change, Buyer may reduce the amount of additional Eligible Collateral required but in no event shall the amount be less than the amount required previous to the Material Adverse Change. Thereafter, if at any time Seller provides to Buyer reasonably detailed evidence demonstrating that Seller's financial condition has recovered to at least a level of creditworthiness as existed prior to the Material Adverse Change, then upon Buyer's approval, which shall not be unreasonably withheld, Buyer shall return to Seller any additional Eligible Collateral provided by Seller.

- 10.2 Replacement Collateral, Release of Collateral: Buyer shall upon two (2) Business Days written request by Seller after the Commercial Operation Date release the portion of the Eligible Collateral that is no longer required as provided in Section 10.1. Seller may periodically change the type(s) of Eligible Collateral by which it satisfies its obligations under Section 10.1, and upon receipt of substitute Eligible Collateral, Buyer shall promptly release the Eligible Collateral for which the substitution is being made. Following any termination of this Agreement, the Parties shall mutually agree to a final settlement of all obligations under this Agreement within 90 days of the date of termination, unless extended by mutual agreement of the Parties. After such settlement, any remaining Eligible Collateral that Buyer has not drawn upon shall be returned to Seller. Any Dispute between the Parties regarding such final settlement shall be resolved according to applicable procedures set forth in Section 16.13.
- 10.3 Draws and Replenishment: Buyer may draw upon Eligible Collateral provided by Seller following the occurrence of an Event of Default by Seller, or as otherwise provided in this Agreement, to recover any damages to which Buyer is entitled under this Agreement. In the event of any draw of amounts from Seller Performance Security permitted under this Agreement, except in the circumstance when this Agreement otherwise terminates, Seller shall within two (2) Business Days replenish the Eligible Collateral to the full amount required by Section 10.1.
- 10.4 Reporting: Seller shall promptly notify Buyer of any circumstance that results in Seller's failure to be in compliance with Seller Performance Security requirements of Article 10. From time to time, at Buyer's written request, Seller shall provide Buyer with such evidence as Buyer may reasonably request that Seller and any Seller Letter of Credit or Seller Security Account is in full compliance with this Agreement.

Article 11
Events of Default and Remedies

- 11.1 Termination Due to Event of Default. If an event specified in Section 11.2 (an “**Event of Default**”) occurs with respect to either Seller or Buyer, then the non-defaulting Party may terminate this Agreement immediately upon written notice to the defaulting Party. The terminating Party will be entitled to all available remedies at law or in equity, except as expressly limited by this Agreement (including Section 14.3).
- 11.2 Events of Default. The occurrence of any of the following events shall constitute an Event of Default:
- 11.2.1 Payment Default. With respect to a Party, if a Party fails to make, when due, any payment required under this Agreement, and that failure is not remedied on or before fifteen (15) days after a Party notifies the other Party of the failure, unless payment is the subject of a good-faith Dispute as described in Section 16.13.1.
- 11.2.2 Inability to Deliver. With respect to Seller, failure to maintain the capability of the Facility to provide at least [REDACTED] of its Capacity and associated Net Electric Energy as established in accordance with Section 3.3 for 60 consecutive days (except in cases of Planned Outages, Mutually Agreed Outages, or Force Majeure), if Seller does not commence a cure for such failure within 30 days after notice from Buyer.
- 11.2.3 Misrepresentation. With respect to a Party, if any representation or warranty made by the Party in this Agreement proves to have been false or misleading in any material respect when made, unless such Party cures or otherwise completes arrangements to hold the other Party harmless from the adverse effect of such misrepresentation within 60 days after notice thereof.
- 11.2.4 Default. With respect to a Party, if the Party fails to perform any covenant set forth in this Agreement (other than obligations that are otherwise specifically covered in this Section 11.2), which is not cured within 60 days after the other Party notifies the Party of the failure; provided that if such failure cannot be cured with due diligence within such 60-day period and the Party has commenced and is diligently continuing to attempt to effect a cure, the Event of Default shall not be deemed to occur until the expiration of such longer period, not to exceed an additional 60 days, as reasonably necessary diligently to complete such cure.
- 11.2.5 Bankruptcy and Insolvency. With respect to a Party, if the Party:
- (a) is dissolved (other than pursuant to a consolidation, amalgamation or merger);
 - (b) becomes insolvent or is unable to pay its debts or fails, or admits in writing its inability, generally to pay its debts as they become due;

- (c) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition (1) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (2) is not dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation thereof;
- (d) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
- (e) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets;
- (f) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets;
- (g) causes or is subject to any event with respect to it, which, under the Applicable Laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (a) through (f) (inclusive); or
- (h) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

11.2.6 Seller materially changes or modifies the Facility from that provided in Recital (A) with respect to its technology or Fuel, without the prior written consent of Buyer.

11.2.7 Seller fails to fulfill its obligations pertaining to Fuel Availability under Section 9.13.

11.2.8 Seller fails to provide the security and to comply with any of the provisions of Article 10.

11.2.9 Seller fails to maintain an Annual Billing Factor of [REDACTED] for 12 consecutive months or more.

- 11.3 Delay Damages. If the Commercial Operation Date does not occur within ninety (90) days after the Stipulated Commercial Operation Date, subject to extension for Force Majeure, Seller shall pay Buyer damages (“**Delay Damages**”) in an amount of [REDACTED] per day for each subsequent day until the Commercial Operation Date is achieved, unless this Agreement is sooner terminated pursuant to Section 11.4. Except as provided in Section 11.4, such Delay Damages shall be Buyer’s sole and exclusive remedy for Seller’s failure to achieve the Commercial Operation Date.
- 11.4 Termination Due to Delay. If the Commercial Operation Date does not occur within 180 days after the Stipulated Commercial Operation Date, subject to extension for Force Majeure, Buyer shall have the right to terminate this Agreement upon fifteen (15) days notice to Seller. Upon termination of this Agreement pursuant to this Section 11.4, Buyer shall be entitled to receive from Seller damages in the amount of [REDACTED] less the amount of Delay Damages paid to Buyer pursuant to Section 11.3. Such right to terminate and receive damages shall be Buyer’s sole and exclusive remedy for Seller’s failure to so achieve the Commercial Operation Date.

Article 12
Taxes/Change in Law

- 12.1 Responsibility. Seller will be responsible for all Taxes imposed or levied relating to the ownership or operation of the Facility. Buyer will be responsible for all Taxes imposed upon the purchase of Net Electric Energy from the Facility (including any applicable sales or use or similar Tax). If either Party is required to collect or remit any Tax on behalf of the other Party, the obligated Party will reimburse the paying Party for such Taxes.
- 12.2 Tax Reporting. Each of the Parties will be responsible for its own Tax reporting. For purposes of Tax reporting, the Parties will treat the transactions described in this Agreement in a manner consistent with the characterizations of such transactions in this Agreement.
- 12.3 Exemption. A Party, on notice from the other, shall provide a certificate of exemption or other reasonably satisfactory evidence of exemption if either Party is exempt from Taxes, and shall use Commercially Reasonable Efforts to obtain, and cooperate with the other Party obtaining, any exemption from or reduction of Tax.
- 12.4 Income and Other Taxes. Each Party shall be responsible for its own liabilities for any other Taxes, including income taxes, attributable to amounts paid to it under this Agreement.
- 12.5 Change in Law.
- 12.5.1 As used herein, “Change(s) in Law(s)” means: after the Effective Date, the adoption, enactment, imposition, promulgation, implementation, issuance, or modification by a Governmental Authority of any Applicable Law, or the issuance of an order, judgment, award or decree of a Governmental Authority

having the effect of the foregoing, including, but not limited to, the imposition on a Party by any Governmental Authority of any requirement with respect to compliance with the Clean Air Interstate Rule promulgated on May 12, 2005 (70 Fed. Reg. 25,162) or the Clean Air Mercury Rule promulgated on May 18, 2005 (70 Fed. Reg. 28,606) and any re-promulgation or re-issuance of such rules in response to a petition for reconsideration or litigation challenging such rules, regardless of the date on which such requirements are imposed.

12.5.2 The Parties acknowledge that Change(s) in Law(s), including, but not limited to Environmental Laws(s) could significantly increase the costs of complying with the terms of this Agreement (“Increased Costs”) and agree that, if any Change(s) in Law(s) should increase(s) a Party’s cost of performing its obligations under this Agreement above the threshold defined in Section 12.5.3 below, the Party affected by such Change(s) in Law(s) may avail itself of the remedies set forth in Section 12.5.4 below as its sole and exclusive remedies for such Change(s) in Law(s) .

12.5.3 The Parties recognize and agree that certain Change(s) in Law(s) may occur that do not rise to a level that the Parties desire to impact this Agreement. Accordingly, the Parties agree that for the purposes of this Agreement, Change(s) in Law(s) will not be deemed to have occurred unless the Increased Costs resulting from such Change(s) in Law(s) exceed ██████████ in the aggregate during the Term.

12.5.4 If a Party’s Increased Costs should meet the threshold requirements set forth in Section 12.5.3 above, and the non-affected Party does not agree, in its sole discretion, to compensate the affected Party for such Increased Costs, then the affected Party may terminate this Agreement upon not less than one hundred and eighty (180) Days written notice to the other Party in the manner provided for in Section 16.1. Notwithstanding the foregoing, Buyer agrees, if legally possible, to seek reimbursement for any such Increased Costs through any applicable cost recovery clause or comparable non-base rate recovery mechanism prior to invoking the termination provision in this Section 12.5.4. In the event that Buyer is not permitted to recover any such Increased Costs through any such clause by the Florida Public Service Commission, then Buyer shall have the right to immediately terminate this Agreement upon the issuance of a final order of the Commission in such matter.

Article 13
Representations and Warranties

13.1 Representations and Warranties of Seller. Seller hereby represents and warrants to Buyer on the date of this Agreement:

13.1.1 Status. Seller is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and has all requisite power and authority to own or lease and operate its properties and to carry on its business as proposed to be conducted hereunder. Seller has delivered to Buyer a true and complete copy of its Articles of Organization, certified by the Secretary of State of the State of _____, and such Articles remain in full force and effect.

13.1.2 Authorization, etc. The execution, delivery and performance by Seller of this Agreement have been duly authorized by all necessary action on the part of Seller, and do not and will not:

- (a) violate the organizational documents of Seller or any Applicable Law, or
- (b) contravene, breach or result in a default under any agreement or instrument to which Seller is a party or by which its assets may be bound.

Seller has delivered to Buyer a true and correct copy of resolutions, duly adopted by the members of Seller at a meeting duly called and held, and authorizing this Agreement, and such resolutions have not been amended or modified and remain in full force and effect.

13.1.3 Enforceability. This Agreement is the legal, valid, and binding obligation of Seller and is enforceable against Seller in accordance with its terms.

13.1.4 Permits and Approvals. As of the date of this Agreement, Seller has obtained any and all Permits necessary for it to enter into this Agreement and reasonably expects to have obtained all Permits necessary for operation of the Facility and delivery of Net Electric Energy by the Commercial Operation Date.

13.1.5 Litigation. There are no suits, proceedings, judgments, rulings or orders by or before any Governmental Authority or arbitrator or any pending or threatened action or proceeding affecting Seller before any Governmental Authority or arbitrator (i) that could reasonably be expected to materially and adversely affect the ability of Seller to perform its obligations under this Agreement or Seller's ability to operate the Facility, or (ii) which purports to affect the legality, validity or enforceability of this Agreement.

13.2 Representations and Warranties of Buyer. Buyer hereby represents and warrants to Seller on the date of this Agreement and again on and as of the Commercial Operation Date:

13.2.1 Status. Buyer is a utility established under the laws of the State of Florida and has all requisite corporate power and authority to own or lease and operate its properties and to carry on its business as now being conducted and as proposed to be conducted under the terms of this Agreement. Buyer has delivered to Seller a

true and complete copy of its Articles of Incorporation, certified by the Secretary of State of the State of _____, and such Articles remain in full force and effect.

13.2.2 Authorization, etc. The execution, delivery and performance by Buyer of this Agreement have been duly authorized by all necessary action on the part of Buyer, and do not and will not:

- (a) violate the organizational documents of Buyer or any Applicable Law, or
- (b) contravene, breach or result in a default under any agreement or instrument to which Buyer is a party or by which its assets may be bound.

13.2.3 Enforceability. This Agreement is the legal, valid, and binding obligation of Buyer and is enforceable against Buyer in accordance with its terms.

13.2.4 Permits and Approvals. Buyer has obtained any and all Permits necessary for it to enter into and perform its obligations under this Agreement.

13.2.5 Litigation. There are no suits, proceedings, judgments, rulings or orders by or before any Governmental Authority or arbitrator or any pending or threatened action or proceeding affecting Buyer before any Governmental Authority or arbitrator that (i) could reasonably be expected to materially and adversely affect the ability of Buyer to perform its obligations under this Agreement, or (ii) purports to affect the legality, validity or enforceability of this Agreement.

13.3 No Other Warranties. Except as explicitly set forth in this Agreement, neither Party makes any representation or warranty, and all implied warranties, including any warranty of merchantability or fitness for a particular purpose, are hereby expressly disclaimed. Each Party's decisions have been the result of arm's length negotiations between the Parties; and each Party is entering into this Agreement with a full understanding of all of the associated risks (economic and otherwise), and it is capable of assuming and willing to assume those risks.

Article 14 **Indemnification; Limitation of Liability**

14.1 Indemnification by Seller. Seller hereby agrees to indemnify and defend Buyer and each of its Affiliates and the directors, officers and employees of each of them (collectively, the “**Buyer Indemnified Parties**”), and hold each of Buyer Indemnified Parties harmless, against all Claims made by third parties to the extent arising out of, resulting from or caused by:

- (1) the ownership, operation or maintenance of the Facility, or
- (2) Net Electric Energy, when title to Net Electric Energy, is vested in Seller.

14.2 Indemnification by Buyer. Buyer hereby agrees to indemnify and defend Seller and each of its Affiliates and the directors, officers and employees of each of them (collectively, the “**Seller Indemnified Parties**”), and hold each of Seller Indemnified Parties harmless, against all Claims made by third parties to the extent arising out of, resulting from or caused by:

- (1) The ownership and operation of Buyer’s electric transmission, insofar as Buyer’s operation of such system relates to the subject matter of this Agreement, or
- (2) Net Electric Energy, when title to Net Electric Energy, is vested in Buyer.

14.3 LIMITATION ON REMEDIES. TO THE EXTENT ANY EXPRESS REMEDY, PAYMENT OBLIGATION, OR MEASURE OF DAMAGES FOR BREACH OF ANY SECTION OF THIS AGREEMENT IS SET FORTH IN THIS AGREEMENT, SUCH REMEDY, PAYMENT OBLIGATION OR MEASURE OF DAMAGES WILL BE THE SOLE AND EXCLUSIVE REMEDY FOR THE BREACH OF SUCH SECTION. ACCORDINGLY, EACH PARTY’S LIABILITY WILL BE LIMITED AS SET FORTH IN SUCH SECTION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY FOR THE SAME DAMAGE OR INJURY NOT PERMITTED BY SUCH SECTION ARE WAIVED. NEITHER PARTY WILL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR IN CONTRACT, EXCEPT TO THE EXTENT THAT A CLAIM FOR WHICH A PARTY IS REQUIRED TO INDEMNIFY THE OTHER PARTY UNDER THIS ARTICLE 14 INCLUDES SUCH DAMAGES INCURRED BY THE THIRD PARTY MAKING SUCH CLAIM.

14.4 Survival. The provisions of this Article 14 shall survive the termination of this Agreement.

Article 15
Force Majeure

15.1 Force Majeure. To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under this Agreement and such Party (the “**Claiming Party**”) gives notice and details of the Force Majeure to the other Party as soon as practicable, then the Claiming Party shall be excused from the performance of its

obligations for the duration of the Force Majeure. Force Majeure shall not excuse the obligation to pay amounts due or owing under this Agreement. The Claiming Party shall remedy the Force Majeure with all reasonable dispatch and shall notify the non-Claiming Party as soon as practicable of the termination of such Force Majeure event. To the extent Buyer is unable to accept delivery of Net Electric Energy as provided under this Agreement due to Force Majeure, this Agreement will not be construed to prohibit Seller from selling Net Electric Energy to third parties during the continuance of such Force Majeure; provided, that nothing in this Agreement will obligate Buyer to transmit such Net Electric Energy to any third party. Seller shall reactivate the Facility at its own expense if the Facility is rendered inoperable due to actions of Seller or its agents or a Force Majeure Event.

- 15.2 Termination for Extended Force Majeure. In the event that a Force Majeure continues for more than three (3) consecutive calendar months, then, during the next three (3) consecutive months, so long as the Claiming Party is exercising due diligence to remedy the Force Majeure this Agreement shall remain in full force and effect. If at the end of such three (3) month period, the Parties agree that the cause of such Force Majeure can reasonably be expected to be remedied through the exercise of due diligence within six (6) additional months, the Claiming Party shall have an additional six (6) months to remedy such Force Majeure; provided that, if the parties are unable to agree, the matter shall be referred to an independent, neutral arbiter selected jointly by the parties to determine whether there is a reasonable probability that the effects of the Force Majeure condition can be remedied within six (6) additional months through the exercise of reasonable diligence. If the arbiter so determines, he shall have sole authority to grant the Claiming Party an additional cure period of up to six months from the expiration of the preceding cure period. If at the conclusion of the additional six-month cure period, the Force Majeure has not been remedied, the non-Claiming Party may terminate this Agreement upon notice to the Claiming Party.

15.2.1 Termination by Claiming Party. If the Claiming Party determines that curing the effects of a Force Majeure event will cost the Claiming Party in excess of [REDACTED] in out-of-pocket costs, then the Claiming Party, upon demonstration to the non-Claiming Party's reasonable satisfaction of the anticipated cost of the cure, shall be entitled to terminate the Agreement.

Article 16
Miscellaneous

16.1 Notices. All notices, demands, requests and other communications provided for under this Agreement, except for real-time or routine communications between the Operating Representatives concerning Facility operations, will be in writing addressed to the respective Party, as the case may be, at the following addresses. Either Party may change the address to which notices are sent or the designation of its Operating Representative by written notice to the other as required by this Section 16.1. Notice will be deemed to have been given (a) when presented personally, upon receipt, (b) when sent by a nationally recognized overnight courier service, on the date delivered to the addressee, (c) when sent by mail, postage prepaid, registered or certified, return receipt requested, on the date delivered to the addressee or (d) when sent by facsimile transmission, on the date of electronic confirmation of transmission (if sent on a Business Day before 5:00 p.m. Eastern Prevailing Time) or the first Business Day thereafter (if sent at any other time). The names and addresses for the service of notices referred to in this Section 16.1 and the designated Operating Representatives are:

To Seller: **BG&E of Florida, LLC d/b/a Biomass Gas and Electric of Florida**

c/o Biomass Gas & Electric, LLC

3500 Parkway Lane, Suite 440

Norcross, GA 30092

Fax No.: 770-662-0287

Operating Representative: Glenn Farris

with a copy to: **Sutherland Asbill & Brennan LLP**

999 Peachtree Street NE

Atlanta, GA 30309

Fax No.: 404-853-8806

Attention: Dorothy B. Franzoni

To Buyer: **Progress Energy Florida, Inc**

299 First Avenue North

PEF 155

St. Petersburg, FL 33701

Fax No.: (727) 820-4598

Operating Representative: Cogeneration Manager

with a copy to: **Progress Energy Florida, Inc**
299 First Avenue North
PEF 151
St. Petersburg, Florida 33701
Fax No.: (727) 820-4598
Attention: Deputy General Counsel

- 16.2 Confidentiality. Each Party agrees that it will not disclose Confidential Information, whether acquired before or after the Effective Date of this Agreement, to any third party other than each Party's officers, directors, employees, advisors or representatives, or each Party's Affiliates and commercial or institutional lenders or investors (current or prospective), their officers, directors, employees, advisors or representatives, in each case who need to know such information for the purpose of advising such Party or enforcing the terms of this Agreement, and who agree to maintain the confidentiality of the Confidential Information (collectively, "**Representatives**") during the Term and for a period ending two years thereafter. Each Party will be responsible for any breach of this Section 16.2 by its Representatives. Notwithstanding the foregoing, Confidential Information may be disclosed to any Governmental Authority or regulatory authority requesting or requiring such information, provided that the other Party is notified of such disclosure (to the extent permitted by law) so that it may seek a protective order or take other action it deems appropriate. This provision will not restrict either Party from making public announcements of the existence of this Agreement or the amount of Net Electric Energy to be purchased and sold or the duration of this Agreement, but no such public announcement may disclose the other terms of this Agreement without the consent of the other Party.
- 16.3 No Partnership. This Agreement shall not be interpreted or construed to create an association, joint venture or partnership among the Parties, or to impose any partnership duty, obligation or liability on the Parties. No Party shall act as agent of the other, have the authority or hold itself out as having the authority to bind the other Party to any contract, obligation or commitment or take any other action on behalf of the other Party, in each case except as expressly set forth in this Agreement.
- 16.4 Assignment. This Agreement may not be assigned by any Party without the other Party's prior written consent; provided, however, that Seller may assign, transfer, mortgage or pledge its interest in this Agreement as security (an "**Assignment for Security**") for any obligation secured by any indenture, mortgage or similar lien on its assets, without limitation on the right of the secured party to further assign this Agreement, including the assignment to create a security interest for the benefit of the third party. Buyer will take such actions as Seller may reasonably request in connection with an Assignment for Security, including delivery of its written consent to such assignment and other documentation reasonably acceptable to lenders. Any assignment of this Agreement by Seller made with the consent of Buyer, except for an Assignment for Security, shall constitute an acceptance and assumption of such obligations by the assignee, a novation of the assignee in place of Seller with respect to such obligations (and any related interests so transferred), and a release and discharge by Buyer of Seller from, and an

agreement by Buyer not to make any claim for payment, liability, or otherwise against Seller with respect to, such obligations from and after the effective date of the assignment.

- 16.5 Further Assurances. Each Party hereby undertakes to take or cause to be taken all actions, including the execution of additional instruments or documents, necessary to give full effect to the provisions of this Agreement.
- 16.6 Third Party Beneficiaries. This Agreement is for the benefit of the Parties hereto and their respective successors and permitted assigns and Buyer Indemnified Parties and Seller Indemnified Parties, and this Agreement shall not otherwise be deemed to confer upon or give to any third party any remedy, claim, liability, reimbursement, cause of action or other right.
- 16.7 Governing Law. This Agreement shall be governed by and shall be construed and interpreted in accordance with the laws of the State of Florida, without reference to principles of conflicts of laws thereunder.
- 16.8 Waiver of Jury Trial. Each Party hereby irrevocably and unconditionally waives any right to a jury in any trial of any action arising out of this Agreement.
- 16.9 Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements and undertakings, oral or written, between them with respect to the subject matter of this Agreement.
- 16.10 Amendment.
- 16.10.1 In Writing. No amendment, modification, waiver, change or addition hereto shall be effective or binding on any of the Parties hereto unless the same is in writing and signed by each of the Parties hereto.
- 16.11 Waivers. Any waiver, express or implied, by either Party of any right or of any failure to perform or breach of this Agreement by the other Party shall not constitute or be deemed as a waiver of any right or of any other failure to perform or breach of this Agreement by such other Party, whether of a similar or dissimilar nature.
- 16.12 Severability. In the event of the invalidity or unenforceability of any provision of this Agreement, the validity or enforceability of the other provisions hereof shall not be affected and the Parties shall substitute for such invalid or unenforceable provision a valid and enforceable provision that most closely approximates the intended effect of the invalid or unenforceable provision.
- 16.13 Resolution of Disputes
- 16.13.1 Notice of Dispute. In the event that any dispute, controversy or claim arising out of or relating to this Agreement or the breach, termination or validity thereof should arise between the Parties (a “**Dispute**”), the Party wishing to declare a

Dispute shall deliver to the other Party a written notice identifying the disputed issue.

- 16.13.2 Resolution by Parties. Either Party may give the other Party written notice of any Dispute not resolved in the normal course of business. Executives of both Parties shall meet at a mutually acceptable time and place within ten (10) Business Days after delivery of such notice and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the Dispute. In such meetings and exchanges, a Party shall have the right to designate as confidential any information that such Party offers. No Confidential Information exchanged in such meetings for the purpose of resolving a Dispute may be used by a Party in litigation against the other Party. If the matter has not been resolved in the aforementioned manner within thirty (30) Days of the disputing Party's notice having been issued, or if the Parties fail to meet within ten (10) Business Days as required above, either Party may initiate binding arbitration in St. Petersburg, Florida, as hereafter provided. The binding arbitration proceeding shall be conducted by a three-party arbitration panel in accordance with the Rules for Non-Administered Arbitration of The International Institute for Conflict Prevention & Resolution ("CPR Institute") or other mutually agreed upon procedures.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and delivered by their duly authorized officers or agents, all as of the day and year first above written.

BG&E of Florida, LLC d/b/a Biomass Gas and Electric of Florida

By: 

Name: S. Glenn Farris

Title: CEO

Florida Power Corporation d/b/a Progress Energy Florida, Inc.

By: 

Name: ROBERT F. CASWELL

Title: VP-REG. COMM. OPS