

# **EXHIBIT 1**

**ASSET PURCHASE AGREEMENT**

**by and between**

**Entergy Nuclear FitzPatrick LLC**

**as Seller,**

**and**

**Exelon Generation Company, LLC**

**as Buyer**

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**Dated as of August 8, 2016**

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- Exhibit E – Fund Assets Market Value Documentation
- Exhibit F – Owner’s Affidavit and Gap Undertaking
- Exhibit G – Seller Guarantee

## **ASSET PURCHASE AGREEMENT**

This ASSET PURCHASE AGREEMENT (this "Agreement") is dated as of August 8, 2016 and is by and between Entergy Nuclear FitzPatrick LLC, a Delaware limited liability company ("Seller"), and Exelon Generation Company, LLC, a Pennsylvania limited liability company ("Buyer"). Each of Seller and Buyer is referred to, individually, as a "Party," and, collectively, they are referred to as the "Parties."

### **RECITALS**

WHEREAS, Seller owns the James A. FitzPatrick Nuclear Power Station and related facilities (together, the "Facility");

WHEREAS, subject to the terms and conditions set forth in this Agreement, Seller desires to sell, and cause the Subsidiaries of Entergy Corporation ("Entergy") that own or purport to own Transferred Assets (together with Seller, the "Seller Entities") to sell, the Transferred Assets, and Buyer desires to purchase the Transferred Assets for the consideration specified in Section 2.06 of this Agreement and assume certain liabilities of the Seller Entities related to the Transferred Assets (together, the "Transaction");

WHEREAS, as a material inducement to Buyer to enter into this Agreement, Seller has agreed to deliver to Buyer at Closing the Seller Guarantee;

WHEREAS, NYPA has caused to be issued an irrevocable letter of credit in the amount of thirty five million dollars (\$35,000,000) (the "Available Funds L/C") in favor of Seller to be drawn upon and disbursed pursuant to the terms of an available funds agreement between Seller and NYPA (the "Available Funds Agreement") upon the occurrence of any Draw Event (as defined in the Available Funds Agreement);

WHEREAS, in connection with the Transaction, the Signing Related Agreements have been executed and delivered by the parties thereto (including, where applicable, the Parties) concurrently with the execution of this Agreement; and

WHEREAS, Seller and Buyer desire to make certain representations, warranties, covenants and agreements in connection with the Transaction and also to prescribe various conditions to the Transaction.

NOW THEREFORE, in consideration of the premises and the respective representations, warranties, covenants and agreements in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

### **ARTICLE I**

#### **DEFINITIONS AND RULES OF CONSTRUCTION**

Section 1.01 Definitions. Capitalized terms used in this Agreement shall have

the meanings ascribed to them in Exhibit A hereto or in the applicable section of this Agreement to which reference is made therein.

Section 1.02 Rules of Construction.

(a) Unless the context otherwise requires, references in this Agreement to Articles, Sections, Exhibits, Annexes and Schedules shall be deemed references to Articles and Sections of, and Exhibits, Annexes and Schedules to, this Agreement.

(b) If a term is defined as one part of speech (such as a noun), it shall have a corresponding meaning when used as another part of speech (such as a verb). Terms defined in the singular have the corresponding meanings in the plural and vice versa. Unless the context of this Agreement clearly requires otherwise, words importing the masculine gender shall include the feminine and neutral genders and vice versa. The word "or" shall not be exclusive. The words "includes" and "including" shall mean "including, without limitation." The words "hereof," "hereto," "hereby," "herein," "hereunder" and words of similar import, when used in this Agreement, shall refer to this Agreement as a whole and not to any particular section or article in which such words appear, unless the context otherwise requires.

(c) If a term is defined in this Agreement, then it shall have the corresponding meaning in any Exhibit, Schedule or Annex to this Agreement unless such Exhibit, Schedule or Annex shall otherwise expressly provide.

(d) Whenever this Agreement refers to a number of days, such number shall refer to calendar days unless Business Days are specified. When calculating the period of time before which, within which or following which any action must be taken hereunder, the date that is the reference date in calculating such period shall be excluded. If the last day of such period is on a day that is not a Business Day, then such action may be validly taken on or by the next day that is a Business Day.

(e) The Parties acknowledge that each Party and its attorney have reviewed this Agreement and that any rule of construction to the effect that any ambiguities are to be resolved against the drafting Party, or any similar rule operating against the drafter of an agreement, shall not be applicable to the construction or interpretation of this Agreement.

(f) The captions in this Agreement are for convenience only and shall not be considered a part of or affect the construction or interpretation of any provision of this Agreement.

(g) All accounting terms used herein and not expressly defined herein shall have the meanings given to them under GAAP.

(h) The dollar thresholds contained in Article VIII, including the Deductible and the Cap, are not an indication of materiality for any purposes under this Agreement.

(i) All references to "dollars" or "\$" shall be to U.S. dollars.

(j) References to any Person include the successors and permitted assigns of that Person.

(k) Prior drafts of this Agreement are not an indication of the Parties' intent and shall not be applicable to the construction or interpretation of this Agreement.

(l) Any reference in this Agreement, the Schedules or any document delivered in connection with this Agreement to any Law, Contract or document, or any section thereof, shall, unless otherwise expressly provided in this Agreement, be a reference to such Law, Contract, document or section as amended, modified or supplemented (including any successor section) and in effect from time to time.

## ARTICLE II

### PURCHASE AND SALE

Section 2.01 Purchase and Sale of Assets. Upon the terms and subject to the conditions of this Agreement, at and effective as of the Closing, Seller shall (and shall cause the Other Seller Entities to) sell, assign, transfer, convey and deliver, or cause to be sold, assigned, transferred, conveyed or delivered, to Buyer, and Buyer shall purchase, assume and accept from Seller and the Other Seller Entities, free and clear of any Liens (except any Permitted Liens) all of Seller's and the Other Seller Entities' right, title and interest in and to the Transferred Assets. As used in this Agreement and except to the extent any such assets, properties or rights are Excluded Assets, the "Transferred Assets" means (i) all of the assets, properties and rights of Seller, (ii) all of the assets, properties and rights of any Other Seller Entity to the extent such assets, properties or rights exclusively relate to, or are exclusively used in, the ownership or operation of the Facility and (iii) all of the assets in the JAF NDT, along with all related tax and accounting records and the then most recent and final decommissioning study on file with the NRC). The Transferred Assets shall include the following:

(a) the Sites, including the real property and Improvements thereon set forth on Schedule 2.01(a), and all appurtenances thereto and easements with respect thereto, including (i) all related non-exclusive rights of ingress and egress; (ii) the 115kV and 345kV switchyards, transmission or generator tie lines and the lake water intake and discharge structures to the extent such may be deemed real property, fuel handling and storage facilities and installations, barriers, enclosures and other structures for the Site security plan and the administration facility, training facility and wellness center; and (iii) all right, title and interest with respect to the emergency operations facilities, including the environmental laboratory facility at Oswego County Airport located in Oswego County, New York (together, the "Real Property");

(b) all personal property located at or on any of the Sites;

(c) all machinery, mobile or otherwise, equipment (including computer hardware and communications equipment), weapons, detectors, monitors, testing devices and other devices or equipment required for or related to physical security (including access authorization and fitness for duty), safeguards or cybersecurity, radiation monitors, tools,

spare parts, fixtures, furniture, furnishings, storage casks and canisters, vehicles and other personal property, including the equipment in the 115kV and 345kV switchyards, transmission or generator tie lines and lake water intake and discharge structures to the extent such may be deemed personal property, and the Inventories, including all transferable warranties and similar guarantees existing as of the Closing Date from Third Parties relating thereto, including those set forth on Schedule 2.01(c);

(d) all Permits relating to ownership or operation of the Facility which are transferable to Buyer by assignment or otherwise (including upon request or application to a Governmental Authority) or which will pass to Buyer as successor in title to the Facility by operation of Law, including those set forth on Schedule 2.01(d) and all FCC licenses relating to the Facility (collectively, the "Transferable Permits");

(e) all right, title and interest in and to any Material Contracts, including those set forth on Schedule 2.01(e), other than any Material Contracts that are Eligible Contracts that Buyer elects to include on Schedule 2.02(l) as updated in accordance with Section 2.02(l); provided, however, that Buyer may not elect to include on Schedule 2.02(l) the Material Contracts sets forth on Schedule 2.01(e) that are marked with an asterisk;

(f) all right, title and interest in and to the Facility Long-Term Agreement;

(g) (i) all files, records, reports and systems (including electronic systems) maintained as part of the Facility's access authorization and fitness for duty programs required by applicable Law and (ii) all books, records, operating, safety and maintenance manuals, security plans, inspection reports, engineering design plans, blueprints, as-built plans, specifications, procedures, studies, reports and equipment repair, safety, maintenance or service records of Seller relating primarily to the design, construction, licensing, regulation and operation of the Facility (collectively, the "Books and Records");

(h) all right, title and interest of Seller in and to the use of the name "James A. FitzPatrick Nuclear Power Station";

(i) all assignable right, title and interest in and to the NRC Licenses;

(j) all right, title and interest in and to Nuclear Fuel on the Closing Date;

(k) all right, title and interest in and to Spent Nuclear Fuel, including Pre-1983 Spent Nuclear Fuel, Radioactive Material and the spent fuel storage installation, in each case located on the Sites on the Closing Date;

(l) (i) all right, title and interest of Seller in and to the property and assets used or usable in providing emergency warning or associated with emergency planning or preparedness, including as set forth on Schedule 2.01(l)(i) and (ii) all right, title and interest in and to the Contracts and agreements associated with emergency warning, emergency planning or preparedness, including as set forth on Schedule 2.01(l)(ii) (the "Emergency Preparedness Agreements");

(m) all right, title and interest in and to (i) any Site MOUs and (ii) the DOE Standard Contract for the Facility pursuant to the transfer of title of all of the Facility's Spent Nuclear Fuel and Radioactive Material and, subject to Section 2.04(j), the assignment to Buyer of such rights and obligations under the DOE Standard Contract for the Facility pursuant to the DOE Consent;

(n) (i) subject to the proviso in Section 2.01(e), all right, title and interest in and to the Contracts set forth on Schedule 2.01(n)(i); provided, that Buyer may update Schedule 2.01(n)(i) in its sole discretion at any time on or prior to September 30, 2016 to add or remove any Eligible Contract; and (ii) the portion of any assignable Shared Contracts or Multiparty Contracts set forth on Section 2.01(n)(ii) (the "Specified Shared Contracts") to the extent related to the Facility;

(o) all right, title and interest in and to Intellectual Property developed or owned by Seller;

(p) all right, title and interest in and a license or other right to use any drawings, designs, specifications and other documents owned by or licensed to Seller or any Other Seller Entity which are necessary for the licensing, operation or Decommissioning of the Facility, including (i) the Corporate Standard Procedures for the Facility, (ii) all drawings, designs and specifications related to the information technology systems used to operate the Facility and (iii) all drawings, designs, specifications and other documents related to the software set forth on Schedule 2.01(r)(ii)(A) and Schedule 2.01(r)(ii)(B);

(q) all right, title and interest in and to ANI nuclear liability policies which are transferable by Seller or any Other Seller Entity to Buyer by assignment and all associated rights and benefits (including any proceeds in respect of the Facility or any portion thereof);

(r) (i) all right, title and interest of Seller or any Seller Entity in and to the existing simulator application suite for the Fitzpatrick Training Simulator that includes the replicated plant models, executive, and instructor station; provided, however, that Buyer shall be responsible for all costs and expenses required to obtain any Third Party consent or other permission or replacement license therefor; and (ii) with respect to any other software: (A) owned by Seller or any Other Seller Entity, and used exclusively in the operation of the Facility, all right, title and interest in and to such software, including as set forth on Schedule 2.01(r)(ii)(A); and (B) licensed from Third Parties and exclusively used in the operation of the Facility, such right, title and interest in such software licenses, including as set forth on Schedule 2.01(r)(ii)(B), but only if (1) the terms of such licenses expressly allow for the assignment to Buyer, or if not, (2) Buyer secures consent from the licensors for such assignment, provided that such consent does not impose obligations on Seller on or after the Closing (other than to assign the license), and (3) Buyer presents evidence of such consent to Seller prior to the Closing; provided, that Seller shall cooperate with Buyer and assist Buyer, at Buyer's sole cost and expense, in obtaining such consent;

(s) except as provided for on Schedule 2.01(s), all Claims and rights against any Third Parties arising out of or relating to any of the Assumed Liabilities;

(t) all right, title and interest in and to the CBAs to the extent applicable to any Transferred Employee (as defined in the Employee Matters Agreement) with respect to such employee's employment by Buyer or its Affiliates, subject to modification or termination by agreement between Buyer or its applicable Affiliate and the applicable labor union;

(u) all other assets related to the Facility set forth on Schedule 2.01(u).

Section 2.02 Excluded Assets. Notwithstanding any provision to the contrary in Section 2.01, the Seller Entities will retain all of their respective rights, titles and interests in and to, and shall not, and shall not be deemed to, sell, assign, transfer, convey or deliver to Buyer, and the Transferred Assets shall not, and shall not be deemed to, include any of the following assets, properties and rights (all such retained assets, the "Excluded Assets"):

(a) except as otherwise provided in any Related Agreement, any Seller Entity Plan, any trusts, insurance arrangements or other assets held pursuant to, or set aside to fund the obligations of Entergy or its Subsidiaries under, any Seller Entity Plan, any data and records (or copies thereof) required to administer the benefits of any Seller Entity Employee or any spouse, child, dependent, alternate payee or beneficiary of such Seller Entity Employee under any Seller Entity Plan, and any other assets attributable to or otherwise maintained in respect of the employment, termination of employment or retirement of any Seller Entity Employee or in respect of any spouse, child, dependent, alternate payee or beneficiary of such Seller Entity Employee;

(b) all assets of the Other Seller Entities that are not exclusively related to or exclusively used in the ownership and operation of the Facility (except to the extent expressly identified as Transferred Asset in clauses (a) through (t) of Section 2.01);

(c) except as provided in Section 2.01(q) and except to the extent such assets are held in the JAF NDT, all cash and cash equivalents (including marketable securities and short term investments), accounts receivable, checkbooks and canceled checks and bank deposits, and any income, sales, payroll or other refunds of any Tax for which Seller is liable pursuant to Section 10.01 and Section 10.02;

(d) all (i) Contracts, instruments or other agreements between the Seller Entities and their customers relating to sales by the Seller Entities of electric capacity or energy from the Facility and (ii) all tariffs, agreements and arrangements to which any Seller Entity is a party or has an interest for the purchase or sale of electric capacity and/or energy or for the purchase or sale of transmission or ancillary services, including each as set forth on Schedule 2.02(d);

(e) all right, title and interest in and to any Claims against Third Parties (other than a Governmental Authority having regulatory jurisdiction over the Transferred Assets) relating to (i) any period prior to the Closing (except to the extent such Claim relates to an Assumed Liability) or (ii) the Excluded Assets or Excluded Liabilities, whether payable in cash or as a credit against future liabilities, including insurance proceeds and condemnation awards, Claims for contribution or indemnity, tort Claims, causes of action, contract rights and

refunds accrued and owing as of the Closing Date, including those set forth on Schedule 2.02(e);

(f) all right, title and interest in and to any refunds under any ANI nuclear liability and NEIL property insurance policies attributable to any period prior to the Closing (including any NEIL distributions due for periods prior to Closing);

(g) all right, title and interest in and to (i) the name "Entergy" or "Entergy Corporation," in any style or design, or the name of any other Affiliate of Seller, any trademark, trade name, identifying symbols, logos, emblems, signs, insignia or domain names comprised or derived from, confusingly similar to or including any of the foregoing, (ii) all trademarks and any other Intellectual Property that is not expressly designated as a Transferred Asset, and (iii) the reputation or goodwill of Seller or any of its Affiliates (collectively, the "Entergy Names and Marks");

(h) all right, title and interest in and to any properties or assets privileged under the attorney-client privilege, attorney work-product privilege, or any other self-auditing privilege or policy from a Governmental Authority;

(i) (i) all books and records related to the Facility which form part of the general ledger of the Seller Entities or their Affiliates, including any such Person's corporate or organizational books and records (including minute books), Tax Returns, financial and other accounting records necessary for the preparation of financial statements, Tax Returns or government-required filings, personnel records and other records that such Person is required by Law or Order to retain in its possession, including those set forth on Schedule 2.02(i) and, except as expressly set forth in the Employee Matters Agreement or Section 2.01(g), all files and records relating to any Seller Entity Employee (including files and records relating to skill and development training, biographies, seniority histories, salary and benefits, Occupational Safety and Health Administration reports (or the equivalent), active medical restriction forms, fitness for duty and disciplinary actions); provided, that all records relating to union negotiations pertaining to Active Employees shall be made available to Buyer for review and copying in the manner set forth in Section 5.03; and (ii) to the extent permitted by Law, copies of any Books and Records that are in the possession of Seller or any of its Affiliates;

(j) any employee e-mail, instant messages, text messages, recorded voicemails and other electronic employee communications whether on employee-owned devices or devices owned by Seller or its Affiliates;

(k) except as expressly provided in Section 2.01(g)(i) and Section 2.01(r), (i) all fleet-wide information technology systems and Intellectual Property, including as set forth on Schedule 2.02(k) and (ii) software developed, owned, or licensed by the Seller or the Seller Entities, used in connection with the operation of the Facility;

(l) subject to the proviso in Section 2.01(e), all right, title and interest in and to all (i) Contracts related to the Facility that are set forth on Schedule 2.02(l); provided, that (A) Buyer may update Schedule 2.02(l) in its sole discretion at any time on or prior to September 30, 2016 to add or remove any Material Contract in effect as of the date of this Agreement that is an Eligible Contract and (B) Buyer may update Schedule 2.02(l) in its sole

discretion at any time within 30 days after it receives written notice from Seller of a Contract that would constitute a Material Contract if entered into on or prior to the date of this Agreement that is an Eligible Contract and entered into after the date of this Agreement; (ii) except as contemplated in the Reimbursement Agreement or the Transfer Agreement, Contracts that would constitute Material Contracts that are entered into after the date of this Agreement of which Seller does not provide Buyer written notice at least 30 days prior to the Closing Date; (iii) Contracts in effect as of the date of this Agreement that are Eligible Contracts of the type specified in clause (ii) of the definition of Eligible Contract, including as set forth on Schedule 2.02(1)(iii), that Buyer does not elect to include on Schedule 2.01(n)(i) as updated in accordance with Section 2.01(n), (iv) Contracts related to the Facility that are (A) in effect as of the date of this Agreement and were not made available to Buyer prior to the date of the Agreement or (B) entered into by Seller or any of its Affiliates on or after the date of this Agreement and that are not terminable by Buyer after the Closing without penalty upon not more than ninety (90) days' notice, (vi) non-severable Multiparty Contracts and Shared Contracts other than the Specified Shared Contracts and (vii) any Contract solely between or among Seller and any of its Affiliates (collectively, the "Non-Assigned Contracts");

- (m) all right, title and interest under the Prior Acquisition Agreement;
- (n) all right, title and interest to the Excluded DOE Claims;
- (o) all other assets of the Seller Entities set forth on Schedule 2.02(o);

and

(p) all other assets of the Seller Entities not specified above which do not constitute a right or interest in the Transferred Assets.

Section 2.03 Assumption of Liabilities. Upon the terms and subject to the terms of this Agreement, Buyer shall, on the Closing Date, assume, agree to pay, perform and discharge when due any and all of the Assumed Liabilities. As used in this Agreement, and except to the extent any such Liability is an Excluded Liability, the "Assumed Liabilities" means any and all of the Liabilities of the Seller and any Other Seller Entity to the extent such Liabilities arise out of the operation of the Facility, whether arising from, or relating to, the period prior to, on or after the Closing Date, including the following:

(a) all Environmental Liabilities (other than as provided in Section 2.04), including those set forth on Schedule 2.03(a);

(b) all Liabilities arising after the Closing under the Material Contracts, the Contracts set forth on Schedule 2.01(n)(i) as updated in accordance with Section 2.01(n), the Specified Shared Contracts, Emergency Preparedness Agreements and Transferable Permits in accordance with the terms thereof, except in each case, to the extent such Liabilities (other than with respect to any Environmental Permit) relate to or arise out of breaches by the Seller Entities prior to the Closing or events, facts or circumstances existing prior to the Closing (Liabilities relating to or arising out of breaches by the Seller Entities prior to the Closing or events, facts or circumstances existing prior to the Closing, "Pre-Closing Contractual Liabilities");

(c) except as provided for in this Agreement or any Related Agreement, all Liabilities in respect of Taxes for which Buyer is liable pursuant to Section 10.01 and Section 10.02;

(d) all Liabilities arising out of the use or ownership by Buyer or any of its Affiliates after the Closing of any Transferred Asset owned, leased or held by any Other Seller Entity at any time prior to the Closing;

(e) all Liabilities under any Orders relating to the Facility, the Transferred Assets or the Assumed Liabilities;

(f) all Liabilities in respect of: (i) the Decommissioning of the Site (including the Facility) following permanent cessation of operations; (ii) decontamination and decommissioning fund costs or fees arising from or in connection with the Facility pursuant to 42 U.S.C. §2297g-1 after the Closing; and (iii) any other post-operative sale, transfer or other disposition of the Facility or any other of the Transferred Assets;

(g) all Liabilities from and after the Closing for the management, storage, transportation and disposal of Spent Nuclear Fuel including, subject to Section 2.04(j), all Liabilities under the DOE Standard Contract for the Facility pursuant to the transfer of title of all of the Facility's Spent Nuclear Fuel and Radioactive Material and the assignment of such rights and obligations pursuant to the DOE Consent, including pursuant to Article VIII of the DOE Standard Contract the (i) one-time fee (plus interest on the outstanding fee balance) for Pre-1983 Spent Nuclear Fuel to be paid after Closing and (ii) any fee on electricity generated by the Facility that is imposed by the DOE after, or is payable after, the Closing (Seller being responsible to reimburse Buyer, or cause Buyer to be reimbursed, for Liabilities described in Section 2.04(j));

(h) all Liabilities for any Price-Anderson Act retrospective premium obligations under the secondary financial protection program applicable to the NRC License for the Facility for (i) nuclear worker liability on or prior to or after the Closing Date or (ii) any Third Party nuclear Liability arising out of any nuclear incident or occurrence on or prior to or after the Closing Date;

(i) all Liabilities for retrospective premium obligations under the NEIL account arising from losses incurred by the insurer after the Closing;

(j) all Liabilities under the NRC License (i) applicable to the ownership and operation of the Facility relating to the period after the Closing imposed by the NRC, including fees or charges accrued on or after the Closing or (ii) with respect to compliance with any corrective actions imposed after the Closing by the NRC with respect to the operation of the Facility after the Closing;

(k) all Liabilities and obligations expressly allocated to or assumed by Buyer or any Affiliate of Buyer in any Related Agreement;

(l) all Liabilities arising under or relating to nuclear Laws or Orders of the NRC or relating to any Claim in respect of nuclear material arising out of ownership or

operation of the Facility and the other Transferred Assets from and after the Closing Date, unless expressly excluded pursuant to Section 2.04;

(m) all Liabilities relating to any Claim by a Third Party that arise after the commencement of the Refueling and do not involve Excluded Disqualifying Conduct against or relating to the Seller Entities or the Transferred Assets for damages arising out of or resulting from the use, ownership or lease of the Transferred Assets by the Seller Entities (except to the extent such Claim was, to the Knowledge of Seller, threatened in writing prior to the Refueling);

(n) all Liabilities expressly allocated to Buyer in this Agreement; and

(o) all Liabilities expressly designated as Assumed Liabilities on Schedule 2.03(o).

Section 2.04 Excluded Liabilities. Notwithstanding any provision to the contrary in Section 2.03, and except as otherwise provided in any Related Agreement, Buyer shall not assume or be liable for, and shall not be deemed to have assumed or to have become liable for, the following Liabilities of the Seller Entities (the "Excluded Liabilities"):

(a) all Liabilities in respect of the Excluded Assets (including Non-Assigned Contracts);

(b) (i) all Liabilities arising under any Seller Entity Plan and (ii) all Liabilities to, or attributable or arising with respect to the employment or termination of employment or retirement of, any Seller Entity Employee or any spouse, child, dependent, alternate payee or beneficiary of any Seller Entity Employee;

(c) (i) all Liabilities arising under COBRA in respect of Business Employees insofar as the Liabilities relate to qualifying events (within the meaning of COBRA) that occur prior to, at or in connection with the Closing; and (ii) all Liabilities arising under Title IV of ERISA in respect of any Seller Entity Plan;

(d) all Liabilities arising out of any Indebtedness of any of the Seller Entities;

(e) all Liabilities arising out of any obligations to, or agreements by, any Seller Entity or any of its Affiliates, in each case other than as provided for pursuant to this Agreement or any Related Agreement;

(f) all Liabilities in respect of Taxes for which Seller is liable pursuant to Section 10.01 and Section 10.02;

(g) all Liabilities for goods delivered or services rendered prior to the Closing;

(h) Environmental Liabilities relating to the disposal, storage, transportation, discharge, release, recycling, or the arrangement for such activities, at any Off-Site Location by Seller or any Other Seller Entity, of Hazardous Substances that were generated

at the Sites where the disposal, storage, transportation, discharge, release or recycling of such Hazardous Substances at such Off-Site Location occurred prior to the Closing;

(i) all Liabilities of Seller for assessments for Decommissioning and decontamination fees relating to Nuclear Fuel purchased and consumed at the Facility for periods prior to the Closing under 42 U.S.C. §2297g-1;

(j) all Liabilities of Seller for fees (including interest) payable to the DOE under Article VIII of the DOE Standard Contract after the Closing for electricity generated by the Facility prior to the Closing (other than as provided in Section 2.03(g)(i)), regardless of whether the fee is imposed retroactively or is imposed prospectively (but then only for that portion of the fee that represents an increase in the fee to account for periods during which the DOE did not collect the fee), it being understood that, as between DOE and Buyer, Buyer shall become primarily liable for such fees as a result of its assumption of the DOE Standard Contract for the Facility, but that, as between Buyer and Seller, Seller shall remain responsible for such fees;

(k) all Liabilities and obligations expressly allocated to or retained by Seller or any Affiliate of Seller in any Related Agreement;

(l) all Liabilities for monetary fines, penalties or interest imposed by a Governmental Authority with respect to the Transferred Assets or the export of controlled information in violation of export control Laws and regulations, the Facility or Seller to the extent resulting from actions or omissions prior to the Closing;

(m) except to the extent expressly designated as an Assumed Liability in Section 2.03(m), all Liabilities relating to any Claim by a Third Party against or relating to the Seller Entities or the Transferred Assets (A) which is pending or threatened in writing prior to the Refueling or (B) which arises after the commencement of the Refueling and prior to the Closing and involves Excluded Disqualifying Conduct;

(n) all Liabilities expressly designated as Excluded Liabilities set forth on Schedule 2.04(n);

(o) all Pre-Closing Contractual Liabilities, including with respect to the CBAs except to the extent specifically provided in the Employee Matters Agreement; and

(p) except to the extent specifically identified as Assumed Liabilities in clauses (a) through (o) of Section 2.03, all Liabilities arising from the Transferred Assets or ownership and operation of the Facility prior to the Closing.

Section 2.05 Signing Fee. On the Business Day after the date of this Agreement, Buyer shall pay to Seller an amount in cash equal to ten million dollars (\$10,000,000) (the "Signing Fee") by wire transfer of immediately available funds in U.S. dollars to an account designated in writing by Seller. The Signing Fee is not refundable to Buyer if this Agreement is terminated pursuant to Section 9.01 for any reason.

Section 2.06 Purchase Price.

(a) The aggregate purchase price for the Transferred Assets is an amount in cash equal to one hundred million dollars (\$100,000,000) (the "Purchase Price"). For the avoidance of doubt, the Purchase Price shall not be reduced by the Signing Fee.

(b) At the Closing, Buyer shall pay to Seller the Purchase Price by wire transfer of immediately available funds in U.S. dollars to an account designated by Seller.

Section 2.07 Proration.

(a) Without limiting Seller's rights under the Reimbursement Agreement, Buyer and Seller agree that all of the items normally prorated, including those listed below (but not including Taxes, except as expressly set forth below), relating to the business and operations of the Transferred Assets will be prorated as of the Closing, with Seller liable to the extent such items relate to any period on or prior to the Closing Date, and Buyer liable to the extent such items relate to periods after the Closing Date: (i) except with respect to any penalties that are Excluded Liabilities, any personal property or real property Taxes, any payments made under the Payment In Lieu of Taxes Agreement for the Facility with the Town of Scriba, Mexico Academy & Central School District and County of Oswego, assessments and other charges of the type that could give rise to Permitted Liens, if any, on or associated with the Transferred Assets; (ii) any rent and other items payable by or to Seller under any of the Material Contracts, Emergency Preparedness Agreements, the Specified Shared Contracts or the Contracts set forth on Schedule 2.01(n)(i) as updated in accordance with Section 2.01(n) assigned to and assumed by Buyer hereunder (except for prepayments for Nuclear Fuel or Inventories); (iii) any Permit, license, registration or fees with respect to any Transferable Permit assigned to Buyer associated with the Transferred Assets; (iv) sewer rents and charges for water, telephone, electricity and other utilities; and (v) any other fees or charges (other than Taxes) imposed by any Governmental Authority.

(b) In connection with the prorations referred to in Section 2.07(a), if the actual figures are not available on the Closing Date, the proration shall be based upon the actual payments, for the preceding year (or appropriate period) for which actual payments are available and such payments shall be re-prorated upon request of either Seller or Buyer made within sixty (60) days of the date the actual amounts become available. If the Taxes which are apportioned are thereafter reduced by abatement, the amount of such abatement, less the reasonable cost of obtaining the same, shall be apportioned between the Parties; provided that no Party shall be obligated to institute or prosecute an abatement proceeding unless otherwise agreed in writing. Seller and Buyer agree to furnish each other with such documents and other records that may be reasonably requested in order to confirm all adjustment and proration calculations made pursuant to this Section 2.07.

Section 2.08 Closing. The closing of the Transaction (the "Closing") shall take place (a) at the offices of Skadden, Arps, Slate, Meagher & Flom LLP, 1440 New York Avenue NW, Washington, DC 20001, at 10:00 a.m. Eastern Time on the fourth (4th) Business Day following the satisfaction or waiver of the conditions set forth in Article VI (other than those conditions that by their nature are to be satisfied at the Closing but subject to the satisfaction or

waiver of such conditions) or (b) at such other time, date and place as may be mutually agreed upon in writing by the Parties (the date on which the Closing actually occurs being referred to as the "Closing Date"). For purposes of this Agreement, the effective time of the Closing shall be deemed to be 12:01 a.m. Eastern Time on the Closing Date.

Section 2.09 Closing Deliveries.

(a) At the Closing (unless otherwise indicated), Seller shall deliver the following to Buyer, duly executed and properly acknowledged, if appropriate:

(i) limited warranty deeds to the Real Property, and any properly executed owner's Transfer Tax forms in order to effectuate the transfer of the Real Property to Buyer;

(ii) the Owner's Affidavit and Gap Undertaking;

(iii) the Bills of Sale;

(iv) the Assignment and Assumption Agreements;

(v) the Related Agreements to which Seller or an Affiliate of Seller is a party;

(vi) the Transferable Permits, Material Contracts (other than Material Contracts set forth on Schedule 2.02(l) as updated in accordance with Section 2.02(l) or that are otherwise Excluded Assets in accordance with Section 2.02(l)), Emergency Preparedness Agreements, Specified Shared Contracts, Contracts set forth on Schedule 2.01(n)(i) as updated in accordance with Section 2.01(n) and the JAF NDT, which shall be delivered to Buyer at the Facility or such other location as Buyer shall reasonably request;

(vii) the Seller Guarantee;

(viii) the officer's certificate contemplated by Section 6.02(c);

(ix) Seller's FIRPTA Affidavit;

(x) copies, certified by the Secretary or any Assistant Secretary of Seller, of limited liability company resolutions authorizing the execution and delivery of this Agreement and the Related Agreements and all of the other agreements and instruments to be executed and delivered by Seller in connection herewith and therewith, and the consummation of the Transaction;

(xi) a certificate of good standing with respect to Seller, issued by the Secretary of State of the State of Delaware as of a recent date; and

(xii) such other agreements, consents, documents, instruments and writings as are reasonably required to be delivered by Seller at or prior to the Closing Date pursuant to this Agreement or otherwise reasonably required or in connection herewith, including all such other instruments of sale, transfer, conveyance, assignment or assumption as Buyer or its counsel may reasonably request in connection with the sale and transfer of the Transferred Assets or the Transaction; provided that this Section 2.09(a)(xii) shall not require Seller to prepare or obtain any surveys or title insurance relating to the Real Property or to obtain and deliver any legal opinions.

(b) At the Closing, Buyer shall deliver the following to Seller, duly executed and properly acknowledged, if appropriate:

(i) the Purchase Price, in accordance with Section 2.06(b);

(ii) the Bills of Sale;

(iii) the Assignment and Assumption Agreements;

(iv) the Related Agreements to which Buyer or an Affiliate of Buyer is a party;

(v) the officer's certificate contemplated by Section 6.03(c);

(vi) copies, certified by the Secretary or any Assistant Secretary of Buyer, of limited liability company resolutions authorizing the execution and delivery of this Agreement and the Related Agreements and all of the other agreements and instruments to be executed and delivered by Buyer in connection herewith and therewith, and the consummation of the Transaction;

(vii) a certificate of good standing with respect to Buyer, issued by the Secretary of State of the State of Pennsylvania as of a recent date; and

(viii) such other agreements, consents, documents, instruments and writings as are reasonably required to be delivered by either Buyer at or prior to the Closing Date pursuant to this Agreement or otherwise reasonably required in connection herewith, including all such other instruments of assumption as Seller or its counsel may reasonably request in connection with the purchase of the Transferred Assets or the Transaction.

#### Section 2.10 Purchase Price Allocation.

(a) Buyer and Seller intend that the purchase and sale of the Transferred Assets pursuant to this Agreement will be treated for U.S. federal income Tax purposes as a purchase and sale of assets of Seller and the Seller Entities. Buyer and Seller shall

use their Commercially Reasonable Efforts to jointly agree within one hundred eighty (180) days after the Closing Date to an allocation among the Transferred Assets that is consistent with the allocation methodology provided by Code section 1060 and the Treasury regulations promulgated thereunder (the "Allocation"). Notwithstanding the foregoing, in the event that Buyer and Seller cannot agree as to the Allocation, each Party shall be entitled to take its own position in any Tax Return, Tax proceeding or audit.

(b) Notwithstanding the foregoing, to the extent required for purposes of determining the amount of Transfer Taxes attributable to the sale or transfer of the Facility and the Transferred Assets to Buyer and the scope of any exemptions from Transfer Taxes, Buyer shall deliver to Seller a schedule valuing the Real Property and tangible personal property (including a separate valuation for exempt tangible personal property) included in the Transferred Assets (the "Transfer Tax Valuation") at least ten (10) Business Days prior to the Closing Date. Seller shall provide a sales tax invoice at Closing (which shall be consistent with the Transfer Tax Valuation) on which it separately states (i) the value of real property transferred, (ii) a description and the value of taxable tangible personal property transferred, (iii) a description and the value of exempt or otherwise nontaxable tangible personal property transferred and (iv) the amount of sales tax applicable to the tangible personal property transferred. Buyer and Seller each agrees to file all applicable Transfer Tax Returns, and to remit all Transfer Taxes, in accordance with the Transfer Tax Valuation and otherwise agrees not to take any position for Transfer Tax purposes inconsistent with the Transfer Tax Valuation. Buyer and Seller each agrees to provide the other promptly with any other information necessary to complete any applicable Transfer Tax Return.

Section 2.11 Withholding. Buyer and Seller will be entitled to deduct and withhold from any amounts payable pursuant to this Agreement (including payments of the Purchase Price) such amounts as such Party or any of such Party's Affiliates shall determine in good faith they are required to deduct and withhold with respect to the making of such payment under the Code or any other provision of Law. At least fifteen (15) Business Days prior to the date on which any payment is made pursuant to this Agreement, Buyer or Seller, as applicable, shall provide the other Party with written notice of its obligation to withhold, if any, setting forth the amount of any such withholding and the jurisdiction requiring such withholding, and Buyer and Seller shall work in good faith to minimize or reduce such withholding. To the extent any such amounts are so withheld by Buyer or Seller, such withheld amounts will be treated for all purposes of this Agreement as having been paid to the Person in respect of whom such deduction and withholding were made.

Section 2.12 Assignment of Certain Transferred Assets. Notwithstanding any other provision of this Agreement to the contrary, this Agreement shall not constitute an agreement to convey, assign, transfer or deliver to Buyer any Transferred Asset that is a Contract, warranty, guarantee, license or other instrument or document that would otherwise be a Transferred Asset if an attempted conveyance, assignment, transfer or delivery thereof, or an agreement to do any of the foregoing, without the consent of a Third Party, would constitute a breach or other contravention thereof or a violation of Law or would in any way adversely affect the rights of Buyer (as assignee or transferee of Seller, or otherwise) or Seller thereto or thereunder. Subject to Section 5.04, and except as applies to the assets described in Section 2.01(r)(ii)(B) each of Seller and Buyer shall use its Commercially Reasonable Efforts to obtain

any consent necessary for the conveyance, assignment, transfer or delivery to Buyer of (a) any such Transferred Asset and (b) any warranties and similar guarantees existing as of the Closing Date from Third Parties relating to Transferred Assets of the type described in Section 2.01(c) that are not transferable as a result of the fact that a consent of such Third Party has not been obtained (collectively, "Consent-Required Warranties"). If, on the Closing Date, any such consent is not obtained, or if an attempted conveyance, assignment, transfer or delivery thereof or performance thereof by Buyer would be ineffective or a violation of Law so that Buyer would not in fact receive all such rights, Seller and Buyer will cooperate in a mutually acceptable arrangement under which Buyer would, in compliance with Law, obtain the benefits and assume the obligations and bear the economic burdens associated with such Transferred Asset in accordance with this Agreement, including subcontracting, sublicensing or subleasing to Buyer, or under which Seller would enforce for the benefit (and at the expense) of Buyer its rights against a Third Party associated with such Transferred Asset and Seller would promptly pay to Buyer when received all monies received by Seller and its Affiliates under or with respect to any such Transferred Asset. Notwithstanding the foregoing, any such Transferred Asset or Consent-Required Warranties shall be conveyed, assigned, transferred and delivered to Buyer upon receipt of the requisite consent unless such attempted contribution, conveyance, assignment, transfer or delivery thereof would be ineffective or a violation of Law or would adversely affect the rights of Buyer or Seller. Any provision of the benefits of any Transferred Asset pursuant to this Section 2.12 shall be deemed to satisfy the condition to closing in Section 6.03(e) with respect to such Transferred Asset. The obligations under this Section 2.12 shall terminate on the two-year anniversary of the Closing Date.

### ARTICLE III

#### **REPRESENTATIONS AND WARRANTIES OF SELLER**

Seller hereby represents and warrants to Buyer that, as of the date of this Agreement and as of the Closing Date (except in each case to the extent any representation or warranty speaks expressly as of a different date), and except as set forth on the disclosure schedule delivered by Seller to Buyer concurrently herewith (the "Seller Disclosure Schedule"), as follows:

Section 3.01 Organization; Qualification. Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, and each Other Seller Entity is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization. Each Seller Entity is duly qualified or licensed to do business in each other jurisdiction in which its ownership of the Transferred Assets, the operation of the Facility or the actions required to be performed by it hereunder, make such qualification or licensing necessary, except where the failure to be so qualified or licensed would not have, and would not reasonably be expected to have, a Seller Material Adverse Effect. Seller has all limited liability company power and authority required to own, lease and operate its assets and properties, and to operate the Facility in the manner it was operated immediately prior to the date of this Agreement. Each Other Seller Entity has all corporate, limited liability company or equivalent power and authority required to own, lease and operate the Transferred Assets. Copies of the Organizational Documents of Seller, as amended and in effect on the date hereof, have been made available to Buyer.

### Section 3.02 Authorization.

(a) The execution, delivery and performance by Seller of this Agreement, any Related Agreements to which it is a party, and any other agreements and instruments to be delivered hereunder or thereunder to which it is a party, and the consummation by Seller of the Transaction and the other transactions contemplated hereunder and thereunder, have been duly authorized by all necessary limited liability company action on the part of Seller. Each Other Seller Entity has all requisite corporate, limited liability company or equivalent power and authority to enter into any Related Agreements to which it will be a party and to consummate the transactions contemplated thereby. This Agreement has been duly executed and delivered by Seller and, assuming due authorization and delivery by Buyer, this Agreement constitutes a valid and binding obligation of Seller enforceable against Seller in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar Laws now or hereafter in effect relating to or affecting creditors' rights generally or by general equitable principles (regardless of whether such enforceability is considered in a proceeding in equity or at law) (the "Bankruptcy and Equity Exceptions").

(b) Each Signing Related Agreement to which Seller or any Other Seller Entity is a party has been duly executed and delivered by Seller or such Other Seller Entity, as applicable, and, assuming due authorization and delivery by the other parties thereto, each such Signing Related Agreement constitutes a valid and binding obligation of Seller or such Other Seller Entity, as applicable, enforceable against each applicable Seller Entity in accordance with its respective terms, except as enforceability may be limited by the Bankruptcy and Equity Exceptions. Each other Related Agreement to which Seller or any Other Seller Entity is a party, when entered into at the times provided for in this Agreement, will be at such time duly executed and delivered by Seller or such Other Seller Entity, as applicable, and, assuming due authorization and delivery by the other parties thereto, each such other Related Agreement will constitute a valid and binding obligation of Seller or such Other Seller Entity, as applicable, enforceable against each applicable Seller Entity in accordance with its respective terms, except as enforceability may be limited by the Bankruptcy and Equity Exceptions.

### Section 3.03 Consents and Approvals; No Violation.

(a) No consent or approval (each, a "Consent") of, or notice, declaration, registration or filing (each, a "Filing") with, any Governmental Authority is required to be obtained or made by Seller or any of its Affiliates (including the Other Seller Entities) which has not been obtained or made by such Person in connection with the execution, delivery and performance of this Agreement, the Related Agreements, or the other agreements and instruments to be delivered hereunder or thereunder by Seller or any Other Seller Entity, as applicable, or the consummation by Seller or any such Other Seller Entity, as applicable, of the Transaction or the other transactions contemplated hereby and thereby, other than (a) the Consents and Filings set forth on Section 3.03(a) of the Seller Disclosure Schedule (the "Seller Required Consents") and (b) the Consents and Filings the failure of which to obtain or make would not, and would not reasonably be expected to, result in a Seller Material Adverse Effect.

(b) Assuming that all Seller Required Consents have been timely made, obtained or given, as applicable, the execution, delivery and performance of this

Agreement, the Related Agreements and the other agreements and instruments to be delivered hereunder or thereunder by Seller or any Other Seller Entity, as applicable, do not, and the consummation by Seller or any Other Seller Entity, as applicable, of the Transaction and the other transactions contemplated hereunder and thereunder will not (with or without notice or lapse of time, or both), conflict with, or result in any violation of or default under, or give rise to a right of termination, cancellation or acceleration of any obligation, or result in the creation of any Lien (except for Permitted Liens) upon any of the Transferred Assets under, any provision of (a) the Organizational Documents of Seller or any applicable Other Seller Entity, (b) any Law or Order to which Seller or any applicable Other Seller Entity is subject or by which any property or asset of Seller or any of the Transferred Assets is bound or affected or (c) any Contract or other instrument or obligation to which Seller is a party or by which Seller, or any of the Transferred Assets may be bound, except, in the case of clauses (b) and (c), as has not had, and would not reasonably be expected to have, a Seller Material Adverse Effect.

Section 3.04 Absence of Certain Changes or Events. Except as contemplated by this Agreement and as set forth on Section 3.04 of the Seller Disclosure Schedule, since January 1, 2015, Seller has operated the Facility in the ordinary course of business consistent with past practice and since January 1, 2015 through the date of this Agreement there has not been any change or development that, individually or in the aggregate, has had, or would reasonably be expected to have, a Seller Material Adverse Effect.

Section 3.05 Litigation. Except as set forth on Section 3.05 of the Seller Disclosure Schedule, there are no Claims pending or, to Seller's Knowledge, threatened against or by Seller or any Other Seller Entity, related to or affecting the Transferred Assets, the Facility or the Assumed Liabilities, which, individually or in the aggregate, would have, or would reasonably be expected to have, a Seller Material Adverse Effect. Except as would not have a Seller Material Adverse Effect, since January 1, 2015, neither Seller nor any of the Other Seller Entities has received notice of any investigation by any Governmental Authority with respect to the Transferred Assets and, to Seller's Knowledge, no such investigation is pending or threatened.

Section 3.06 Compliance with Law; Permits.

(a) Since January 1, 2015, neither Seller nor any of the Other Seller Entities has received written notice from any Governmental Authority that it is not in compliance with any Laws applicable to the Transferred Assets, the Assumed Liabilities or the operation of the Facility, as applicable, other than as disclosed in Section 3.06(a) of the Seller Disclosure Schedule, and none of the Selling Entities has violated such Laws, except for violations which, individually or in the aggregate, have not had and would not reasonably be expected to have a Seller Material Adverse Effect.

(b) Except as has not had and would not reasonably be expected to have a Seller Material Adverse Effect, Seller has obtained all Permits necessary for the operation of the Facility as presently operated, and Seller and the Other Seller Entities have obtained all Permits necessary for the ownership of the Transferred Assets. Section 3.06(b)(i) of the Seller Disclosure Schedule lists each such Permit. Except as set forth on Section 3.06(b)(ii) of the Seller Disclosure Schedule, (i) all of such Permits are in full force and effect and no proceedings

for the suspension or cancellation of any of them is pending or, to Seller's Knowledge, threatened and (ii) no Seller Entity has received any notice that it is in violation of any of such Permits, except for notice of violations which have not had and could not, individually or in the aggregate, reasonably be expected to have had a Seller Material Adverse Effect. Each Seller Entity is in compliance with all Permits it holds, except for violations which, individually or in the aggregate, to Seller's Knowledge, have not had and would not reasonably be expected to have a Seller Material Adverse Effect.

Section 3.07 Material Contracts.

(a) Section 3.07(a) of the Seller Disclosure Schedule sets forth a list of the following Contracts in effect on the date of this Agreement (but expressly excluding any CBA or any employment Contract) to which Seller (or any Seller Entity, to the extent such Contract relates to the Facility) is a party (such Contracts, collectively, the "Material Contracts"):

(i) any Contract that reasonably would be expected to require the payment or delivery of goods or services with a value of more than five hundred thousand dollars (\$500,000), other than those Contracts that can be terminated without penalty upon not more than ninety (90) days' notice;

(ii) interconnection agreements;

(iii) Contracts with Global Nuclear Fuel – Americas, LLC entered into in connection with the Refueling;

(iv) Contracts (with respect to the Transferred Assets, Assumed Liabilities or the Facility) to which Buyer will be required to separately assume the guaranty obligations of a Seller Entity of another Person or indebtedness of a Seller Entity at the Closing;

(v) Site MOUs;

(vi) DOE Standard Contract;

(vii) Fourth Amendment and Restatement of Contract UD-3S for the Sale of Power to Long Island Lighting Company d/b/a LIPA, dated as of December 17, 2014, by and between Long Island Lighting Company d/b/a LIPA and Entergy Nuclear Power Marketing, LLC; and

(viii) material Contracts with any Governmental Authority (excluding any Permit or Site MOU, any Related Agreement or any other Agreement referenced in Section 3.07(c) to the extent NYPA is a party thereto).

(b) True and correct copies of all Material Contracts and Emergency Preparedness Agreements have been made available to Buyer, including all amendments, supplements and modifications thereto and waivers thereunder that are currently in effect.

(c) Prior to the date of this Agreement, true and correct copies (or copies of execution drafts) of the Available Funds L/C, the Available Funds Agreement, the Trust Fund Transfer Agreement (and all related agreements), the Procured Nuclear Fuel Purchase Agreement (as defined in the Reimbursement Agreement) and the Prior Acquisition Agreement have been made available to Buyer, including all amendments, supplements and modifications thereto and waivers thereunder that are currently in effect.

(d) Except as would not, and would not reasonably be expected to, have a Seller Material Adverse Effect, (i) each Material Contract and Emergency Preparedness Agreement is a valid, binding and legally enforceable obligation of the applicable Seller Entity, as a party thereto, and, to the Knowledge of Seller, of the other parties thereto, subject in all respects to the Bankruptcy and Equity Exceptions, (ii) to the Knowledge of Seller, each Material Contract and Emergency Preparedness Agreement is in full force and effect, (iii) the applicable Seller Entity, as a party thereto, is not (with or without notice or lapse of time or both) in breach or default under any such Material Contract or Emergency Preparedness Agreement and, to the Knowledge of Seller, no other party to such Material Contract or Emergency Preparedness Agreement is (with or without notice or lapse of time, or both) in breach or default thereunder, and (iv) to the Knowledge of Seller, no event or circumstance has occurred that, with notice or lapse of time or both, would constitute a breach or default under any Material Contract or result in a termination thereof (other than an expiration at the end of the scheduled term thereof).

(e) For the avoidance of doubt, with respect to the Contracts with Global Nuclear Fuel – Americas, LLC, the representations and warranties set forth in Section 3.07(b) and Section 3.07(d) shall only be deemed made at Closing.

#### Section 3.08 Real Estate.

(a) Section 3.08(a) of the Seller Disclosure Schedule sets forth a description of, and exhibits indicating the location of, the Real Property.

(b) Seller or, as applicable, each Other Seller Entity has good and valid fee title to the Real Property, in each case free and clear of all Liens except (i) Permitted Liens; and (ii) Liens set forth on Section 3.08(b) of the Seller Disclosure Schedule. Copies of any recent surveys, title insurance policies, zoning reports, estoppels and subordination, non-disturbance and attornment agreements in Seller's or any applicable Other Seller Entity's possession with respect to the Real Property have been made available to Buyer.

(c) The Real Property has means of access, ingress and egress for automobiles and trucks to and from public highways, access to, and use of public utilities, in each case adequate and sufficient in all material respects, with respect to each contiguous group of parcels of the Real Property as well as all of the Real Property in the aggregate to permit the Facility to be operated following the Closing in all material respects as it is currently being operated.

(d) Neither Seller nor any of the Other Seller Entities is obligated under any outstanding option, right of first offer, right of first refusal, put option, equity participation right or other contractual right to offer, purchase, acquire, lease, license, sell, assign

or dispose of, or to grant or create any Lien on or affecting any portion of any of the Real Property in favor of any Person, except as set forth in Section 3.08(d) of the Seller Disclosure Schedule. Except for Seller or the Other Seller Entities, no Person has any right to use, lease, sublease, license, possess or occupy any portion of the Real Property and there are no oral or written agreements between Seller or Other Seller Entities and any other Person providing such Person the right to use, occupy or possess all or any portion of any of the Real Property (except as set forth in Section 3.08(d) of the Seller Disclosure Schedule).

(e) Neither Seller nor, solely with respect to the Facility, any Other Seller Entity, leases or subleases any real property.

#### Section 3.09 Title to Assets.

(a) Except as set forth on Section 3.09 of the Seller Disclosure Schedule, each Seller Entity has, and (except for assets sold or otherwise disposed of in compliance with Section 5.01 after the date of this Agreement) on the Closing Date shall have, good and valid title to, or a valid leasehold interest in, a license for or a right to use the Transferred Assets, free and clear of all Liens except for Permitted Liens.

(b) At the Closing, Buyer will acquire (i) good and valid title to all Real Property owned by the Seller Entities and property listed on Schedule 3.09(b) and (ii) a valid lease, license or other right to use all Real Property leased or licensed by the Seller Entities.

(c) The Seller Entities own, among other property, the property at or on the Sites listed on Schedule 3.09(c).

#### Section 3.10 Sufficiency of Assets.

(a) Except as set forth on Section 3.10(a) of the Seller Disclosure Schedule and except for any asset or property the benefit of which was provided by a Contract that Buyer elected not to assume pursuant to Section 2.01(n) or Section 2.02(l), as of the Closing, and, when taken together with the services to be made available pursuant to the Transition Services Agreement, the Transferred Assets will constitute all of the material tangible assets and properties used or held for use in the ownership or operation of the Facility and (ii) at the Closing, Buyer will acquire all of each Seller Entity's right, title and interest in and to the Transferred Assets and, together with the services to be made available pursuant to the Transition Services Agreement and all assets contributed to Seller pursuant to Section 5.11, will have sufficient tangible property and assets to own and operate the Facility immediately after the Closing in all material respects as conducted during the twelve (12) months prior to the Closing Date and will have all tangible property and assets necessary to own and operate the Facility immediately after the Closing in all material respects as conducted during the twelve (12) months prior to the Closing Date.

(b) Except as set forth on Section 3.10(b) of the Seller Disclosure Schedule, or as set forth in the operating logs of Seller for the months of February 2016 through July 2016 reviewed by Buyer at the Facility on August 6, 2016, which are expressly described in and deemed incorporated into Section 3.10(b) of the Seller Disclosure Schedule by reference, to Seller's Knowledge, there are no material defects in the physical condition of any material

Improvements that constitute a part of the Real Property.

Section 3.11 Employee Benefit Matters.

(a) Section 3.11(a) of the Seller Disclosure Schedule contains a list, as of the date of this Agreement, of each Seller Benefit Plan. With respect to each Seller Benefit Plan, Seller has made available to Buyer copies of such Seller Benefit Plan and any amendments thereto and, as applicable, (i) the most recent summary plan description and any summaries of material modifications thereto, (ii) any trust, insurance, annuity or other funding Contract related thereto, (iii) the most recent financial statement and actuarial or other valuation report prepared with respect thereto and (iv) with respect to each Seller Benefit Plan that is intended to be qualified under Section 401(a) of the Code, the most recent determination letter received from the IRS.

(b) Except as set forth on Section 3.11(b) of the Seller Disclosure Schedule, No Seller Benefit Plan is a multiemployer plan (as defined in Section 3(37) of ERISA) or is subject to Title IV of ERISA or Section 302 of ERISA. No Liability under Title IV of ERISA has been incurred by Seller or any ERISA Affiliate that has not been satisfied in full when due, and no condition exists that is reasonably likely to present a material risk to Buyer or its Affiliates of incurring a Liability under Title IV of ERISA in respect of any Seller Entity Plan.

(c) Section 3.11(c) of the Seller Disclosure Schedule contains a list, as of the date of this Agreement, of each Seller Benefit Plan that provides to any Business Employee medical, dental, vision or life benefits after retirement or other termination of employment (other than as required under COBRA).

(d) There is no pending or, to the Knowledge of Seller, threatened Claim relating to any Seller Benefit Plan (other than routine claims for benefits). There is no audit, inquiry or examination pending or, to the Knowledge of Seller, threatened by the IRS, the Department of Labor, the Pension Benefit Guaranty Corporation or any other Governmental Authority with respect to any Seller Benefit Plan. Each Seller Benefit Plan that is intended to be qualified within the meaning of Section 401(a) of the Code, has received a favorable determination letter as to its qualification, and to Seller's Knowledge no events have occurred and no condition exists that could reasonably be expected to result in the revocation of such determination letter or otherwise materially adversely affect any such plan's qualified status. Except as could not reasonably be expected to result in any Liability (including contingent liability) to Buyer or any of its Affiliates (for these purposes, not taking into account Section 2.04 of this Agreement), each Seller Benefit Plan has been in all material respects maintained and operated in conformity with the terms of such Seller Benefit Plan and with all applicable Laws, including the Code and ERISA.

(e) Except as would not result in any Liability to Buyer or its Affiliates, the consummation of the transactions contemplated by this Agreement and the Related Agreements, whether alone or together with any other event, will not (i) entitle any Business Employee to any additional payment, compensation or benefit or (ii) accelerate the time of payment, funding or vesting of, or increase the amount of, compensation otherwise due any Business Employee.

Notwithstanding any provision of this Agreement to the contrary, the representations and warranties in this Section 3.11 are the sole and exclusive representations relating to employee benefit matters, including compliance with ERISA.

Section 3.12 Labor.

(a) Section 3.12(a) of the Seller Disclosure Schedule sets forth a list of all CBAs. Except as set forth on Section 3.12(a) of the Seller Disclosure Schedule, (i) no union certification or decertification proceeding has been filed before any Governmental Authority and, to the Knowledge of Seller, no union authorization card campaign or other union organizing activity has been conducted relating to the Business Employees since January 1, 2015, and (ii) since January 1, 2015, there have been no strikes, lockouts or other material labor stoppages involving the Business Employees with respect to the Transferred Assets or the Facility nor are any strikes, lockouts or other labor stoppages pending or, to the Knowledge of Seller, threatened with respect to the Transferred Assets or the Facility.

(b) Except as disclosed in Section 3.12(b) of the Seller Disclosure Schedule or as would not have a Seller Material Adverse Effect, with respect to each Business Employee, as applicable, (i) there are no Claims, investigations, audits or grievances pending or, to the Knowledge of Seller, threatened against any Seller Entity by or before any Governmental Authority or arbitrator by or on behalf of any current or former director, officer, employee, consultant or independent contractor of Seller or (solely with respect to current and former directors, officers, employees, consultants or independent contractors providing services with respect to the operation of the Facility) the Other Seller Entities or pertaining to labor or employment matters arising out of operation of the Facility and (ii) Seller and each Other Seller Entity is, and since January 1, 2015, has been, in compliance in all respects with Law and CBAs respecting labor and employment.

(c) Section 3.12(c) of the Seller Disclosure Schedule sets forth a list of each Business Employee who is not a United States citizen or permanent resident (i.e., green card holder), and has not been granted refugee/asylee status by the United States and for each such Business Employee, Section 3.12(c) of the Seller Disclosure Schedule identifies the country(ies) in which the individual is a citizen or foreign national and indicates whether each such Business Employee is working under a general authorization or a specific authorization from the Department of Energy under the export control regulations promulgated by the Department of Energy at 10 C.F.R. Part 810.

Notwithstanding any provision of this Agreement to the contrary, the representations and warranties in this Section 3.12 are the sole and exclusive representations relating to labor matters, including compliance with any CBAs.

Section 3.13 Nuclear Matters; Plant and Equipment. Except as set forth on Section 3.13 of the Seller Disclosure Schedule:

(a) Seller, ENOI and any applicable Other Seller Entity, with respect to the Facility, are, and since January 1, 2015, have been, in material compliance with all nuclear Laws and Orders of the NRC.

(b) There are no Claims, audits or investigations pending or, to the Knowledge of Seller, threatened against Seller, ENOI or any applicable Other Seller Entity, with respect to the Facility, alleging any material violation of, or material liability under, any nuclear Laws, the NRC License or any Permit applicable to the ownership and operation of the Facility that is issued by the NRC.

(c) Seller (together with ENOI) holds (i) the NRC License and (ii) all Permits applicable to the ownership and operation of the Facility that are issued by the NRC, and is in compliance in all material respects with the NRC License and each such Permit. Seller has not received any written notification by the NRC which remains unresolved that Seller or ENOI, with respect to the Facility, is in material violation of the NRC License, any such Permit or any order, rule, regulation or decision of the NRC with respect to the Facility.

(d) The Facility conforms in all material respects to the technical specifications included in the NRC License in accordance with the requirements of 10 C.F.R. §50.36 and the Final Safety Analysis Report, as updated, that is required to be maintained for the Facility in accordance with the requirements of 10 C.F.R. §50.71(e), and is being operated in all material respects in conformance with all applicable requirements under the Atomic Energy Act, the Energy Reorganization Act, and the rules, regulations, Orders and licenses issued thereunder.

Notwithstanding any other provision of this Agreement, this Section 3.13 contains the exclusive representations and warranties of Seller concerning the NRC License and any Permit, certificate, license, consent, approval, exemption, registration or similar authorization issued by the NRC.

Section 3.14 Reports. Except as set forth on Section 3.14 of the Seller Disclosure Schedule, since January 1, 2015, Seller and its Affiliates (including the Other Seller Entities) have filed or caused to be filed with the NRC, DOE, FERC, NERC and any other applicable state or local utility commission or regulatory body or enforcement organization, as the case may be, all material forms, statements, reports, notices and documents (including all exhibits, amendments and supplements thereto) (together, the "Reports") required to be filed by Seller or any of its Affiliates (including the Other Seller Entities) with respect to the Transferred Assets or the ownership or operation of the Facility under Laws, including the Federal Power Act, the PUHCA, the Atomic Energy Act, the Energy Reorganization Act and the Price-Anderson Act and the respective rules and regulations thereunder, except for such filings the failure of which to make would not, individually or in the aggregate, have a Seller Material Adverse Effect. All such filings complied in all material respects with all applicable requirements of Law in effect on the date each such Report was filed. Neither Seller nor its Affiliates (including the Other Seller Entities) has received any written notification which remains unresolved that any of such filings is not in compliance with the applicable requirements of Law.

Notwithstanding any other provision of this Agreement, the representations and warranties in this Section 3.14 are the sole and exclusive representations and warranties relating to the Reports.

Section 3.15 Regulation as a Utility.

(a) Seller meets the requirements for, and has filed a self-certification with FERC or been found by FERC to be, an "exempt wholesale generator" within the meaning of PUHCA.

(b) Seller has received authorization from FERC to sell electric energy, capacity and ancillary services at market-based rates under a filed tariff in a Final Order no longer subject to rehearing or appeal and has been granted such waivers and blanket authorizations (including blanket authorization to issue securities and to assume liabilities under Section 204 of the Federal Power Act, as amended, and Part 34 of FERC's regulations) as are customarily granted to entities with market-based rate authority.

(c) Seller is not a "holding company" within the meaning of PUHCA.

Section 3.16 Environmental Matters.

(a) Except as disclosed in Section 3.16(a) of the Seller Disclosure Schedule or as would not have a Seller Material Adverse Effect:

(i) each of Seller, the Sites and the Facility are, and have been since January 1, 2015, in compliance with all Environmental Laws;

(ii) there are no Claims pending or, to the Knowledge of Seller, threatened against Seller, the Sites or the Facility alleging any violation of, or Liability under, any Environmental Law;

(iii) neither Seller nor the Sites are subject to any Order requiring the Remediation of any Hazardous Substance under any Environmental Law at or emanating from the Sites or the Facility;

(iv) there has been no release of any Hazardous Substance at the Sites or the Facility that would reasonably be expected to be the subject of any Claim against Seller, the Sites or the Facility or otherwise result in Liability to Seller;

(v) (A) Seller holds all Environmental Permits necessary for the operation of the Sites and the Facility, (B) all such Environmental Permits are in full force and effect and are final and nonappealable and (C) no Claim to revoke, limit or modify any of such Environmental Permits has either been served upon Seller, or is, to the Knowledge of Seller, threatened;

(vi) there are no capital expenditures required at the Facility or at any Site in order to meet any current or pending requirement of any Environmental Law that are not reflected in the operating budget of the Facility made available to Buyer prior to the date of this Agreement; and

(vii) all environmental audits or assessments and

environmental reports, investigations or studies conducted on or after January 1, 2015 relating to the Sites or the Facility which are in the possession or control of Seller or any of its Affiliates have been made available to Buyer prior to execution of this Agreement.

Notwithstanding any provision of this Agreement to the contrary, the representations and warranties in this Section 3.16 are the sole and exclusive representations relating to environmental matters, including compliance with any Environmental Law or Environmental Permits or the use, generation, treatment, storage, disposal, release or handling of Hazardous Substances.

Section 3.17 Condemnation. Except as set forth on Section 3.17 of the Seller Disclosure Schedule or any proceeding therefor, which would not be material, no Seller Entity has received written notice from any Governmental Authority of any pending or threatened proceeding to condemn or take by power of eminent domain or otherwise, by any Governmental Authority, all or any part of the Transferred Assets or the Facility.

Section 3.18 Taxes. Except as set forth on Section 3.18 of the Seller Disclosure Schedule, the Seller Entities have filed all Tax Returns that are required to have been filed with respect to the ownership or operation of the Facility and the Transferred Assets, and have paid any Taxes that have become due with respect to the Facility or the Transferred Assets (whether or not shown in any Tax Return). All such Tax Returns are complete and accurate and disclose all Taxes required to be paid in respect of the Facility and the Transferred Assets. No Seller Entity is currently the beneficiary of any extension of time within which to file any such Tax Return, and has not waived any statute of limitations in respect of Taxes associated with the Facility or the Transferred Assets, which waiver is currently in effect. There is no action, suit, investigation, audit, Claim or assessment pending, proposed or threatened with respect to Taxes associated with the Facility or the Transferred Assets, and to Seller's Knowledge, no basis exists therefor. There are no Liens for Taxes upon the Transferred Assets or the Facility except for Permitted Liens. All monies required to be withheld by any Seller Entity (including from employees of the Facility for income Taxes and social security and other payroll Taxes) have been collected or withheld, and either paid to the respective Taxing Authorities, set aside in accounts for such purpose, or accrued, reserved against and entered upon the books of the Facility. None of the Transferred Assets or the Facility is properly treated as owned by Persons other than the Seller Entities for income Tax purposes. There is no unpaid Tax on any Seller Entity's ownership, operation or use of the Transferred Assets or the Facility for which Buyer could become liable.

Section 3.19 JAF NDT.

Notwithstanding anything to the contrary in this Agreement, the representations and warranties set forth in this Section 3.19 (other than the representations and warranties in Section 3.19(h)) shall only be made by Seller as of the Closing Date.

(a) JAF NDT is a trust validly existing under the laws of the jurisdiction of its formation that is authorized to and does include the Qualified Decommissioning Fund and the Non-Qualified Decommissioning Fund. Since the Fund

Transfer Date, Seller has maintained the Qualified Decommissioning Fund and the Non-Qualified Decommissioning Fund in accordance with all terms and requirements of the JAF NDT Agreement and all applicable rules, regulations, approvals and Orders of the NRC and any other Governmental Authority. Since the creation of the Qualified Decommissioning Fund, Seller has maintained such fund in accordance with all requirements of Code §468A and the Treas. Reg. §§1.468A-1 through 1.468A-9.

(b) Since the Fund Transfer Date, Seller has not requested a schedule of ruling amounts pursuant to §468A(a) of the Code and Treas. Reg. §1.468A-3 ("Schedule of Ruling Amounts") from the IRS concerning the Facility and Seller has not made any contribution to its Qualified Decommissioning Fund pursuant to a Schedule of Ruling Amounts, except as otherwise contemplated by this Agreement.

(c) There are no (i) Liabilities, including any acts of "self-dealing" as defined in Treas. Reg. §1.468A-5(b)(2) or agency or other Claims that would materially affect the financial position of the Qualified Decommissioning Fund or (ii) Liens for income Tax upon the assets of the Qualified Decommissioning Fund (other than Permitted Liens).

(d) The Qualified Decommissioning Fund is, and always has been since the Fund Transfer Date, a "Nuclear Decommissioning Reserve Fund" within the meaning of §468A of the Code that meets the requirements of a "qualified nuclear decommissioning fund" pursuant to Treas. Reg. §§1.468A-1 through 1.468A-9, and specifically §1.468A-5.

(e) The Qualified Decommissioning Fund has filed or, as of the Closing Date, will have timely filed all material Tax Returns required to be filed by it prior to the Closing Date (taking into account all applicable extensions of time within which to file) with respect to all taxable periods ending prior to the Closing Date, including returns for estimated income Tax.

(f) There are no (i) Liabilities or agency or other Claims that would materially affect the financial position of the Non-Qualified Decommissioning Fund or (ii) Liens for income Tax upon the assets of the Non-Qualified Decommissioning Fund other than Permitted Liens.

(g) Neither the trustee of the JAF NDT nor Seller has received a notice of deficiency or assessment from any Taxing Authority during the period after the Fund Transfer Date. There are no outstanding agreements or waivers extending the applicable statutory periods of limitations for any income Tax associated with the Qualified Decommissioning Fund for any period.

(h) Seller has made available to Buyer on the date hereof a copy of the trustee valuation report, provided by NYPA to Seller, of the Fund Assets Market Value of the Facility as of the date specified in such report. To Seller's Knowledge, the Fund Assets Market Value as of the date specified in each such report is accurate. To Seller's Knowledge, the Fund Asset Market Value contained in the Fund Market Value Documentation to be delivered at Closing is accurate as of the date specified in such report.

Section 3.20 Insurance. Seller has made available to Buyer true and correct

copies of all material insurance policies related to the Facility, the Transferred Assets or the Assumed Liabilities (collectively, the "Insurance Policies"). The Insurance Policies are in full force and effect on the date of this Agreement and there are no outstanding unpaid premiums with respect thereto. As of the Business Day immediately prior to the date of this Agreement, there is no material Claim by Seller or any of its Affiliates pending under the Insurance Policies with respect to the Facility, the Transferred Assets or the Assumed Liabilities as to which coverage has been denied or disputed by or on behalf of the underwriters of the Insurance Policies. As of the Business Day immediately prior to the date of this Agreement, no insurance with respect to the Facility, the Transferred Assets or the Assumed Liabilities has been refused, no coverage with respect to the Facility, the Transferred Assets or the Assumed Liabilities has been limited by any insurance carrier to which Seller or any of its Affiliates has applied for any such insurance during the past three (3) years, and all required notices have been sent to insurers to preserve all material claims under the Insurance Policies.

Section 3.21 Intellectual Property. Section 3.21(i) of the Seller Disclosure Schedule lists the registrations and applications for Intellectual Property that are owned by Seller and included in the Transferred Assets. Up to the Closing, and except as set forth on Section 3.21(ii) of the Seller Disclosure Schedule, Seller and the Other Seller Entities own or possess valid and fully paid-up licenses or other valid rights to use all Intellectual Property reasonably necessary for the operation of the Facility, except where the failure to do so would not have and would not reasonably be expected to have a Seller Material Adverse Effect. Except as would not have and would not reasonably be expected to have a Seller Material Adverse Effect, (a) neither Seller nor any Other Seller Entity has received any written notice or other written communication that Seller or any Other Seller Entity with respect to the ownership and operation of the Facility is infringing any Intellectual Property of any other Person and (b) to the Knowledge of Seller, (i) no Person is infringing upon any Intellectual Property of Seller or any Other Seller Entity and (ii) the operation and maintenance of the Facility and the Transferred Assets, as presently operated and maintained, up to the Closing does not infringe or otherwise violate any Intellectual Property rights of any other Person.

Section 3.22 Broker Fees. Except as set forth on Section 3.22 of the Seller Disclosure Schedule, neither Seller nor any of its Affiliates (including the Other Seller Entities) has any Liability or obligation to pay any fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement for which Buyer could become liable or obligated.

Section 3.23 Seller Guarantee. On the Closing Date, the Seller Guarantee will be in full force and effect and constitute (assuming the due execution of this Agreement and the Related Agreements by the Parties) a valid and legally binding obligation of Seller Guarantor, enforceable against Seller Guarantor in accordance with its terms, except as enforceability may be limited by the Bankruptcy and Equity Exceptions. On the Closing Date, no event will have occurred which, with or without notice, lapse of time or both, would constitute a default on the part of Seller Guarantor under the Seller Guarantee.

Section 3.24 Credit Support. Section 3.24 of the Seller Disclosure Schedule sets forth, as of the date of this Agreement, any form of credit support, financial assurance or financial guarantee, in each case, in excess of one million dollars (\$1,000,000) with any Third

Party to which Seller or any of its Affiliates is a party or otherwise providing with respect to the Facility or the Transferred Assets. Except as set forth on Section 3.24 of the Seller Disclosure Schedule, the aggregate amount of all such forms of support, assurances and guarantees does not exceed ten million dollars (\$10,000,000) in the aggregate.

## ARTICLE IV

### **REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer hereby represents and warrants to Seller, solely with respect to itself, that, as of the date of this Agreement and as of the Closing Date (except in each case to the extent any representation or warranty speaks expressly as of a different date), and except as set forth on the disclosure schedule delivered by Buyer to Seller concurrently herewith (the "Buyer Disclosure Schedule"), as follows:

Section 4.01 Organization; Qualification. Buyer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Pennsylvania and has all requisite limited liability company power and authority to carry on its business as it is now being conducted. Buyer is duly qualified or licensed to do business in each other jurisdiction in which the nature of the business conducted by it, and in which the actions required to be performed by it hereunder, make such qualification or licensing necessary, except where the failure to be so qualified or licensed would not have a material adverse effect on Buyer's ability to perform its obligations hereunder or to consummate the Transaction.

Section 4.02 Authorization.

(a) The execution, delivery and performance by Buyer of this Agreement, any Related Agreements to which it is a party, and any other agreements and instruments to be delivered hereunder or thereunder to which it is a party, and the consummation by Buyer of the Transaction and the other transactions contemplated hereunder and thereunder, have been duly authorized by all necessary limited liability company action on the part of Buyer. This Agreement has been duly executed and delivered by Buyer and, assuming due authorization and delivery by Seller, this Agreement constitutes a valid and binding obligation of Buyer enforceable against Buyer in accordance with its terms, except as enforceability may be limited by the Bankruptcy and Equity Exceptions.

(b) Each Signing Related Agreement to which Buyer is a party has been duly executed and delivered by Buyer and, assuming due authorization and delivery by the other parties thereto, each such Signing Related Agreement constitutes a valid and binding obligation of Buyer enforceable against Buyer in accordance with its respective terms, except as enforceability may be limited by the Bankruptcy and Equity Exceptions. Each other Related Agreement to which Buyer is a party, when entered into at the times provided for in this Agreement, will be at such time duly executed and delivered by Buyer and, assuming due authorization and delivery by the other parties thereto, each such other Related Agreement will constitute a valid and binding obligation of Buyer enforceable against Buyer in accordance with its respective terms, except as enforceability may be limited by the Bankruptcy and Equity Exceptions.

#### Section 4.03 Consents and Approvals; No Violation.

(a) No Consent of, or Filing with, any Governmental Authority is required to be obtained or made which has not been obtained or made by Buyer in connection with the execution, delivery and performance of this Agreement, the Related Agreements, or the other agreements and instruments to be delivered hereunder or thereunder by Buyer or the consummation by Buyer of the Transaction or the other transactions contemplated hereby and thereby, other than (a) the Consents and Filings set forth on Section 4.03(a) of the Buyer Disclosure Schedule (the "Buyer Required Consents" and, together with the Seller Required Consents, the "Required Consents") and (b) the Consents and Filings the failure of which to obtain or make would not have a material adverse effect on Buyer's ability to perform its obligations hereunder or to consummate the Transaction.

(b) Assuming that all Buyer Required Consents have been timely made, obtained or given, as applicable, the execution, delivery and performance of this Agreement, the Related Agreements and the other agreements and instruments to be delivered hereunder or thereunder by Buyer do not, and the consummation by Buyer of the Transaction and the other transactions contemplated hereunder and thereunder will not (with or without notice or lapse of time, or both), conflict with, or result in any violation of or default under, or give rise to a right of termination, cancellation or acceleration of any obligation to or loss of a benefit under any provision of (a) the Organizational Documents of Buyer, (b) any Law to which Buyer is subject or by which any property or asset of Buyer is bound or affected except, in the case of clause (b), as would not have a material adverse effect on Buyer's ability to perform its obligations hereunder or to consummate the Transaction.

Section 4.04 Absence of Certain Changes or Events. Except as contemplated by this Agreement and as set forth on Section 4.04 of the Buyer Disclosure Schedule, since January 1, 2015, there has not been: (a) any change or development that has had or would reasonably be expected to cause a material adverse effect on Buyer's ability to perform its obligations hereunder or to consummate the Transaction or (b) any damage, destruction or casualty loss, whether or not covered by insurance, which, individually or in the aggregate, has had or would reasonably be expected to cause a material adverse effect on Buyer's ability to perform its obligations hereunder or to consummate the Transaction. All of the equity and voting interests of Buyer are indirectly owned by Exelon Corporation.

Section 4.05 Litigation. Except as set forth on Section 4.05 of the Buyer Disclosure Schedule (i) there are no Claims pending or, to Buyer's Knowledge, threatened before any Governmental Authority which, individually or in the aggregate, could reasonably be expected to have material adverse effect on Buyer's ability to perform its obligations hereunder or to consummate the Transaction; (ii) Buyer is not subject to any outstanding Order which, individually or in the aggregate, could reasonably be expected to cause a material adverse effect on Buyer's ability to perform its obligations hereunder or to consummate the Transaction or the transactions contemplated by the Related Agreements; and (iii) Buyer has not received any written notification that it is in violation of any Laws or Permits, except for notifications of violations which could not, individually or in the aggregate, reasonably be expected to cause a material adverse effect on Buyer's ability to perform its obligations hereunder or to consummate the Transaction or the transactions contemplated by the Related Agreements.

Section 4.06 Available Funds; Source of Funds. Buyer has, and shall have at Closing, sufficient cash or other sources of immediately available funds to pay in cash the Purchase Price in accordance with Article II and for all other actions necessary for Buyer to consummate the Transaction and perform its obligations under this Agreement or any Related Agreement to which it is a party. All funds paid and to be paid to Seller shall not have been derived from, or constitute, either directly or indirectly, the proceeds of any criminal activity under the anti-money laundering laws of the U.S.

Section 4.07 Regulation; Qualified Buyer.

(a) As of the Closing Date, Buyer will be regulated as a "public utility" under the Federal Power Act and be authorized by FERC pursuant to §205 of the Federal Power Act to make such sales at market-based rates.

(b) Buyer is qualified, or will be qualified as of the Closing Date, to obtain and hold any Permits and Environmental Permits necessary for Buyer to own and operate the Transferred Assets as of the Closing Date, to the extent such operation is either required by this Agreement, or is contemplated by Buyer.

(c) Buyer is a "holding company" within the meaning of PUHCA.

Section 4.08 No Foreign Ownership or Control. Buyer conforms to the restrictions on foreign ownership, control or domination contained in §§103d and 104d of the Atomic Energy Act, as applicable, and the NRC's regulations in 10 C.F.R. §50.38. Buyer is not currently owned, controlled or dominated by a foreign entity and will not become owned, controlled or dominated by a foreign entity before the Closing Date.

Section 4.09 Broker Fees. Except as set forth on Section 4.09 of the Buyer Disclosure Schedule, neither Buyer nor any of its Affiliates has any Liability or obligation to pay any fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement for which Seller could become liable or obligated.

## ARTICLE V

### COVENANTS

Section 5.01 Conduct of Business Pending the Closing.

(a) During the Interim Period, except (1) as required or expressly permitted by the provisions of this Agreement or any Related Agreement, (2) as set forth on Schedule 5.01(a), (3) as may be required under Law or Order or as reasonably required in response to any operational emergencies, equipment failures, repairs or immediate and material threats to the health and safety of natural Persons or (4) with the prior written consent of Buyer (which consent shall not be unreasonably withheld, conditioned or delayed), Seller shall (and shall cause its Affiliates to with respect to any Transferred Assets, the Assumed Liabilities and the Facility) (A) operate and maintain the Facility in the ordinary course of business in accordance with past practice and prudent industry practice and (B) use its Commercially Reasonable Efforts to preserve, maintain and protect the Transferred Assets and the Facility and

preserve the goodwill and relationships with the Business Employees and independent contracts with vendors, suppliers and others having business dealings with Seller or its Affiliates in connection with the Facility or the Transferred Assets. Without limiting the foregoing, during the Interim Period, except (w) expressly permitted or required by the provisions of this Agreement or any Related Agreement (including any action permitted or required under the Reimbursement Agreement), (x) as set forth on Schedule 5.01(a), (y) as may be required under Law or Order or in response to any operational emergencies, equipment failures, repairs or immediate and material threats to the health and safety of natural Persons or (z) with the prior written consent of Buyer (which consent shall not be unreasonably withheld, conditioned or delayed), Seller shall not (and shall cause its Affiliates not to) with respect to the Transferred Assets, the Assumed Liabilities and the Facility:

(i) make any material change to the operations of the Facility or the levels of Inventories customarily maintained by Seller or at the Sites;

(ii) make any capital expenditures not included in the operating budget of the Facility made available to Buyer prior to the date of this Agreement (except, and without limiting Section 5.01(a)(w), as contemplated in Section 7.03 of the Reimbursement Agreement);

(iii) move Inventory or equipment from the Sites other than sales to Third Parties or the removal of equipment no longer in use, in each case, in the ordinary course of business consistent with past practice;

(iv) waive, release, assign, settle or compromise any material Claim by or against Seller or any Affiliate of Seller (the extent such Claim relates to the Sites or the Transferred Assets or Assumed Liabilities) or otherwise to the extent such Claim relates to the Sites, except waivers, releases, assignments, settlements or compromises that (A) relate solely to the payment of monetary damages that will be satisfied by Seller or (B) relate solely to an Excluded Liability;

(v) enter into any Contract that would constitute a Material Contract if entered into prior to the date of this Agreement or is a type of Contract contemplated in the definition of Material Contracts, except for any Material Contract (1) that does not impose any Liability on Buyer or any of its Affiliates after the Closing, or can be terminated by Buyer after the Closing without penalty upon not more than ninety (90) days' notice (2) that relates solely to an Excluded Asset or Excluded Liability or (3), without limiting Section 5.01(a)(w), as contemplated in the Reimbursement Agreement;

(vi) further modify the JAF NDT Agreement after Seller receives the JAF NDT from ENOI, other than (A) to transfer the assets of the Non-Qualified Decommissioning Fund into the Qualified Decommissioning Fund, at the direction of Buyer, and (B) to take actions necessary to, at the direction of Buyer, (1) invest the cash in the Qualified Decommissioning Fund

and (2) rebalance the assets remaining in the Non-Qualified Decommissioning Fund after assets have been transferred to the Qualified Decommissioning Fund;

(vii) sell, lease, transfer, convey, abandon, cancel or otherwise dispose of any of the Transferred Assets or the Facility, other than in the ordinary course of business consistent with past practice;

(viii) encumber, pledge, mortgage or suffer to be imposed on any of the Transferred Assets or the Facility any Lien other than (i) Permitted Liens or (ii) Liens caused or required to be imposed by any Governmental Authority;

(ix) enter into any commitment for the purchase of Nuclear Fuel or make any material modifications to any Contracts with respect to the purchase or delivery of Nuclear Fuel, except in connection with the Refueling;

(x) enter into any power sales agreements (or similar) with terms extending beyond Closing;

(xi) terminate, amend, supplement, modify or renew any of the Material Contracts, Emergency Preparedness Agreements or Permits;

(xii) move to the Sites any nuclear materials, except as required in connection with the Refueling;

(xiii) modify, increase or accelerate the amount, vesting or payment of any compensation or employee benefits to be paid or provided to any Business Employee, except for annual merit-based or promotion-based pay increases in the ordinary course of business, consistent with past practice, or as required by Law, any Seller Benefit Plan or an applicable CBA;

(xiv) hire any new Business Employees or recall any Business Employee on layoff as of the date hereof, except the hiring of a new Business Employee for a position included on the organization chart made available by Seller to Buyer which hiring (A) uses screening and other hiring procedures in the ordinary course of business consistent with past practice and (B) is for a position that is below the department head level;

(xv) permit or cause any individual to alter his or her status as, or as not, a Business Employee by transferring (A) positions or (B) between Seller and any of its Affiliates (including the Other Seller Entities);

(xvi) except as required by Law or an applicable CBA adopt, amend or terminate any Seller Benefit Plan (or any employee benefit plan that would be a Seller Benefit Plan if in effect on the date hereof) (other than amendments to broad-based Seller Benefit Plans that are applicable to all employees of Entergy and its Affiliates that participate in such Seller Benefit Plan or amendments to Seller Benefit Plans that do not increase the level of

compensation and benefits payable to any Business Employee under such Seller Benefit Plan);

(xvii) fail to make Commercially Reasonable Efforts to pursue currently pending regulatory approvals and Permit applications, approvals and renewals relating to the Transferred Assets that are reasonably necessary to operate the Facility; or

(xviii) enter into any agreement or commitment to do any of the foregoing.

(b) During the Interim Period, notwithstanding anything to the contrary contained in this Agreement and for the avoidance of doubt, Seller and ENOI, as the licensed owner and operator of the Facility, shall retain the exclusive responsibility for safe operation of the Facility and nothing in this Agreement shall prevent Seller and ENOI from fulfilling any duties or obligations in connection with the ownership or operation of the Facility under Law, any NRC Orders or the NRC License.

Section 5.02 Publicity. During the Interim Period, no Party or its respective Affiliates shall make any public announcement or issue any public communication regarding this Agreement, the Related Agreements and the transactions contemplated hereby or thereby without the prior written consent of the other Party (which consent shall not be unreasonably withheld, conditioned or delayed), except any such announcement or communication (a) as may be required by Law or the rules and regulations of any applicable national securities exchange (provided that such Party uses its Commercially Reasonable Efforts to coordinate or communicate such announcement or communication with the other Party prior to announcement or issuance) or (b) is consistent with previous announcements or communications made jointly by the Parties or other documents mutually approved by the Parties; provided that each Party or any of its respective Affiliates may make any public statements (i) describing the anticipated benefits of the transactions contemplated by this Agreement and the Related Agreements or (ii) in response to questions by the press, analysts, investors or those attending industry or other conferences or analyst or investor conference calls, in either case, so long as such statements are not inconsistent with previous announcements or communications made jointly by the Parties or other documents mutually approved by the Parties.

Section 5.03 Access to Properties; Access to Information.

(a) During the Interim Period, subject to the terms and conditions of this Section 5.03, and subject to compliance with all nuclear and other Laws and all NRC Orders, Buyer shall be permitted, through its designated Representatives (the "Observers"), to reasonably observe all operations at the Facility, and such observation will be permitted on a cooperative basis in the presence of one or more individuals designated by Seller in order to facilitate an orderly transition of the Transferred Assets and the Facility. Notwithstanding anything in this Section 5.03(a) to the contrary, (i) the Observers may be excluded from access to any material, operations or meeting or portion thereof if Seller determines that such exclusion is reasonably necessary to preserve the attorney-client privilege (provided, that Buyer and Seller shall work in good faith to develop substitute arrangements that do not result in the loss of such privilege) or to

protect confidential or proprietary information or for other similar reasons, but only if Seller reasonably believes that the disclosure of such information to Buyer would be competitively harmful to Seller (and provided, that Buyer and Seller shall work in good faith to develop substitute arrangements that permit Buyer to have access to as much of such information as possible without resulting in competitive harm to Seller) or to not supply Buyer with any information that Seller or its Affiliates is legally prohibited from supplying, (ii) the Observers and their actions shall not unreasonably interfere with the operation of the Facility, and (iii) the number of Observers observing at any particular time and the scheduling and duration of their observation shall be subject at all times to the approval of Seller (which approval shall not be unreasonably withheld, conditioned or delayed). Notwithstanding anything in this Agreement to the contrary, during the Interim Period, Buyer and its Representatives shall not have the right to perform or conduct any environmental sampling or testing at, in, on or underneath the Facility without the prior written consent of Seller (which consent shall not be unreasonably withheld, conditioned or delayed). During the Interim Period, Buyer has the right to obtain an ALTA survey of the Real Property at its sole cost and expense. Upon receipt of such survey, Buyer shall promptly deliver to Seller a complete copy of such survey.

(b) During the Interim Period, subject to the terms and conditions of this Section 5.03, subject to compliance with all nuclear and other Laws and NRC Orders, and subject to approval in advance by Seller or one or more individuals designated by Seller (which approval shall not be unreasonably withheld, conditioned or delayed), (i) Seller shall give to Buyer, through its Representatives, reasonable access to (A) all Books and Records and (B) the employees of Seller and its Affiliates providing services relating to the Facility, upon notice to applicable bargaining representatives, (ii) Seller shall furnish to Buyer such historical financial and operating data and other information with respect to the Transferred Assets and the Facility as Buyer may from time to time reasonably request and (iii) if requested by Buyer, promptly furnish Buyer a copy of each material report, schedule or other document filed or received by it since the date hereof with respect to the Transferred Assets and the Facility with any Governmental Authority. Any such access shall be conducted during regular business hours upon reasonable advance notice and under reasonable circumstances, and shall be subject to restrictions under Law and any confidentiality obligations to which the Seller or any of its Affiliates is bound. Seller shall cause its Representatives to reasonably cooperate with Buyer and Buyer's Representatives in connection with such access and, notwithstanding the foregoing, agrees that meetings between Buyer's Representatives and the labor unions representing the employees of Seller and its Affiliates described above may also occur away from the Facility and outside of regular business hours; provided, that Seller and Buyer shall cooperate to coordinate any such meeting and Representatives of Seller may attend any such meeting. Buyer and Buyer's Representatives shall conduct any activities set forth in this Section 5.03(b) in such a manner as to minimize any disruption to, and to not interfere unreasonably with, the business or operations of Seller or the prompt and timely discharge by the employees of Seller or its Affiliates of their normal duties. Notwithstanding anything to the contrary in this Section 5.03(b), no such investigation or examination shall be permitted to the extent that it would require Seller to disclose (i) information about Seller or any of its Affiliates that Seller reasonably determines to be sensitive, competitive or proprietary, but only if Seller reasonably believes that the disclosure of such information to Buyer would be competitively harmful to Seller or any of its Affiliates (and provided, that Buyer and Seller shall work in good faith to develop substitute arrangements that permit Buyer to have access to as much of such information

as possible without resulting in competitive harm to Seller or any of its Affiliates); (ii) information regarding any Excluded Assets or Excluded Liabilities (other than personnel records and labor history and negotiation files pertaining to employees to be offered employment in accordance with the Employee Matters Agreement and the union representatives of any such employees, in all cases, upon consent of the affected employee or bargaining representative); (iii) information (but only that portion thereof that is) subject to attorney-client, work product or similar privilege (provided, that Buyer and Seller shall work in good faith to develop substitute arrangements that permit Buyer to have access to as much of such information as possible without resulting in the loss of such privilege); (iv) forecasts that include information relating to Affiliates of Seller or (v) information that Seller or any of its Affiliates is legally prohibited from supplying or contractually prohibited from supplying pursuant to any agreement made available to Buyer prior to the date of this Agreement.

(c) Buyer shall indemnify, defend and hold harmless Seller and its Affiliates, and each of their Representatives, against any and all Claims or Liabilities, including costs and expenses for Indemnifiable Loss, injury to or death of any Representative of Buyer or any other Person, and for any loss, damage to or destruction of any portion of the Facility (or any other property visited by any Representatives) or any other assets of the Seller or its Affiliates, in each case, arising directly out of the rights of Buyer under Section 5.03(a) or Section 5.03(b) or resulting from any action or inaction taken by any of the Representatives of Buyer during any visit to the Facility or any other property of Seller or its Affiliates prior to the Closing Date pursuant to Section 5.03(a) and Section 5.03(b). During any visit to the Facility or any other property of Seller or its Affiliates, Buyer shall, and shall cause its Representatives accessing such Facility or property to, comply in all material respects with all Laws and all of the safety and security procedures of the Seller or its Affiliates that are disclosed in advance to Buyer.

(d) All information furnished to or obtained by Buyer or its Representatives pursuant to this Section 5.03 shall be subject to the Confidentiality Agreement and shall be treated as Evaluation Material (as defined in the Confidentiality Agreement).

(e) For a period of six (6) years after the Closing, Buyer will use Commercially Reasonable Efforts to give Seller, its Affiliates and its and their Representatives access, subject to restrictions under Law and Buyer's internal policies and procedures, to properties transferred to Buyer, Books and Records transferred to Buyer (even if such transferred Books and Records are or become commingled with books and records of Buyer and its Affiliates), and personnel and Representatives of Buyer, as may be reasonably required by Seller or its Affiliates for reasonable business purposes in respect of its ownership of the Transferred Assets (including the Facility) (excluding, for the avoidance of doubt, in connection with any matter that is or would reasonably be expected to become the subject of a dispute with Buyer or with respect to the participation of any personnel or Representative of Seller, any participation that could result in adverse consequences to such personnel or Representative), including to the extent reasonably necessary for the preparation of financial statements, regulatory filings or Tax Returns of Seller or its Affiliates in respect of periods ending on or prior to the Closing, or in connection with any Tax audits or Claims relating solely to the Excluded Liabilities or in connection with any insurance Claim related to any Business Employee; provided, that to the extent the personnel or Representatives of one Party are made available to the other party or its Affiliates or Representatives pursuant to this Section 5.03(e), the other Party shall pay or

reimburse the providing Party for all reasonable expenses which may be incurred by such personnel or Representative in connection therewith, including all reasonable travel, lodging and meal expenses. At Seller's cost and expense, Seller, its Affiliates and its and their Representatives shall be entitled to make copies of the Books and Records to which such Persons are entitled to access pursuant to this Section 5.03(e). Any such access shall be conducted during regular business hours upon reasonable advance notice and under reasonable circumstances, and shall be subject to restrictions under Law. During any visit to the Facility or any other property of Buyer or its Affiliates, Seller shall, and shall cause its Representatives accessing such Facility or property to, comply in all material respects with all applicable Laws and all of the safety and security procedures of Buyer or its Affiliates that are disclosed in advance to Seller. Notwithstanding anything to the contrary in this Section 5.03(e), no such investigation or examination shall be permitted to the extent that it would require Buyer to disclose (i) information (but only that portion thereof that is) subject to attorney-client, work product or similar privilege (provided, that Buyer and Seller shall work in good faith to develop substitute arrangements that permit Seller to have access to as much of such information as possible without resulting in the loss of such privilege); or (ii) information that Buyer or any of its Affiliates is legally prohibited from supplying. Buyer agrees that it shall preserve and keep the Books and Records held by Buyer or any of its Affiliates relating to the Transferred Assets and the Facility prior to the Closing for a period of six (6) years following the Closing Date. Seller shall, and shall cause its Affiliates and Representatives to (i) keep all information and Books and Records accessed pursuant to this Section 5.03(e) confidential, (ii) not disclose such information or Books and Records to any other Person (except where such disclosure, upon the advice of outside counsel, is required by Law and only to the extent required by Law); provided, that Seller or its Affiliates may disclose such information or such Books and Records to its Representatives or other Persons that have a duty of confidentiality (or similar duty or obligation of non-disclosure) to Seller and its Affiliates, but only to the extent such disclosure is required for reasonable business purposes, and (iii) not use such information or Books and Records other than for the express purposes set forth on the first sentence of this Section 5.03(e). Notwithstanding the foregoing, any and all such Books and Records may be destroyed by Buyer after the sixth (6th) anniversary of the Closing Date (or longer if required by Law) if Buyer sends to Seller written notice in accordance with Section 11.02 of its intent to destroy such Books and Records, specifying in reasonable detail the contents of the Books and Records to be destroyed. Such Books and Records may then be destroyed after the sixtieth (60th) day following such notice unless Seller notifies Buyer that Seller desires to obtain possession of such Books and Records, in which event Buyer shall transfer the records to Seller and Seller shall pay all reasonable expenses of Buyer in connection therewith. The provisions of this Section 5.03(e) shall not apply to matters that are the subject of Section 4.5 of the Employee Matters Agreement.

(f) For a period of six (6) years after the Closing, Seller will use Commercially Reasonable Efforts to give Buyer, its Affiliates and its and their Representatives access, subject to restrictions under Law and Seller's internal policies and procedures, to properties retained by Seller, books and records retained by Seller (even if such retained books and records are or become commingled with books and records of Seller and its Affiliates), and personnel and Representatives of Seller, as may be reasonably required by Buyer or its Affiliates for reasonable business purposes in respect of the Facility (excluding, for the avoidance of doubt, in connection with any matter that is or would reasonably be expected to become the subject of a dispute with Buyer or, with respect to the participation of any personnel or Representative of

Seller, any participation that could result in adverse consequences to such personnel or Representative), including to the extent reasonably necessary for the preparation of financial statements or regulatory filings, or in connection with any Tax audits or Claims relating solely to the Assumed Liabilities; provided, that to the extent the personnel or Representatives of one Party are made available to the other Party or its Affiliates or Representatives pursuant to this Section 5.03(f), the other Party shall pay or reimburse the providing Party for all reasonable expenses which may be incurred by such personnel or Representative in connection therewith, including all reasonable travel, lodging, and meal expenses. At Buyer's cost and expense, Buyer, its Affiliates and its and their Representatives shall be entitled to make copies of the books and records to which such Persons are entitled to access pursuant to this Section 5.03(f). Any such access shall be conducted during regular business hours upon reasonable advance notice and under reasonable circumstances, and shall be subject to restrictions under Law. During any visit to any property of Seller or its Affiliates, Buyer shall, and shall cause its Representatives accessing such Facility or property to, comply in all material respects with all applicable Laws and all of the safety and security procedures of Seller or its Affiliates that are disclosed in advance to Buyer. Notwithstanding anything to the contrary in this Section 5.03(f), no such investigation or examination shall be permitted to the extent that it would require Seller to disclose (i) information (but only that portion thereof that is) subject to attorney-client, work product or similar privilege (provided, that Seller and Buyer shall work in good faith to develop substitute arrangements that permit Buyer to have access to as much of such information as possible without resulting in the loss of such privilege); or (ii) information that Seller or any of its Affiliates is legally prohibited from supplying. Seller agrees that it shall preserve and keep the books and records retained by Seller or any of its Affiliates in connection with this Transaction for a period of six (6) years following the Closing Date. Buyer shall, and shall cause its Affiliates and Representatives to (i) keep all information and books and records accessed pursuant to this Section 5.03(f) confidential, (ii) not disclose such information or books and records to any other Person (except where such disclosure, upon the advice of outside counsel, is required by Law and only to the extent required by Law); provided, that Buyer or its Affiliates may disclose such information or such books and records to its Representatives or other Persons that have a duty of confidentiality (or similar duty or obligation of non-disclosure) to Buyer and its Affiliates, but only to the extent such disclosure is required for reasonable business purposes, and (iii) not use such information or books and records other than for the express purposes set forth on the first sentence of this Section 5.03(f). Notwithstanding the foregoing, any and all such books and records may be destroyed by Seller after the sixth (6th) anniversary of the Closing Date (or longer if required by Law) if Seller sends to Buyer written notice in accordance with Section 11.02 of its intent to destroy such books and records, specifying in reasonable detail the contents of the books and records to be destroyed. Such books and records may then be destroyed after the sixtieth (60th) day following such notice unless Buyer notifies Seller that Buyer desires to obtain possession of such books and records, in which event Seller shall transfer the records to Buyer and Buyer shall pay all reasonable expenses of Seller in connection therewith. The provisions of this Section 5.03(f) shall not apply to matters that are the subject of Section 4.5 of the Employee Matters Agreement.

#### Section 5.04 Commercially Reasonable Efforts; Consents and Regulatory Approvals.

- (a) During the Interim Period, subject to the terms and conditions of

this Agreement, each Party agrees to use its Commercially Reasonable Efforts (except where a different efforts standard is specifically contemplated by this Agreement, in which case such different standard shall apply) to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable to consummate and make effective the Transaction and the other transactions contemplated by this Agreement and the Related Agreements in an expeditious manner.

(b) The Parties will use their respective Commercially Reasonable Efforts to obtain the Required Consents, any approvals of parties to any Contracts that are Transferred Assets and any Filings or Consents with or from any Governmental Authority, including by (i) each preparing and filing as soon as practicable (and, in any event, within fifteen (15) days following the date of this Agreement), all necessary filings required to be made with the DOJ and the FTC under the HSR Act to consummate the Transaction, (ii) jointly preparing and filing as soon as practicable (and, in any event, within fifteen (15) days following the date of this Agreement) all necessary filings required to be made with FERC under Section 203 of the Federal Power Act to consummate the Transaction, which shall be submitted to FERC in a form mutually acceptable to the Parties, (iii) each preparing and filing as soon as practicable (and, in any event, within fifteen (15) days following the date of this Agreement) all necessary filings required to be made with the NRC to consummate the Transaction, including an application requesting consent under Section 184 of the Atomic Energy Act for the transfer of any NRC License and approving the transfer of trust funds and amendment of trust fund license conditions necessary to consummate the Transaction, (iv) jointly preparing and filing as soon as practicable (and, in any event within fifteen (15) days following the date of this Agreement) all necessary filings required to be made with the NYPSIC to approve the Transaction, (v) making all filings required with the FCC to receive the approval of the FCC for the transfer of control over the FCC licenses that are Transferred Assets, (vi) making all such other Filings or Consents with any Governmental Authority or other Person to obtain the transfer, reissuance or amendment, to the extent necessary, of all applicable Permits and Environmental Permits that are required to be filed or obtained in order to consummate the transactions contemplated hereby and requesting expedited treatment of such Filings, (vii) using their respective Commercially Reasonable Efforts to assure that all such Filings are in material compliance with the requirements of Laws, (viii) using their respective Commercially Reasonable Efforts to furnish the other Party with such necessary information and reasonable assistance as may be reasonably necessary in connection with the preparation of necessary filings or submission of information to any Governmental Authority and consistent with appropriate confidentiality safeguards, (ix) subject to applicable legal limitations and the instructions of any Governmental Authority, keeping each other Party apprised of the status of material matters relating to the completion of the transactions contemplated hereby, including promptly furnishing the other with copies of Filings or other material written communications or correspondence between the Parties, or any of their respective subsidiaries, and any Governmental Authority (or members of their respective staffs) with respect to the transactions contemplated hereby, (x) responding to and complying with, as promptly as reasonably practicable, any request for information or documentary material regarding the transactions contemplated hereby from any relevant Governmental Authority (including responding to any "second request" for additional information or documentary material under the HSR Act as promptly as reasonably practicable), (xi) using their respective Commercially Reasonable Efforts to obtain (A) the prompt expiration or termination of any applicable waiting period and clearance or approval by any relevant Governmental Authority,

including defense against, and (B) the avoidance, elimination and resolution of, any objections or challenges, in court or otherwise, by any relevant Governmental Authority preventing consummation of the transactions (including as may be asserted by the DOJ, FTC, FERC or FCC under the HSR Act, the Sherman Antitrust Act of 1890, as amended, the Clayton Act of 1914, as amended, the Federal Trade Commission Act of 1914, as amended, the Federal Power Act or the Communications Act of 1934, as amended) and (xii) using their respective Commercially Reasonable Efforts to take all commercially reasonable actions necessary to cause all conditions set forth in Article VI to be satisfied as soon as practicable. Buyer shall bear the filing fees associated with any Filings by Buyer or Seller with any Governmental Authority in connection with or otherwise related to the transactions contemplated hereby. Prior to communicating any information regarding Transferred Assets and any Filings or Consents with or from any Governmental Authority to any Governmental Authority (or members of their respective staffs) in written form, to the extent practicable, each Party shall permit counsel for the other Party a reasonable opportunity to review and provide comments on, and consider in good faith the views of the other Party in connection with, any such proposed written communication to any Governmental Authority (or members of their respective staffs) to the extent permitted by Law; provided, that either Party may redact, or otherwise not provide for review, any written communication or Filing to the extent such written communication or Filing contains commercially sensitive information (including any “4(c)” or “4(d)” documents under the HSR Act). In exercising the foregoing rights, each of Seller and Buyer shall act reasonably and as promptly as reasonably practicable. Each of Buyer and Seller agrees not to participate in any in-person meeting where any material substantive matters are scheduled to be discussed with any Governmental Authority regarding Transferred Assets or any Filings or Consents with or from any Governmental Authority in connection with the Transaction unless, to the extent practicable and not prohibited by such Governmental Authority or by Law, it gives the other Party the opportunity to attend and participate in such in-person meeting.

(c) No Party will, without the prior written consent of the other Party, advocate, support or take any action which would reasonably be expected to prevent or materially impede, interfere with or delay the Transaction, the other transactions contemplated by this Agreement and the transactions contemplated by the Related Agreements, or the performance of the Related Agreements.

(d) Each of Seller and Buyer shall use its Commercially Reasonable Efforts to (i) give the other Party prompt notice of the commencement or threat of commencement of any Claim by or before any Governmental Authority with respect to the Transaction, the other transactions contemplated by this Agreement or the transactions contemplated by the Related Agreements, in each case, of which it becomes aware; (ii) keep the other Party informed in all material respects as to the status of any such Claim or threat; and (iii) reasonably cooperate in all respects with each other and shall use their respective Commercially Reasonable Efforts to contest and resist any such Claim and to have vacated, lifted, reversed or overturned any Order, whether temporary, preliminary or permanent, that is in effect and that prohibits, prevents or restricts consummation of the Transaction, the other transactions contemplated by this Agreement or the transactions contemplated by the Related Agreements. In connection with the Required Consents, no Party shall settle any Claim or enter into any consent or order without the prior written consent of the other Party, such consent not to unreasonably be withheld, conditioned or delayed.

(e) From and after the date of this Agreement, each of Buyer and Seller shall use its Commercially Reasonable Efforts to negotiate and enter into the Long-Term Agreements with NYSERDA no later than November 18, 2016; provided, however, that the form and substance of each Long-Term Agreement shall be satisfactory to each of Seller and Buyer in their sole discretion.

(f) Notwithstanding anything to the contrary in this Agreement, each of the Parties hereby agrees and acknowledges that neither of this Section 5.04 nor the "Commercially Reasonable Efforts" standard shall require, or be construed to require, in order to obtain the NYPSC Approvals, Seller, or any Affiliate of Seller, to propose, negotiate or offer to effect, or consent or commit to, any terms, conditions or restrictions that, individually, or in the aggregate, are reasonably likely to adversely affect Seller's or any Seller Affiliate's ability to own or operate any of their respective businesses or operations or ability to conduct any such businesses or operations, including the ability of any Affiliate owner or operator of any nuclear power facility to fulfill any duties or obligations in connection with the ownership or operation of such facility under Law or its NRC licenses or any such Affiliates' ability to continue to operate such nuclear power facility (any such condition, a "Seller Burdensome Condition"). Seller acknowledges and agrees that nothing in the CES Order as in effect on the date of this Agreement constitutes, shall be considered, or shall be taken into account in determining whether a condition constitutes a Seller Burdensome Condition.

(g) To the extent that any of the Required Consents include terms and conditions that do not, individually or in the aggregate, constitute a Seller Burdensome Condition or a Buyer Burdensome Condition or a material adverse effect on Buyer's ability to perform its obligations hereunder, any costs with complying with such terms and conditions shall be borne by the Party to whom such condition applies (it being understood that any such costs on the Transferred Assets will be borne by Buyer).

(h) Notwithstanding anything to the contrary in this Agreement, each of the Parties hereby agrees and acknowledges that neither of this Section 5.04 nor the "Commercially Reasonable Efforts" standards shall require, or be construed to require, in order to obtain the HSR Approval, the NRC Approval or the FERC Approval, Buyer to propose, negotiate or offer to effect, or consent or commit to, any terms, condition or restrictions that would, individually or in the aggregate with any other terms, condition or restrictions with respect to the HSR Approval, NRC Approval or the FERC Approval, result in or would reasonably be likely to result an aggregate negative economic effect on Buyer and its Affiliates (including the Transferred Assets after the Closing) in excess of seventy-five million dollars (\$75,000,000) on a net present value basis (any such condition, a "Buyer Burdensome Condition"); provided, however, that with respect to any request, order or requirement of the NRC for Buyer to provide financial assurances, credit support, guarantees or similar arrangements regarding the ownership and operation of the Facility following consummation of the Transaction (such assurances, "NRC Financial Assurances"), the provision by Buyer of any NRC Financial Assurances in an amount equal to up to one (1) year of operating costs of the Facility (or, only in the event that in determining the required amount of the NRC Financial Assurances, the NRC does not take into account any portion of the zero-emission credits available under the CES Order (whether in effect as of the date of this Agreement or as otherwise modified or rescinded), the sum of (i) up to one (1) year of operating costs of the Facility and (ii)

the portion of the amount of required NRC Financial Assurances exclusively resulting the NRC's determination not to take into account the zero-emission credits available under the CES Order), shall not be taken into account in determining whether a term, condition or restriction constitutes a Buyer Burdensome Condition; provided, further, however, that, for the avoidance of doubt, any conditions, terms or restrictions otherwise arising under Law and generally applicable to owners or operators of wholesale nuclear power plants shall not be considered and shall not be taken into account in determining a Buyer Burdensome Condition.

(i) During the Interim Period, each of Seller and Buyer shall cooperate use Commercially Reasonable Best Efforts to obtain any consent to sever or partially assign to Buyer any Specified Shared Contract (including, if request to the counterparty thereto, Buyer entering into a new agreement with such counterparty). All costs, expenses and fees payable to any such counterparty in order to obtain such consent or assignment shall be borne by Buyer. If any such consent or assignment is not obtained by the Closing, the benefit of such Specified Shared Contract may be provided pursuant to, and subject to the conditions of, Section 2.12. In the event the benefits of such Specified Share Contract cannot be provided to Buyer pursuant to Section 2.12, such event shall not give rise to the failure of the satisfaction of the condition to closing in Section 6.03(e).

Section 5.05 Post-Closing Transfers. If at any time following the Closing, any Party (or any Affiliate of such Party) shall receive or otherwise possess any asset or Liability that is allocated to the other Party pursuant to this Agreement or any Related Agreement, such Party shall (or shall cause its Affiliate to) (the "Transferor Party") promptly transfer, or cause to be transferred, such asset (each, a "Non-Transferred Asset") or liability (each, a "Non-Transferred Liability"), as the case may be, to the other Party (or to such Party's Affiliate) (the "Transferee Party") entitled to such Non-Transferred Asset or responsible for such Non-Transferred Liability, as the case may be, and the Transferee Party entitled to such Non-Transferred Asset or responsible for such Non-Transferred Liability shall accept such Non-Transferred Asset or accept, assume and agree faithfully to perform or discharge such Non-Transferred Liability, as applicable. If any transfer or assignment of any Non-Transferred Asset under this Section 5.05 is unable to be consummated promptly for any reason, then, insofar as reasonably possible, the Transferor Party retaining such Non-Transferred Asset shall thereafter hold such Non-Transferred Asset for the use and benefit of the Transferee Party entitled thereto (at the expense of the Transferee Party entitled thereto). In addition, the Transferor Party retaining such Non-Transferred Asset shall, insofar as reasonably possible and to the extent permitted by applicable Law, take such actions as may be reasonably requested by the Transferee Party to whom such Non-Transferred Asset is to be transferred or assigned, in order to place such Transferee Party in a substantially similar position as if such Non-Transferred Asset had been transferred as contemplated hereby and so that all the benefits and burdens relating to such Non-Transferred Asset, including use, risk of loss, potential for gain, and dominion, control and command over such Non-Transferred Asset, is to inure from and after the Closing to the Transferee Party. The reasonable out-of-pocket costs and expenses associated with any such transfers or assignments of Non-Transferred Assets or assumption of Non-Transferred Liabilities, including reasonable attorneys' fees and all recording or similar fees, shall be borne by the party that would have been responsible for such costs and expenses if the transfer, assignment or assumption had occurred at or prior to the Closing.

Section 5.06 Pre-Refueling Conditions.

(a) Upon satisfaction of the Pre-Refueling Conditions, Seller shall cause the Facility breakers to be opened and the Facility to be disconnected from the transmission grid for the purposes of commencing the Refueling, deliver the Refueling Disconnect Notice to Buyer and conduct the Refueling (and use Commercially Reasonable Efforts to commence the Refueling by mid-January 2017) in accordance with Schedule 5.06, subject to the terms and conditions of the Reimbursement Agreement; provided, that in no event shall Seller or any of its Affiliates cause the Facility breakers to be opened, the Facility to be disconnected from the transmission grid for the purposes of commencing the Refueling, deliver the Refueling Disconnect Notice to Buyer or begin to conduct the Refueling prior to mid-January 2017.

(b) Each of Buyer and Seller shall confirm in writing to the other the satisfaction or non-satisfaction of any Pre-Refueling Condition promptly (but in no event later than the applicable deadlines set forth for such condition in Exhibit B hereto), upon receipt of an Order by the NYPSC approving such condition or upon finalization of the Long-Term Agreements with NYSERDA, as applicable. Except as provided in Section 5.06(e), upon mutual written confirmation of the satisfaction thereof, any such Pre-Refueling Condition shall be deemed satisfied.

(c) Notwithstanding anything to the contrary in this Agreement, each of the Parties hereby agrees and acknowledges that prior to the expiration of the Pre-Refueling Period, none of Section 5.04, the "Commercially Reasonable Efforts" standard, Section 5.06, Exhibit B or any other provision of this Agreement shall require, or be construed to require, in order to obtain the NYPSC Approvals or enter into the Facility Long-Term Agreement, Seller, or any Affiliate of Seller, to propose, negotiate or offer to effect, or consent or commit to, any terms, conditions or restrictions that are reasonably likely to adversely affect Seller's or any Seller Affiliate's ability to own or operate any of their respective businesses or operations or ability to conduct any such businesses or operations, including the ability of any Affiliate owner or operator of any nuclear power facility to fulfill any duties or obligations in connection with the ownership or operation of such facility under Law or its NRC licenses or any such Affiliates' ability to continue to operate such nuclear power facility (any such condition, a "Pre-Refueling Seller Burdensome Condition").

(d) Notwithstanding anything to the contrary in this Agreement, each of the Parties hereby agrees and acknowledges that prior to the expiration of the Pre-Refueling Period, none of Section 5.04, the "Commercially Reasonable Efforts" standard, Section 5.06, Exhibit B or any other provision of this Agreement shall require, or be construed to require, in order to obtain the NYPSC Approvals or enter into any Long-Term Agreement, Buyer, or any Affiliate of Buyer, to propose, negotiate or offer to effect, or consent or commit to, any terms, conditions, restrictions that are not acceptable to Buyer in its sole discretion (any such condition, a "Pre-Refueling Buyer Burdensome Condition").

(e) In the event that any time after the date of this Agreement and prior to the expiration of the Pre-Refueling Period, any Order or action by any Governmental Authority adversely overturns, reverses, annuls, sets-aside, suspends, enjoins, restrains, or

modifies in any respect, or takes similar judicial or regulatory action with respect to, the NYPSA Approvals, the CES Order or any of the agreements set forth in Exhibit B or the transactions contemplated thereby, or any Law is enacted that has the same effect, (each a "Reversal Event"), then either Party shall have the right to assert that the Pre-Refueling Condition subject to such Reversal Event is no longer satisfied and to terminate this Agreement pursuant to Section 9.01(g) by delivering written notice thereof (a "Reversal Notice") to the other Party provided that such notice is delivered to the other Party no later than the earlier of (i) ten (10) Business Days after the applicable Party becomes aware of such Reversal Event or (ii) the expiration of the Pre-Refueling Period. If no Reversal Notice is delivered or any Party fails to deliver a Reversal Notice within the time periods specified above, the right of such Party to assert that the Pre-Refueling Condition is no longer satisfied and to terminate this Agreement pursuant to Section 9.01(g) shall be deemed waived by such Party.

(f) For the avoidance of doubt, in the event any Law, Order or action by a Governmental Authority exists or occurs after the Pre-Refueling Period, in each case, having the effect of a Reversal Event on the Facility Long-Term Agreement, Buyer shall not assert such Law, Order or action, or any effects arising thereunder or resulting therefrom, as a basis for a failure of a Closing condition to be satisfied.

Section 5.07 Schedule Updates. From time to time during the Interim Period, if Seller first becomes aware of any fact, circumstance, development, event or occurrence first arising after the date of this Agreement that would make any of the representations or warranties in Article III inaccurate or incorrect if such representation or warranty were made on the date of the occurrence of such fact, circumstance, development, event or occurrence or on the Closing Date, then Seller may provide Buyer with a written description thereof within ten (10) Business Days after the occurrence of such fact, circumstance, development, event, effect or occurrence (any such description, a "Schedule Update"). Except as provided in Section 9.01(e), no such Schedule Update shall be deemed to have amended the Seller Disclosure Schedule and no fact, circumstance, development, event, effect or occurrence disclosed in such Schedule Update shall be deemed incorporated into such Seller Disclosure Schedule, or to have cured any misrepresentation or breach of warranty that otherwise exists hereunder by reason of the existence of such fact, circumstance, development, event, effect or occurrence; provided, that, with respect to a Claim made pursuant to Section 8.01(a)(i) resulting from, arising out of or in connection with a misrepresentation or breach of warranty that exists hereunder by reason solely of the existence of any fact, circumstance, development, event, effect or occurrence expressly set forth in a Schedule Update in accordance with this Section 5.07, the Indemnified Buyer Entities shall not be entitled to indemnification for Indemnifiable Losses with respect to all such Claims unless and until the aggregate of Indemnifiable Losses to all Indemnified Buyer Entities with respect to all such Claims exceeds one million dollars (\$1,000,000) (the "Schedule Update Deductible") in addition to the application of the Deductible in accordance with Section 8.01(b) (it being agreed that any Claim made pursuant to Section 8.01(a)(i) with respect to a Schedule Update shall first be applied to the Schedule Update Deductible prior to being applied to the Deductible and any such Claims shall be subject to the limitations and other provisions in Article VIII).

Section 5.08 Trust Transfer; Nuclear Decommissioning Trust; Favorable Letter Ruling.

(a) After receipt of the Power Authority of the State of New York Master Decommissioning Trust from NYPA, Seller will create the JAF NDT, which will have investment guidelines approved by Buyer, and ENOI will transfer the Fund Assets to the JAF NDT.

(b) The Parties agree that Buyer shall participate in the preparation and filing of a private letter ruling request to be made by Seller with the IRS in order to obtain the Seller IRS Ruling. Seller shall provide Buyer copies of all documents filed with the IRS in support of Seller IRS Ruling. After receipt of a favorable Seller IRS Ruling, Seller will cause Fund Assets to be transferred from the Non-Qualified Decommissioning Fund to the Qualified Decommissioning Fund at the direction of Buyer, which will have investment guidelines approved by Buyer; provided, however, that Seller shall only be required to transfer an amount of Fund Assets from the Non-Qualified Decommissioning Fund to the Qualified Decommissioning Fund that does not exceed the amount allowed as a deduction to Seller under Section 468A of the Code and Treas. Reg. §1.468A-6(e).

(c) The Parties agree to cooperate in the preparation and filing of a private letter ruling request with the IRS to be jointly made by Buyer and Seller in order to

obtain the Joint IRS Ruling desired by the Parties with respect to the transfer of the legal or beneficial rights, title and interests (the "Beneficial Interest") in the Qualified Decommissioning Fund and the assets held therein pursuant to the terms of this Agreement. Without limiting the generality of the foregoing, Buyer and Seller shall use Commercially Reasonable Efforts to obtain the Joint IRS Ruling. Neither Buyer nor Seller shall take any action that would cause the transfer of the Beneficial Interest in the Qualified Decommissioning Fund to Buyer to fail to be treated as satisfying the requirements of Treas. Reg. §1.468A-6(b) (assuming solely for purposes of this sentence that the interest acquired by Buyer constitutes a "qualifying interest" in a "nuclear power plant" as defined in Treas. Reg. §1.468A1(b)), or cause Buyer and Seller to fail to obtain the Joint IRS Ruling. Buyer shall be primarily responsible for the preparation and filing of the Joint IRS Ruling. The filing fees payable in connection with any joint request submitted to the IRS shall be borne by Buyer.

(d) Seller and its Affiliates shall not withdraw Fund Assets from the FitzPatrick Unit Fund of the Power Authority of the State of New York Master Decommissioning Trust or the JAF NDT; provided, however, that Seller or its Affiliates shall be permitted to withdraw Fund Assets to satisfy any administrative costs (including any Liability for income Taxes) of the FitzPatrick Unit Fund of the Power Authority of the State of New York Master Decommissioning Trust or the JAF NDT incurred during the period beginning on the date that NYPA transfers the FitzPatrick Unit Fund of the Power Authority of the State of New York Master Decommissioning Trust to ENOI and ending on the Closing; provided, however, that for purposes of determining any Liability for income Taxes the applicable tax rate shall equal twenty percent (20%).

#### Section 5.09 Transition Services Agreement.

(a) After the date of this Agreement, each of the Parties shall negotiate in good faith the terms, conditions and form of a transition services agreement (the "Transition Services Agreement") to be entered into at the Closing (and each of the Parties shall use Commercially Reasonable Efforts, negotiating in good faith, to finalize the form of the Transition Services Agreement no later than fourteen (14) days after the date of this Agreement; provided, however, that (i) the terms of any transition services under the Transition Services Agreement shall be limited to twelve (12) months unless otherwise agreed to in writing by the Parties, (ii) the fees for each such service shall be equal to Seller's or its applicable Affiliate's actual cost to provide such service, (iii) such services shall include the services set forth on Schedule 5.09(a), and (iv) Seller will make appropriate employees and data available to Buyer through Seller's employees or representatives to assist Buyer. Buyer shall ensure that Seller is authorized to access and use any software required to perform such transition services by the applicable licensor(s). Seller shall not be required to license such software or otherwise ensure that it is authorized to use such software on behalf of Buyer for the purpose of performing such transition services.

(b) The Parties shall establish, as soon as practicable after the execution of this Agreement, a committee (the "Transition Committee") comprised of at least four (4) natural persons, including two (2) natural persons designated by Seller and two (2) natural persons designated by Buyer. The Transition Committee shall remain in existence until the Closing Date and shall oversee and manage the transition process through the Closing Date.

Subject to applicable Laws, the Transition Committee will be kept fully apprised by Seller of all the management and operating developments with respect to the Facility, including with respect to any pre-closing outage, any repairs and any capital expenditures. The Transition Committee shall meet on a regular basis to (i) review current management and operating procedures, systems and developments with respect to the Facility; (ii) discuss and examine transition issues relating to or arising in connection with plans for integration of the Facility following the Closing and (iii) develop the specific implementation plan for the Transition Services Agreement to ensure the continued processing of all regular business transactions and assist in the migration of files and data during the Interim Period and up to the Closing. Without limiting the obligations of the Parties set out hereunder, it is intended that Seller and Buyer each will, through the Transition Committee, keep the other apprised of the status of matters relating to completion of the Transaction. Members of the Transition Committee shall have no authority to bind either Party and shall not make or commit to make any concessions, agreements or other undertakings with or to any Governmental Entity or other Person. During the Interim Period, for the purpose of planning, facilitating and implementing the transition of the Transferred Assets to Buyer and the transition to new systems or systems of Buyer or its Affiliates (the “IT Transition”), Seller shall, and shall cause its Affiliates to, (i) provide to Buyer, through its Representatives, access to (A) the Facility necessary to implement required infrastructure capabilities in connection with the IT Transition, including for the purpose of installing required infrastructure, and (B) documentation, designs and specifications for the purpose of the IT Transition, and (ii) make available the resources and provide the services set forth on Schedule 5.09(b) in connection with the IT Transition.

(c) During the Interim Period, Buyer shall use Commercially Reasonable Efforts to plan, facilitate and implement the IT Transition to transition all of the Transferred Assets to Buyer and the transition to new systems or systems of Buyer or its Affiliates the systems and software required for the safe and reliable operation of the Facility as if the Closing were scheduled to occur on April 1, 2017 (the “IT Transition”). Seller shall, and shall cause its Affiliates to, reasonably cooperate with Buyer, at Buyer’s expense, in effecting the IT Transition. If Buyer reasonably believes it will be unable to effect the IT Transition on the Closing Date, Buyer shall, at least 60 days prior to the anticipated Closing, identify in writing such systems with potential deficiencies to Seller. Upon receipt of such written notice, Buyer and Seller shall consult on the status of such systems with potential deficiencies. For the systems set forth on Schedule 5.09(c), Seller shall, and shall cause its Affiliates to, and, for any systems with potential deficiencies other than those systems set forth on Schedule 5.09(c) that Buyer identifies in such written notice, upon Seller’s approval (not to be unreasonably withheld, delayed or conditioned) Seller shall, and shall cause its Affiliates to, following the Closing, provide limited access to its systems and software by a limited number of Buyer’s personnel approved by Seller (such approval not to be unreasonably withheld, delayed or conditioned) only to the extent necessary, and only for as long as necessary (not to exceed 60 calendar days following the Closing), to assist with the continued effective execution of Site and Facility activities with respect to such systems with potential deficiencies.

(d) Buyer shall be responsible for all reasonable costs and expenses and other Liabilities incurred or suffered by Seller or any of its Affiliates in connection the IT Transition (including as contemplated by Section 5.03(c)).

Section 5.10 Excluded DOE Claims. With respect to the Excluded DOE Claims, Buyer shall make available those Business Employees employed by Buyer or its Affiliates whose assistance or testimony is reasonably necessary to assist Seller in connection with prosecuting the Excluded DOE Claims after the Closing as witnesses or consultants and provide such information and documents as may be appropriate at any time with respect to the Excluded DOE Claims, subject to appropriate protections of confidential, proprietary or privileged information. Seller shall reimburse Buyer for any out of pocket costs (including any reasonable travel costs but excluding any payroll or benefit costs) incurred by Buyer in connection with the foregoing.

Section 5.11 Transfer of Assets. Prior to the Closing, at Seller's sole discretion and determination, Seller shall cause any of its Affiliates to (a) transfer, assign or deliver to Seller all assets used or held in connection with the ownership or operation of the Facility (whether or not a Transferred Asset) and owned or held by such Affiliate (and upon such transfer, assignment or delivery, such asset shall be deemed to be a Transferred Asset) or (b) provide transition services to Buyer at and as of the Closing (subject to and in accordance with the terms set forth in Section 5.09 and the Transition Services Agreement), in each case contemplated in clause (a) or (b) of this Section 5.11, in order to make the representation and warranty of Seller set forth in Section 3.10 true and correct as of the Closing. All costs and expenses incurred in connection with any such transfers, assignments or deliveries or the provision of any such transition services to Buyer pursuant to this Section 5.11 shall be paid by Buyer.

Section 5.12 CES Order. Notwithstanding anything to the contrary in Section 5.04, (a) Seller and its Affiliates shall support the CES Order in effect as of the date of this Agreement and Long-Term Agreements approved by the Parties; and (b) Seller and its Affiliates shall not raise or support any objections to the CES Order in effect as of the date of this Agreement or Long-Term Agreements approved by the Parties and shall not seek as a remedy, nor support, any action to challenge, overturn or enjoin the CES Order in effect as of the date of this Agreement or Long-Term Agreements approved by the Parties (and, for the avoidance of doubt, shall not, with respect to the CES Order in effect as of the date of this Agreement, seek as a remedy the elimination in whole or in part of the CES program or any modification thereto).

Section 5.13 Cessation of Operations. From and after the date of this Agreement until the earlier to occur of (i) the Closing and (ii) December 31, 2018, Buyer shall not, and shall cause its Affiliates not to, file any notice with the NYISO providing for the permanent cessation of operations of the Nine Mile Nuclear Power Station (a "Nine Mile Termination Notice"); provided that Buyer or its Affiliates may file a Nine Mile Termination Notice if Buyer has given written notice to Seller at least twenty (20) Business Days prior to filing a Nine Mile Termination Notice (an "Advance Termination Notice"). From and after the date the Advance Termination Notice is delivered, and notwithstanding any provision to the contrary in this Agreement, Seller and its Affiliates shall have the right to file a notice with the NYISO providing for the permanent cessation of operations of the Facility (including prior to Buyer or its Affiliates filing the Nine Mile Termination Notice with NYISO).

Section 5.14 Entergy Restructuring. Notwithstanding anything to the contrary in this Agreement, Entergy shall be permitted to effect a restructuring involving Seller or any

intermediate holding company thereof with the prior written consent of Buyer (such consent not to be unreasonably withheld, delayed or conditioned).

Section 5.15 Insurance.

(a) Buyer acknowledges and agrees that, except for insurance policies that constitute Transferred Assets, from and after the Closing, the Facility shall cease to be insured by Seller's policies of liability and property insurance with respect to the ownership, operation and maintenance of the Facility.

(b) Seller shall use Commercially Reasonable Efforts to cooperate with Buyer's efforts to obtain insurance, including insurance required under the Price-Anderson Act or other nuclear Laws with respect to the Transferred Assets and the Facility. Buyer agrees to reimburse Seller for its reasonable out-of-pocket expenses incurred in providing such assistance and cooperation.

Section 5.16 Entergy Names and Marks.

(a) Except as set forth in this Section 5.16, from and after the Closing Buyer shall not use, or permit any of its Affiliates to use, any Entergy Names and Marks in the operation or ownership of the Transferred Assets (including the Facility) and Buyer shall, as soon as practicable, and in any event within ninety (90) days following the Closing Date, remove, strike over or otherwise obliterate all Entergy Names and Marks from all materials, including signage, vehicles, facilities, business cards, schedules, stationery, packaging materials, displays, promotional materials, manuals, forms, computer software or other materials. From and after the Closing until such removal occurs, Seller, on behalf of Entergy, grants Buyer a non-exclusive license to use the Entergy Names and Marks consistent with this Section 5.16.

(b) The license granted under this Section 5.16 may be terminated by written notice if Buyer or any of its Affiliates is in material breach of any provision of this Section 5.16 that remains uncured for more than twenty (20) calendar days after written notice thereof from Seller. Upon such termination of the license granted hereunder for any reason, Buyer shall not use, and shall cause its Affiliates not to use, any of the Entergy Names and Marks.

(c) Notwithstanding anything to the contrary this Section 5.16, at all times after Closing, Buyer may use the name "Entergy Corporation" and "Entergy Nuclear FitzPatrick" (i) to describe the historical ownership of the Facility prior to the Closing and (ii) on any legal documents, business correspondence and similar items that are not public facing or do not confuse the public as to the separate legal status of Buyer, on the one hand, and Seller and its Affiliates, on the other.

Section 5.17 Notifications. Until the Closing, each Party shall promptly notify the other Party in writing of any fact, circumstance, event or action of which it has actual Knowledge, the existence, occurrence or taking of which has resulted in any of the conditions set forth in Article VI becoming incapable of being satisfied.

Section 5.18 Certain Contracts.

(a) During the Interim Period, except with the prior written consent of Buyer (such consent not to be unreasonably withheld, delayed or conditional), (i) Seller shall not (and shall cause each of ENOI and Seller's other Affiliates with respect to the Transferred Assets, the Assumed Liabilities and the Facility not to) terminate, amend, modify, amend, supplement, modify or waive any right under or renew, the Facility Long-Term Agreement, the Trust Fund Transfer Agreement, the Procured Nuclear Fuel Purchase Agreement (as defined in the Reimbursement Agreement), the Interconnection Agreement or the Prior Acquisition Agreement, (ii) Seller shall (and shall cause each of ENOI and Seller's other Affiliates with respect to the Transferred Assets, the Assumed Liabilities and the Facility to) use Commercially Reasonable Efforts to enforce its rights under the Facility Long-Term Agreement, the Trust Fund Transfer Agreement, the Procured Nuclear Fuel Purchase Agreement, the Interconnection Agreement and the Prior Acquisition Agreement and (iii) Seller shall (and shall cause each of ENOI and Seller's other Affiliates with respect to the Transferred Assets, the Assumed Liabilities and the Facility to) perform in accordance with the terms of the Facility Long-Term Agreement, the Trust Fund Transfer Agreement, the Procured Nuclear Fuel Purchase Agreement, the Interconnection Agreement and the Prior Acquisition Agreement. During the Interim Period, Seller shall (A) promptly give Buyer written notice upon having Knowledge of any material breach by any party to the Facility Long-Term Agreement, the Trust Fund Transfer Agreement, the Procured Nuclear Fuel Purchase Agreement, the Interconnection Agreement or the Prior Acquisition Agreement and (B) promptly give Buyer a copy of any notice received from NYPA or NYSERDA, as applicable, by Seller, ENOI or any of Seller's Affiliates with respect to the Transferred Assets with respect to the Facility Long-Term Agreement, the Trust Fund Transfer Agreement, the Procured Nuclear Fuel Purchase Agreement, the Interconnection Agreement or the Prior Acquisition Agreement.

(b) Until the time at which Buyer has no further obligations under Section 9.02, Seller shall (i) use Commercially Reasonable Efforts to enforce its rights under the Available Funds L/C and the Available Funds Agreement, perform in accordance with the terms of the Available Funds L/C and the Available Funds Agreement, (ii) promptly give Buyer written notice upon having Knowledge of any material breach by any party to the Available Funds L/C or the Available Funds Agreement, (iii) promptly give Buyer a copy of any notice received with respect to the Available Funds L/C or the Available Funds Agreement, (iv) not, except with the prior written consent of Buyer (such consent not to be unreasonably withheld, delayed or conditioned), terminate, amend, modify, amend, supplement, modify or waive any right under, the Available Funds L/C or the Available Funds Agreement.

Section 5.19 Atomic Energy Act Authorizations. Prior to Closing, Seller shall provide Buyer with copies of all specific authorizations regarding the export of controlled information to foreign nationals currently in effect and all reports of generally authorized activities to the extent such activities are ongoing, in each case, as required under the Atomic Energy Act.

## ARTICLE VI

### CONDITIONS TO THE CLOSING

Section 6.01 Conditions to Each Party's Obligations. The obligation of each

Party to consummate the Closing is subject to the satisfaction (or waiver by such Party) on or prior to the Closing Date of each of the following conditions.

(a) Anti-trust Matters. All applicable waiting periods (and any extensions thereof) under the HSR Act shall have expired or otherwise been terminated.

(b) Required Consents. The other Required Consents shall have been obtained and such Required Consents shall have become Final Orders.

(c) No Legal Restraints. No Law and no Order, whether preliminary, temporary, or permanent, shall be in effect that prevents, makes illegal or prohibits the consummation of the Transaction or the performance of the Transition Services Agreement, the Employee Matters Agreement, the Seller Guarantee or the agreement between Buyer and NYPA with respect to the one-time fee payable pursuant to the DOE Standard Contract (any such Law or Order, a "Legal Restraint").

(d) Permits. All material Permits (including Environmental Permits) necessary for the ownership and operation of the Facility shall have been obtained and shall be in full force and effect, except where the failure to obtain such Permits would not result in a failure to operate the Facility in compliance with applicable material Laws.

(e) Refueling. The Refueling shall have been completed.

(f) Joint IRS Ruling. The Parties shall have received a favorable Joint IRS Ruling and such ruling shall be in full force and effect.

(g) Decommissioning Trust Transfer. The Power Authority of the State of New York Master Decommissioning Trust shall have been transferred by NYPA to ENOI pursuant to the terms of the Trust Fund Transfer Agreement. Seller shall have created the JAF NDT and ENOI shall have transferred the Fund Assets to the JAF NDT.

(h) Fund Assets Market Value. Buyer shall have received the Fund Assets Market Value Documentation.

(i) Qualified Decommissioning Fund and Qualified Decommissioning Trust Assets. If requested by Buyer at the time of the transfer of the Fund Assets to the Qualified Decommissioning Fund and at Buyer's direction, Seller shall have taken all necessary actions to (i) invest the cash transferred to the Qualified Decommissioning Fund and (ii) rebalance the assets remaining in the Non-Qualified Decommissioning Fund after assets in the Non-Qualified Decommissioning Fund have been transferred to the Qualified Decommissioning Fund.

(j) Seller IRS Ruling. Seller shall have received the Seller IRS Ruling and such ruling shall be in full force and effect.

(k) Closing Deliverables. All closing deliverables set forth on Section 2.09 shall have been delivered.

(l) Full Force and Effect. The Employee Matters Agreement, the

Transition Services Agreement, the Seller Guarantee and the agreement between Buyer and NYPA with respect to the one-time fee payable pursuant to the DOE Standard Contract are in full force and effect on the Closing Date.

Section 6.02 Conditions to Obligation of Buyer. The obligation of Buyer to consummate the Closing is subject to the satisfaction (or waiver by Buyer) on or prior to the Closing Date of each of the following additional conditions.

(a) Covenants of Seller. Each of Seller and each of its Affiliates shall have performed and satisfied in all material respects each of its respective covenants and agreements set forth in this Agreement, the Facility Long-Term Agreement, the Reimbursement Agreement, the Employee Matters Agreement, the Transfer Agreement and the EUP Procurement Agreement required to be performed and satisfied by it at or prior to the Closing.

(b) Representations and Warranties of Seller. The representations and warranties of Seller (i) contained in Section 3.01 (first sentence only), Section 3.02, Section 3.08(a), Section 3.08(b) (first sentence only), Section 3.09 and Section 3.22 shall be true and correct in all material respects as of the Closing Date as though made on and as of the Closing Date, (ii) contained in Section 3.04 shall be true and correct in all respects on the Closing Date as though made on the Closing Date (except to the extent expressly made as of an earlier date, in which case as of such earlier date) and (iii) otherwise set forth in Article III shall be true and correct (without giving effect to any qualification as to "materiality" or "Seller Material Adverse Effect" set forth on such Article) as of the Closing Date as though made on and as of the Closing Date (except to the extent expressly made as of an earlier date, in which case as of such earlier date), except where the failure of any representation or warranty to be true and correct, individually or in the aggregate, would not have a Seller Material Adverse Effect.

(c) Officer's Certificate of Seller. Seller shall have delivered to Buyer a certificate, dated as of the Closing Date, executed on behalf of Seller by an authorized executive officer thereof, certifying that the conditions specified in Section 6.02(a) and Section 6.02(b) have been fulfilled.

(d) No Seller Material Adverse Effect. There shall not exist a Seller Material Adverse Effect.

(e) Transfer of Transferred Assets. Subject to Section 2.12, the Transferred Assets, including the JAF NDT, shall have been transferred and delivered by Seller and the Other Seller Entities to Buyer pursuant to the terms of this Agreement.

(f) No Buyer Burdensome Condition. No Order with respect to any of the Required Consents (other than an Order of the NYPSC with respect to the NYPSC Approvals) individually or with all other Orders (other than an Order of the NYPSC with respect to the NYPSC Approvals) and other factors imposes or would be reasonably expected to result in any Buyer Burdensome Condition.

(g) DOE Consent. The DOE Consent shall have been obtained, in form and substance satisfactory to Buyer.

(h) Facility Power Generation. The Facility is operating and generating power.

(i) IT Transition. The IT Transition shall have been completed to Buyer's reasonable satisfaction such that, upon and following the Closing, the Facility will be effectively positioned to operate with the information technology systems of Buyer and its Affiliates (including any information technology assets included in the Transferred Assets); provided, however, that after March 31, 2017 this Section 6.02(i) shall cease to be a condition to the obligation of Buyer to consummate the Closing.

Section 6.03 Conditions to Obligation of Seller. The obligation of Seller to consummate the Closing is subject to the satisfaction (or waiver by Seller) on or prior to the Closing Date of each of the following additional conditions.

(a) Covenants of Buyer. Buyer shall have performed and satisfied in all material respects each of its covenants and agreements set forth in this Agreement, the Reimbursement Agreement, the Employee Matters Agreement, the Buyer Long-Term Agreement, the Transfer Agreement and the EUP Procurement Agreement required to be performed and satisfied by it at or prior to the Closing, including the receipt by Seller of all amounts required to be paid by Buyer at the Closing under Section 2.06.

(b) Representations and Warranties of Buyer. The representations and warranties of Buyer set forth in Article IV shall be true and correct in all material respects as of the Closing Date as though made on and as of the Closing Date (except to the extent expressly made as of an earlier date, in which case as of such earlier date), except where the failure of any representation or warranty to be true and correct, individually or in the aggregate, would not reasonably be expected to have a material adverse effect on Buyer's ability to perform its obligations hereunder or to consummate the Closing.

(c) Officer's Certificate of Buyer. Buyer shall have delivered to Seller a certificate, dated as of the Closing Date, executed on behalf of Buyer by an authorized individual thereof, certifying that the conditions specified in Section 6.03(a) and Section 6.03(b) have been fulfilled.

(d) DOE Consent. The DOE Consent shall have been obtained, in form and substance reasonably satisfactory to Seller.

(e) No Seller Burdensome Condition. No Order with respect to the NYSPC Approval imposes or would be reasonably expected to result in any Seller Burdensome Condition.

## ARTICLE VII

### SURVIVAL

Section 7.01 Survival of Certain Representations, Warranties and Covenants. The representations and warranties and all Claims with respect thereto contained in Section 3.01 (first sentence only), Section 3.02, Section 3.08(a), Section 3.08(b) (first sentence only), Section

3.09 and Section 3.22 (the "Seller Fundamental Representations") and Section 4.01 (first sentence only) and Section 4.09 (the "Buyer Fundamental Representations") shall terminate on the date that is four (4) years following the Closing Date. The representations and warranties and all Claims with respect thereto contained in Section 3.16 shall terminate on the date that is three (3) years following the Closing Date. The representations and warranties and all Claims with respect thereto contained in Section 3.18 and Section 3.19 (the "Seller Tax Representations") shall terminate on the date that is ninety (90) days following the expiration of the statute of limitations with respect to the applicable Tax Return. All other representations and warranties and all Claims with respect thereto contained in this Agreement shall terminate on the date that is twelve (12) months following the Closing Date. All of the covenants and agreements of the Parties contained in this Agreement which, by their terms, are to be performed or complied with in their entirety at or prior to the Closing, and all Claims with respect thereto, shall terminate on the date that is three (3) months following the Closing Date. All of the covenants and agreements of the Parties contained in this Agreement which, by their terms, are to be performed or complied with in whole or in part following the Closing, and all Claims with respect thereto, shall survive for the period provided in such covenants and agreements, if any, or until performed in accordance with their respective terms. The Parties expressly agree that the provisions of this Section 7.01 shall operate as a contractual statute of limitations. Notwithstanding anything to the contrary contained in this Agreement, any breach of any representation, warranty, covenant or agreement or any Claim with respect thereto, shall survive the time at which it would otherwise terminate pursuant to the preceding sentences of this Section 7.01 if notice of the inaccuracy or breach thereof giving rise to such right of indemnification shall have been properly given pursuant to this Agreement at or prior to the time at which such representation, warranty, covenant or agreement or Claim with respect thereto would otherwise expire pursuant to this Section 7.01.

Section 7.02 Certain Limitations. Notwithstanding anything in this Agreement to the contrary:

(a) Except under the Seller Guarantee, no Representative or Affiliate of, or direct or indirect equity owner in, Seller shall have any personal liability to Buyer or any other Person as a result of the breach of any representation, warranty, covenant, agreement or obligation of Seller in this Agreement, and no Representative or Affiliate of, or direct or indirect equity owner in, Buyer shall have any personal liability to Seller or any other Person as a result of the breach of any representation, warranty, covenant, agreement or obligation of Buyer in this Agreement; and

(b) no Party shall be liable for special punitive, exemplary, consequential or indirect damages, lost profits or losses calculated by reference to any multiple of earnings or earnings before interest, Tax, depreciation or amortization (or any other valuation methodology), whether based on contract, tort, strict liability, other Law or otherwise and whether or not arising from the other Party's sole, joint or concurrent negligence, strict liability or other fault for any matter relating to this Agreement and the Transaction, except to the extent any such damages are paid to a Third Party in the accordance with the terms of this Agreement; provided, however, that, after the Closing, and without limiting any of the limitations in Article VIII, each Party shall be liable for any Indemnifiable Losses that constitute consequential damages (including lost profits) to the extent such damages are reasonably foreseeable

(provided, that in no event shall any Party's aggregate Liability to the other Party's Indemnified Entities for such consequential damages exceed twenty million dollars (\$20,000,000)).

## ARTICLE VIII

### INDEMNIFICATION

#### Section 8.01 Indemnification by Seller.

(a) From and after the Closing, subject to the other provisions of this Article VIII, Seller agrees to indemnify Buyer and its Affiliates and each of their Representatives (collectively, the "Indemnified Buyer Entities") for, and to hold each of them harmless from and against, any and all Indemnifiable Losses actually suffered, paid or incurred by such Indemnified Buyer Entity resulting from, arising out of or in connection with:

(i) any breach of or inaccuracy in any of the representations and warranties made by Seller in Article III (or contained or referred to in any certificate delivered by or on behalf of Seller pursuant hereto) or the Employee Matters Agreement;

(ii) any failure to perform any covenant or agreement of Seller contained in this Agreement or the Employee Matters Agreement and that survives the Closing (including in accordance with Section 7.01);

(iii) any Excluded Liabilities;

(iv) any Excluded Assets; or

(v) for all costs and expenses associated with (x) the transfer of the Power Authority of the State of New York Master Decommissioning Trust from NYPA to ENOI and (y) the Fund Transfer (other than any administrative costs and expenses pursuant to which Seller or its Affiliates is permitted to withdraw pursuant to the proviso in Section 5.08(d)).

(b) Notwithstanding anything to the contrary contained in this Section 8.01, the Indemnified Buyer Entities shall be entitled to indemnification:

(i) with respect to any Claim for indemnification pursuant to Section 8.01(a)(i), only if the aggregate of Indemnifiable Losses to all Indemnified Buyer Entities with respect to all such Claims exceeds \$1,000,000 (the "Deductible"), whereupon (subject to the provisions of clauses (ii) and (iii) below) Seller shall be obligated to pay in full all such amounts but only to the extent such aggregate Indemnifiable Losses are in excess of the amount of the Deductible; provided, however, that the Deductible shall not apply, and shall not be taken into account in determining the Deductible, with respect to any Claim for indemnification pursuant to Section 8.01(a)(i) solely with respect to the Seller Fundamental Representations or the Seller Tax Representations;

(ii) with respect to any Claim for indemnification pursuant to Section 8.01(a)(i), only with respect to individual items, together with any other items arising out of substantially similar facts and circumstances, where the Indemnifiable Losses relating thereto are in excess of \$100,000 (the "Minimum Claim Amount") (any items less than such threshold shall not be aggregated for the purposes of the immediately preceding clause (i)); provided, however, that the Minimum Claim Amount shall not apply with respect to any Claim for indemnification pursuant to Section 8.01(a)(i) solely with respect to the Seller Fundamental Representations or the Seller Tax Representations; and

(iii) with respect to any Claim for indemnification pursuant to Section 8.01(a)(i), only if such Claims are made on or before the expiration of the survival period pursuant to Section 7.01 for the applicable representation or warranty.

(c) Notwithstanding anything to the contrary contained in this Agreement, with respect to any Claim for indemnification pursuant to Section 8.01(a)(i), in no event shall Seller's aggregate Liability to the Indemnified Buyer Entities exceed twenty million dollars (\$20,000,000) (the "Cap"); provided, however, that the Cap shall not apply with respect to any Claim for indemnification pursuant to Section 8.01(a)(i) solely with respect to the Seller Fundamental Representations and the Seller Tax Representations; provided, further, however, that under no circumstances will Seller's aggregate Liability to the Indemnified Buyer Entities with respect to Claims for indemnification pursuant to Section 8.01(a)(i) (except with respect to the Seller Tax Representations) exceed fifty million dollars (\$50,000,000).

(d) This Section 8.01 is subject to the limitations set forth in Section 7.02(b).

(e) For purposes of this Section 8.01, the determination of whether a breach or a violation of any representation or warranty of Seller (other than the representations and warranties contained in Section 3.10(b)) has occurred and the amount of Indemnifiable Losses resulting from a breach or inaccuracy of any representation or warranty of Seller shall be made by disregarding and not giving effect to any qualifiers in the applicable agreement as to "Seller Material Adverse Effect," "materiality," "in all material respects," or words of similar import and instead interpreting such representation or warranty as if such terms were deleted.

(f) Any payments pursuant to the Owner's Affidavit and Gap Undertaking made by Seller to the title company named therein on account of Indemnifiable Losses (as defined in the Owner's Affidavit and Gap Undertaking) shall be taken into account in determining (i) the Deductible and the Cap to the extent the Deductible and the Cap would apply if such payments were made with respect to a Claim by an Indemnified Buyer Entity for indemnification pursuant to Section 8.01(a)(i) and (ii) Seller's aggregate Liability pursuant to the last proviso in Section 8.01(c).

#### Section 8.02 Indemnification by Buyer.

(a) From and after the Closing Date, subject to the other provisions of

this Article VIII, Buyer agrees to indemnify Seller and its Affiliates and each of their Representatives (collectively, the "Indemnified Seller Entities") for, and to hold each of them harmless from and against any and all Indemnifiable Losses actually suffered, paid or incurred by any such Indemnified Seller Entity resulting from, arising out of or in connection with:

(i) any breach or inaccuracy of any of the representations and warranties made by Buyer in Article IV or the Employee Matters Agreement;

(ii) any failure to perform any covenant or agreement of Buyer contained in this Agreement or the Employee Matters Agreement that survives the Closing (including in accordance with Section 7.01);

(iii) any Assumed Liabilities;

(iv) the ownership or use of any Transferred Assets after the Closing, other than with respect to any Excluded Liability.

(b) Notwithstanding anything to the contrary contained in this Section 8.02, the Indemnified Seller Entities shall be entitled to indemnification:

(i) with respect to any Claim for indemnification pursuant to Section 8.02(a)(i), only if the aggregate of Indemnifiable Losses to all Indemnified Seller Entities with respect to all such Claims exceeds the Deductible, whereupon (subject to the provisions of clauses (ii) and (iii) below) Buyer shall be obligated to pay in full all such amounts but only to the extent such aggregate Indemnifiable Losses are in excess of the amount of the Deductible; provided, however, that the Deductible shall not apply, and shall not be taken into account in determining the Deductible with respect to any Claim for indemnification pursuant to Section 8.02(a)(i) solely with respect to the Buyer Fundamental Representations;

(ii) with respect to any Claim for indemnification pursuant to Section 8.02(a)(i), only with respect to individual items where the Indemnifiable Losses relating thereto are in excess of the Minimum Claim Amount (any items less than such threshold shall not be aggregated for the purposes of the immediately preceding clause (i)); provided, however, that the Minimum Claim Amount shall not apply with respect to any Claim for indemnification pursuant to Section 8.02(a)(i) solely with respect to the Buyer Fundamental Representations; and

(iii) with respect to any Claim for indemnification pursuant to Section 8.02(a)(i), only if such Claims are made on or before the expiration of the survival period pursuant to Section 7.01 for the applicable representation or warranty.

(c) Notwithstanding anything to the contrary contained in this Agreement, with respect to any Claim for indemnification pursuant to Section 8.02(a)(i), in no

event shall Buyer's aggregate Liability to the Indemnified Seller Entities exceed the Cap; provided, however, (i) that with respect to any Claim for indemnification pursuant to Section 8.02(a)(i) solely with respect to the Buyer Fundamental Representations the Cap shall not apply, and (ii) Buyer's aggregate Liability to the Indemnified Seller Entities with respect to all Claims for indemnification pursuant to Section 8.02(a)(i) shall not exceed fifty million dollars (\$50,000,000).

(d) This Section 8.02 is subject to the limitations set forth in Section 7.02.

(e) For purposes of this Section 8.02, the determination of whether a breach or a violation of any representation or warranty of Buyer in this Agreement has occurred and the amount of Indemnifiable Losses resulting from a breach or inaccuracy of any representation or warranty of Buyer contained in this Agreement shall be made by disregarding and not giving effect to any qualifiers in this Agreement as to "material adverse effect," "materiality," "in all material respects," or words of similar import and instead interpreting such representation or warranty as if such terms were deleted.

#### Section 8.03 Indemnification Procedures.

(a) If an Indemnified Buyer Entity or an Indemnified Seller Entity (each, an "Indemnified Entity") believes that a Claim or other fact or circumstance exists that may give rise to a right of indemnification under this Article VIII (whether or not the amount of Indemnifiable Losses relating thereto is then quantifiable), such Indemnified Entity may assert its Claim for indemnification by giving written notice thereof (a "Claim Notice") to the Party from which indemnification is sought pursuant to Section 8.01 or Section 8.02, as applicable (the "Indemnifying Entity"). The Claim Notice shall be given reasonably promptly (and in any event within ten (10) Business Days) after the Indemnified Entity becomes aware of any fact or circumstance that may give rise to a Claim for indemnity. Each Claim Notice shall describe in reasonable detail the nature of the Claim, identify the section of this Agreement that forms the basis of such Claim, attach copies of all material written evidence thereof received from any Third Party to the date of the Claim Notice. and set forth the estimated amount of Indemnifiable Losses relating thereto to the extent reasonably estimable. The failure of the Indemnified Entity to notify or a delay in notifying the Indemnifying Entity, as the case may be, will not relieve the Indemnifying Entity of its obligations pursuant to this Article VIII, except to the extent that such Indemnifying Entity is materially prejudiced as a result thereof.

(b) Upon receipt by an Indemnifying Entity of a Claim Notice in respect of a Claim brought by a Third Party that (i) is solely for money damages or includes equitable relief that can be substantially resolved through the expenditure of an immaterial amount of money and (ii) which would not reasonably be expected to exceed the maximum amount for which indemnification may be required by an Indemnifying Entity, the Indemnifying Entity shall be entitled to (x) assume and have sole control over the defense and investigation of such Claim at its sole cost and expense (subject to the last sentence of this Section 8.03(b)) and with counsel of its own choosing if it gives notice of its intention to do so to the Indemnified Entity within thirty (30) days of the receipt of such Claim Notice from the Indemnified Entity and (y) negotiate a settlement or compromise of, or consent to the entry of a judgment with

respect to, such Claim; provided that if such settlement, compromise or consent does not include a full and unconditional waiver and release by the Third Party of all applicable Indemnified Entities for all costs or liabilities with respect to such Claim, such settlement, compromise or consent shall be permitted hereunder only with the written consent of the Indemnified Entity (whether or not the Indemnified Entity is an actual or potential party to such Claim), which consent shall not be unreasonably withheld, conditioned or delayed. If the Indemnifying Entity is not entitled to assume and control the defense or investigation of such claim, or within thirty (30) days of receipt from an Indemnified Entity of any Claim Notice with respect to a Third Party Claim, the Indemnifying Entity advises such Indemnified Entity in writing that the Indemnifying Entity does not elect to defend and investigate such Claim or (B) fails to make such an election in writing, then (1) such Indemnified Entity may, at its option, defend, investigate, settle or compromise, or consent to an entry of judgment with respect to, such Claim; provided that any such settlement, compromise or consent shall be permitted hereunder only with the written consent of the Indemnifying Entity (whether or not the Indemnifying Entity is an actual or potential party to such Claim), which consent shall not be unreasonably withheld, conditioned or delayed, and (2) the Indemnifying Entity may participate in (but not control) any such defense and investigation at its sole cost and expense. Each Indemnified Entity shall make available to the Indemnifying Entity all information available to such Indemnified Entity relating to such Claim, except as may be prohibited by Law, including providing the Indemnifying Entity promptly (but in any event within five (5) Business Days) after the Indemnified Entity's receipt thereof, with copies of all notices and documents (including court papers) received by the Indemnified Entity relating any Claim by a Third Party and shall grant the Indemnifying Entity and its Representatives reasonable access to the books, records, employees, Representatives and properties of any such Indemnified Entity to the extent reasonably related to the matters to which the Claim Notice relates. In addition, the Parties shall render to each other such assistance as may reasonably be requested in order to ensure the proper and adequate defense and investigation of any such Claim. If the Indemnifying Entity elects to assume control of the defense and investigation of any such Claim, then the Indemnified Entity shall be entitled to participate in (but not control) such defense and investigation at such Indemnified Entity's sole cost and expense. In the event the Indemnifying Entity assumes control of the defense and investigation of (or otherwise elects to negotiate a settlement or compromise of or consent to an entry of judgment with respect to) any such Claim, the Indemnified Entity shall reimburse the Indemnifying Entity for all costs and expenses incurred by the Indemnifying Entity in connection with such defense and investigation (or negotiation, settlement, compromise or consent) to the extent, if applicable, that such costs and expenses do not exceed the amount of the remaining Deductible; provided that such costs and expenses shall be included in the calculation of the Deductible.

(c) Upon receipt by an Indemnifying Entity of a Claim Notice not brought by a Third Party (a "Direct Claim"), the Indemnifying Entity shall notify the Indemnified Entity within thirty (30) days of receipt of such Claim Notice whether the Indemnifying Entity disputes such Direct Claim. If the Indemnifying Entity does not dispute such Direct Claim, then it shall promptly pay the full amount of such Direct Claim to the Indemnified Entity.

Section 8.04 Indemnification Generally.

(a) The amount of Indemnifiable Losses which the Indemnifying Entity is required to pay to any Indemnified Entity pursuant to this Article VIII shall be reduced (retroactively, if necessary) by any insurance proceeds (net of recovery costs and other related costs, including deductibles and premium adjustments) actually received or recoverable by or on behalf of such Indemnified Entity or its Affiliates with respect to such Indemnifiable Losses, and an Indemnified Entity shall use Commercially Reasonable Efforts to receive or recover such proceeds or other amounts; provided that an Indemnified Entity has no obligation to pursue such recovery for Indemnifiable Losses prior to such Indemnified Entity's right to make a Claim for recovery pursuant to this Article VIII. An Indemnified Entity shall take, or cause its Affiliates to take, Commercially Reasonable Efforts to pursue payment from any Third Party with respect to any Indemnifiable Loss under any Contract, arrangement or commitment pursuant to which such Indemnified Entity or its Affiliates are entitled to reimbursement or indemnification with respect to such Indemnifiable Loss; provided, that such Commercially Reasonable Efforts shall be taken by the Indemnified Entity at the Indemnifying Entity's sole cost and expense. If an Indemnified Entity shall have received the payment required by this Agreement from the Indemnifying Entity in respect of Indemnifiable Losses (including any Purchase Price adjustment with respect to the circumstances giving rise to such payment under this Article VIII) and shall subsequently receive (or any of its Affiliates shall subsequently receive) any insurance proceeds or other amounts in respect of such Indemnifiable Losses, then such Indemnified Entity shall promptly repay, or cause to be repaid, to the Indemnifying Entity a sum equal to the amount of such insurance proceeds or other amounts actually received (net of recovery costs and other related costs, including deductibles and premium adjustments).

(b) In addition to the requirements of Section 8.04(a), each Indemnified Entity shall be obligated in connection with any Claim for indemnification under this Article VIII to use Commercially Reasonable Efforts to mitigate Indemnifiable Losses upon and after becoming aware of any fact or circumstance that may give rise to such Indemnifiable Losses.

(c) Except for Claims arising from actual and intentional fraud in connection with this Agreement or any Related Agreement, the indemnification provided in this Article VIII shall be the exclusive post-Closing remedy available to any Party or its Affiliates or Representatives with respect to any breach of any representation, warranty, covenant or agreement in this Agreement or otherwise in respect of the transactions contemplated by this Agreement. Without limiting the generality of the foregoing, Buyer, for itself and its Affiliates, does hereby irrevocably release Seller and its Affiliates from any and all Environmental Liabilities (other than Excluded Liabilities) resulting from or arising out of or in connection with the Transferred Assets except for the remedies expressly set forth in this Agreement and Claims arising from actual and intentional fraud in connection with this Agreement or any Related Agreement. In furtherance of, but subject to, the foregoing, Buyer, for itself and on behalf of its Affiliates, hereby irrevocably waives any and all rights and benefits with respect to such Environmental Liabilities that it now has, or in the future may have conferred upon it by virtue of any Law or common law principle, in each case, which provides that a general release does not extend to claims which a party does not know or suspect to exist in its favor at the time of executing the release, if knowledge of such claims would have materially affected such party's

settlement with the obligor. In connection with the foregoing, Buyer hereby acknowledges that it is aware that factual matters now unknown to it and Seller or any of their respective Affiliates may have given, or hereafter may give, rise to Environmental Liabilities, and Buyer further agrees that the release set forth in this Section 8.04(c) has been negotiated and agreed upon in light of that awareness, and Buyer, for itself and its Affiliates, nevertheless hereby intends irrevocably to release Seller and its Affiliates from all such Environmental Liabilities (other than Excluded Liabilities) except for the remedies expressly set forth in this Agreement and Claims arising from actual and intentional fraud in connection with this Agreement or any Related Agreement.

(d) All Indemnifiable Losses shall be determined without duplication of recovery under other provisions of this Agreement or any other document or agreement delivered in connection with this Agreement. Without limiting the generality of the prior sentence, if a set of facts, conditions or events constitutes a breach of more than one representation, warranty, covenant or agreement of this Agreement that is subject to an indemnification obligation under this Article VIII, only one recovery of Indemnifiable Losses shall be allowed with respect to such set of facts, conditions or events, and in no event shall there be any indemnification or duplication of payments or recovery under different provisions of this Agreement arising out of the same set of facts, conditions or events.

(e) Except as set forth herein, neither Party shall have any right to off-set or set-off any payment due pursuant to this Article VIII.

## **ARTICLE IX**

### **TERMINATION**

Section 9.01 Termination. This Agreement may be terminated (each of the following, a "Termination Event"):

(a) at any time prior to the Closing Date by mutual written agreement of Buyer and Seller;

(b) by either Buyer or Seller by giving written notice to the other Party if the Closing shall not have occurred on or prior to June 8, 2017 (the "Outside Date"); provided that the right to terminate this Agreement under this Section 9.01(b) shall not be available to any Party whose failure to fulfill any obligation under this Agreement has been the cause of, or resulted in, the failure of the Closing to occur on or before such date; provided further that if all conditions to the Closing set forth in Article VI have been fulfilled (other than those conditions that by their nature are to be satisfied at the Closing) except for the receipt of any Required Consents and any Legal Restraint related to such Required Consents or the DOE Consent, then the Outside Date shall be extended to August 8, 2017;

(c) by either Buyer or Seller by giving written notice to the other Party if (i) the condition set forth in Section 6.01(c) is not satisfied and the Legal Restraint giving rise to such nonsatisfaction has become final and nonappealable or (ii) any of the Required Consents the receipt of which is a condition to the obligation of such first Party to consummate the Closing

as provided in Article VI, shall have been denied in a final and nonappealable Order or shall have been granted subject to or containing terms and conditions that prevent the satisfaction of one or more of such first Party's conditions to Closing set forth in Article VI; provided, however, that the right to terminate this Agreement under this Section 9.01(c) shall not be available to any Party whose failure to fulfill any obligation under Section 5.04 has been the cause of, or resulted in, the failure to satisfy such condition.

(d) by either Buyer or Seller by giving written notice to the other Party if there has been a breach by such other Party of any representation, warranty, covenant or other agreement contained in this Agreement or any Signing Related Agreement and such breach (i) would result in the failure to satisfy one or more of the conditions to the Closing of the Party sending such notice and (ii) is of a character that is capable of being cured (unless waived by the non-breaching Party) but has not been cured prior to the date that is thirty (30) days from the date that the breaching Party is notified or waived in writing by the other Party of such breach (or such shorter period contained in the applicable Signing Related Agreement);

(e) by Buyer by giving written notice to Seller within ten (10) Business Days after the delivery by Seller of a Schedule Update if such Schedule Update discloses a fact, circumstance, development, event or occurrence, the existence of which would have otherwise permitted Buyer to terminate this Agreement pursuant to Section 9.01(d) (with or without giving effect to any cure period contained in Section 9.01(d); provided that, if Buyer does not exercise its termination right under this Section 9.01(e) within such ten (10) Business Day period, then (i) Buyer shall not have the right to terminate this Agreement solely as a result of any fact, circumstance, development, event or occurrence expressly disclosed in such Schedule Update and (ii) Buyer shall be deemed to have irrevocably and forever waived any termination right or any right to assert the failure to satisfy any condition to the Closing set forth in Article VI solely with respect to any such fact, circumstance, development, event or occurrence;

(f) by Buyer, if Seller files with the NRC a notice for the permanent cessation of operations of the Facility;

(g) by either Buyer or Seller, if such Person delivers a Reversal Notice pursuant to Section 5.06(e); or

(h) automatically without any action by either Party on November 23, 2016 if the Pre-Refueling Conditions are not satisfied by November 18, 2016; provided that the Parties may mutually agree in writing to waive such Termination Event prior to November 23, 2016.

#### Section 9.02 Termination Fees.

(a) If this Agreement is terminated (i) by either Buyer or Seller pursuant to Section 9.01(a), Section 9.01(b), Section 9.01(c) or Section 9.01(g), (ii) by Seller pursuant to Section 9.01(d), (iii) by Buyer pursuant to Section 9.01(e) or (iv) automatically without action of either Party pursuant to Section 9.01(h), Buyer shall pay to Seller a fee of five million dollars (\$5,000,000) (provided that, if both of the following occur: (A) this Agreement is

terminated pursuant to Section 9.01 after the commencement of the Refueling (other than, for the avoidance of doubt, by Buyer pursuant to Section 9.01(d), Section 9.01(e) or Section 9.01(f)) and at a time of such termination Buyer did not also have the right to terminate this Agreement pursuant to Section 9.01(d), Section 9.01(e) or Section 9.01(f) and (B) the conditions set forth in Section 6.02(a) and Section 6.02(b) would be satisfied (except where the failure of such conditions to be satisfied is the result of a failure of Buyer to perform its obligation under this Agreement or any Related Agreement) if the Closing Date were the date of such termination, then such fee shall be an amount equal to the sum of (x) five million dollars (\$5,000,000) plus (y) either (I) the difference, if (and only if) such difference is a positive amount, between (a) twenty-five million dollars (\$25,000,000) and (b) all amounts paid to Seller in connection with the Available Funds L/C or the Available Funds Agreement or (II) zero dollars (\$0), if such difference is not a positive amount) (the "Buyer Termination Fee"), it being understood that in no event shall Buyer be required to pay the Buyer Termination Fee on more than one occasion (except as set forth below with respect to any payment under the Available Funds L/C or Available Funds Agreement being rescinded, restored, or returned). The Buyer Termination Fee shall be payable in immediately available funds by wire transfer no later than two (2) Business Days (to an account designated in writing by Seller) after such termination in the event terminated by Seller or concurrently with such termination by Buyer; provided, however, that in the event this Agreement is terminated in circumstances that result in the Buyer Termination Fee being calculated by taking the sum of the amounts set forth in clauses (x) and (y) above following the occurrence of any event that may give Seller a right to payment under the Available Funds L/C or the Available Funds Agreement, Buyer shall not be obligated to pay to Seller the portion of the Buyer Termination Fee that is the amount set forth in clause (y) above until (i) Seller has used its Commercially Reasonable Efforts to seek such payment under the Available Funds L/C or the Available Funds Agreement for a period of at least than five (5) Business Days and failed to obtain such payment (provided, however, for the avoidance of doubt, Seller shall not have to seek such payment if it reasonably believes that it is not entitled to any such payment under the terms of the Available Funds L/C or the Available Funds Agreement) and (ii) two (2) Business Days after Seller delivers to Buyer written notice of such failure and of the amount of all payment to Seller in connection with the Available Funds L/C or the Available Funds Agreement (or two (2) Business Days after Seller delivers notice to Buyer that it reasonably believes that it is not entitled to any such payment). In the event any payment to Seller under the Available Funds L/C or the Available Funds Agreement is rescinded or must otherwise be restored or returned by Seller for any reason (including if compelled to do so under any Order by any Government Authority, including upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of NYPA or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, any of NYPA or any substantial part of NYPA's property), Buyer shall pay to Buyer an amount equal to the difference between (A) the amount of the Buyer Termination Fee that would be payable calculated as if such rescinded, restored or returned amount had not been paid and (B) the amount of the Buyer Termination Fee previously paid by Buyer. In the event Buyer has made any payment of any portion of the Buyer Termination Fee that is the amount set forth in clause (y) above for which Seller subsequently receives a payment in connection with the Available Funds L/C or the Available Funds Agreement, Seller shall pay to Buyer the amount of such payment no later than two (2) Business Days after Seller receives it. For the avoidance of doubt, any amount received by Seller as recovery for its reasonable out-of-pocket attorney fees and expenses to enforce the

Available Fund Agreement or the Available Funds L/C shall not be deemed an amount paid to Seller for purposes of clause (y) above. If this Agreement is terminated and Seller is entitled to draw funds under the terms of the Available Funds L/C or the Available Funds Agreement, Seller shall draw and demand funds under the Available Funds L/C and the Available Funds Agreement. In the event Buyer makes a payment of the Termination Fee in an amount calculated in accordance with the first proviso above in this Section 9.02(a), Seller shall, promptly (and in any event, within one (1) Business Day) following such payment, deliver a joint written notice with Buyer to NYPA of such payment by Buyer. Buyer shall be responsible for any transfer fee in the event the Available Funds L/C is transferred to Buyer.

(b) If this Agreement is terminated and the aggregate Reimbursement Credit Amount (as defined in the Reimbursement Agreement) is a positive amount, Seller shall pay to Buyer a fee equal to such positive amount (the "Seller Termination Fee"), it being understood that in no event shall Seller be required to pay the Seller Termination Fee on more than one occasion. The Seller Termination Fee shall be payable in immediately available funds by wire transfer no later than two (2) Business Days (to an account designated in writing by Buyer) after such termination in the event terminated by Buyer or concurrently with such termination by Seller.

(c) Without limiting any Party's rights pursuant to Section 11.07, such Party's rights to receive payment of the applicable Termination Fee and, if applicable, its costs and expenses pursuant to Section 9.02(d), shall be the sole and exclusive remedy of the other Party or any of its Affiliates against such first Party or any of its Affiliates or any of their respective stockholders, partners, members or Representatives for any and all losses that may be suffered based upon, resulting from or arising out of this Agreement or the Transaction; provided, however, that, regardless of whether such Party pays or is obligated to pay the applicable Termination Fee, nothing in this Section 9.02(c) shall release such Party from any liability for a Willful Breach of this Agreement or for any liability for any breach of any provision of this Agreement that expressly survives termination of this Agreement.

(d) If any Party fails to promptly pay an amount due pursuant to Section 9.02(a) or (b) and, in order to obtain such payment the other Party commences a Claim that results in a judgment against such first Party for the amount of the applicable Termination Fee or any portion thereof, such Party shall pay to the other Party its costs and expenses (including reasonable attorneys' fees and the fees and expenses of any expert or consultant engaged by the other Party) in connection with such Claim. All amounts payable pursuant to this Section 9.02 shall accrue interest at the prime lending rate published in The Wall Street Journal and in effect on the date of payment, with such interest being payable in respect of the period from the date that payment was originally required to be made pursuant to this Section 9.02 through to and including the date of payment.

(e) Each of the Parties acknowledges that the agreements contained in this Section 9.02 are an integral part of the Transaction and that each of the Buyer Termination Fee and the Seller Termination Fee is not a penalty, but rather is liquidated damages in a reasonable amount that will compensate Buyer or Seller, as applicable in the circumstances in which such fee is payable for the efforts and resources expended and opportunities foregone while negotiating this Agreement and in reliance on this Agreement and on the expectation of the

consummation of the Transaction, which amount would otherwise be impossible to calculate with precision.

### Section 9.03 Effect of Termination.

(a) If this Agreement is terminated pursuant to Section 9.01, written notice of such termination (including specific reference to the provision in Section 9.01 pursuant to which this Agreement is being terminated) shall be given by the terminating Party to the other Party. In the event that this Agreement is validly terminated in accordance with Section 9.01, this Agreement shall forthwith become null and void and have no effect, without Liability or obligation on the part of Seller or Buyer (or any Affiliate or Representative thereof), whether arising before or after such termination, based on, arising out of or relating to this Agreement or the negotiation, execution, performance or subject matter hereof (whether in contract or in tort or otherwise, or whether at law or in equity) except for (i) the provisions of this Article IX, Section 5.03(c), Section 5.03(d), Section 5.09(d), Section 5.13, Section 5.18(b) and Article XI, which provisions and any Liability therefore will survive such termination, and (ii) any Liability for any Willful Breach of this Agreement prior to such termination.

(b) Each of the Parties acknowledges on behalf of itself and its Affiliates that, except as contemplated by Section 5.18(b), Section 9.02(a) or the Available Funds Agreement (including with respect to Buyer's third party beneficiary rights thereunder), (i) any payment or proceeds pursuant to the Available Funds Agreement or the Available Funds L/C is compensation for Seller and its Affiliates for the efforts and resources expended and the opportunities foregone while negotiating this Agreement and the Related Agreements, (ii) Buyer and its Affiliates shall have no rights under, or interest to, the Available Funds Agreement, the Available Funds L/C or any payments or proceeds therefrom, (iii) the availability of, or the payments or proceeds from, the Available Funds Agreement or the Available Funds L/C shall not otherwise reduce any recovery of damages that Seller may properly Claim under this Agreement against Buyer or otherwise affect Buyer's obligation to pay the Buyer Termination Fee when payable pursuant to this Agreement, and (iv) Buyer shall not assert any Claim that is contrary to the foregoing.

## ARTICLE X

### CERTAIN TAX MATTERS

Section 10.01 Taxes. Seller shall be liable for and pay and, pursuant to Article VIII, shall indemnify, defend and hold harmless the Indemnified Buyer Entities from and against any and all Indemnified Losses suffered, paid or incurred by such Indemnified Buyer Entity relating to or arising out of (a) all Taxes attributable to the Excluded Assets and the Excluded Liabilities, or otherwise unrelated to the Facility, the Transferred Assets or the Assumed Liabilities; and (b) (other than Taxes subject to reimbursement as Transaction Related Incremental Costs under the Reimbursement Agreement) all Taxes applicable to the Facility, the Transferred Assets and the Assumed Liabilities, in each case attributable to a Pre-Closing Tax Period and, with respect to any Straddle Period, the portion of such Straddle Period ending on and including the Closing Date. Except as provided in this Agreement or any Related Agreement, Buyer shall be liable for and pay and, pursuant to Article VIII, shall indemnify,

defend and hold harmless the Indemnified Seller Entities from and against any and all Indemnified Losses suffered, paid or incurred by such Indemnified Seller Entity relating to or arising out of all Taxes applicable to the Facility, the Transferred Assets and the Assumed Liabilities that are attributable to taxable years or periods beginning after the Closing Date and, with respect to any Straddle Period, the portion of such Straddle Period beginning after the Closing Date.

Section 10.02 Transfer Taxes. Notwithstanding Section 10.01, Buyer shall be solely liable for and shall pay all Transfer Taxes attributable to the sale or transfer of the Facility and the Transferred Assets to Buyer and shall indemnify, defend and hold harmless Seller and its Affiliates from and against any and all Liability for the payment of such Transfer Taxes. Each of Buyer and Seller agrees to timely sign and deliver any such certificates or forms as may be necessary or appropriate to establish an exemption from (or otherwise reduce), and Seller agrees to file any Tax Returns required to be filed by it (after review and approval by Buyer) with respect to, such Transfer Taxes. Seller agrees to accept and honor any New York Direct Payment Permit or any exemption certificate provided by Buyer. For the avoidance of doubt, notwithstanding anything in this Agreement, the Reimbursement Agreement or any other Related Agreement to the contrary, Buyer shall not be liable, nor shall Buyer be required to reimburse Seller for (i) any Transfer Taxes that would not have been imposed but for the failure of Seller (or any Affiliate of Seller) to provide certificates or forms as may be necessary or appropriate to establish an exemption from (or otherwise reduce) Transfer Taxes, (ii) any failure of any representation of Seller in Section 3.02(f) of the Reimbursement Agreement to be true, (iii) any Transfer Taxes attributable to the sale or transfer of the Facility and the Transferred Assets that arise in connection with any restructuring involving Seller or any intermediate holding company thereof prior to Closing, including any restructuring pursuant to Section 5.14, or (iv) any interest or penalties attributable to Seller's failure to timely remit Taxes collected from Buyer.

Section 10.03 Straddle Period. For purposes of determining the amount of Taxes that relate to a Pre-Closing Tax Period (or portion of any Straddle Period ending on or prior to the Closing Date), the Parties agree as follows:

(a) in the case of real property Taxes, personal property Taxes, any payments made under the Payment in Lieu of Taxes Agreement for the Facility with the Town of Scriba, Mexico Academy & Central School District and County of Oswego, ad valorem Taxes, and other similar Taxes levied on a periodic basis, whether imposed or assessed before or after the Closing Date, the amount of Taxes that are attributable to the portion of the Straddle Period ending on (or in the case of employment Taxes, the day before) the Closing Date shall be determined by multiplying the Taxes for the entire Straddle Period by a fraction, the numerator of which is the number of calendar days in the portion of the period ending on the Closing Date and the denominator of which is the number of calendar days in the entire Straddle Period; and

(b) in the case of all other Taxes (including income Taxes, employment Taxes, and sales and use Taxes), whether imposed or assessed before or after the Closing Date, the amount of Taxes that are attributable to the portion of the Straddle Period ending on (or in the case of employment Taxes, the day before) the Closing Date shall be determined as if Seller filed a separate Tax Return with respect to such Taxes for the portion of the Straddle Period ending on (or in the case of employment Taxes, the day before) the Closing

Date using a "closing of the books methodology." For purposes of this clause (b), any item determined on an annual or periodic basis (including amortization and depreciation deductions) shall be allocated to the portion of the Straddle Period ending on (or in the case of employment Taxes, the day before) the Closing Date based on the mechanics set forth on clause (a) for periodic Taxes.

Section 10.04 Reimbursements. Seller and Buyer, as the case may be, shall provide reimbursement for any Tax paid by one Party all or a portion of which is the responsibility of the other Party in accordance with the terms of this Article X without regard to the aggregate indemnification limitations set forth in Article VIII. Within a reasonable time prior to the payment of any such Tax, the Party paying such Tax shall give notice to the other Party of the Tax payable and the portion which is the liability of each Party, although failure to do so will not relieve the other Party from its liability hereunder.

Section 10.05 Tax Claims. Each Party shall promptly notify the other Party in writing of the commencement of any examination, proceeding or audit of any Tax Return of the Facility or the Transferred Assets and any other proposed change or adjustment, Claim, dispute, arbitration or litigation that would reasonably be expected to give rise to a liability of the other Party in respect of Taxes under this Article X (a "Tax Claim"). Such notice shall describe the asserted Tax Claim in reasonable detail and shall include copies of any notices and other documents received from any Taxing Authority in respect of any such asserted Tax Claim. Buyer shall control the defense of any Tax Claim; provided that (i) Seller shall have the opportunity to participate, at its own expense, in any Tax Claim that would reasonably be expected to give rise to a liability of the Seller pursuant to this Article X, and (ii) Buyer shall not settle any Tax Claim relating to Taxes for which Seller is liable pursuant to this Article X without first obtaining Seller's written consent.

Section 10.06 Cooperation. Buyer and Seller agree to furnish or cause to be furnished to each other, upon request, as promptly as practicable, such information and assistance relating to the Facility, the Transferred Assets and the Assumed Liabilities as is reasonably necessary for the filing of all Tax Returns, the making of any election relating to Taxes, the preparation for any audit by any Taxing Authority, and the prosecution or defense of any Claim relating to any Tax.

Section 10.07 Tax Ownership. Notwithstanding anything to the contrary in this Agreement, the Parties intend that Buyer will become the owner of the Facility and the Transferred Assets for U.S. federal and applicable state and local Tax purposes immediately after the Closing and each Party shall file, and shall cause each of its Affiliates to file, all Tax Returns consistent with such intent.

## **ARTICLE XI**

### **MISCELLANEOUS**

Section 11.01 Expenses. Except as otherwise provided in this Agreement (including Section 5.04(b)) or any Related Agreement, whether or not the Closing takes place, all costs and expenses incurred in connection with this Agreement and the Transaction shall be paid

by the Party incurring such costs and expenses, including any fees, expenses or other payments incurred or owed by a Party to any brokers, Representatives, financial or legal advisors or comparable other Persons retained or employed by such Party in connection with the Transaction.

Section 11.02 Notices. All notices, requests, consents, Claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt), (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested), (c) on the date sent by facsimile or e-mail of a .pdf document (with confirmation of transmission) if sent prior to 6:00 p.m. Central Time on a Business Day and on the next Business Day if sent after 6:00 p.m. Central Time on a Business Day or at any time on a date that is not a Business Day or (d) on the third (3<sup>rd</sup>) day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective Parties at the following addresses (or at such other address for a Party as shall be specified in a notice given in accordance with this Section 11.02).

(a) if to Buyer, to:

Exelon Generation Company, LLC  
10 South Dearborn Street, 49th Floor  
Chicago, IL 60603  
Attention: Carter Culver, Vice President & Deputy General Counsel  
Email: carter.culver@exeloncorp.com

with a copy to (which shall not constitute notice):

Sidley Austin LLP  
One South Dearborn  
Chicago, IL 60603  
Attention: Richard W. Astle  
Email: rastle@sidley.com

(b) if to Seller, to:

Entergy Nuclear FitzPatrick, LLC  
c/o Entergy Services, Inc.  
2001 Timberloch Place  
2nd Floor South  
The Woodlands, TX 77380  
Attention: Barrett E. Green  
Email: bgreen2@entergy.com

with a copy to (which shall not constitute notice):

Entergy Services, Inc.  
L-ENT-26B  
639 Loyola Avenue  
New Orleans, LA 70113  
Facsimile: (504) 576-4150  
Attention: General Counsel

and

Skadden, Arps, Slate, Meagher & Flom LLP  
1440 New York Avenue, NW  
Washington, DC 20005  
Attention: Pankaj K. Sinha, Esq.  
Email: pankaj.sinha@skadden.com

Section 11.03 Severability. Any term or provision of this Agreement that is determined by a court of competent jurisdiction to be invalid or unenforceable for any reason shall, as to that jurisdiction, be ineffective solely to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction, so long as the economic or legal substance of the Transaction is not affected in any manner adverse to any Party. Upon such determination that any term or provision is invalid or unenforceable, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated by this Agreement be consummated as originally contemplated to the greatest extent possible. If any provision of this Agreement is determined by a court of competent jurisdiction to be so broad as to be unenforceable, that provision shall be interpreted to be only so broad as is enforceable. Each of Buyer and Seller acknowledges that the Pre-Refueling Conditions and the agreements contained in Section 5.06 with respect to the Refueling are an integral part of this Agreement and the Transaction and that, without these conditions and agreements, the Purchaser would not have entered into this Agreement or any Related Agreement.

Section 11.04 Amendments and Waivers. This Agreement may not be amended except by an instrument in writing signed by Buyer and Seller. Each Party may, by an instrument in writing signed on behalf of such Party, waive compliance by any other Party with any term or provision of this Agreement that such other Party was or is obligated to comply with or perform. No failure or delay by any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. Except as otherwise provided herein, the rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by Law.

Section 11.05 Entire Agreement; No Third Party Beneficiaries. This Agreement

(together with the written agreements (including the Assignment and Assumption Agreements and the Bills of Sale), Schedules and certificates referred to herein or delivered pursuant hereto and the Related Agreements) and the Confidentiality Agreement constitute the entire agreement and supersede all prior agreements and understandings, both written and oral, among the Parties with respect to the subject matter hereof. Except as provided in Section 7.02(a) with respect to the Persons specified therein, or Article VIII with respect to any Indemnified Entity, this Agreement is for the sole benefit of the Parties and their permitted assigns and is not intended to confer upon any other Person any rights or remedies hereunder.

Section 11.06 Governing Law. This Agreement, the Employee Matters Agreement, and all Claims or causes of action of the Parties (whether in contract or in tort or otherwise, or whether at law (including at common law or by statute) or in equity) that may be based on, arise out of or relate to this Agreement, the Employee Matters Agreement or the negotiation, execution, performance or subject matter hereof or thereof, shall be governed by and construed in accordance with the domestic Laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule that would cause the application of the Laws of any jurisdiction other than the State of Delaware; provided that all Claims or causes of action of the Parties with respect to the Real Property or other real estate matters shall be governed by and construed in accordance with the domestic Laws of the State of New York without giving effect to any choice or conflict of law provision or rule that would cause the application of the Laws of any jurisdiction other than the State of New York.

Section 11.07 Specific Performance.

(a) The Parties agree that irreparable damage would occur in the event that any provision of this Agreement was not performed in accordance with its specific terms or was otherwise breached. Accordingly, each of the Parties agrees that any other Party shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof, in addition to any other remedy to which such Party is entitled at law or in equity. The Parties hereby waive, in any action for specific performance, the defense of adequacy of a remedy at law and the posting of any bond or other undertaking or security in connection therewith. Each of the Parties agrees that it will not oppose the granting of an injunction, specific performance and other equitable relief on the basis that there is adequate remedy at law or an award of specific performance is not an appropriate remedy for any reason at law or equity. Each Party further agrees that (i) by seeking any remedy provided in this Article XI, a Party shall not in any respect waive its right to seek any other form of relief that may be available to a Party under this Agreement and (ii) nothing contained in this Section 11.07 shall require any Party to institute any action for (or limit any Party's right to institute any action for) specific performance under this Section 11.07 before exercising any other right under this Agreement.

(b) If any Party brings any legal proceeding in court to enforce specifically the performance of the terms and provisions when expressly available to such Party pursuant to the terms of this Agreement, the Outside Date shall automatically be extended by the time period between the commencement of such legal proceeding is no longer actively pending before a court with jurisdiction pursuant to Section 11.08.

Section 11.08 Consent to Jurisdiction; Waiver of Jury Trial. Each of the Parties irrevocably submits to the exclusive jurisdiction of the Delaware Court of Chancery or, if such court disclaims jurisdiction, any state or federal court located in the State of Delaware, for the purposes of any suit, action or other proceeding arising out of this Agreement, the Employee Matters Agreement or any transaction contemplated hereby or thereby. Each of the Parties further agrees that service of any process, summons, notice or document by U.S. certified mail to such Party's respective address set forth on Section 11.02 shall be effective service of process for any action, suit or proceeding in the State of Delaware with respect to any matters to which it has submitted to jurisdiction as set forth above in the immediately preceding sentence. Each of the Parties irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of this Agreement, the Employee Matters Agreement or the Transaction in (a) the Delaware Court of Chancery or (b) any state or federal court located in the State of Delaware, and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum. **EACH OF THE PARTIES HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE EMPLOYEE MATTERS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.**

Section 11.09 EXCLUSIVITY OF REPRESENTATIONS AND WARRANTIES.

(a) BUYER ACKNOWLEDGES AND AGREES THAT, EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN ARTICLE III (AS MODIFIED BY THE SELLER DISCLOSURE SCHEDULE) AND THE RELATED AGREEMENTS, THE TRANSFERRED ASSETS ARE SOLD "AS-IS, WHERE-IS," AND SELLER EXPRESSLY DISCLAIMS (AND DISCLAIMS ANY LIABILITY FOR OR RESPONSIBILITY OF) ANY AND ALL OTHER REPRESENTATIONS AND WARRANTIES OF ANY KIND OR NATURE, EXPRESS OR IMPLIED, AT COMMON LAW OR STATUTE, MADE BY SELLER OR ITS AFFILIATES, OR BY ANY REPRESENTATIVE THEREOF, WITH RESPECT TO THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT AND THE RELATED AGREEMENTS, INCLUDING AS TO (I) ANY ASSETS OR LIABILITIES (INCLUDING THE TRANSFERRED ASSETS AND THE ASSUMED LIABILITIES) OR BUSINESS OR OPERATIONS OF ANY SELLER ENTITY OR ITS AFFILIATES, THE OPERATIONS OF THE FACILITY, (II) THE TITLE, CONDITION, VALUE, OR QUALITY OF THE TRANSFERRED ASSETS, (III) THE MERCHANTABILITY, USAGE, SUITABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHETHER LATENT OR PATENT, OR AS TO THE CONDITION OF THE TRANSFERRED ASSETS, OR (IV) THE ACCURACY OR COMPLETENESS (OR LACK THEREOF) OF ANY MATERIALS OR OTHER INFORMATION (INCLUDING ANY PROJECTION, FORECAST, ADVICE OR OPINION) PROVIDED BY OR COMMUNICATIONS MADE BY SELLER OR ANY OF ITS AFFILIATES, OR BY ANY REPRESENTATIVE THEREOF, WHETHER BY USE OF A DATA ROOM OR ANY OTHER METHOD OF COMMUNICATION. BUYER ACKNOWLEDGES AND AGREES THAT NO EXHIBIT TO THIS AGREEMENT, NOR ANY MATERIALS OR OTHER INFORMATION REFERENCED IN CLAUSE (IV) OR

OTHERWISE WILL CAUSE OR CREATE ANY REPRESENTATION OR WARRANTY OF ANY KIND OF NATURE, EXPRESS OR IMPLIED, AT COMMON LAW OR STATUTE. BUYER FURTHER ACKNOWLEDGES THAT BUYER, EITHER ALONE OR TOGETHER WITH ITS AFFILIATES AND ITS AND THEIR REPRESENTATIVES, HAS KNOWLEDGE AND EXPERIENCE IN TRANSACTIONS OF THIS TYPE AND IN THE OWNERSHIP AND OPERATION OF NUCLEAR POWER PLANTS AND IS THEREFORE CAPABLE OF EVALUATING THE RISKS AND MERITS OF ACQUIRING THE TRANSFERRED ASSETS AND ASSUMING THE ASSUMED LIABILITIES AND CONSUMMATING THE TRANSACTION AND THE TRANSACTIONS CONTEMPLATED UNDER THIS AGREEMENT AND THE RELATED AGREEMENTS. BUYER FURTHER ACKNOWLEDGES THAT IT HAS RELIED ON ITS OWN INDEPENDENT INVESTIGATION, AND HAS NOT RELIED ON ANY MATERIALS OR OTHER INFORMATION PROVIDED BY OR COMMUNICATION MADE BY SELLER OR ANY OF ITS AFFILIATES, OR BY ANY REPRESENTATIVE THEREOF, OR ANY OTHER REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESSED OR IMPLIED, AT COMMON LAW OR STATUTE, (EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH ON ARTICLE III (AS MODIFIED BY THE SELLER DISCLOSURE SCHEDULE)), IN DETERMINING TO ENTER INTO THIS AGREEMENT AND THE RELATED AGREEMENTS OR THE PROBABLE SUCCESS OF PROFITABILITY OF THE FACILITY.

(b) SELLER ACKNOWLEDGES AND AGREES THAT, EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN ARTICLE IV (AS MODIFIED BY THE BUYER DISCLOSURE SCHEDULE) AND THE RELATED AGREEMENTS, BUYER EXPRESSLY DISCLAIMS (AND DISCLAIMS ANY LIABILITY FOR OR RESPONSIBILITY OF) ANY AND ALL OTHER REPRESENTATIONS AND WARRANTIES OF ANY KIND OR NATURE, EXPRESS OR IMPLIED, AT COMMON LAW OR STATUTE, MADE BY BUYER OR ITS AFFILIATES, OR BY ANY REPRESENTATIVE THEREOF, WITH RESPECT TO THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT AND THE RELATED AGREEMENTS.

(c) EACH PARTY ACKNOWLEDGES AND AGREES THAT THE PROVISIONS OF THIS SECTION HAVE BEEN NEGOTIATED BY THE PARTIES AFTER DUE CONSIDERATION AND ARE INTENDED TO BE A COMPLETE EXCLUSION AND NEGATION AND NONRELIANCE OF ANY REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS OR IMPLIED, AT COMMON LAW OR STATUTE, OTHER THAN THOSE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN THIS AGREEMENT OR IN ANY OTHER RELATED AGREEMENT, PROVIDED, HOWEVER, THAT, NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS SECTION 11.09, NEITHER BUYER OR SELLER IS WAIVING ANY RIGHT TO MAKE ANY CLAIMS FOR ACTUAL AND INTENTIONAL FRAUD IN CONNECTION WITH THIS AGREEMENT OR ANY RELATED AGREEMENT AND THE ABOVE WAIVERS, AGREEMENTS AND ACKNOWLEDGEMENTS DO NOT APPLY WITH RESPECT TO ANY MATTERS INVOLVING SUCH FRAUD.

Section 11.10 Assignment. Neither this Agreement nor any of the rights or obligations hereunder shall be assigned by any of the Parties without the prior written consent of

each of the other Parties. Subject to the preceding sentence, this Agreement will be binding upon, inure to the benefit of and be enforceable by the Parties and their respective successors and permitted assigns.

Section 11.11 Schedules, Annexes and Exhibits. Except as otherwise provided in this Agreement, all Schedules, Annexes and Exhibits referred to herein are intended to be and hereby are made a part of this Agreement. Any disclosure in the Schedules corresponding to and qualifying a specific section or subsection hereof shall be deemed to correspond to and qualify any other section or subsection hereof relating to Seller (in the case of the Seller Disclosure Schedule) or Buyer (in the case of the Buyer Disclosure Schedule), in each case, to the extent that it is reasonably apparent on the face thereof that such fact or item relates to another Schedule. Certain information set forth on the Schedules is included solely for informational purposes, is not an admission of Liability with respect to the matters covered by the information, and may not be required to be disclosed pursuant to this Agreement. The specification of any dollar amount contained in this Agreement or the inclusion of any specific item in the Schedules is not intended to imply that such amounts (or higher or lower amounts) are or are not material, and no Party shall use the fact of the setting of such amounts or the fact of the inclusion of any such item in the Schedules in any dispute or controversy between the Parties as to whether any obligation, item or matter not described herein or included in a Schedule is or is not material for purposes of this Agreement. In no event will the listing of any matter in the Schedules be deemed or interpreted to broaden or otherwise amplify the representations, warranties, covenants or agreements contained in this Agreement.

Section 11.12 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which shall, taken together, be considered one and the same agreement. Delivery of an executed signature page of this Agreement by facsimile or other electronic image scan transmission shall be effective as delivery of a manually executed counterpart of this Agreement.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the date first above written.

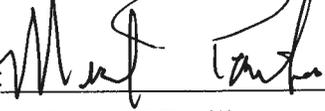
**SELLER**

**Entergy Nuclear FitzPatrick, LLC**

By:   
Name: A.C. Bakken III  
Title: SUP-CVO, President CEO

**BUYER**

**Exelon Generation Company, LLC**

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

Name: Michael Pacilio

Title: Executive Vice President and  
Chief Operating Officer

## **Exhibit A**

### **Defined Terms**

Section 1 Defined Terms. As used in this Agreement, each of the following terms has the meaning specified in this Section 1 of Exhibit A.

"Active Employees" has the meaning specified in the Employee Matters Agreement.

"Affiliate," with respect to any Person, means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with such first Person.

"ANI" means American Nuclear Insurers.

"Assignment and Assumption Agreements" means the respective assignment and assumption agreements, each in the form attached hereto as Exhibit C, by and between each Seller Entity, as applicable, and Buyer.

"Atomic Energy Act" means the Atomic Energy Act of 1954, as amended.

"Bills of Sale" means respective bills of sale by which the title to personal property shall be conveyed to Buyer by each applicable Seller Entity, substantially in the form attached hereto as Exhibit D.

"Business Day" means any day other than a Saturday or Sunday or any day banks in the State of New York are authorized or required to be closed.

"Business Employee" means any employee of Seller or any Other Seller Entity whose job duties relate principally to the operation of the Facility or any former employee of Seller or any Other Seller Entity whose job duties immediately before termination of employment related principally to the operation of the Facility. Business Employees shall not include individuals who render services to Seller or any Other Seller Entity solely on a consultant or independent contractor basis.

"Buyer Long-Term Agreement" means the long-term agreement by and among Buyer and/or one or more of its Affiliates and NYSERDA for each of Buyer's and Constellation Energy Nuclear Group, LLC's nuclear facilities in the State of New York to be entered into during the Interim Period.

"CBA" means all agreements with the collective bargaining representatives of Active Employees that set forth the terms and conditions of employment of Active Employees, and all modifications of, or amendments to, such agreements and any rules, procedures, awards or decisions of competent jurisdiction interpreting or applying such agreements.

"CES" means the clean energy standard adopted by the NYPSC in the CES Order.

"CES Order" means the Order Adopting a Clean Energy Standard by the NYPSC issued

and effective as of August 1, 2016, with respect to Cases 15-E-0302 & 16-E-0270.

"Claim" means any demand, claim, counter-claim, action, legal proceeding (whether at law or in equity), or arbitration.

"COBRA" means Section 4980B(f) of the Code, Part 6 of Subtitle B of Title I of ERISA or any analogous state Law.

"Code" means the U.S. Internal Revenue Code of 1986, as amended.

"Commercially Reasonable Efforts" means, as further expanded, limited, clarified or otherwise modified by any specific provision of this Agreement, the commercially reasonable efforts, time and, if any, costs (or other Liabilities) a reasonable Person desirous of achieving the contemplated result would use, expend or incur in similar circumstances to attempt to ensure that such result is achieved as expeditiously as reasonably practicable.

"Confidentiality Agreement" means the Confidentiality Agreement, dated as of May 24, 2016, by and between Entergy Services, Inc. and Exelon Corporation, as amended by that certain letter agreement dated August 8, 2016.

"Contract" means any written or oral contract, lease, license, evidence of indebtedness, mortgage, indenture purchase order, binding bid, letter of credit, memorandum of understanding, security agreement, undertaking or other agreement that is legally binding.

"control" (including its correlative meanings "controlled by" and "under common control with") means possession, directly or indirectly, of the power to direct or cause the direction of management or policies of a Person (whether through ownership of securities or partnership or other ownership interests, by Contract or otherwise).

"Decommissioning" means the complete retirement and removal of the Facility from service and the restoration of the Site to a status that permits the Site and spent fuel storage installation to be released for unrestricted use in accordance with the NRC regulations, as well as any planning and administrative activities incidental thereto, including, (a) reducing residual radioactivity at the Site and spent fuel storage installation to levels meeting the NRC radiological release criteria and any other actions necessary to obtain termination of the NRC Licenses and (b) all other activities necessary for the retirement, dismantlement, and decontamination of the Facility to comply with all applicable requirements of the Atomic Energy Act, the NRC's rules, regulations, orders and pronouncements thereunder and any related decommissioning plan, Environmental Laws and other Laws.

"DOE" means the U.S. Department of Energy or any successor thereto.

"DOE Consent" means the unrestricted consent of DOE for the assignment to Buyer at Closing of the rights and obligations relating to the Facility (and exclusive of any Seller rights and obligations relating to Indian Point Nuclear Generating Unit No. 3 or any other facility) under the DOE Standard Contract.

"DOE Standard Contract" means the Contract for Disposal of Spent Nuclear Fuel and/or

High-Level Radioactive Waste, No. DE-CR01-83NE-44407, dated as of June 20, 1983, between the United States of America, represented by the United States DOE, and NYPA, as amended from time to time, and assigned by NYPA to Seller on or around November 21, 2000, but only to the extent that such contract applies to the Facility (and exclusive of any rights and obligations relating to Indian Point Nuclear Generating Unit No. 3 or any other facility).

"DOJ" means the U.S. Department of Justice.

"Eligible Contract" means (i) any Material Contract of the type set forth in clause (i) of the definition of Material Contract in Section 3.07 or Contract of the type set forth in clause (i) of the definition of Material Contract in Section 3.07 that would constitute a Material Contract if entered into prior to the date of this Agreement (but excluding any such Material Contract that also is or would be a Material Contract under any other clause of the definition of Material Contract) and (ii) any Contract related to the Facility that (a) is not an Emergency Preparedness Agreement, Material Contract or Seller Entity Plan, (b) was made available to Buyer prior to the date of this Agreement and (c) can be terminated by Seller (or its applicable Affiliate party thereto) without penalty upon not more than ninety (90) days' notice.

"Employee Matters Agreement" means the employee matters agreement, dated the date of this Agreement, by and between Buyer and Seller.

"Energy Reorganization Act" means the Energy Reorganization Act of 1974, as amended.

"ENOI" means Entergy Nuclear Operations, Inc.

"Environmental Law" means any and all Laws and judicial interpretations thereof that relate to the prevention, abatement, remediation, or elimination of pollution, Hazardous Substances or protection, preservation or restoration of the environment (including air, surface water, groundwater, drinking water supply, surface land, plant and animal life or any other natural resources), protection of human health or safety in respect of exposure to Hazardous Substances, or the release or disposal of Hazardous Substances, including the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. § 9601 et seq., the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. § 6901 et seq., the Clean Water Act, 33 U.S.C. § 1251 et seq., the Clean Air Act, 42 U.S.C. § 7401 et seq., the Emergency Planning and Community Right to Know Act of 1986, 42 U.S.C. § 11001 et seq., the Safe Drinking Water Act, 42 U.S.C. § 300f et seq., the Toxic Substances Control Act, 42 U.S.C. § 2601 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. § 5101 et seq., the Endangered Species Act, 16 U.S.C. § 1531 et seq., the Migratory Bird Treaty Act, 16 U.S.C. § 703 et seq., the Bald and Golden Eagle Protection Act, 16 U.S.C. § 668 et seq., and state laws analogous to any of the above, as any or all may be amended, changed or supplemented.

"Environmental Liabilities" means any Liability under or related to Environmental Laws or the common law, whether such liability or obligation or responsibility is known or unknown, contingent or accrued, arising as a result of or in connection with (a) any violation or alleged violation of Environmental Law, prior to, on or after the Closing Date, with respect to the

ownership, operation or use of the Transferred Assets or the Facility, including fines, penalties and the costs of correcting any such violations but excluding fines and penalties to the extent arising out of violations or alleged violations occurring prior to the Closing Date; (b) loss of life, injury to Persons, property or business or damage to natural resources (whether or not such loss, injury or damage arose or was made manifest before the Closing Date or arises or becomes manifest after the Closing Date), caused (or allegedly caused) by the presence or release of Hazardous Substances at, on, in, under, above or migrating from the Transferred Assets or the Facility prior to, on or after the Closing Date, including Hazardous Substances contained in building materials at the Transferred Assets or the Facility or in the atmosphere, soil, surface water, sediments, groundwater, landfill cells, or in other environmental media at or on the Transferred Assets or the Facility; (c) the Remediation (whether or not such Remediation commenced before the Closing Date or commences after the Closing Date) of Hazardous Substances that are present or have been released prior to, on or after the Closing Date at, on, in, under, above or migrating from the Transferred Assets or the Facility, including Hazardous Substances contained in building materials at the Transferred Assets or the Facility or in the atmosphere, soil, surface water, sediments, groundwater, landfill cells, or in other environmental media at or on the Transferred Assets or the Facility; (d) except as provided in clause (a) above, compliance with Environmental Laws prior to, on or after the Closing Date with respect to the ownership or operation or use of the Transferred Assets or the Facility; (e) loss of life, injury to Persons, property or business or damage to natural resources caused (or allegedly caused) by the offsite disposal, storage, transportation, discharge, release or recycling, or the arrangement for such activities, of Hazardous Substances, prior to, on or after the Closing Date, in connection with the ownership or operation of the Transferred Assets or the Facility; and (f) the Remediation of Hazardous Substances that are disposed, stored, transported, discharged, released, recycled, or the arrangement of such activities, prior to, on or after the Closing Date, in connection with the ownership or operation of the Transferred Assets or the Facility.

"Environmental Permits" means any permits, certificates, licenses, franchises, writs, variances, exemptions, orders and other authorizations of any Governmental Authorities issued under any Environmental Law.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"ERISA Affiliate" means any trade or business (whether or not incorporated) that, together with a Person, is treated as a single employer under Section 4001(b) of ERISA or under Section 414 of the Code.

"EUP Procurement Agreement" has the meaning specified in the Reimbursement Agreement.

"Excluded Disqualifying Conduct" means any Disqualifying Conduct (as defined in the Reimbursement Agreement).

"Excluded DOE Claims" means any Claims (a) arising from DOE's partial breach of the DOE Standard Contract with respect to the Facility accrued as of Closing and (b) arising from any future breach by DOE of the DOE Standard Contract with respect to the Facility and related or pertaining to any fees paid prior to Closing pursuant to Article VIII of the DOE Standard

Contract.

"Facility Long-Term Agreement" means the long-term agreement by and between Seller and NYSERDA for the Facility to be entered into during the Interim Period.

"FCC" means the Federal Communications Commission or any successor agency.

"Federal Power Act" means the Federal Power Act of 1935, as amended and the rules and regulations promulgated thereunder.

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

"FERC Approval" means the final order of FERC granting approval pursuant to the Federal Power Act necessary to consummate the Transaction.

"Final Orders" means action by the relevant Governmental Authority that has not been reversed, stayed, enjoined, set aside, annulled or suspended, with respect to which any mandatory waiting period or mandatory appeal period prescribed by Law before the Transaction may be consummated has expired and as to which all conditions to the consummation of the Transaction prescribed by Law or Order required to be satisfied at or prior to the Closing have been satisfied.

"FIRPTA Affidavit" means the affidavit of non-foreign status to be delivered by Seller at Closing in accordance with Treas. Reg. § 1.1445-2(b), in form and substance reasonably satisfactory to Buyer, and with respect to which Buyer shall not have actual knowledge that such certification is false and shall not have received a notice that such certification is false pursuant to Treas. Reg. § 1.1445-4.

"FTC" means the U.S. Federal Trade Commission.

"Fund Assets" means (i) prior to the Fund Transfer, all of the assets of the FitzPatrick Unit Fund of the Power Authority of the State of New York Master Decommissioning Trust and (ii) after the Fund Transfer, all of the assets of the JAF NDT whether held in the Qualified Decommissioning Fund or the Non-Qualified Decommissioning Fund.

"Fund Assets Market Value" means the market value (as determined by the trustee in accordance with its customary valuation procedures) of the Fund Assets as set forth in the trustee valuation report as of the dates specified in such report.

"Fund Assets Market Value Documentation" means (i) each month-end trustee valuation report of the Fund Assets Market Value received by Seller prior to the Closing Date after the date the JAF NDT is transferred to ENOI and (ii) a mid-month trustee valuation report of the Fund Assets Market Value as of a date within four (4) Business Days of the Closing Date, in each case of (i) and (ii), substantially in the form of the documentation attached hereto as Exhibit E.

"Fund Transfer" means the transfer of the Fund Assets by ENOI to the JAF NDT to be created by Seller.

"Fund Transfer Date" means the date ENOI transferred the Fund Assets to the JAF NDT created by Seller pursuant to Section 5.08.

"GAAP" means U.S. generally accepted accounting principles in effect from time to time.

"Governmental Authority" means any U.S. or foreign federal, state, provincial or local governmental authority, court, government or self-regulatory organization, commission, tribunal or organization or any arbitral body or any regulatory, administrative or other agency, or any political or other subdivision, department or branch of any of the foregoing, including any governmental, quasi-governmental or nongovernmental body administering, regulating, or having general oversight over gas, electricity, power or other energy-related markets, including NERC and any Persons to whom NERC has delegated authority.

"Hazardous Substance" means any substance, pollutant, toxic substance, hazardous waste, hazardous material, or petroleum product now or hereafter classified, regulated, defined in, denoted or listed by or designated pursuant to any Environmental Law, including petroleum, petroleum products, volatile organic compounds, semi-volatile organic compounds, pesticides, polychlorinated biphenyls, and friable asbestos and asbestos-containing materials; provided, however, that Hazardous Substance shall not include any Radioactive Materials.

"HSR Act" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

"HSR Approval" means the expiration of the applicable waiting period under the HSR Act or any other approval pursuant to the HSR Act necessary to consummate the Transaction.

"Improvements" means all buildings, structures (including all fuel handling and storage facilities or installations), machinery and equipment, security equipment and barriers, fixtures, construction in progress, including all piping, cables and similar equipment forming part of the mechanical, electrical, plumbing or heating venting and cooling infrastructure of any building, structure or equipment, located on and affixed to the Real Property, or used in or for the operation of the Real Property.

"Indebtedness" means, with respect to any Person at any date, without duplication: (i) all obligations of such Person for borrowed money or in respect of loans or advances, (ii) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments or debt securities, (iii) all obligations arising from cash/book overdrafts, (iv) all indebtedness for the deferred purchase price of property or services with respect to which a Person is liable as obligor (other than trade payables incurred in the ordinary course of business), (v) all obligations in respect of capital leases in respect of which such Person is liable, contingent or otherwise, as obligor, guarantor or otherwise, or in respect of which obligations such Person assures a creditor against loss, (vi) indebtedness guaranteed in any manner by such Person, including a guarantee in the form of an agreement to repurchase or reimburse, (vii) obligations in respect of banker's acceptances or letters of credit issued or created for the account of such Person; (E) any payment obligation in respect of interest under any interest rate, currency or other hedging swap or other Contract to which such Person is a party or by which it is bound, and (viii) all interest, prepayment penalties, premiums, fees and expenses payable with respect to any of the foregoing.

"Indemnifiable Losses" means, subject to Section 7.02, any and all Claims, injuries, lawsuits, Liabilities, losses, damages, judgments, fines, penalties, settlement payments, documented out-of-pocket costs and expenses, including the reasonable expenses of investigation, enforcement and collection and reasonable documented fees and disbursements of counsel, accountants and similar professionals.

"Indemnification Period" means the period from and after the Closing until the date that is the fourth anniversary of the Closing Date; provided, however, that the Indemnification Period shall be extended with respect to any Claim that is the subject of a Claim Notice submitted by an Indemnified Buyer Entity to Seller in accordance with this Agreement prior to the earlier of such anniversary date and the applicable survival period in Section 7.01 until all such Claims are finally resolved and, if applicable, satisfied in accordance with the terms and conditions of this Agreement.

"Intellectual Property" means all intellectual property rights, including patents and patent rights, software, specifications, designs, drawings, trade secrets, technology, technical information and other confidential and proprietary information, including know-how and materials subject to copyright Laws and other works of authorship and registrations, renewals, extensions, divisions, reissues of, and applications for, any of the foregoing.

"Interconnection Agreement" means that certain Interconnection Agreement and Operation Agreement, dated March 28, 2000, by and between NYPA and Seller.

"Interim Period" means that period of time commencing on the date of this Agreement and ending on the earlier to occur of (a) the Closing and (b) the termination of this Agreement.

"Inventory" or "Inventories" means all materials and supplies, including fuel inventories (excluding Nuclear Fuel or Spent Nuclear Fuel), materials, spare parts, consumable supplies and chemical and gas inventories located at the Site, in transit to the Site or identified in any Schedule.

"IRS" means the U.S. Internal Revenue Service.

"JAF NDT" means the decommissioning trust that will be created by Seller prior to Closing in connection with the Fund Transfer, maintained with respect to the Facility, and which will have both the Qualified Decommissioning Fund and the Non-Qualified Decommissioning Fund.

"JAF NDT Agreement" means the decommissioning trust agreement to be entered into between Seller and The Bank of New York Mellon in connection with the Fund Transfer with respect to the Facility.

"Joint IRS Ruling" means a ruling from the IRS which provides that (a) the transfer by Seller to Buyer of the Qualified Decommissioning Fund does not disqualify the fund as a qualified fund under Section 468A(a) of the Code; (b) the Qualified Decommissioning Fund will continue to be treated as satisfying the requirements of Section 468A of the Code and Treas. Reg. §1.468A-5 following the transfer of the fund by Seller to Buyer; (c) the Qualified Decommissioning Fund will not recognize any gain or loss or otherwise take any income or

deduction into account as a result of the transfer of the fund by Seller to Buyer; (d) Buyer and Seller will not recognize any gain or loss under Section 468A of the Code or otherwise take any income or deduction into account under Section 468A of the Code as a result of the transfer of the fund by Seller to Buyer; (e) the tax basis of the assets of the Qualified Decommissioning Fund will not be changed as a result of the transfer of the Qualified Decommissioning Fund by Seller to Buyer; (f) the amount realized by Seller from the transfer of the Facility will include the nuclear decommissioning liability associated with the facility, but will not include the portion of the nuclear decommissioning liability funded by the Qualified Decommissioning Fund on the date of the transfer; and (g) Seller will be entitled to treat the nuclear decommissioning liability, to the extent it is included in the amount realized, as satisfying economic performance under Treas. Reg. §1.461-4(d)(5).

"Knowledge" means (a) in the case of Seller, the actual knowledge of the individuals listed in Schedule A after reasonable due inquiry of the Persons who would reasonably be expected to have actual knowledge of such facts or other matters and (b) in the case of Buyer, the actual knowledge of the individuals listed in Schedule B after reasonable due inquiry of the Persons who would reasonably be expected to have actual knowledge of such facts or other matters.

"Law" means, with respect to any Person, any domestic or foreign, federal, state, provincial or local statute, law, common law ordinance, rule, binding administrative interpretation, regulation or regulatory order, or other similar requirement of any Governmental Authority directly applicable to, or binding on, such Person or any of its respective properties or assets.

"Liability" or "Liabilities" means any liability or obligation (whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, whether incurred or consequential and whether due or to become due), including any liability for Taxes.

"Lien" means any mortgage, pledge, assessment, security interest, lien, adverse claim, levy, encroachment or other similar encumbrance or restriction.

"Long-Term Agreements" means, collectively, the Facility Long Term Agreement and the Buyer Long-Term Agreement.

"made available" means, (i) with respect to a particular document, inclusion of a complete copy thereof in the virtual data room hosted by Merrill Corporation in connection with the Transaction on or prior to 11:59 p.m. Eastern Time on August 6, 2016 (unless another date is expressly stated) or (ii) with respect to in the operating logs of Seller for the months of February 2016 through July 16, reviewed by Buyer at the Facility on August 6, 2016 (it being understood and agreed that as soon as practicable Seller shall deliver to Buyer in optical media or USB drive format a complete and accurate copy of the contents of said virtual data room as of such date).

"Multiparty Contracts" means any Contract with a Third Party in which Seller and another Affiliate of Seller is a party to such Contact.

"NEIL" means Nuclear Electric Insurance Limited.

"NERC" means North American Electric Reliability Corporation.

"Nine Mile Nuclear Power Station" means the Nine Mile Point Nuclear Station, a nuclear power plant with two nuclear reactors located in the town of Scriba, approximately five miles northeast of Oswego, New York.

"Non-Qualified Decommissioning Fund" means the trust fund to be formed by Seller prior to Closing in connection with the Fund Transfer and that does not meet the requirements of Code §468A and Treas. Reg. §1.468A-5. The Non-Qualified Decommissioning Fund will be construed as a state law trust that is a sub-trust of the JAF NDT and is maintained by Seller with respect to the Facility after the Fund Transfer Date through the Closing.

"NRC" is the United States Nuclear Regulatory Commission, as established by Section 201 of the Energy Reorganization Act, or any successor commission, agency or officer.

"NRC Approval" means all approvals from the NRC necessary to authorize the transfer of the Facility to Buyer and Buyer's operation of the Facility after the Closing including without limitation approval under Section 184 of the Atomic Energy Act.

"NRC Licenses" means Renewed Facility Operating License No. DPR-59, Docket No. 50-333, and any amendments thereto on the basis of which Seller and ENOI are authorized to possess and use the Facility and ENOI is authorized to operate the Facility prior to the Closing Date, and on the basis of which Buyer, subject to the approval contemplated under Section 5.04(b), will be authorized to possess, use and operate the Facility on and after the Closing Date and the General License, Docket No. 72-012, for the Independent Spent Fuel Storage Installation.

"Nuclear Fuel" means all fuel assemblies in the Facility's reactors on the Closing Date and any irradiated fuel assemblies that have been temporarily removed from the Facility's reactors as of that date and all unirradiated fuel assemblies awaiting insertion into the Facility's reactors as well as all fuel constituents in any stage of the fuel cycle which are in the process of fabrication for use in the Facility's reactors, which are owned by Seller on the Closing Date.

"NYISO" means the New York Independent System Operator.

"NYPA" means the Power Authority of the State of New York

"NYPSC" means the Public Service Commission of the State of New York.

"NYPSC Approval" means the approvals by and other Orders of the NYSPC contemplated in Section 5 of Exhibit B.

"NYSERDA" means the Energy Research and Development Authority of the State of New York.

"Off-Site Location" means any location other than: (i) the Sites; and (ii) any real property that is adjacent to or downgradient of the Sites and which has been impacted by a release of Hazardous Substances migrating from the Sites (unless such adjacent or downgradient property

was also an intended location for the disposal, storage, transportation, discharge, release or recycling of Hazardous Substances generated by the Sites or the Facility).

"Order" means any order, writ, judgment, injunction, decree, stipulation, determination, settlement agreement or similar written agreement, or assessment or arbitration award entered by or with any Governmental Authority.

"Organizational Documents" means, with respect to any Person, the articles or certificate of incorporation or organization and by-laws, the limited partnership agreement, the partnership agreement or the limited liability company agreement, operating agreement or such other similar organizational documents of such Person.

"Other Seller Entity" means any Seller Entity other than Seller.

"Owner's Affidavit and Gap Undertaking" means the owner's affidavit and gap undertaking substantially in the form set forth on Exhibit F.

"Permits" means all certificates, licenses, permits, approvals, authorizations, consents, orders, exemptions, decisions and other actions of a Governmental Authority pertaining to the ownership, operation or use of the Facility or a particular Transferred Asset.

"Permitted Liens" means and includes: (a) Liens for Taxes or other charges or assessments by any Governmental Authority to the extent that the payment thereof is not in arrears or otherwise due or is being contested in good faith pursuant to appropriate procedures and which are identified on Section A-1 of the Seller Disclosure Schedule, (b) Liens (i) in the nature of zoning ordinances and restrictions, building and land use Laws, special designations, environmental, ordinances, orders, decrees, restrictions or any other conditions imposed by or pursuant to any agreement with any Governmental Authority now or hereafter enacted, made or issued by any such Governmental Authority affecting the Real Property and (ii) with respect to any Real Property, any matters of record, observable upon inspection or would be revealed by a survey or any other Lien, imperfections in or failure of title or defect therein; provided that in each of (i) or (ii), the same do not materially adversely affect the use and operation of the Real Property as currently conducted and excluding such Liens that secure indebtedness unless such Liens will be repaid and released as of Closing; (c) easements granted by an instrument executed in connection with this Agreement or the Related Agreements or the transactions contemplated hereby or thereby, but excluding such Liens that secure indebtedness; (d) deposits or pledges made in connection with, or to secure payment of, worker's compensation, unemployment insurance, pension programs mandated under Laws or other social security regulations; (e) statutory or common law liens in favor of carriers, warehousemen, mechanics and materialmen, statutory or common law liens to secure claims for labor, materials or supplies and other like liens, which secure obligations to the extent that payment thereof is not in arrears or otherwise due; (f) all rights with respect to the ownership, mining, extraction and removal of minerals of whatever kind and character (including all coal, iron ore, oil, gas, sulfur, methane gas in coal seams, aggregate, limestone and other minerals, metals and ores) that have been granted, leased, excepted or reserved prior to the date of this Agreement; and (g) any Lien or title imperfection with respect to the Transferred Assets created by or resulting from any act or omission of Buyer, its Affiliates or Representatives.

"Person" means any individual, corporation, partnership, joint venture, trust, association, organization, Governmental Authority or other entity.

"Power Authority of the State of New York Master Decommissioning Trust" means the decommissioning trust maintained by NYPA, which contains two sub-trusts; one sub-trust maintained with respect to the Indian Point 3 Nuclear Power Plant, and a second sub-trust maintained with respect to the Facility.

"Pre-1983 Spent Nuclear Fuel" means any Spent Nuclear Fuel assemblies or portions thereof and in-core burned fuel used by the Facility to generate electricity prior to April 7, 1983.

"Pre-Closing Tax Period" means any Tax period ending on or before the Closing Date.

"Pre-Refueling Conditions" means the conditions to be satisfied in order to commence the Refueling set forth on Exhibit B hereto.

"Pre-Refueling Period" the period commencing on the date of this Agreement and ending immediately before the Procured Nuclear Fuel (as defined in the Reimbursement Agreement) is used in Critical Operation (as defined in the Reimbursement Agreement) in the Facility's reactor.

"Price-Anderson Act" means the Price-Anderson Nuclear Industries Indemnity Act of 1957, as amended.

"Prior Acquisition Agreement" means the Purchase and Sale Agreement, dated March 28, 2000, between Seller, Entergy Nuclear Indian Point 3, LLC and NYPA, and any agreement entered into in connection therewith (as amended or modified consistent with Section 5.18(a)).

"PUHCA" means the Public Utility Holding Company Act of 2005, enacted as part of the Energy Policy Act of 2005, Pub. L. No. 109-58, as codified at §1261 et seq., and the rules and regulations promulgated thereunder.

"Qualified Decommissioning Fund" means the trust fund to be formed by Seller prior to Closing in connection with the Seller IRS Ruling that meets the requirements of Code §468A and Treas. Reg. §1.468A-5 and maintained in accordance with Treas. Reg. §§1.468A-1 through 1.468A-9. The Qualified Decommissioning Fund will be construed as a state law trust that is a sub-trust of the JAF NDT and is maintained by Seller with respect to the Facility after the Seller transfers funds from the Non-Qualified Decommissioning fund to the Qualified Decommissioning fund pursuant to the Seller IRS Ruling.

"Radioactive Material" means any material (including high-level radioactive waste) that is radioactive or contaminated with radioactivity.

"Refueling" means the refueling outage of the Facility and the refueling of the Facility that will need to occur as a result of the Transaction; provided, that the commencement of the Refueling shall be deemed to occur when the Refueling Disconnect Notice has been delivered in accordance with this Agreement.

"Refueling Disconnect Notice" means written notice received by Buyer from Seller that

the Facility breakers have been opened and the Facility has been disconnected from the transmission grid for the purposes of commencing the Refueling.

"Reimbursement Agreement" means the Reimbursement Agreement, dated as of the date of this Agreement, by and between Seller and Buyer.

"Related Agreements" means, collectively, (a) the Signing Related Agreements, (b) the Long-Term Agreements and (c) the Transition Services Agreement.

"Remediation" or "Remediations" means any or all of the following activities to the extent they relate to or arise from the presence of Hazardous Substances at a Site: (a) monitoring, investigation, assessment, treatment, cleanup, containment, removal, mitigation, response or restoration work; (b) obtaining any permits, consents, approvals or authorizations of any Governmental Authority necessary to conduct any such activity; (c) preparing and implementing any plans or studies for any such activity; (d) obtaining a written notice from a Governmental Authority with jurisdiction over the Sites under Environmental Laws that no material additional work is required by such Governmental Authority; (e) obtaining a written opinion of a qualified professional, as contemplated by the relevant Environmental Laws and in lieu of a written notice from a Governmental Authority, that no material additional work is required to address Hazardous Substances at the Sites in compliance with Environmental Laws; and (f) any other activities reasonably determined by a Party to be necessary or appropriate or required under Environmental Laws to address the release or presence of Hazardous Substances at the Sites.

"Representative" or "Representatives" means, as to any Person, the officers, directors, managers, employees, counsel, accountants, financial advisors and consultants of such Person.

"Schedules" means, unless otherwise expressly indicated in the Agreement, collectively, the Seller Disclosure Schedule and the Buyer Disclosure Schedule, and each is referred to as a "Schedule."

"Seller Benefit Plan" means each Seller Entity Plan that is maintained, sponsored or contributed to by any Seller Entity or any of their respective ERISA Affiliates for the benefit of any Business Employee or any spouse, child, dependent, alternate payee or beneficiary of such employee.

"Seller Entity Employee" means each individual who is or is deemed to be a full-time, part-time or other director, officer or employee of Entergy or any of its Subsidiaries under applicable federal, state or local Laws, including Tax and employment Laws. References to Seller Entity Employees include present, former and future employees. Seller Entity Employees shall not include individuals who render services to Entergy or any of its Subsidiaries solely on a consultant or independent contractor basis.

"Seller Entity Plan" means each "employee benefit plan" as defined in Section 3(3) of ERISA, and each other plan, Contract, program, fund, policy, agreement or other arrangement, whether or not subject to ERISA and whether written or oral, qualified or non-qualified, funded or unfunded, foreign or domestic, providing for compensation or employee benefits, including (i) severance pay or other severance benefits, retention, stay pay, salary continuation, change in control payments or benefits, termination pay or benefits, bonuses, commissions, profit-sharing,

equity options, employee stock ownership or other forms of cash or equity-based compensation or incentives; (ii) vacation or vacation pay, holiday or holiday pay, paid or unpaid sick leave or other paid or unpaid time-off; (iii) health, welfare, medical, dental, vision, disability, life, accidental death and dismemberment, employee assistance, wellness, educational assistance, relocation or fringe benefits or perquisites, including post-employment benefits; or (iv) compensation, deferred compensation, defined benefit or defined contribution, thrift savings, retirement, supplemental retirement, early retirement or pension benefits, or equity grants, in each case that (A) covers any Seller Entity Employee or any spouse, child, dependent, alternate payee or beneficiary of such employee, or (B) that is maintained, administered, sponsored or made available by, or with respect to which contributions are made or required to be made by Entergy or any of its Subsidiaries or (C) with respect to which Entergy, any of its Subsidiaries or any of their respective ERISA Affiliates has any Liability whatsoever.

"Seller Guarantee" means a guarantee, substantially in the form attached hereto as Exhibit G, issued by Seller Guarantor in favor of Buyer with respect to the post-Closing obligations of Seller arising under, or in connection with, this Agreement and the Related Agreements.

"Seller Guarantor" means Entergy Corporation, a Delaware corporation and an Affiliate of Seller.

"Seller IRS Ruling" means a ruling from the IRS permitting Seller to transfer all or substantially all of its assets in the JAF NDT to a Qualified Decommissioning Fund as described in Section 468A of the Code and Treas. Reg. §1.468A-5.

"Seller Material Adverse Effect" means the occurrence of any change, event or effect that is, individually or in the aggregate, materially adverse to (a) the business, condition (financial or otherwise), results of operations or assets of the business operated by Seller using the Transferred Assets (including the Facility) taken as a whole; or (b) Seller's ability to perform its obligations hereunder or consummate the Transaction; provided that none of the following, and no change, event or effect arising out of or resulting from the following, shall constitute or be deemed to contribute to a Seller Material Adverse Effect, or shall otherwise be taken into account in determining whether a Seller Material Adverse Effect has occurred, in each case, for purposes of the foregoing: (i) any changes generally affecting the industries in which the Facility operates, whether international, national, regional, state, provincial or local; (ii) changes in international, national, regional, state, provincial or local wholesale or retail markets for nuclear power or other fuel supply or transportation or related products and operations, including those due to actions by competitors and regulators; (iii) changes in general regulatory or political conditions (including, the outbreak or escalation of war, military action, sabotage or acts of terrorism); (iv) changes in international, national, regional, state or local electric transmission, nuclear power or distribution systems generally; (v) changes in the markets for or costs of commodities or supplies, including Nuclear Fuel and fuel other than Nuclear Fuel, generally; (vi) changes in the markets for or costs of nuclear power, generally; (vii) effects of weather, meteorological events or other natural disasters or natural occurrences beyond the control of Seller; (viii) any change of Law or regulatory policy generally applicable to similarly situated Persons, including any rate or tariff generally applicable to similarly situated Persons, unless such change unless such change is a Legal Restraint; (ix) changes or adverse conditions in the

financial, banking or securities markets, including those relating to debt financing and, in each case, including any disruption thereof and any decline in the price of any security or any market index; (x) the announcement, execution, delivery or performance of this Agreement or any Related Agreement or the consummation of the Transaction or the other transactions contemplated hereby or thereby; provided, however, that this clause (x) shall not apply to the representations and warranties in Section 3.04 or the closing conditions in Article VI related to such section; (xi) any change in accounting requirements or principles; (xii) any labor strike, request for representation, organizing campaign, work stoppage, slowdown or other labor dispute; (xiii) any change in GAAP; (xiv) any new generating facilities and their effect on pricing and transmission; (xv) any failure by the Facility to meet any revenue, earnings or other financial projections or forecasts (but not the underlying causes thereof); and (xvi) arising out of, or related to, the CES Order, including any effect of a Reversal Event with respect to the CES Order or any other Order or action by a Governmental Authority or Law having the effect of such a Reversal Event or the failure of any of the expected benefits to be provided by the CES Order to be achieved or realized; provided further, however, that any change, event or effect referred to in clauses (i) through (ix), (xi) and (xii) immediately above shall be taken into account in determining whether a Seller Material Adverse Effect has occurred or could reasonably be expected to occur to the extent that such event, occurrence, fact, condition or change has a disproportionate effect (in which case, only the incremental disproportionate effect may be taken into account in determining whether there has been, or would be, a Seller Material Adverse Effect, and to the extent such change is not otherwise excluded from being taken into account by clauses (i) through (xvi) above) on the Transferred Assets (including the Facility) compared to other participants in the industries in which the Facility operates.

"Shared Contracts" means any Contract between or among a Third Party and any Affiliate of Seller that relates to the ownership or use of the Facility and the other business functions or operations of any Affiliate of Seller.

"Signing Related Agreements" means (a) the Reimbursement Agreement; (b) the Transfer Agreement; (c) the Employee Matters Agreement; (d) the Available Funds Agreement and (e) the Procured Nuclear Fuel Agreements (as defined in the Reimbursement Agreement).

"Site" means the real property on which the Facility is located. "Sites" includes any other real property described in Schedule 2.01(a). Any reference to a Site shall include, by definition, the surface and subsurface elements, including the soils and groundwater present at such Site, and any reference to items "at the Site" shall include all items "at, on, in, upon, over, across, under and within" the Site.

"Site MOUs" means the memoranda of understanding and other agreements related to the Sites described on Schedule 3.07.

"Spent Nuclear Fuel" means fuel that has been withdrawn from a nuclear reactor following irradiation, and has not been chemically separated into its constituent elements by reprocessing.

"Straddle Period" means a Tax period beginning on or before, and ending after, the Closing Date.

"Subsidiary" means any Person (i) of which fifty percent (50%) or more of the outstanding share capital, voting securities or other voting equity interests are owned, directly or indirectly, by Entergy or (ii) of which Entergy is entitled to elect, directly or indirectly, at least one-half of the board of directors or similar governing body of such Person.

"Tax" or "Taxes" means any U.S. federal, state, local or foreign income, gross receipts, windfall profits, franchise, withholding, ad valorem, real property, personal property (tangible and intangible), employment, payroll, sales and use, social security, disability, occupation, production, real property, severance, value added, transfer, stamp, environmental (including taxes under Section 59A of the Code), excise and other taxes, charges, levies or other similar assessments imposed by a Taxing Authority, including any interest, penalty or addition thereto and any payments to any state, local, provincial or foreign Taxing Authorities in lieu of any such taxes, levies or assessments, and any obligation to pay amounts in respect of the foregoing, whether by Law or as the result of any obligation under any Tax sharing arrangement, Tax indemnity agreement or Contract.

"Tax Returns" means any return, report or similar statement required to be filed with a Taxing Authority with respect to any Taxes (including any attached schedules), including any information return, Claim for refund, amended return and declaration of estimated Tax.

"Taxing Authority" means, with respect to any Tax, the governmental entity or political subdivision thereof that imposes such Tax, and the agency (if any) charged with the collection of such Tax for such entity or subdivision.

"Termination Fee" means either the Buyer Termination Fee or the Seller Termination Fee.

"Third Party" means any Person that is not a Party or an Affiliate of a Party.

"Transfer Agreement" means the Transfer Agreement by and between Seller and Buyer, dated the date hereof.

"Transfer Taxes" means all personal property transfer, real property transfer, sales, use, goods and services, value added, documentary, stamp duty, excise and conveyance Taxes and other similar Taxes, duties, fees, or charges, together with any interest thereon, penalties, fines, charges, fees, additions to Tax or additional amounts with respect thereto.

"Trust Fund Transfer Agreement" means the trust transfer agreement by and between ENOI and NYPA dated as of the date of this Agreement and made available (or execution draft thereof) to Buyer prior to the execution thereof by ENOI and NYPA.

"U.S." or "United States" means United States of America or any political subdivision thereof.

"Willful Breach" means a voluntary, intentional and deliberate action or failure to act that results in, and such action is taken or such failure occurred with the actual knowledge, intention or reasonable expectation that it will or would reasonably be expected to result in, a material breach of this Agreement, but shall not require that such action or failure to act be malicious or

done with bad motive or purpose.

Section 2 Other Defined Terms. In addition to the defined terms set forth on Section 2 of Exhibit A, each of the following capitalized terms has the meaning specified in the Section set forth opposite such term below:

Advance Termination Notice .....	5.13
Agreement.....	Preamble
Allocation.....	2.10(a)
Assumed Liabilities .....	2.03
Available Funds Agreement .....	Recitals
Available Funds L/C.....	Recitals
Bankruptcy and Equity Exceptions.....	3.02(a)
Beneficial Interest .....	5.08(c)
Books and Records .....	2.01(g)
Buyer.....	Preamble
Buyer Burdensome Condition.....	5.04(h)
Buyer Disclosure Schedule.....	Article IV
Buyer Fundamental Representations .....	7.01
Buyer Required Consents .....	4.03(a)
Buyer Termination Fee .....	9.02(a)
Cap .....	8.01(c)
Claim Notice .....	8.03(a)
Closing .....	2.08
Closing Date.....	2.08
Consent .....	3.03(a)
Consent Required-Warranties.....	2.12
Deductible.....	8.01(b)(i)
Direct Claim.....	8.03(c)
Emergency Preparedness Agreements.....	2.01(l)(ii)
Entergy .....	Recitals
Entergy Name and Marks .....	2.02(g)
Excluded Assets.....	2.02
Excluded Liabilities .....	2.04
Facility .....	Recitals
Filing.....	3.03(a)
Indemnified Buyer Entities.....	8.01(a)
Indemnified Entity .....	8.03(a)
Indemnified Seller Entities .....	8.02(a)
Indemnifying Entity .....	8.03(a)
Insurance Policies .....	3.20
IT Transition .....	5.09(b)
Legal Restraint.....	6.01(c)
Material Contracts.....	3.07(a)
Minimum Claim Amount.....	8.01(b)(ii)
Nine Mile Termination Notice.....	5.13
Non-Assigned Contracts.....	2.02(l)
Non-Transferred Asset.....	5.05

Non-Transferred Liability .....	5.05
NRC Financial Assurances .....	5.04(h)
Observers .....	5.03(a)
Outside Date.....	9.01(b)
Parties.....	Preamble
Party .....	Preamble
Pre-Closing Contractual Liabilities.....	2.03(b)
Pre-Refueling Buyer Burdensome Condition .....	5.06(d)
Pre-Refueling Seller Burdensome Condition.....	5.06(c)
Purchase Price .....	2.06(a)
Real Property .....	2.01(a)
Reports .....	3.14
Required Consents .....	4.03(a)
Reversal Event .....	5.06(e)
Reversal Notice.....	5.06(e)
Schedule of Ruling Amounts .....	3.19(b)
Schedule Update .....	5.07
Seller .....	Preamble
Seller Burdensome Condition.....	5.04(f)
Seller Disclosure Schedule .....	Article III
Seller Entities .....	Recitals
Seller Fundamental Representations.....	7.01
Seller Required Consents.....	3.03(a)
Seller Tax Representations .....	7.01
Seller Termination Fee.....	9.02(b)
Signing Fee .....	2.05
Specified Shared Contracts.....	2.01(m)
Tax Claim.....	10.05
Termination Event .....	9.01
Transaction.....	Recitals
Transferable Permits .....	2.01(d)
Transferee Party .....	5.05
Transferor Party .....	5.05
Transferred Assets .....	2.01
Transfer Tax Valuation.....	2.10(b)
Transition Committee .....	5.09(b)
Transition Services Agreement.....	5.09(a)