6.2. Acquisition Proposals; Go-Shop Period.

(a) Go-Shop Period. Notwithstanding anything to the contrary contained in this Agreement, during the period beginning on the date of this Agreement and continuing until 11:59 p.m. (Eastern time) on the 40th calendar day after the date of this Agreement (the "*Go-Shop Period*"), the Company and its Subsidiaries and their respective directors, officers, employees, investment bankers, attorneys, accountants and other advisors or representatives (collectively, "*Representatives*") shall have the right to: (i) initiate, solicit and encourage any inquiry or the making of any proposals or offers that constitute Acquisition Proposals, including by way of providing access to non-public information to any Person pursuant to confidentiality agreements on customary terms not more favorable in any material respect to such Person than those contained in the Confidentiality Agreement (it being understood that such confidentiality agreements need not prohibit the making or amendment of an Acquisition Proposal to the extent such Acquisition Proposal is made directly to the Company); provided that the Company shall promptly (and in any event within 24 hours thereafter) make available to Parent and Merger Sub any material non-public information concerning the Company or its Subsidiaries that the Company provides to any Person given such access that was not previously made available to Parent or Merger Sub, and (ii) engage or enter into, continue or otherwise participate in any discussions or negotiations with any Persons or groups of Persons with respect to any Acquisition Proposals or otherwise cooperate with or assist or participate in, or facilitate any such inquiries, proposals, discussions or negotiations or any effort or attempt to make any Acquisition Proposals.

(b) No Solicitation or Negotiation. Except as expressly permitted by this Section 6.2 and except as may relate to any Person or group of Persons (so long as such Person and the other members of such group, if any, who were members of such group immediately prior to the No-Shop Period Start Date constitute at least 50% of the equity financing of such group at all times following the No-Shop Period Start Date and prior to the termination of this Agreement) from whom the Company has received (x) prior to the expiration of the Go-Shop Period, an Acquisition Proposal that the Board of Directors of the Company or any committee thereof has determined in good faith (after consultation with its financial advisor) either constitutes a Superior Proposal or could reasonably be expected to result in a Superior Proposal, and (y) by 11:59 p.m. (Eastern time) on the 5th business day after the date of expiration of the Go-Shop Period, a written Acquisition Proposal that the Board of Directors of the Company or any committee thereof determines in good faith (after consultation with its financial advisor) constitutes a Superior Proposal,

(any such Person or group of Persons, an "*Excluded Party*"; provided that any Excluded Party shall cease to be an Excluded Party for all purposes under this Agreement at such time as the Acquisition Proposal made by such Person or group of Persons fails to constitute a Superior Proposal (it being agreed and understood that an Acquisition Proposal will not fail to constitute a Superior Proposal if such Acquisition Proposal is amended, modified or revised during the

course of ongoing negotiations with the Company as a result of the exercise by Parent of its rights pursuant to Section 6.2(e), which exercise renders such Acquisition Proposal no longer to be a Superior Proposal, so long as such negotiations are ongoing and it subsequently constitutes a Superior Proposal))

the Company and its Subsidiaries and their respective officers and directors shall, and the Company shall instruct and cause its and its Subsidiaries' other Representatives to, (i) at 12:00 a.m. on the 41st calendar day after the date of this Agreement (the "*No-Shop Period Start Date*") immediately cease any discussions or negotiations with any Persons that may be ongoing with respect to an Acquisition Proposal and (ii) from the No-Shop Period Start Date until the earlier of the Effective Time and the termination of this Agreement in accordance with Article VIII, not (A) initiate, solicit or knowingly facilitate or encourage any inquiries or the making of any proposal or offer that constitutes an Acquisition Proposal, (B) engage in, continue or otherwise participate in any discussions or negotiations regarding, or provide any non-public information or data concerning the Company or its Subsidiaries to any Person relating to, any Acquisition Proposal, (C) enter into any agreement or agreement in principle with respect to any Acquisition Proposal (other than a confidentiality agreement referred to in Section 6.2(a) or Section 6.2(c)) or (D) otherwise knowingly facilitate any effort or attempt to make an Acquisition Proposal.

(c) Conduct Following No-Shop Period Start Date. Notwithstanding anything in this Agreement to the contrary but subject to the last sentence of this paragraph, at any time following the No-Shop Period Start Date and prior to the time, but not after, the Company Requisite Vote is obtained, if the Company or any of its Representatives receives a written Acquisition Proposal from any Person that did not result from a material breach of Section 6.2(b), the Company and its Representatives may contact such Person to clarify the terms and conditions thereof and (i) the Company and its Representatives may provide non-public information and data concerning the Company and its Subsidiaries in response to a request therefor by such Person if the Company receives from such Person an executed confidentiality agreement on customary terms not more favorable to such Person in any material respect than those contained in the Confidentiality Agreement (it being understood that such confidentiality agreement need not prohibit the making or amendment of an Acquisition Proposal to the extent such Acquisition Proposal is made directly to the Company); provided that the Company shall promptly (and in any event within 24 hours) make available to Parent and Merger Sub any material non-public information concerning the Company or its Subsidiaries that the Company made available to any Person given such access which was not previously made available to Parent or Merger Sub, (ii) the Company and its Representatives may engage or participate in any discussions or negotiations with such Person and (iii) after having complied with Section 6.2(e), the Board of Directors of the Company or any committee thereof may authorize, adopt, approve, recommend, or otherwise declare advisable or propose to authorize, adopt, approve, recommend or declare advisable (publicly or otherwise) such an Acquisition Proposal, if and only to the extent that, (x) prior to taking any action described in clause (i) or (ii) above, the Board of Directors of the Company or any committee thereof determines in good faith (after consultation

with its outside legal counsel) that failure to take such action could be inconsistent with the directors' fiduciary duties under applicable Law; (y) in each such case referred to in clause (i) or (ii) above, the Board of Directors of the Company or any committee thereof has determined in good faith (after consultation with its financial advisor) that such Acquisition Proposal either constitutes a Superior Proposal or could reasonably be expected to result in a Superior Proposal; and (z) in the case referred to in clause (iii) above, the Board of Directors of the Company or any committee thereof determines in good faith (after consultation with its financial advisor) that such Acquisition Proposal is a Superior Proposal. For the avoidance of doubt, notwithstanding the occurrence of the No-Shop Period Start Date, the Company may continue to engage in the activities described in Section 6.2(a) with respect to any Excluded Parties, including with respect to any amended proposal submitted by any Excluded Parties following the No-Shop Period Start Date, and the restrictions in Section 6.2(b) shall not apply with respect thereto; provided that the provisions of Section 6.2(e) shall apply.

(d) Definitions. For purposes of this Agreement:

(i) "*Acquisition Proposal*" means (i) any proposal or offer with respect to a merger, consolidation, business combination or similar transaction involving the Company or any of its Significant Subsidiaries or (ii) any acquisition by any Person or group of Persons resulting in, or proposal or offer to acquire by tender offer, share exchange or in any manner which if consummated would result in, any Person or group of Persons becoming the beneficial owner of, directly or indirectly, in one or a series of related transactions, (A) more than 20% of the Shares then outstanding or the total voting power of the equity securities of the Company, (B) assets that during the most recently completed twelve month period for which financial information is available generated more than 20% of the consolidated total revenues of the Company and its Subsidiaries, taken as a whole, or (C) assets constituting more than 20% of consolidated total assets, measured either by book value or fair market value (including, equity securities of its Subsidiaries), of the Company and its Subsidiaries, taken as a whole, in each case other than the transactions contemplated by this Agreement.

(ii) "*Superior Proposal*" means an Acquisition Proposal (with the percentages set forth in the definition of such term changed from 20% to 50%), that the Board of Directors of the Company or any committee thereof has determined in its good faith judgment (i) is reasonably likely to be consummated in accordance with its terms, taking into account all material legal, financial and regulatory aspects of the proposal (including the financing thereof) and the Person making the proposal, and (ii) if consummated, would result in a transaction more favorable to the Company's stockholders from a financial point of view than the transaction contemplated by this Agreement.

(e) No Change in Recommendation or Alternative Acquisition Agreement. Except as set forth in this Section 6.2(e), Section 6.2(f) or Section 8.3(a), the Board of Directors of the Company and each committee thereof shall not:

(i) withhold, withdraw, qualify or modify (or publicly propose or resolve to withhold, withdraw, qualify or modify), in a manner adverse to Parent, the Company Recommendation with respect to the Merger or approve or recommend, or propose publicly to approve or recommend, or resolve to approve or recommend, any Acquisition Proposal (it being understood that the Board of Directors may take no position with respect to an Acquisition Proposal until the close of business as of the tenth (10th) business day after the commencement of such Acquisition Proposal pursuant to Rule 14d-2 under the Exchange Act without such action being considered an adverse modification); or

(ii) except as expressly permitted by Section 8.3(a), cause or permit the Company to enter into any letter of intent, acquisition agreement, merger agreement or similar definitive agreement (other than a confidentiality agreement referred to in Section 6.2(a) or Section 6.2(c)) (an "*Alternative Acquisition Agreement*") relating to any Acquisition Proposal.

Notwithstanding anything to the contrary set forth in this Agreement, prior to the time, but not after, the Company Requisite Vote is obtained, the Board of Directors of the Company and any committee thereof may withhold, withdraw, qualify or modify the Company Recommendation or approve, recommend or otherwise declare advisable any Acquisition Proposal that the Board of Directors of the Company or any committee thereof determines in good faith is a Superior Proposal made after the date hereof, if the Board of Directors of the Company or any committee thereof determines in good faith, after consultation with outside counsel, that the failure to do so could be inconsistent with its fiduciary obligations under applicable Law (a "*Change of Recommendation*") and may also take action pursuant to Section 8.3(a); provided, however, that the Company shall not effect a Change of Recommendation in connection with a Superior Proposal or take any action pursuant to Section 8.3(a) with respect to a Superior Proposal unless (x) the Company notifies Parent in writing, at least ninety-six (96) hours in advance, that it intends to effect a Change of Recommendation in connection with a Superior Proposal or to take action pursuant to Section 8.3(a) with respect to a Superior Proposal, which notice shall specify the identity of the party who made such Superior Proposal and all of the material terms and conditions of such Superior Proposal and attach the most current version of such agreement providing for such Superior Proposal; (y) after providing such notice and prior to making such Change of Recommendation in connection with a Superior Proposal or taking any action pursuant to Section 8.3(a) with respect to a Superior Proposal, the Company shall negotiate in good faith with Parent during such ninety-six (96) hour period (to the extent that Parent desires to negotiate) to make such revisions to the terms of this Agreement, the Equity Financing Commitment or the Guaranty as would permit the Board of Directors of the Company not to effect a Change of Recommendation in connection with a Superior Proposal or to take such

action pursuant to Section 8.3(a) in response to a Superior Proposal; and (z) the Board of Directors of the Company shall have considered in good faith any changes to this Agreement, the Equity Financing Commitment and the Guaranty offered in writing by Parent in a manner that would form a binding contract if accepted by the Company and shall have determined in good faith that the Superior Proposal would continue to constitute a Superior Proposal if such changes offered in writing by Parent were to be given effect; provided that, for the avoidance of doubt, the Company shall not effect a Change of Recommendation in connection with a Superior Proposal or take any action pursuant to Section 8.3(a) with respect to a Superior Proposal prior to the time that is ninety-six (96) hours after it has provided the written notice required by clause (x) above; provided further, that in the event that the Acquisition Proposal is thereafter modified by the party making such Acquisition Proposal, the Company shall provide written notice of such modified Acquisition Proposal and shall again comply with this Section 6.2(e), except that the Company's advance written notice obligation shall be reduced to forty-eight (48) hours (rather than the ninety-six (96) hours otherwise contemplated by this Section 6.2(e)) and the time the Company shall be permitted to effect a Change of Recommendation in connection with a Superior Proposal or to take action pursuant to Section 8.3(a) with respect to a Superior Proposal shall be reduced to the time that is forty-eight (48) hours after it has provided such written notice (rather than the time that is the ninety-six (96) hours otherwise contemplated by this Section 6.2(e)) (but in no event prior to the original ninety-six (96) hour advance notice period).

(f) Certain Permitted Disclosure. Nothing contained in this Section 6.2 shall be deemed to prohibit the Company or the Board of Directors of the Company or any committee thereof from (i) complying with its disclosure obligations under U.S. federal or state Law with regard to an Acquisition Proposal, including taking and disclosing to its stockholders a position contemplated by Rule 14d-9 and Rule 14e-2(a) promulgated under the Exchange Act (or any similar communication to stockholders), or (ii) making any "stop-look-and-listen" communication to the stockholders of the Company pursuant to Rule 14d-9(f) promulgated under the Exchange Act (or any similar communications to the stockholders of the Company); provided, however, that neither the Company nor the Board of Directors of the Company (or any committee thereof) shall be permitted to recommend that the Company stockholders tender any securities in connection with any tender or exchange offer (or otherwise approve, endorse or recommend any Acquisition Proposal), unless in each case, in connection therewith, the Company Board (or any committee thereof) effects a Change in Recommendation; provided further that any such disclosure (other than a "stop, look and listen" communication or similar communication of the type contemplated by Rule 14d-9(f) under the Exchange Act) shall be deemed to be an Change in Recommendation unless the Board of Directors of the Company expressly reaffirms the Company Recommendation at least two (2) business days prior to the Stockholders Meeting.

(g) Notice. Within 24 hours following the No-Shop Period Start Date, the Company shall notify Parent of the identity of each Person or group of Persons that has made an Acquisition Proposal that the Board of Directors of the Company or any committee thereof has

determined in good faith (after consultation with its financial advisor) either constitutes a Superior Proposal or could reasonably be expected to result in a Superior Proposal. Within 24 hours following the expiration of the five business day period after the end of the Go-Shop Period, the Company shall notify Parent of the identity of each Person or group of Persons that the Company considers to be an Excluded Party as of such time. The Company agrees that it will promptly (and, in any event, within twenty-four (24) hours) notify Parent if (i) from and after the date hereof, any Acquisition Proposals are received by the Company and (ii) from and after the No-Shop Period Start Date, any non-public information is requested from, or any discussions or negotiations are sought to be initiated or continued with, it or any of its Representatives, and, in the case of both clauses (i) and (ii) above, will, in connection with such notice, identify the Person or group of Persons making the offer or the proposal or seeking such information or discussions or negotiations and include a written summary of the material terms and conditions of any proposals or offers that are not made in writing and copies of any requests, proposals or offers, including proposed agreements, of proposals or offers that are made in writing. The Company shall keep Parent reasonably informed, on a prompt basis (and, in any event, within twenty-four (24) hours), of the status and terms of any Acquisition Proposals (including any amendments thereto or any change to the terms or conditions thereof) and the status of any discussions or negotiations. The Company agrees that it and its Subsidiaries will not enter into any confidentiality agreement with any Person subsequent to the date hereof which prohibits the Company from providing such information to Parent.

6.3. Proxy Filings; Information Supplied. The Company shall prepare and file with the SEC as promptly as practicable following the date of this Agreement (and in any event use reasonable best efforts to file within fifteen (15) business days following the date of this Agreement) the Proxy Statement in preliminary form. The Company agrees that at the date of mailing to stockholders of the Company and at the time of the Stockholders Meeting, (i) the Proxy Statement will comply in all material respects with the applicable provisions of the Exchange Act and the rules and regulations thereunder and (ii) none of the information supplied by it or any of its Subsidiaries for inclusion or incorporation by reference in the Proxy Statement will contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. Parent and Merger Sub agree that none of the information supplied by either of them or any of their Affiliates for inclusion in the Proxy Statement will contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. The Company shall provide NRG with respect to the matters relating to NRG or the NRG Sale an opportunity to review and comment on the Proxy Statement and shall consider in good faith any comments reasonably proposed by NRG with respect to the matters relating to NRG or the NRG Sale.

6.4. Stockholders Meeting. Subject to fiduciary obligations under applicable Law, the Company will take, in accordance with applicable Law and its certificate of

incorporation and bylaws, all reasonable action necessary to call, give notice of and convene a meeting of Record Holders of Shares (the "*Stockholders Meeting*") as promptly as practicable after the date of mailing of the Proxy Statement to consider and vote upon the adoption of this Agreement; provided, however, for the avoidance of doubt, the Company may postpone or adjourn the Stockholders Meeting, but no longer than reasonably necessary, (i) with the consent of Parent; (ii) for the absence of a quorum; (iii) to allow reasonable additional time for the filing and mailing of any supplemental or amended disclosure which the Board of Directors of the Company has determined in good faith after consultation with outside counsel is necessary under applicable Law and for such supplemental or amended disclosure to be disseminated and reviewed by the Company's stockholders prior to the Stockholders Meeting; (iv) if required by Law; or (v) if the Company has provided a written notice to Parent and Merger Sub pursuant to Section 6.2(e) that it intends to take action pursuant to Section 8.3(a) with respect to a Superior Proposal and the deadline contemplated by Section 6.2(e) with respect to such notice has not been reached. Subject to Section 6.2, the Board of Directors of the Company shall recommend such adoption, shall include the Company Recommendation in the Proxy Statement and shall take all reasonable lawful action to solicit such adoption of this Agreement. Notwithstanding any Change in Recommendation, unless this Agreement is terminated pursuant to, and in accordance with, Article VIII, this Agreement shall be submitted to the Record Holders of Shares at the Stockholders Meeting for the purpose of adopting this Agreement.

6.5. Filings; Reasonable Best Efforts; Other Actions; Notification.

(a) Proxy Statement. The Company shall promptly notify Parent (and NRG with respect to the matters relating to NRG or the NRG Sale) of the receipt of all comments from the SEC with respect to the Proxy Statement and of any request by the SEC for any amendment or supplement thereto or for additional information and shall promptly provide to Parent (and NRG with respect to matters relating to NRG or the NRG Sale) copies of all correspondence between the Company and/or any of its Representatives and the SEC with respect to the Proxy Statement and shall provide Parent (and NRG with respect to the matters relating to NRG or the NRG Sale) an opportunity to review and comment on any such amendment, supplement or response to the SEC and shall consider in good faith any comments reasonably proposed by Parent (and NRG with respect to the matters relating to NRG or the NRG Sale). The Company and Parent shall each use its reasonable best efforts to promptly provide responses to the SEC with respect to all comments received on the Proxy Statement from the SEC. The Company shall cause the definitive Proxy Statement to be mailed as promptly as practicable after the date the SEC staff advises that it has no further comments thereon or that the Company may commence mailing the Proxy Statement; provided, that the Company shall not be required to mail the Proxy Statement prior to the seventh business day following the No-Shop Period Start Date. To the extent required by applicable Law in the good faith judgment of the Company, the Company shall, as promptly as reasonably practicable prepare, file and distribute to the stockholders of the Company any supplement or amendment to the Proxy Statement if any event shall occur which requires such action at any time prior to the Stockholders Meeting.

(b) Information. Subject to applicable Laws, the Company and Parent each shall, upon request by the other, furnish the other with all information concerning itself, its Affiliates, directors, officers and stockholders, and, with respect to Parent, NRG, and such other matters as may be reasonably necessary or advisable in connection with the Proxy Statement or any other statement, filing, notice or application made by or on behalf of Parent, the Company or any of their respective Affiliates to any third party and/or any Governmental Entity in connection with the Merger, the NRG Sale and the other transactions contemplated by this Agreement, including under the HSR Act, any other applicable Antitrust Law, the FPA, the New York Public Service Law and any other applicable regulatory Law.

(c) Status. Subject to applicable Laws and the instructions of any Governmental Entity, the Company and Parent each shall keep the other reasonably apprised of the status of matters relating to completion of the transactions contemplated hereby and the NRG Sale, including promptly furnishing the other with copies of notices or other communications received by Parent or the Company, as the case may be, or any of its Affiliates, from any third party and/or any Governmental Entity with respect to the Merger, the NRG Sale and the other transactions contemplated by this Agreement. Neither the Company nor Parent shall permit any of its Affiliates, officers or any other Representatives to participate in any meeting with any Governmental Entity in respect of any filings with, investigation or other inquiry by such Governmental Entity with respect to the Merger, the NRG Sale and the other transactions contemplated hereby or by the NRG PSA unless it consults with the other party in advance and, to the extent permitted by such Governmental Entity, gives the other party (either directly or through one of its Representatives) the opportunity to attend and participate thereat.

(d) Required Approval Matters. Without limiting the generality of the other undertakings pursuant to this Section 6.5 and subject to the other terms and conditions of this Agreement, each of the Company (in the case of clauses (i), (ii), (iii)(A) and (iv) of this Section 6.5(d) set forth below) and Parent (in all cases set forth below) agrees to take or cause to be taken the following actions:

(i) to cooperate with each other and use (and shall cause their respective Affiliates to use) their respective reasonable best efforts to take or cause to be taken all actions, and do or cause to be done all things, reasonably necessary, proper or advisable on its part under this Agreement and applicable Laws to satisfy the conditions set forth in Article VII and to consummate and make effective the Merger, the NRG Sale and the other transactions contemplated by this Agreement as soon as practicable, including, with respect to Parent, specifically enforcing its rights under the NRG PSA, and preparing and filing as promptly as practicable all documentation to effect all necessary notices, reports and other filings and to obtain as promptly as practicable all consents, registrations, approvals, permits and authorizations necessary or advisable to be obtained from any third party and/or any Governmental Entity in order to consummate the Merger, the NRG Sale or any of the other transactions contemplated by this Agreement or by the NRG PSA, including under the HSR Act, the FPA and the New York Public Service Law. In

furtherance of and not in limitation of the foregoing, Parent and the Company each shall file the initial pre-merger notifications with respect to this Agreement and the transactions contemplated herein required, and Parent shall, and shall use its reasonable best efforts to cause NRG, to file the initial pre-merger notification with respect to the NRG PSA, the NRG Sale and the transactions contemplated therein, in each case, under the HSR Act (which filing, including the exhibits thereto, need not be shared or otherwise disclosed to the other party except to outside counsel of each party), the FPA and the New York Public Service Law, in each case, as promptly as practicable after the date of this Agreement but in all events within ten (10) business days after the date of this Agreement. The Company and Parent will each request early termination of the waiting period with respect to the Merger under the HSR Act and any other applicable Antitrust Law. Parent will, and will use its reasonable best efforts to cause NRG, to request early termination of the waiting period with respect to the NRG Sale under the HSR Act or any other Antitrust Law. The Company will provide information necessary for Parent to complete its pre-merger notification under the HSR Act with respect to the NRG Sale and and an officer or director of the Company will certify in Parent's pre-merger notification that the information provided is accurate as required under HSR Rule 803.6. Parent will not, and will use its reasonable best efforts to cause NRG not to, withdraw its initial filing under the HSR Act or any other Antitrust Law, as the case may be, with respect to the Merger or the NRG Sale and refile it unless the Company has consented in advance to such withdrawal and refiling. Subject to applicable Laws relating to the exchange of information, Parent and the Company shall have the right to review in advance, and to the extent practicable each will consult with the other on and consider in good faith the views of the other in connection with, all of the information relating to Parent or the Company, as the case may be, and any of their respective Affiliates, that appears in any filing made with, or written materials submitted to, any third party and/or any Governmental Entity in connection with the Merger, the NRG Sale and the other transactions contemplated by this Agreement (including the Proxy Statement but subject to Section 6.5(a)). In exercising the foregoing rights, each of the Company and Parent shall act reasonably and as promptly as practicable. Nothing in this Agreement shall require the Company or its Subsidiaries to take or agree to take any action with respect to its business or operations unless the effectiveness of such agreement or action is conditioned upon Closing. For purposes of this Agreement, "*Antitrust Law*" means the Sherman Act, the Clayton Act, the HSR Act, the Federal Trade Commission Act and all other Laws that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade or lessening of competition through merger or acquisition;

(ii) to provide promptly to each and every federal, state, local or foreign court or Governmental Entity with jurisdiction over any Company Required Governmental Approval, Parent Required Governmental Approval, the approvals required to consummate the NRG Sale as set forth in Section 7.2(c) of the Parent Disclosure Letter

(the "*NRG Sale Approvals*") or otherwise over the transactions contemplated by this Agreement or the NRG PSA (a "*Governmental Approval Entity*") such non-privileged information and documents as reasonably requested by any such Governmental Approval Entity or that are necessary, proper or advisable to permit consummation of the transactions contemplated by this Agreement or the NRG PSA;

(iii) to use its reasonable best efforts to (A) obtain promptly all Company Required Governmental Approvals, Parent Required Governmental Approvals and NRG Sale Approvals and (B) avoid the entry or enactment of any permanent, preliminary or temporary injunction or other order, decree, decision, determination, judgment, investigation or Law that would delay in any material respect, restrain, prevent, enjoin or otherwise prohibit consummation of the transactions contemplated by this Agreement or the NRG PSA, including the proffer and agreement by Parent of its willingness to sell or otherwise dispose of, or hold separate pending such disposition, and promptly to effect the sale, disposal and holding separate of, such assets, categories of assets or businesses or other segments of the Company or Parent or either's respective Subsidiaries or Affiliates (and the entry into agreements with, and submission to orders of, the relevant Governmental Approval Entity giving effect thereto) if such action should be reasonably necessary or advisable to avoid, prevent, eliminate or remove the actual, anticipated or threatened (x) commencement of any investigation or proceeding in any forum or (y) issuance or enactment of any order, decree, decision, determination, judgment or Law that would delay in any material respect, restrain, prevent, enjoin or otherwise prohibit consummation of the Merger, the NRG Sale and the other transactions contemplated hereby by any Governmental Approval Entity;

(iv) in the event that any permanent, preliminary or temporary injunction, decision, order, judgment, determination, decree or Law is entered, issued or enacted, or becomes reasonably foreseeable to be entered, issued or enacted, in any proceeding, review or inquiry of any kind that would make consummation of the Merger in accordance with the terms of this Agreement or the consummation of the NRG Sale in accordance with the NRG PSA unlawful or that would delay, restrain, prevent, enjoin or otherwise prohibit consummation of the Merger, the NRG Sale or the other transactions contemplated by this Agreement or the NRG PSA, to use its reasonable best efforts to take any and all steps (including the appeal thereof, the posting of a bond or the taking of the steps contemplated by clause (iii) of this Section 6.5(d)) necessary to resist, vacate, modify, reverse, suspend, prevent, eliminate, avoid or remove such actual, anticipated or threatened injunction, decision, order, judgment, determination, decree or enactment so as to permit such consummation on a schedule as close as possible to that contemplated by this Agreement or the NRG PSA, as the case may be; and

(v) to refrain from entering into any agreement, arrangement or other understanding to acquire any assets or properties that would reasonably be expected to (i) prevent or materially delay receipt of any Company Required Governmental

Approvals, Parent Required Governmental Approvals or the NRG Sale Approvals or (ii) prevent or materially delay the Closing or the consummation of the NRG Sale.

(e) Planning Committee. Promptly following the date hereof (but in any event within five (5) calendar days after the date of this Agreement), each of the Company and Parent shall, and Parent shall use its reasonable best efforts to cause NRG to, appoint two (2) representatives to a regulatory and transition planning committee (the "*Committee*"). The Committee shall meet by telephone or in person weekly (with at least one representative from each of the Company, Parent and NRG present), to discuss the status of all notices, consents, registrations, approvals, permits and authorizations made or sought by Parent, the Company and NRG which are necessary or advisable to be obtained from any third party and/or Governmental Entity in order to consummate the Merger, the NRG Sale and any of the other transactions contemplated by this Agreement or by the NRG PSA, including under the HSR Act, the FPA, the NYPSC, the California Public Utilities Commission and the California Independent System Operator.

6.6. Access and Reports.

(a) Subject to applicable Law, upon reasonable prior written notice, the Company shall (and shall cause its Subsidiaries to) afford Parent's officers and other Representatives reasonable access, during normal business hours throughout the period from the date hereof and though the Effective Time, to its employees, properties, facilities, books, contracts and records and, during such period, the Company shall (and shall cause its Subsidiaries to) furnish promptly to Parent all information concerning its business, properties, facilities, operations and personnel as may reasonably be requested, provided that no investigation pursuant to this Section 6.6 shall affect or be deemed to modify or supplement any representation or warranty made by the Company herein, and provided, further, that the foregoing shall not require the Company (i) to permit any inspection, or to disclose any information, that in the reasonable judgment of the Company would result in the disclosure of any trade secrets of third parties or violate any of its obligations with respect to confidentiality if the Company shall have used its reasonable best efforts to furnish such information in a manner that does not result in any such disclosure, including obtaining the consent of such third party to such inspection or disclosure or (ii) to disclose any privileged information of the Company or any of its Subsidiaries if the Company shall have used reasonable best efforts to furnish such information in a manner that does not result in the loss of such privilege. All requests for information made pursuant to this Section 6.6 shall be directed to a Person designated by the Company. All such information shall be governed by the terms of the Confidentiality Agreement. Notwithstanding the foregoing, the Receiving Party and its Representatives (each as defined in the Confidentiality Agreement) may furnish Evaluation Material (as defined in the Confidentiality Agreement) after the No-Shop Period Start Date to any Person in connection with such Person's (A) potential investment in Parent or its Affiliates or (B) evaluation of the acquisition of assets of the Company in connection with or following the Closing (the actions contemplated by the foregoing clauses (A) and (B), other than in connection with the NRG Sale,

a "*Third Party Investment*"), provided, that Parent shall have directed such Person to treat any Evaluation Material provided to such Person in accordance with the confidentiality provisions of the Confidentiality Agreement and to perform or to comply with the obligations of the Receiving Party with respect to any such Evaluation Material as contemplated by the Confidentiality Agreement. Parent agrees that it will be fully responsible for any breach of any of the provisions of the Confidentiality Agreement by any such Person as though it were a "Representative" under the Confidentiality Agreement. In connection with a Third Party Investment, the Company agrees to provide, and shall cause its Subsidiaries and its and their Representatives to provide, all reasonable cooperation in connection with the arrangement or consummation of a Third Party Investment as may be reasonably requested by Parent, including with respect to any customary due diligence review of such assets that may be requested by Parent such as visits of properties and facilities of the Company and meeting with appropriate personnel of the Company (provided that such requested cooperation does not unreasonably interfere with the ongoing operations of the Company and its Subsidiaries). Parent shall, promptly upon request by the Company, reimburse the Company for all reasonable and documented out-of-pocket costs incurred by the Company, its Subsidiaries and their Representatives in connection with such cooperation. Parent shall indemnify and hold harmless the Company, its Subsidiaries and its Representatives from and against any and all liabilities, losses, damages, claims, costs, expenses, interest, awards, judgments and penalties suffered or incurred by them in connection with the arrangement of any Third Party Investment (including any action taken in accordance with this Section 6.6) and any information utilized in connection therewith. Parent and Merger Sub acknowledge and agree that any Third Party Investment is not a condition to Closing and reaffirm their obligation to consummate the transactions contemplated by this Agreement irrespective and independently of the availability of any Third Party Investment, subject to fulfillment or waiver of the conditions set forth in Article VII.

(b) In furtherance and not in limitation of the foregoing Section 6.6(a), at any time and from time to time after the date hereof, the Company will allow Parent and its representatives reasonable access to the Derivative Products trading operations of the Company, the Company's Subsidiaries and the Company Joint Ventures and their respective books and records, and develop appropriate procedures to permit Parent and its approved Representatives (such approval by the Company not to be unreasonably withheld, delayed or conditioned) to monitor the aggregate net positions in the Derivative Products trading portfolio of the Company, the Company Subsidiaries and Company Joint Ventures, subject to the other terms of this Agreement, the terms of the Confidentiality Agreement and applicable Laws. Parent shall have the right to appoint an individual who, in addition to exercising any of the rights granted to Parent pursuant to Section 6.6(a) and the preceding sentence of this Section 6.6(b), shall also have the rights, and be subject to the limitations, set forth on Section 6.6(b) of the Company Disclosure Letter.

6.7. Stock Exchange De-listing. Parent shall cause the Company's securities to be de-listed from the NYSE and de-registered under the Exchange Act as soon as practicable following the Effective Time.

6.8. Publicity. The initial press release regarding the Merger shall be a joint press release and thereafter (unless and until a Change of Recommendation has occurred or in connection with Section 6.2(f)) the Company and Parent each shall consult with each other prior to issuing any press releases or otherwise making public announcements with respect to the Merger and the other transactions contemplated by this Agreement and prior to making any filings with any third party and/or any Governmental Entity (including any national securities exchange or interdealer quotation service) with respect thereto, except as may be required by Law or by obligations pursuant to any listing agreement with or rules of any national securities exchange or interdealer quotation service or by the request of any Governmental Entity.

6.9. Employee Benefits.

(a) Parent agrees that, during the period commencing at the Effective Time and ending on the first anniversary of the Effective Time, the employees of the Company and its Subsidiaries (other than those subject to collectively-bargained agreements) who continue employment with Parent, the Surviving Corporation or any Subsidiary of the Surviving Corporation after the Effective Time ("*Affected Employees*") will be provided, unless their employment has ceased, with total annual cash compensation opportunities and benefits that, taken together, are substantially comparable in the aggregate to those total annual cash compensation opportunities and benefits provided by the Company and its Subsidiaries immediately prior to the Effective Time. Following the Effective Time, Parent shall cause the Surviving Corporation and any Subsidiary of the Surviving Corporation to comply with the provisions of each of the Company's change in control severance plans.

(b) Parent shall cause any employee benefit plans which the Affected Employees are entitled to participate in to take into account for purposes of eligibility, vesting and benefit accrual thereunder (other than any benefit accrual under any defined benefit pension plan), service for the Company and its Subsidiaries as if such service were with Parent, to the same extent such service was credited under the comparable plan of the Company or any of its Subsidiaries (except to the extent it would result in a duplication of benefits). Parent shall, and shall cause its direct and indirect Subsidiaries (including the Surviving Corporation) to (i) waive all limitations as to preexisting conditions exclusions and all waiting periods with respect to participation and coverage requirements applicable to each Affected Employee under any welfare benefit plan in which an Affected Employee is eligible to participate on or after the Effective Time to the extent such limitations, conditions, and waiting periods were satisfied or inapplicable under the comparable welfare benefit plan and (ii) credit each Affected Employee for any co-payments, deductibles and other out-of-pocket expenses paid prior to the Effective Time under the terms of any corresponding Company Plan in satisfying any applicable deductible, co-payment or out-of-pocket requirements for the plan year in which the Effective

Time occurs under any welfare benefit plan in which the Affected Employee participates on and after the Effective Time.

(c) For all Affected Employees who continue employment with Parent, the Surviving Corporation or any Subsidiary of the Surviving Corporation through the earlier of March 15, 2011 (such Affected Employees, the "*Continuing Employees*"), and the date on which Parent otherwise pays annual bonuses and incentive payments to similarly situated employees (the "*2011 Bonus Payment Date*"), bonuses and incentive payments shall be paid to such Continuing Employees on the 2011 Bonus Payment Date in accordance with the bonus and incentive plans or programs of Parent; provided that Parent shall ensure that the aggregate annual bonuses and incentive payments made to all Continuing Employees, measured as a group, in respect of the 2010 calendar year are no less than the aggregate amount accrued therefor as of December 31, 2010 for such Continuing Employees.

(d) Parent hereby acknowledges that a "change in control" or "change of control" within the meaning of each Company Plan listed in Section 6.9(d) of the Company Disclosure Letter will occur upon the Effective Time, subject to Section 409A of the Code.

(e) Parent hereby acknowledges and recognizes that, as of the Effective Time, all of the Company's and/or the Company's Affiliates' contractual obligations with the unions representing bargaining unit employees of the Company or its Affiliates will continue, including all contractual obligations under applicable collective bargaining agreements, as listed in Section 6.9(e) of the Company Disclosure Letter (subject to future bargaining between the unions and the Company or the Company's Affiliates).

(f) As soon as reasonably practicable after the date of this Agreement (but no later than fifteen (15) calendar days and prior to the Closing), the Company shall take the actions described in Section 6.9(f) of the Company Disclosure Letter.

(g) Notwithstanding the foregoing, nothing contained herein shall (i) be treated as an amendment of any particular Company Plan, (ii) give any third party (including any employee or dependent or beneficiary of any employee or trustee) any right to enforce the provisions of this Section 6.9 or (iii) obligate Parent, the Surviving Corporation or any of their Affiliates to retain the employment of any particular employee for any period of time or to maintain any particular Company Plan or benefit, except to the extent otherwise required by Section 6.9(c) with respect to the bonuses and incentive payments.

(h) At the Closing, the Company shall provide Parent with a true and complete list of Business Employee (as that term is defined in the NRG PSA) terminations, by date and location, implemented by the Company or any Subsidiary of the Company in the 90-day period prior to the Closing.

6.10. Expenses. The Surviving Corporation shall pay all charges and expenses, including those of the Paying Agent, in connection with the transactions contemplated in Article IV. Except as otherwise provided in Section 8.5, whether or not the Merger is consummated, all costs and expenses incurred in connection with this Agreement and the Merger and the other transactions contemplated by this Agreement shall be paid by the party incurring such expense, except for Parent's reimbursement and indemnification obligations pursuant to Section 6.6 and Section 6.14.

6.11. Indemnification; Directors' and Officers' Insurance.

(a) From and after the Effective Time, each of Parent and the Surviving Corporation agrees that it will indemnify and hold harmless, to the fullest extent permitted under applicable Law (and Parent shall also advance expenses as incurred to the fullest extent permitted under applicable Law), each present and former director and officer of the Company and its Subsidiaries (collectively, the "*Indemnified Parties*") against any costs or expenses (including reasonable attorneys' fees), judgments, fines, losses, claims, damages or liabilities incurred in connection with any claim, action, suit, proceeding or investigation, whether civil, criminal, administrative or investigative, arising out of or related to such Indemnified Parties' service as a director or officer of the Company or its Subsidiaries or services performed by such persons at the request of the Company or its Subsidiaries at or prior to the Effective Time, whether asserted or claimed prior to, at or after the Effective Time, including, for the avoidance of doubt, in connection with (i) the transactions contemplated by this Agreement and (ii) actions to enforce this provision or any other indemnification or advancement right of any Indemnified Party.

(b) Prior to the Effective Time, the Company shall and, if the Company is unable to, Parent shall cause the Surviving Corporation as of the Effective Time to obtain and fully pay the premium for "tail" insurance policies for the extension of (i) the directors' and officers' liability coverage of the Company's existing directors' and officers' insurance policies, and (ii) the Company's existing fiduciary liability insurance policies, in each case for a claims reporting or discovery period of at least six years from and after the Effective Time from an insurance carrier with the same or better credit rating as the Company's insurance carrier as of the date hereof with respect to directors' and officers' liability insurance and fiduciary liability insurance (collectively, "*D&O Insurance*") with terms, conditions, retentions and limits of liability that are at least as favorable to the insureds as the Company's existing policies with respect to any matter claimed against a director or officer of the Company or any of its Subsidiaries by reason of him or her serving in such capacity that existed or occurred at or prior to the Effective Time (including in connection with this Agreement or the transactions or actions contemplated hereby); provided that the cost of the annual premium amount for such "tail" insurance policies does not exceed an amount equal to 300% of the annual premiums currently paid by the Company for such insurance. If the Company and the Surviving Corporation for any reason fail to obtain such insurance policies as of the Effective Time, the Surviving Corporation shall, and Parent shall cause the Surviving Corporation to, continue to maintain in effect for a

period of at least six years from and after the Effective Time the D&O Insurance in place as of the date hereof with terms, conditions, retentions and limits of liability that are at least as favorable to the insureds as provided in the Company's existing policies as of the date hereof, or the Surviving Corporation shall, and Parent shall cause the Surviving Corporation to, use reasonable best efforts to purchase comparable D&O Insurance for such six-year period with terms, conditions, retentions and limits of liability that are at least as favorable to the insureds as provided in the Company's existing policies as of the date hereof; provided, however, that in no event shall Parent or the Surviving Corporation be required to expend for such policies pursuant to this sentence an annual premium amount in excess of 300% of the annual premiums currently paid by the Company for such insurance; and provided, further, that if the annual premiums of such insurance coverage exceed such amount, the Surviving Corporation shall obtain a policy with the greatest coverage available for a cost not exceeding such amount.

(c) If Parent or the Surviving Corporation or any of their respective successors or assigns (i) shall consolidate with or merge into any other corporation or entity and shall not be the continuing or surviving corporation or entity of such consolidation or merger or (ii) shall transfer all or substantially all of its properties and assets to any individual, corporation or other entity, then, and in each such case, proper provisions shall be made so that the successors and assigns of Parent or the Surviving Corporation shall assume all of the obligations set forth in this Section 6.11.

(d) The provisions of this Section 6.11 are intended to be for the benefit of, and shall be enforceable by, each of the Indemnified Parties, who are third party beneficiaries of this Section 6.11.

(e) The rights of the Indemnified Parties under this Section 6.11 shall be in addition to any rights such Indemnified Parties may have under the certificate of incorporation, bylaws or comparable governing documents of the Company or any of its Subsidiaries, or under any applicable Contracts or Laws. All rights to indemnification and exculpation from liabilities for acts or omissions occurring at or prior to the Effective Time and rights to advancement of expenses relating thereto now existing in favor of any Indemnified Party as provided in the certificate of incorporation, bylaws or comparable governing documents of the Company and its Subsidiaries or any indemnification agreement between such Indemnified Party and the Company or any of its Subsidiaries shall survive the Merger and shall not be amended, repealed or otherwise modified in any manner that would adversely affect any right thereunder of any such Indemnified Party.

6.12. Takeover Statutes. The Company shall use its reasonable best efforts to take all action necessary so that no Takeover Statute is or becomes applicable to the Merger or any of the other transactions contemplated by this Agreement. If any Takeover Statute is or may become applicable to the Merger or the other transactions contemplated by this Agreement, the Company and its Board of Directors shall promptly grant such approvals and take such actions as are necessary so that such transactions may be consummated as promptly as practicable on the

terms contemplated by this Agreement and otherwise promptly act to eliminate or minimize the effects of such statute or regulation on such transactions.

6.13. Parent Vote.

(a) Parent shall vote (or consent with respect to) or cause to be voted (or a consent to be given with respect to) any Shares beneficially owned by it or any of its Subsidiaries or Affiliates or with respect to which it or any of its Subsidiaries has the power (by agreement, proxy or otherwise) to cause to be voted (or to provide a consent), in favor of the adoption of this Agreement at any meeting of stockholders of the Company at which this Agreement shall be submitted for adoption and at all adjournments or postponements thereof (or, if applicable, by any action of stockholders of the Company by consent in lieu of a meeting).

(b) Promptly following the execution of this Agreement, Parent shall execute and deliver, in accordance with Section 228 of the DGCL and in its capacity as the sole stockholder of Merger Sub, a written consent adopting this Agreement.

6.14. Financing. Prior to the Closing, the Company shall use its reasonable efforts, at Parent's sole expense, to assist Parent in a refinancing of all or any portion of the Indebtedness of the Company existing on the date hereof (the "*Debt Financing*"), including: (i) participating in a reasonable number of meetings, presentations and due diligence sessions; (ii) assisting with the preparation of one customary offering memorandum and one presentation in connection with the Debt Financing; and (iii) executing and delivering any definitive financing documents and certificates as may be reasonably requested by Parent; provided that (a) irrespective of the above, no obligation of the Company or any of its Subsidiaries under any certificate, document or instrument shall be effective until the Effective Time and none of the Company or any of its Subsidiaries shall be required to take any action under any certificate, document or instrument that is not contingent upon the Closing (including the entry into any agreement that is effective before the Effective Time) or that would be effective prior to the Effective Time, (b) such efforts do not unreasonably interfere with the ongoing operations of the Company and its Subsidiaries, and (c) none of the Company or any of its Subsidiaries shall be required to issue any offering or information document. None of the Company or any of its Subsidiaries shall be required to bear any cost or expense or to pay any commitment or other similar fee or make any other payment in connection with the Debt Financing or any of the foregoing prior to the Effective Time, and Parent shall, promptly upon request by the Company, reimburse the Company for all reasonable and documented out-of-pocket costs incurred by the Company, its Subsidiaries and their Representatives in connection with the Debt Financing or any cooperation pursuant to this Section 6.14. Parent shall indemnify and hold harmless the Company, its Subsidiaries and the Representatives from and against any and all liabilities, losses, damages, claims, costs, expenses, interest, awards, judgments and penalties suffered or incurred by them in connection with the arrangement of the Debt Financing (including any action taken in accordance with this Section 6.14) and any information utilized in connection therewith (other than arising from historical information provided by the Company or its Subsidiaries). The

Company hereby consents to the use of its and its Subsidiaries' logos in connection with the Debt Financing; provided that such logos shall be used solely in a manner that is not intended or reasonably likely to harm, disparage or otherwise adversely affect the Company or any of its Subsidiaries. Parent and Merger Sub acknowledge and agree that the obtaining of the Debt Financing is not a condition to Closing and reaffirm their obligation to consummate the transactions contemplated by this Agreement irrespective and independently of the availability of the Debt Financing, subject to fulfillment or waiver of the conditions set forth in Article VII.

6.15. Casualty. If, between the date hereof and the Closing Date, there shall occur any physical damage to or destruction of, or theft or similar loss of, any of the tangible assets of the Company or any of its Subsidiaries (a "*Casualty Loss*"), then (i) if such Casualty Loss is material to the Company and its Subsidiaries, taken as a whole, the Company shall promptly give notice to Parent thereof and of the Company's good faith estimate of the amount of casualty insurance, if any, payable to the Company in respect thereof and (ii) the Company shall use its reasonable best efforts to replace or repair (as applicable) the asset or property related to such Casualty Loss. The Company shall use all reasonable best efforts to collect amounts due (if any) under insurance policies or programs in respect of any Casualty Loss.

6.16. Stockholder Litigation. In the event that any stockholder litigation related to this Agreement, the Merger or the other transactions contemplated by this Agreement is brought, or, to the Knowledge of the Company, threatened in writing, against the Company and/or the members of the Board of Directors of the Company prior to the Effective Time, the Company shall promptly notify Parent of any such stockholder litigation brought, or, to the Knowledge of the Company, threatened in writing against the Company and/or members of the Board of Directors of the Company and shall keep Parent reasonably informed with respect to the status thereof. The Company shall reasonably consult with Parent with respect to the defense or settlement of any stockholder litigation against the Company and/or its directors relating to the transactions contemplated by this Agreement, and no such settlement shall be agreed to without Parent's prior written consent (such consent not to be unreasonably withheld, delayed or conditioned).

6.17. Dynegy Power Generation, LLC. Prior to the Closing Date, the Company shall take such action as may be necessary to ensure that Dynegy Power Generation, LLC is characterized as a corporation for U.S. federal income tax purposes, either by conversion to a Delaware corporation or effectuating a merger that has substantially the same effect.

6.18. Credit Agreement Matters. The Company shall provide reasonable cooperation to Parent and Merger Sub in arranging for the termination of the Credit Agreement at the Closing and the procurement of customary payoff letters in connection therewith.

6.19. FCPA Matters. If the Company identifies any activities of the Company or any of its Subsidiaries, including those activities of their respective directors, officers, managers, employees, independent contractors, representatives or agents, that the Company reasonably

believes (following due inquiry) to be in violation of the FCPA, the Company shall and shall cause each of its Subsidiaries and Affiliates to cease such activities. The Company shall and shall cause its Subsidiaries and Affiliates to take all actions required by law to remediate any actions taken by the Company, its Subsidiaries or Affiliates, or any of their respective directors, officers, managers, employees, independent contractors, representatives or agents in violation of the FCPA.

ARTICLE VII

Conditions

7.1. Conditions to Each Party's Obligation to Effect the Merger. The respective obligation of each party to effect the Merger is subject to the satisfaction or waiver at or prior to the Effective Time of each of the following conditions:

(a) Stockholder Approval. This Agreement shall have been duly adopted by holders of Shares constituting the Company Requisite Vote in accordance with applicable Law and the certificate of incorporation and bylaws of the Company.

(b) Regulatory Consents. (i) The waiting period applicable to the consummation of the Merger under the HSR Act shall have been terminated or shall have expired, and (ii) the Company Required Governmental Approvals set forth on Section 7.1(b)(i) of the Company Disclosure Letter shall have been obtained and such approvals shall have become Final Orders.

(c) No Injunction. No Order (whether temporary, preliminary or permanent) by any Governmental Entity of competent jurisdiction prohibiting, restraining, enjoining or rendering illegal the consummation of the Merger shall have been issued and be continuing in effect, and the consummation of the Merger and the other transactions contemplated hereby shall not have been prohibited or rendered illegal under any applicable Law.

7.2. Conditions to Obligations of Parent and Merger Sub. The obligations of Parent and Merger Sub to effect the Merger are also subject to the satisfaction or waiver by Parent at or prior to the Effective Time of the following conditions:

(a) Representations and Warranties. (i) The representations and warranties of the Company set forth in this Agreement other than those referenced in clause (ii) below (without giving effect to any materiality or Company Material Adverse Effect qualifications set forth therein) shall be true and correct as of the date of this Agreement and as of the Closing Date as though made on and as of such date and time (except to the extent that any such representation and warranty expressly speaks as of an earlier date, in which case such representation and warranty shall, subject to the qualifications below, be true and correct as of such earlier date) except where the failures of any such representations and warranties to be so

true and correct, individually or in the aggregate, would not reasonably be expected to have a Company Material Adverse Effect; (ii) the representations and warranties set forth in (x) Section 5.1(b)(i) and Section 5.1(c) shall be true and correct in all respects (except with respect to the representations and warranties of the Company set forth in Section 5.1(b)(i), for such inaccuracies as are *de minimis* relative to Section 5.1(b)(i) taken as a whole) and (y) Section 5.1(f)(i) shall be true and correct without disregarding the Company Material Adverse Effect qualification contained therein; and (iii) Parent shall have received at the Closing a certificate signed on behalf of the Company by a senior executive officer of the Company to the effect that such officer has read this Section 7.2(a) and the conditions set forth in this Section 7.2(a) have been satisfied.

(b) Performance of Obligations of the Company. The Company shall have performed in all material respects all obligations required to be performed by it under this Agreement at or prior to the Closing Date, and Parent shall have received a certificate signed on behalf of the Company by a senior executive officer of the Company to such effect.

(c) NRG Conditions. The conditions to the obligation of Merger Sub and NRG to effect the NRG Sale set forth in Section 7.1 and Section 7.2 of the NRG PSA shall have been satisfied or waived (other than (i) the condition set forth in Section 7.1(i) of the NRG PSA with respect to the closing of the Merger and (ii) those conditions that by their nature are to be satisfied at the closing of the NRG Sale), and NRG is ready, willing and able to consummate the NRG Sale upon the consummation of the Merger.

7.3. Conditions to Obligation of the Company. The obligation of the Company to effect the Merger is also subject to the satisfaction or waiver by the Company at or prior to the Effective Time of the following conditions:

(a) Representations and Warranties. (i) The representations and warranties of Parent set forth in this Agreement shall be true and correct in all material respects as of the date of this Agreement and as of the Closing Date as though made on and as of such date and time (except to the extent that any such representation and warranty expressly speaks as of an earlier date, in which case such representation and warranty shall be true and correct in all material respects as of such earlier date), except where the failure of such representations and warranties to be so true and correct does not materially and adversely affect the ability of Parent or Merger Sub to consummate the Merger and the other transactions contemplated by this Agreement, and (ii) the Company shall have received at the Closing a certificate signed on behalf of Parent by a senior executive officer of Parent to the effect that such officer has read this Section 7.3(a) and the conditions set forth in this Section 7.3(a) have been satisfied.

(b) Performance of Obligations of Parent and Merger Sub. Each of Parent and Merger Sub shall have performed in all material respects all obligations required to be performed by it under this Agreement at or prior to the Closing Date, and the Company shall

have received a certificate signed on behalf of Parent and Merger Sub by a senior executive officer of Parent to such effect.

7.4. Frustration of Closing Conditions. None of the Company, Parent or Merger Sub may rely on the failure of any condition set forth in Section 7.2 or 7.3, as the case may be, to be satisfied to excuse such party's obligation to effect the Merger if such failure was caused by such party's failure to use the standard of efforts required from such party to consummate the Merger and the other transactions contemplated by this Agreement, including as required by and subject to Section 6.5.

ARTICLE VIII

Termination

8.1. Termination by Mutual Consent. This Agreement may be terminated and the Merger may be abandoned at any time prior to the Effective Time, whether before or after the adoption of this Agreement by the stockholders of the Company referred to in Section 7.1(a), by mutual written consent of the Company and Parent by action of their respective boards of directors.

8.2. Termination by Either Parent or the Company. This Agreement may be terminated and the Merger may be abandoned at any time prior to the Effective Time by action of the board of directors of either Parent or the Company if (a) the Merger shall not have been consummated by February 13, 2011, whether such date is before or after the date of adoption of this Agreement by the stockholders of the Company referred to in Section 7.1(a) (such date, as it may be extended pursuant to this Section 8.2, the "*Termination Date*"), provided, that if on February 13, 2011 any of the conditions to Closing in Article VII shall not have been fulfilled or waived but remain capable of being satisfied, then either of Parent or the Company may, by written notice to the other delivered on or prior to the Termination Date, extend the termination date from February 13, 2011 to May 13, 2011 (which shall then be the "Termination Date"); provided, further, that (A) Parent shall not have the right to terminate this Agreement pursuant to this Section 8.2(a) if the Company has the right to terminate this Agreement pursuant to Section 8.3(b), and (B) the Company shall not have the right to terminate this Agreement pursuant to this Section 8.2(a) if Parent has the right to terminate this Agreement pursuant to Section 8.4(b)); (b) the Stockholders Meeting shall have been held and completed and adoption of this Agreement by the stockholders of the Company referred to in Section 7.1(a) shall not have been obtained at such Stockholders Meeting or at any adjournment or postponement thereof; or (c) any Order permanently restraining, enjoining, rendering illegal or otherwise prohibiting consummation of the Merger shall become final and non-appealable (whether before or after the adoption of this Agreement by the stockholders of the Company referred to in Section 7.1(a)), provided, that the right to terminate this Agreement pursuant to this Section 8.2 shall not be available to any party whose failure to fulfill any obligation or other breach under this Agreement has been the primary

cause of, or the primary factor that resulted in, the failure of a condition to the consummation of the Merger to have been satisfied on or before the Termination Date.

8.3. Termination by the Company. This Agreement may be terminated and the Merger may be abandoned by the Company:

(a) at any time prior to the time the Company Requisite Vote is obtained, if (i) the Board of Directors of the Company authorizes the Company, subject to complying with the terms of this Agreement, to enter into an Alternative Acquisition Agreement with respect to a Superior Proposal; (ii) immediately prior to or substantially concurrently with the termination of this Agreement the Company enters into an Alternative Acquisition Agreement with respect to a Superior Proposal; and (iii) the Company immediately prior to or substantially concurrently with such termination pays to Parent or its designee in immediately available funds the Termination Fee; provided, however, that the Company shall not be entitled to terminate this Agreement pursuant to this Section 8.3(a) unless the Company has complied with the requirements of Section 6.2(e);

(b) if there has been a breach of any representation, warranty, covenant or agreement made by Parent or Merger Sub in this Agreement, or any such representation and warranty shall have become untrue after the date of this Agreement, such that the conditions set forth in Section 7.3(a) or 7.3(b) would not be satisfied and such breach or condition is not curable or, if curable, is not cured prior to the earlier of (i) thirty (30) calendar days after written notice thereof is given by the Company to Parent or (ii) two (2) business days prior to the Termination Date; provided, however, that the Company is not then in material breach of this Agreement so as to cause any of the conditions set forth in Section 7.1, Section 7.2(a) or Section 7.2(b) not to be satisfied; or

(c) if all of the conditions set forth in Sections 7.1 and 7.2 have been satisfied (other than those conditions that by their nature cannot be satisfied other than at the Closing) and Parent and Merger Sub fail to consummate the transactions contemplated by this Agreement within the earlier of (i) two (2) business days after the date the Closing should have occurred pursuant to Section 1.2 and (ii) one (1) Business Day before the Termination Date, and the Company stood ready, willing and able to consummate during such period.

8.4. Termination by Parent. This Agreement may be terminated and the Merger may be abandoned at any time prior to the Effective Time by Parent if:

(a) the Board of Directors of the Company or any committee thereof (i) shall have made and not withdrawn a Change of Recommendation, (ii) shall have approved or recommended to the stockholders of the Company an Acquisition Proposal or (iii) fails (or the Company fails) to include the Company Recommendation in the Proxy Statement; or

(b) there has been a breach of any representation, warranty, covenant or agreement made by the Company in this Agreement, or any such representation and warranty shall have become untrue after the date of this Agreement, such that the conditions set forth in Section 7.2(a) or 7.2(b) would not be satisfied and such breach or condition is not curable or, if curable, is not cured prior to the earlier of (i) thirty (30) calendar days after written notice thereof is given by Parent to the Company or (ii) two (2) business days prior to the Termination Date; provided, however, that Parent is not then in material breach of this Agreement so as to cause any of the conditions set forth in Section 7.3(a) or 7.3(b) not to be capable of being satisfied.

8.5. Effect of Termination and Abandonment.

(a) In the event of termination of this Agreement and the abandonment of the Merger pursuant to this Article VIII, this Agreement shall become void and of no effect with no liability to any Person on the part of any party hereto (or of any of its Representatives or Affiliates); provided, however, and notwithstanding anything in the foregoing to the contrary, that (i) except as otherwise provided herein no such termination shall relieve any party hereto of any liability to pay the Termination Fee, the Parent Expenses or the Parent Fee pursuant to this Section 8.5, and (ii) this Section 8.5 and Article IX shall survive the termination of this Agreement.

(b) In the event that:

(i) (x) before obtaining the Company Requisite Vote, this Agreement is terminated pursuant to Section 8.2(a) (the section relating to the Termination Date), or Section 8.2(b) (the section relating to failure to receive stockholder approval), (y) any Person shall have made or publicly announced a bona fide Acquisition Proposal after the date of this Agreement but prior to such termination, and such Acquisition Proposal shall not have been publicly withdrawn without qualification in a manner that would reasonably be expected to adversely affect the receipt of the Company Requisite Vote in any material respect at least ten (10) calendar days prior to, with respect to Section 8.2(a), the date of termination or, with respect to a termination pursuant to Section 8.2(b), no later than five (5) business days prior to the Stockholders Meeting and (z) within eighteen (18) months of such termination (A) the Company shall have consummated an Acquisition Proposal (whether or not such Acquisition Proposal is the same Acquisition Proposal referred to in clause (y) of this Section 8.5(b)(i)) (provided that for purposes of this clause (z) the references to "20%" in the definition of "Acquisition Proposal" shall be deemed to be references to "50%") or (B) the Company and its Subsidiaries, taken as a whole, shall have consummated any transaction, or any series of transactions, providing for the sale of assets (including equity securities of any Subsidiaries of the Company) for aggregate consideration (including the assumption of any Indebtedness by any purchaser of such assets) of greater than $1.0 billion;

(ii) this Agreement is terminated by Parent pursuant to clause (a) of Section 8.4 (the section relating to a Change of Recommendation); or

(iii) this Agreement is terminated by the Company pursuant to Section 8.3(a) (the section relating to an Alternative Acquisition Agreement);

then the Company shall (A) in the case of clause (i) above, within three (3) business days after the date on which the Company consummates the Acquisition Proposal referred to in sub-clause (i)(z)(A) or the date, or dates, on which the Company consummates each sale of assets referred to in sub-clause (i)(z)(B) above, (B) in the case of clause (ii), no later than three (3) business days after the date of such termination and (C) in the case of clause (iii) above, immediately prior to or substantially concurrently with such termination, pay Parent or its designee the Termination Fee (as defined below) by wire transfer of immediately available funds (it being understood that in no event shall the Company be required to pay the Termination Fee on more than one occasion). "*Termination Fee*" shall mean (x) an amount equal to $16.3 million (which the parties to this Agreement view as being approximately 3% of equity value) if the Termination Fee becomes payable in connection with termination of this Agreement pursuant to Section 8.3(a), and the party to the Alternative Acquisition Agreement referred to in Section 8.3(a) is an Excluded Party, (y) an amount equal to $27.5 million less any Parent Expenses previously paid by the Company with respect to the first $1.0 billion of any such asset sales and an additional $1.5 million with respect to each additional $100 million of any such asset sales during such eighteen (18) month period up to an aggregate of $2.5 billion of any such asset sales during such eighteen (18) month period, but in any event no greater than $50 million in the aggregate (including any Parent Expenses previously paid by the Company), if the Termination Fee becomes payable pursuant to Section 8.5(b)(i)(z)(B) and (z) an amount equal to $50 million less any Parent Expenses previously paid by the Company in all other circumstances.

(c) In the event of termination of this Agreement by (i) either party pursuant to Section 8.2(b) (or a termination by the Company pursuant to a different section of Section 8.2 at a time when this Agreement was terminable pursuant to Section 8.2(b)), (ii) Parent pursuant to Section 8.4(b) or (iii) the Company pursuant to Section 8.3(a), and the party to the Alternative Acquisition Agreement referred to in Section 8.3(a) is an Excluded Party, then the Company shall promptly, but in no event later than three (3) business days after being notified of such by Parent in the case of clauses (i) and (ii) of this Section 8.5(c) or prior to or substantially concurrently with such termination in the case of clause (iii) of this Section 8.5(c), pay Parent all of the documented out-of-pocket expenses incurred by Parent, Merger Sub and their respective Affiliates in connection with this Agreement and the transactions contemplated by this Agreement up to a maximum amount of $10 million (or $6 million in the case of clause (iii) of this Section 8.5(c)) (as determined pursuant to this Section 8.5(c), the "*Parent Expenses*"), by wire transfer of same day funds.

(d) If (i) a court of competent jurisdiction has decided not to specifically enforce the obligations of Parent and Merger Sub to consummate the Merger pursuant to a claim

for specific performance brought by the Company in good faith against Parent and Merger Sub pursuant to Section 9.5 and either (x) such decision shall become final and non-appealable or (y) the Company has irrevocably agreed to waive, and not to pursue, any rights it may have to appeal such decision, (ii) upon the date the Company initiated the action referred to in clause (i), the Company could have terminated this Agreement pursuant to Sections 8.3(c) or 8.3(b) (but in the case of a termination pursuant to Section 8.3(b), the breach of the representation, warranty, covenant or agreement, or the inaccuracy of any representation or warranty, shall have contributed materially to the failure of the Closing to have occurred unless a breach by NRG of any of its obligations under the NRG PSA shall have been the proximate cause of the failure of the Closing to have occurred) and (iii) Parent and Merger Sub are not willing to consummate the Merger in accordance with this Agreement within eleven (11) calendar days of the earlier of such decision becoming final and non-appealable or the Company irrevocably agreeing to waive, and not pursue, any rights it may have to appeal such decision, then Parent shall pay the Company as liquidated damages an amount equal to $100 million (the "*Parent Fee*") less any amounts previously paid by, or on behalf of, Parent or Merger Sub pursuant to Section 6.6 or Section 6.14 of this Agreement, which Parent shall promptly, but in no event later than eleven (11) calendar days after the earlier of the date such decision becomes final or non-appealable or the date the Company irrevocably agrees to waive, and not to pursue, any rights it may have to appeal such a decision, pay or cause to be paid to the Company by wire transfer of immediately available funds (it being understood that in no event shall Parent be required to pay the Parent Fee on more than one occasion) and upon such payment this Agreement shall terminate. Parent and Merger Sub acknowledge that, prior to the Closing of the NRG PSA, the sole and exclusive remedy of any party thereunder is specific performance. Parent and Merger Sub agree that if (A) the NRG PSA is terminated, or the NRG Sale is not consummated, for any reason, (B) the Merger Agreement is terminated, or the Merger is not consummated, for any reason and (C) Merger Sub or any of its Affiliates, on the one hand, and NRG or any of its Affiliates, on the other hand, and notwithstanding that specific performance is the exclusive remedy, enter into any settlement, termination or similar negotiated agreement in which Merger Sub or any of its Affiliates receives any payment (whether in cash, assets, properties or otherwise) from NRG or any of its Affiliates in connection with the termination of the NRG PSA or the failure of the NRG Sale to be consummated (but not including any payments received pursuant to section 9.2(b) of the NRG PSA), then, Merger Sub shall, and Parent shall cause Merger Sub to, pay to the Company fifty percent (50%) of the value of such amounts paid by NRG or any of its Affiliates (such amount, an "*NRG Payment*").

(e) The parties acknowledge that the agreements contained in Section 8.5 are an integral part of the transactions contemplated by this Agreement, and that, without these agreements, the parties would not enter into this Agreement; accordingly, if the Company fails to promptly pay the amount due pursuant to Section 8.5(b) or Section 8.5(c) or Parent fails to promptly pay the amounts due pursuant to Section 8.5(d), and, in order to obtain such payment, Parent or Merger Sub, on the one hand, or the Company, on the other hand, commences a suit that results in a judgment against the Company for the amount set forth in Section 8.5(b) or

Section 8.5(c) or any portion thereof or a judgment against Parent for the amounts set forth in Section 8.5(d) or any portion thereof, the Company shall pay to Parent or Merger Sub, on the one hand, or Parent shall pay to the Company, on the other hand, its costs and expenses (including attorneys' fees) in connection with such suit, together with interest on such amount or portion thereof at the prime rate of Citibank N.A. in effect on the date such payment was required to be made through the date of payment. Notwithstanding anything to the contrary in this Agreement, (i) the Company's receipt and acceptance of the Parent Fee and NRG Payment, if any, pursuant to this Section 8.5 (plus, in the case the Parent Fee or the NRG Payment, if any, is not timely paid, the amounts described in the first sentence of this Section 8.5(e)) and the Company's receipt and acceptance of the reimbursement and indemnification obligations of Parent pursuant to Section 6.6 and Section 6.14 shall, subject to Section 9.5(c), be the sole and exclusive remedy of the Company and its Subsidiaries against Parent, Merger Sub, the Guarantor and any of their respective former, current, or future general or limited partners, stockholders, managers, members, directors, officers, Affiliates or agents for any loss suffered as a result of any breach of any covenant or agreement in this Agreement or the failure of the Merger to be consummated, and upon payment of such amounts, none of Parent, Merger Sub, the Guarantor or any of their respective former, current, or future general or limited partners, stockholders, managers, members, directors, officers, Affiliates or agents shall have any further liability or obligation relating to or arising out of this Agreement or the transactions contemplated by this Agreement and (ii) Parent's receipt of the Termination Fee or the Parent Expenses, as the case may be, from the Company pursuant to this Section 8.5 (plus, in the case the Termination Fee or the Parent Expenses is not timely paid, the amounts described in the first sentence of this Section 8.5(e)) shall, subject to Section 9.5(c), be the sole and exclusive remedy of Parent, Merger Sub, the Guarantor and their respective Affiliates against the Company, its Subsidiaries and any of their respective former, current, or future general or limited partners, stockholders, directors, officers, managers, members, Affiliates or agents for any loss suffered as a result of any breach of any covenant or agreement in this Agreement or the failure of the Merger to be consummated, and upon payment of such amounts, none of the Company, its Subsidiaries or any of their respective former, current, or future general or limited partners, stockholders, directors, officers, managers, members, Affiliates or agents shall have any further liability or obligation relating to or arising out of this Agreement or the transactions contemplated by this Agreement.

ARTICLE IX

Miscellaneous and General

9.1. Survival. This Article IX and the agreements of the Company, Parent and Merger Sub contained in Article IV and Sections 6.9 (Employee Benefits), 6.10 (Expenses) and 6.11 (Indemnification; Directors' and Officers' Insurance) shall survive the consummation of the Merger. This Article IX and the agreements of the Company, Parent and Merger Sub contained in Section 6.10 (Expenses) and Section 8.5 (Effect of Termination and Abandonment), the Confidentiality Agreement and the Guaranty shall survive the termination of this Agreement (in

the case of the Confidentiality Agreement and the Guaranty, subject to the terms thereof). All other representations, warranties, covenants and agreements in this Agreement shall not survive the consummation of the Merger or the termination of this Agreement.

9.2. Modification or Amendment. Subject to the provisions of the applicable Laws, at any time prior to the Effective Time, the parties hereto may modify or amend this Agreement, by written agreement executed and delivered by duly authorized officers of the respective parties; provided that this Agreement may not be modified or amended by the parties hereto in a manner adverse to NRG as a third party beneficiary hereunder as set forth in Section 9.8 in any material respect, including any modification or amendment that would reasonably be expected to prevent, impair or materially delay the consummation of the Merger, the NRG PSA or the other transactions contemplated by this Agreement or the NRG PSA, without NRG's prior written consent.

9.3. Waiver of Conditions. The conditions to each of the parties' obligations to consummate the Merger are for the sole benefit of such party and may be waived by such party in whole or in part to the extent permitted by applicable Laws; provided that no such waiver shall be effective without NRG's prior written consent if such waiver would be adverse to NRG as a third party beneficiary hereunder as set forth in Section 9.8 in any material respect, including any such waiver that would prevent, impair or materially delay the consummation of the Merger, the NRG PSA or the other transactions contemplated by this Agreement or the NRG PSA.

9.4. Counterparts. This Agreement may be executed in any number of counterparts, each such counterpart being deemed to be an original instrument, and all such counterparts shall together constitute one and the same agreement.

9.5. GOVERNING LAW AND VENUE; WAIVER OF JURY TRIAL; SPECIFIC PERFORMANCE.

(a) THIS AGREEMENT SHALL BE DEEMED TO BE MADE IN AND IN ALL RESPECTS SHALL BE INTERPRETED, CONSTRUED AND GOVERNED BY AND IN ACCORDANCE WITH THE LAW OF THE STATE OF DELAWARE WITHOUT REGARD TO THE CONFLICTS OF LAW PRINCIPLES THEREOF. The parties hereby irrevocably submit to the exclusive personal jurisdiction of the Court of Chancery of the State of Delaware, or to the extent such Court does not have subject matter jurisdiction, the Superior Court of the State of Delaware (the "*Chosen Courts*") solely in respect of the interpretation and enforcement of the provisions of this Agreement and of the documents referred to in this Agreement, and in respect of the transactions contemplated hereby, and hereby waive, and agree not to assert, as a defense in any action, suit or proceeding for the interpretation or enforcement hereof or of any such document, that it is not subject thereto or that such action, suit or proceeding may not be brought or is not maintainable in the Chosen Courts or that the Chosen Courts are an inconvenient forum or that the venue thereof may not be appropriate, or that this

Agreement or any such document may not be enforced in or by such Chosen Courts, and the parties hereto irrevocably agree that all claims relating to such action, suit or proceeding shall be heard and determined in the Chosen Courts. The parties hereby consent to and grant any such Chosen Court jurisdiction over the person of such parties and, to the extent permitted by Law, over the subject matter of such dispute and agree that mailing of process or other papers in connection with any such action, suit or proceeding in the manner provided in Section 9.6 or in such other manner as may be permitted by law shall be valid, effective and sufficient service thereof.

(b) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH SUCH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ACTION, SUIT OR PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (i) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF SUCH ACTION, SUIT OR PROCEEDING, SEEK TO ENFORCE THE FOREGOING WAIVER, (ii) EACH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (iii) EACH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (iv) EACH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 9.5.

(c) The parties agree that irreparable damage for which monetary damages, even if available, would not be an adequate remedy, would occur in the event that the parties hereto do not perform the provisions of this Agreement (including failing to take such actions as are required of it hereunder in order to consummate this Agreement or the NRG PSA) in accordance with its specified terms or otherwise breach such provisions. The parties acknowledge and agree that each party hereto shall be entitled to an injunction, specific performance and other equitable relief to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof, this being in addition to any other remedy, subject to Section 9.5(d), to which they are entitled at law or in equity. Parent and Merger Sub further acknowledge and agree that the Company shall be entitled to an injunction, specific performance and other equitable relief to prevent breaches of the NRG PSA and to enforce specifically the terms and provisions of the NRG PSA, this being in addition to any other remedy, subject to Section 9.5(d), to which the Company is entitled at law or in equity. Without limitation of the foregoing and notwithstanding anything in this Agreement to the contrary, the parties hereby further acknowledge and agree that prior to the Closing, the Company shall be entitled to seek specific performance (i) to enforce specifically the terms and provisions of, and to prevent or

cure breaches of Section 6.5 by Parent or Merger Sub, (ii) to enforce specifically the terms and provisions of, and to prevent or cure breaches of the NRG PSA by Merger Sub or NRG and (iii) if (A) all conditions in Sections 7.1 and 7.2 (other than those conditions that by their nature are to be satisfied at the Closing) have been satisfied and (B) Parent and Merger Sub fail to complete the Closing by the date the Closing is required to have occurred pursuant to Section 1.2, to cause Parent and/or Merger Sub to draw down the full proceeds of the Equity Financing pursuant to the terms and conditions of the Equity Financing Commitment and to prevent or cure breaches of this Agreement by Parent or Merger Sub and/or to enforce specifically the terms and provisions of this Agreement, including to cause Parent and/or Merger Sub to consummate the transactions contemplated hereby, including to effect the Closing in accordance with Section 1.2, on the terms and subject to the conditions in this Agreement. Each party hereto agrees that it will not oppose the granting of an injunction, specific performance and other equitable relief on the basis that (x) the other party has an adequate remedy at law or (y) an award of specific performance is not an appropriate remedy for any reason at law or equity. For the avoidance of doubt, (1) under no circumstances will the Company be entitled to monetary damages in excess of (A) any amounts payable pursuant to Section 8.5(d), (B) any reimbursement obligation of Parent pursuant to the first sentence of Section 8.5(e) and (C) the reimbursement and indemnification obligations of Parent contained in Section 6.6 and Section 6.14 and (2) under no circumstances will Parent be entitled to monetary damages in excess of (A) the amount of the Termination Fee and (B) any reimbursement obligations of the Company pursuant to the first sentence of Section 8.5(e). Any party seeking an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement shall not be required to provide any bond or other security in connection with any such order or injunction.

(d) Except as provided in Section 8.5(d), the Company hereby agrees that specific performance provided by Section 9.5(c) shall be its sole and exclusive remedy with respect to breaches by Parent or Merger Sub in connection with this Agreement or the transactions contemplated hereby and that it may not seek or accept any other form of relief that may be available for breach under this Agreement, the Equity Financing Commitment or the Guaranty or otherwise in connection with this Agreement or the transactions contemplated hereby (including monetary damages) other than any amounts owing to the Company pursuant to the reimbursement and indemnification obligations of Parent contained in Section 6.6 and Section 6.14.

(e) The Company further agrees that (x) the seeking of the remedies provided for in Section 9.5(c) by Parent or Merger Sub shall not in any respect constitute a waiver by either Parent or Merger Sub of its right to seek any other form of relief that may be available to either of them under this Agreement, including under Section 8.5, in the event that this Agreement has been terminated or in the event that the remedies provided for in Section 9.5(c) are not available or otherwise are not granted, and (y) nothing set forth in this Agreement shall require Parent or Merger Sub to institute any proceeding for (or limit Parent's or Merger Sub's

right to institute any proceeding for) specific performance under Section 9.5(c) prior or as a condition to exercising any termination right under Article VIII (and pursuing damages after such termination), nor shall the commencement of any Legal Proceeding pursuant to Section 9.5(c) or anything set forth in this Section 9.5(e) restrict or limit Parent's or Merger Sub's right to terminate this Agreement in accordance with the terms of Article VIII or pursue any other remedies under this Agreement that may be available then or thereafter.

9.6. Notices. Any notice, request, instruction or other document to be given hereunder by any party to the others shall be in writing and delivered personally or sent by registered or certified mail, postage prepaid, by facsimile or by overnight courier:

If to Parent or Merger Sub:

Denali Parent Inc.
c/o The Blackstone Group
345 Park Avenue
New York, NY 10154
Attention: David I. Foley
fax: (646) 253-8921

with a copy to

Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, NY 10017-3954
Attention: Wilson S. Neely
David M. Lieberman
fax: (212) 455-2502

If to the Company:

Dynegy Inc.
1000 Louisiana, Suite 5800
Houston, TX 77002
Attention: General Counsel
fax: (713) (356-2185

with a copy to

Sullivan & Cromwell LLP
125 Broad Street

New York, NY 10004
Attention: Joseph B. Frumkin
Audra D. Cohen
fax: (212) 558-3588

or to such other persons or addresses as may be designated in writing by the party to receive such notice as provided above. Any notice, request, instruction or other document given as provided above shall be deemed given to the receiving party upon actual receipt, if delivered personally; three (3) business days after deposit in the mail, if sent by registered or certified mail; upon confirmation of successful transmission if sent by facsimile and received by 5:00 p.m. New York time on a business day (otherwise the next business day) (provided that if given by facsimile such notice, request, instruction or other document shall be followed up within one (1) business day by dispatch pursuant to one of the other methods described herein); or on the next business day after deposit with an overnight courier, if sent by an overnight courier.

9.7. Entire Agreement. This Agreement (including any schedules and exhibits hereto), the Company Disclosure Letter, the Parent Disclosure Letter, the Confidentiality Agreement, dated June 28, 2010, between Blackstone Management Partners L.L.C. and the Company (the "*Confidentiality Agreement*"), the Guaranty and the third party beneficiary rights of the Company under the NRG PSA and the Equity Financing Commitment constitute the entire agreement, and supersede all other prior agreements, understandings, representations and warranties both written and oral, among the parties, with respect to the subject matter hereof. EACH PARTY HERETO AGREES THAT, EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS AGREEMENT OR IN THE GUARANTY, NEITHER PARENT AND MERGER SUB NOR THE COMPANY MAKES ANY OTHER REPRESENTATIONS OR WARRANTIES, AND EACH HEREBY DISCLAIMS ANY OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, OR AS TO THE ACCURACY OR COMPLETENESS OF ANY OTHER INFORMATION, MADE BY, OR MADE AVAILABLE BY, ITSELF OR ANY OF ITS REPRESENTATIVES, WITH RESPECT TO, OR IN CONNECTION WITH, THE NEGOTIATION, EXECUTION OR DELIVERY OF THIS AGREEMENT, THE NRG PSA, THE GUARANTY OR THE TRANSACTIONS CONTEMPLATED HEREBY OR BY THE NRG PSA, NOTWITHSTANDING THE DELIVERY OR DISCLOSURE TO THE OTHER OR THE OTHER'S REPRESENTATIVES OF ANY DOCUMENTATION OR OTHER INFORMATION WITH RESPECT TO ANY ONE OR MORE OF THE FOREGOING.

9.8. No Third Party Beneficiaries. Except (i) as provided in Section 6.11 (Indemnification; Directors' and Officers' Insurance), (ii) only with respect to stockholders and only after the Effective Time, for the provisions set forth in Article IV, (iii) as provided in Section 8.5(e), each of the Persons whose liability is limited in accordance with Section 8.5(e) to the extent provided therein and (iv) for NRG, who is an intended third party beneficiary of, and shall have the right only to specifically enforce (and not any right to obtain monetary or other damages of any kind) the rights and obligations of Parent, Merger Sub and the Company, in each

case, to the extent such rights and obligations directly relate to the "Companies", the "Company Subsidiaries", the "Interests", the "Business", the "Assumed Liabilities" and the "Specified Assets", as such terms are defined in the NRG PSA (including, for the avoidance of doubt, the access provisions in Section 6.6 herein) and to the extent permitted by applicable Laws, Parent and the Company hereby agree that their respective representations, warranties and covenants set forth herein are solely for the benefit of the other party hereto, in accordance with and subject to the terms of this Agreement, and this Agreement is not intended to, and does not, confer upon any Person other than the parties hereto any rights or remedies hereunder, including the right to rely upon the representations and warranties set forth herein. The parties hereto further agree that the rights of third party beneficiaries under Section 6.11 shall not arise unless and until the Effective Time occurs. The representations and warranties in this Agreement are the product of negotiations among the parties hereto and are for the sole benefit of the parties hereto. Any inaccuracies in such representations and warranties are subject to waiver by the parties hereto in accordance with Section 9.3 without notice or liability to any other Person. In some instances, the representations and warranties in this Agreement may represent an allocation among the parties hereto of risks associated with particular matters regardless of the knowledge of any of the parties hereto. Consequently, Persons other than the parties hereto may not rely upon the representations and warranties in this Agreement as characterizations of actual facts or circumstances as of the date of this Agreement or as of any other date.

9.9. Obligations of Parent and of the Company. Whenever this Agreement requires a Subsidiary of Parent to take any action, such requirement shall be deemed to include an undertaking on the part of Parent to cause such Subsidiary to take such action. Whenever this Agreement requires a Subsidiary of the Company to take any action, such requirement shall be deemed to include an undertaking on the part of the Company to cause such Subsidiary to take such action and, after the Effective Time, on the part of the Surviving Corporation to cause such Subsidiary to take such action.

9.10. Transfer Taxes. All transfer, documentary, sales, use, stamp, registration and other similar Taxes and fees (including penalties and interest) incurred in connection with the Merger shall be paid by the Surviving Corporation when due.

9.11. Definitions. Each of the terms set forth in Annex A is defined in the Section of this Agreement set forth opposite such term.

9.12. Severability. The provisions of this Agreement shall be deemed severable and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. If any provision of this Agreement, or the application thereof to any Person or any circumstance, is invalid or unenforceable, (a) a suitable and equitable provision shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision and (b) the remainder of this Agreement and the application of such provision to other Persons or circumstances shall not be affected by such invalidity or unenforceability, nor shall such

invalidity or unenforceability affect the validity or enforceability of such provision, or the application thereof, in any other jurisdiction.

9.13. Interpretation; Construction. (a) The table of contents and headings herein are for convenience of reference only, do not constitute part of this Agreement and shall not be deemed to limit or otherwise affect any of the provisions hereof. Where a reference in this Agreement is made to a Section or Exhibit, such reference shall be to a Section of or Exhibit to this Agreement unless otherwise indicated. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation." All pronouns and all variations thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the Person may require. Where a reference in this Agreement is made to any agreement (including this Agreement), contract, statute or regulation, such references are to, except as context may otherwise require, the agreement, contract, statute or regulation as amended, modified, supplemented, restated or replaced from time to time (in the case of an agreement or contract, to the extent permitted by the terms thereof); and to any section of any statute or regulation including any successor to the section and, in the case of any statute, any rules or regulations promulgated thereunder. All references to "dollars" or "$" in this Agreement are to United States dollars.

(b) The parties have participated jointly in negotiating and drafting this Agreement. In the event that an ambiguity or a question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement.

(c) Each party hereto has or may have set forth information in its respective Disclosure Letter in a section thereof that corresponds to the section of this Agreement to which it relates. The fact that any item of information is disclosed in a Disclosure Letter to this Agreement shall not be construed to mean that such information is required to be disclosed by this Agreement.

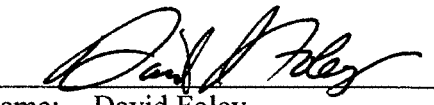
9.14. Assignment. This Agreement shall not be assignable by operation of law or otherwise without the written consent of the other parties hereto; provided, however, that prior to the mailing of the Proxy Statement to the Company's stockholders, Parent may designate, by written notice to the Company, another wholly owned direct or indirect Subsidiary to be a Constituent Corporation in lieu of Merger Sub, in which event all references herein to Merger Sub shall be deemed references to such other Subsidiary, except that all representations and warranties made herein with respect to Merger Sub as of the date of this Agreement shall be deemed representations and warranties made with respect to such other Subsidiary as of the date of such designation; provided that any such designation shall not impede or delay the consummation of the transactions contemplated by this Agreement or otherwise materially impede the rights of the stockholders of the Company under this Agreement. Any purported assignment in violation of this Agreement is void.

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the duly authorized officers of the parties hereto as of the date first written above.

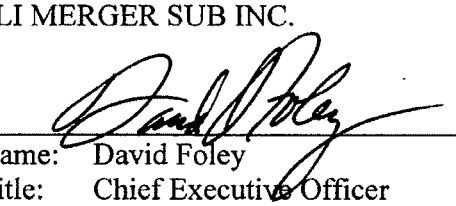
DYNEGY INC.

By: _____
Name: Keith C. Nichols
Title: EVP & Chief Financial Officer

DENALI PARENT INC.

By: 
Name: David Foley
Title: Chief Executive Officer

DENALI MERGER SUB INC.

By: 
Name: David Foley
Title: Chief Executive Officer

ANNEX A

DEFINED TERMS

Terms	Section
2011 Bonus Payment Date	6.9(c)
Acquisition Proposal	6.2(d)(i)
Affected Employees	6.9(a)
Affiliate	5.1(a)(i)
Affiliated Shares	4.1(a)
Agreement	Preamble
Alternative Acquisition Agreement	6.2(e)(ii)
Antitrust Law	6.5(d)(i)
Bankruptcy and Equity Exception	5.1(c)(i)
business day	1.2
Bylaws	2.2
Certificate	4.1(a)
Change of Recommendation	6.2(e)(ii)
Charter	2.1
Chosen Courts	9.5(a)
Closing	1.2
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Commodity Risk Policy	5.1(r)(i)
Company	Preamble
Company Disclosure Letter	5.1
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EXHIBIT A

NRG PSA

EXHIBIT B

FORM OF CERTIFICATE OF INCORPORATION OF THE SURVIVING CORPORATION