

# **BGS-CIEP SUPPLIER MASTER AGREEMENT**

## TABLE OF CONTENTS

<b>ARTICLE 1: DEFINITIONS.....</b>	<b>3</b>
<b>ARTICLE 2: GENERAL TERMS AND CONDITIONS.....</b>	<b>11</b>
2.1 Capacity In Which Company Is Entering Into This Agreement .....	11
2.2 Parties' Obligations .....	12
2.3 PJM Services .....	16
2.4 Communications and Data Exchange.....	16
2.5 Record Retention .....	17
2.6 Verification.....	17
<b>ARTICLE 3: REPRESENTATIONS AND WARRANTIES.....</b>	<b>18</b>
3.1 Supplier's Representations and Warranties .....	18
3.2 Company's Representations and Warranties .....	20
3.3 Survival of Obligations.....	22
<b>ARTICLE 4: COMMENCEMENT AND TERMINATION OF AGREEMENT .....</b>	<b>22</b>
4.1 Commencement and Termination .....	22
4.2 Termination of Right to Supply BGS-CIEP .....	22
4.3 Survival of Obligations.....	22
4.4 Mutual Termination.....	23
<b>ARTICLE 5: BREACH AND DEFAULT .....</b>	<b>24</b>
5.1 Events of Default.....	24
5.2 Rights Upon Default.....	26
5.3 Damages Resulting From an Event Of Default.....	27
5.4 Declaration of an Early Termination Date and Calculation of Settlement Amount and Termination Payment .....	30
5.5 Step-up Provision .....	33
5.6 Setoff of Payment Obligations of the Non-Defaulting Party .....	34
5.7 Preservation of Rights of Non-Defaulting Party .....	35
<b>ARTICLE 6: CREDITWORTHINESS .....</b>	<b>35</b>
6.1 Applicability .....	35
6.2 Creditworthiness Determination.....	35
6.3 Credit Exposure/ Security Calculation .....	41
6.4 Security Instruments .....	42
6.5 Maintenance of Creditworthiness.....	43
6.6 Calling On Security .....	44
6.7 Interest on Cash Held by Company.....	44
6.8 Confidentiality.....	45
6.9 No Endorsement of BGS-CIEP Supplier .....	45
6.10 Multiple BGS Supply Agreements.....	45
<b>ARTICLE 7: PROCEDURES FOR ENERGY SCHEDULING, CAPACITY RESOURCE SUBMISSION AND TRANSMISSION PROCUREMENT .....</b>	<b>46</b>
7.1 Load Obligations .....	46
7.2 Data Transmission .....	47
7.3 Energy Scheduling.....	47
<b>ARTICLE 8: THE ENERGY SETTLEMENT/RECONCILIATION PROCESS .....</b>	<b>48</b>
8.1 Energy Settlement By PJM .....	48

8.2	Energy Settlement by the Company .....	48
<b>ARTICLE 9: BILLING AND PAYMENT .....</b>		<b>49</b>
9.1	The Company Payment of Obligations to the BGS-CIEP Supplier .....	49
9.2	Billing for BGS-CIEP Supplier's Obligations to Other Parties .....	53
9.3	The BGS-CIEP Supplier Payment of Obligations to the Company .....	54
<b>ARTICLE 10: SYSTEM OPERATION .....</b>		<b>55</b>
10.1	Disconnection and Curtailment By the Company .....	55
10.2	Inadvertent Loss of Service To BGS-CIEP Customers.....	55
10.3	Good Faith Efforts .....	56
10.4	PJM Requirements.....	56
10.5	Compliance With Governmental Directives .....	57
<b>ARTICLE 11: DISPUTE RESOLUTION .....</b>		<b>57</b>
11.1	Informal Resolution of Disputes .....	57
11.2	Recourse to Agencies or Courts of Competent Jurisdiction.....	57
<b>ARTICLE 12: REGULATORY AUTHORIZATIONS AND JURISDICTION.....</b>		<b>58</b>
12.1	Compliance With Applicable Legal Authorities .....	58
12.2	FERC Jurisdictional Matters .....	58
<b>ARTICLE 13: LIMITATION OF LIABILITY .....</b>		<b>59</b>
13.1	Limitations on Liability .....	59
13.2	Risk of Loss .....	60
<b>ARTICLE 14: INDEMNIFICATION.....</b>		<b>60</b>
14.1	Indemnification.....	60
14.2	Survives Agreement .....	62
<b>ARTICLE 15: MISCELLANEOUS PROVISIONS .....</b>		<b>62</b>
15.1	Notices.....	62
15.2	No Prejudice of Rights .....	63
15.3	Assignment .....	63
15.4	Governing Law and Venue.....	65
15.5	Headings .....	65
15.6	Third Party Beneficiaries.....	65
15.7	General Miscellaneous Provisions .....	65
15.8	Taxes.....	66
15.9	Changes in Transmission Rates for Firm Transmission Service.....	68
15.10	Use of the Word "Including" .....	72
15.11	Federal Acquisition Regulation.....	73
15.12	Binding Terms .....	74
15.13	Amendment .....	74
15.14	Counterparts .....	74
<b>Sample BGS-CIEP Letter of Credit .....</b>		<b>77</b>
<b>Annex 1 to Letter of Credit.....</b>		<b>83</b>
<b>Annex 2 to Letter of Credit.....</b>		<b>84</b>
<b>Annex 3 to Letter of Credit.....</b>		<b>85</b>
<b>Annex 4 to Letter of Credit.....</b>		<b>86</b>
<b>Annex 5 to Letter of Credit.....</b>		<b>87</b>
<b>Annex 6 to Letter of Credit.....</b>		<b>88</b>
<b>GUARANTY .....</b>		<b>90</b>

## **BGS-CIEP SUPPLIER MASTER AGREEMENT**

**THIS BGS-CIEP SUPPLIER MASTER AGREEMENT**, made and entered into this \_\_\_ day of February\_\_\_\_, 2011, by and between \_\_\_\_\_ (the “Company”), a corporation and a public utility organized and existing under the laws of the State of New Jersey, on its own behalf and as agent as more fully set forth below, and each of the suppliers listed on Appendix A hereto, severally and not jointly (each a “BGS-CIEP Supplier” and, collectively, the “BGS-CIEP Suppliers”), the Company and each BGS-CIEP Supplier hereinafter sometimes referred to collectively as the “Parties”, or individually as a “Party”,

### **WITNESSETH:**

**WHEREAS**, the Company is a public utility engaged, inter alia, in the transmission and distribution of electric Energy within its Service Territory located in the State of New Jersey; and

**WHEREAS**, pursuant to Section 9(c) of the Electric Discount and Energy Competition Act, N.J.S.A. 48:3-49 et. seq. (“EDECA”), the New Jersey Board of Public Utilities (“BPU”) has been authorized to make available to any power supplier on a competitive basis the opportunity to provide Basic Generation Service (“BGS”); and

**WHEREAS**, in its Decision and Order dated\_\_\_\_, in Docket No. ER10040287 (the “\_\_\_\_ Order”), the BPU found that for periods after May 31, 2011, it would serve the public interest for the Company to continue to secure BGS Supply through a bid process; and

**WHEREAS**, in the \_\_\_\_\_ Order, the BPU approved an auction design for bidding out two Basic Generation Service products, one a fixed priced product termed Basic Generation Service – Fixed Pricing (“BGS-FP”), and one a variable hourly priced product termed Basic Generation Service – Commercial and Industrial Energy Pricing (“BGS-CIEP”); and

**WHEREAS**, on \_\_\_\_\_, 2011 through \_\_\_\_\_, 2011, a successful auction for bidding out BGS-CIEP was held; and,

**WHEREAS**, each BGS-CIEP Supplier was one of the winning bidders in the auction for the provision of BGS-CIEP; and

**WHEREAS**, the \_\_\_\_\_ Order authorized the Company to contract with winning bidders, on behalf of the consumers of electricity located on the Company’s distribution system, for the provision of the share of BGS-CIEP Load covered by the winning bid; and

**WHEREAS**, pursuant to the auction procedures approved in the \_\_\_\_\_ Order, the Company and each of the BGS-CIEP Suppliers desire to enter into this BPU-approved BGS-CIEP Supplier Master Agreement (“Agreement”) setting forth their respective obligations concerning the provision of BGS-CIEP;

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

## **ARTICLE 1: DEFINITIONS**

Any capitalized or abbreviated term not elsewhere defined in this Agreement shall have the definition set forth in this Article 1.

Ancillary Services – shall have the meaning ascribed thereto in the PJM Tariff.

Ancillary Service Charge – the price for Ancillary Services in dollars per MWh equal to the amount shown in the Company Specific Addendum approved by the BPU on \_\_\_\_\_.

Applicable Legal Authorities – generally, those federal and New Jersey statutes and administrative rules and regulations that govern the electric utility industry in New Jersey.

Auction Website – [www.bgs-auction.com](http://www.bgs-auction.com)

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

Basic Generation Service or “BGS” – electric generation service that is provided at retail pursuant to the Applicable Legal Authorities under the Company’s retail electric tariffs and under any other agreements or arrangements between the Company and Customers, to any Customer that is not being served by a Third Party Supplier.

Basic Generation Service – Commercial and Industrial Energy Pricing or “BGS-CIEP” – electric generation service that is provided pursuant to the Applicable Legal Authorities at prices that include an energy charge component that varies on an hourly basis in accordance with changes in the actual real-time PJM load weighted average total Locational Marginal Price (“LMP”) (including energy, congestion and marginal losses) for the Company’s Transmission Zone under the Company’s BGS-CIEP Tariffs.

BGS-CIEP Price – the price resulting from the Company’s \_\_\_ 2011 BGS-CIEP auction, equal to \$\_\_\_\_\_ per MW-day, and paid to BGS-CIEP Suppliers based on the daily BGS-CIEP Capacity obligation, as specified in Article 9 of this Agreement.

BGS-CIEP Customer – a Customer who is being served under any one of the Company’s BGS-CIEP Tariffs and is not taking electric generation service from a Third Party Supplier.

BGS-CIEP-Eligible Customer – any Customer who, if that Customer was taking BGS, would be served under the Company’s BGS-CIEP Tariffs, whether or not such Customer receives BGS-CIEP or receives electric generation service from a Third Party Supplier.

BGS-CIEP Load – the full electricity requirement (including without limitation, Energy, Capacity, Ancillary Services and Firm Transmission Service) of BGS-CIEP Customers.

BGS-CIEP Peak Load Share – is the portion of load attributable to those Customers on BGS-CIEP of the PJM-determined EDC zonal peak load.

BGS-CIEP Supplier – an entity that has been selected through the BGS-CIEP solicitation and has accepted the obligations and associated rights to provide BGS-CIEP Supply to retail customers within the State of New Jersey in accordance with the Applicable Legal Authorities and has entered into this Agreement with the Company as a Party. Each BGS-CIEP Supplier under this Agreement must be an LSE and shall have the obligations of an LSE under the PJM Agreements. The term “supplier” also refers generically to any entity authorized by the BPU to provide BGS Supply, as opposed to a specific signatory to this Agreement, where the context makes it appropriate to do so. The distinction can be derived from the context, but is also generally reflected in the use of lower case type ("supplier") to reflect the generic usage, and an initial capital ("Supplier") to reflect a Party to this Agreement.

BGS-CIEP Supplier Responsibility Share – for each BGS-CIEP Supplier, the fixed percentage share of the Company’s BGS-CIEP Load for which the BGS-CIEP Supplier is responsible as set forth in Appendix A. The stated percentage share was determined by multiplying the number of Tranches won by the BGS-CIEP Supplier in the auction times the BGS-CIEP Tranche size percentage share.

BGS-CIEP Supply – unbundled Energy, Capacity, Ancillary Services and Firm Transmission Service, including all losses and/or congestion costs associated with the provision of such services, and such other services or products that a BGS-CIEP Supplier may be required, by PJM or other governmental body having jurisdiction, to provide in order to meet the BGS-CIEP Supplier Responsibility Share under this Agreement.

BGS-CIEP Tariffs – Rate Schedules \_\_\_\_\_ of the Company.

Basic Generation Service – Fixed Pricing or “BGS-FP” – electric generation service that is provided at retail pursuant to the Applicable Legal Authorities under the Company’s BGS-FP Tariffs.

BGS-FP Customer – a Customer who is being served under any one of the Company’s BGS-FP Tariffs.

BGS-FP Load – the full electricity requirement (including, without limitation, Energy, Capacity, Ancillary Services and Firm Transmission Service) of BGS-FP Customers.

BGS-FP Supplier – an entity that has been selected through the BGS-FP solicitation and has accepted the obligations and associated rights to provide BGS-FP Supply to retail customers within the State of New Jersey in accordance with the Applicable Legal

Authorities and has entered into a BGS-FP Supplier Master Agreement with the Company as a Party. Each BGS-FP Supplier must be an LSE and shall have the obligations of an LSE under the PJM Agreements.

BGS-FP Supply – unbundled Energy, Capacity, Ancillary Services and Firm Transmission Service, including all losses and/or congestion costs associated with the provision of such services, and such other services or products that a BGS-FP Supplier may be required, by PJM or other governmental body having jurisdiction, to provide in order to meet the BGS-FP Supplier Responsibility Share of BGS-FP Load.

BGS-FP Tariffs – Rate Schedules \_\_\_\_\_ of the Company.

Basic Generation Service Supply or “BGS Supply” – either BGS-FP Supply or BGS-CIEP Supply.

Billing Month – each calendar month during the term of this Agreement.

BPU or “Board” – the New Jersey Board of Public Utilities or its successor.

Business Day – any day on which the Company’s and PJM’s corporate offices are open for business and commercial banks are not authorized or required to close in New York, New York.

Capacity – shall mean “Unforced Capacity” as set forth in the PJM RAA or in successor, superseding or amended versions of the PJM RAA that may take effect from time to time over the term of this Agreement, and any successor measurement of generating capacity as may be employed in PJM (whether set forth in the PJM RAA or elsewhere) for the purpose of stating the capacity obligation of an LSE.

Charge – any fee, charge or other amount that is billable by the Company to the BGS-CIEP Supplier under this Agreement.

CIEP Standby Fee – the price, equal to \$0.00015 per kWh, and paid to compensate the BGS-CIEP Supplier for being available to provide BGS-CIEP Supply to the BGS-CIEP Supplier Responsibility Share under this Agreement.

Competitive Electricity Supply – unbundled Energy, Capacity and Firm Transmission Service, including all losses and/or congestion associated with the provision of the foregoing services, and such other services or products that are provided by a Third Party Supplier to fulfill its obligations to serve customer load. The provision of Competitive Electricity Supply by Third Party Suppliers entails fulfillment of all obligations associated with service to Customers, including the obligations of a Load Serving Entity under the PJM Tariff, procedures, agreements and manuals.

Costs – means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred by such Party either

in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace this Agreement; and all reasonable attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with the termination of this Agreement.

Customer – a Company customer as defined in the Company's retail tariffs, eligible to receive Competitive Electricity Supply from a Third Party Supplier or BGS-FP or BGS-CIEP from a BGS-FP Supplier or a BGS-CIEP Supplier, respectively, in accordance with the Applicable Legal Authorities.

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

Early Termination – termination of this Agreement prior to the end of the term due to the occurrence of an Event of Default as specified in Section 5.1 of this Agreement and the declaration of Early Termination.

Early Termination Date – the date upon which an Early Termination becomes effective as specified in Section 5.2 of this Agreement.

Effective Date - the date first written above.

Electric Distribution Company or "EDC" – the applicable of the four New Jersey Electric Distribution Companies.

Emergency – (i) an abnormal system condition requiring manual or automatic action to maintain system frequency, or to prevent loss of firm load, equipment damage, or tripping of system elements that could adversely affect the reliability of an electric system or the safety of persons or property; or (ii) a fuel shortage requiring departure from normal operating procedures; or (iii) a condition that requires implementation of Emergency Operations Procedures as defined in the PJM OATT or PJM manuals; or (iv) any other condition or situation that the Company or PJM deems imminently likely to endanger life or property or to affect or impair the Company's electrical system or the electrical system(s) of other(s) to which the Company's electrical system is directly or indirectly connected (a "Connected Entity"). Such a condition or situation may include, but shall not be limited to, potential overloading of the Company's transmission and/or distribution circuits, PJM minimum generation ("light load") conditions, or unusual operating conditions on either the Company's or a Connected Entity's electrical system, or conditions such that the Company is unable to accept Energy from the BGS-CIEP Supplier without jeopardizing the Company's electrical system or a Connected Entity's electrical system.

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

Energy Portfolio Standards – (i) those standards imposed by the BPU pursuant to N.J.S.A. 48:3-87(d) requiring that specified levels of electric power sold for the provision of Basic Generation Service shall be produced from renewable energy resources as set forth in the Renewable Energy Portfolio Standards, N.J.A.C. 14:8-2 et seq., as modified or superseded, or in such other regulations of the BPU as may be adopted or amended from time to time, and (ii) any standards imposed under any federal, state or local legislation or by any federal, interstate, state or local court, tribunal or governmental agency or authority or regulatory body that have the effect of requiring that specified levels of electric power sold for the provision of Basic Generation Service shall be produced from, or be otherwise attributable to, renewable energy resources or shall be produced from, or be otherwise attributable to, resources emitting only specified amounts of carbon or other substances, as the same may be adopted or amended from time to time.

Event of Default – a breach of obligations under this Agreement as set forth in Section 5.1 of this Agreement.

FERC – the Federal Energy Regulatory Commission.

Final FERC Order – a final order issued by FERC which is no longer subject (either actually or potentially) to rehearing or judicial review and is not the subject of proceedings at FERC on remand from any court.

Final Hourly Energy Allocation or “FHEA” – is a quantity in kWh which, for any hour, is the PHEA, adjusted for any billing or metering errors found subsequent to the calculation of PHEA, of which PJM is notified within 60 days.

Final Monthly Energy Allocation or “FMEA” – is a quantity in kWh which, for any Billing Month, is the PMEA adjusted for any billing or metering data received subsequent to the calculation of PMEA of which PJM is notified within 60 days.

Firm Transmission Service – shall mean “Network Integration Transmission Service” under the PJM OATT in effect as of the Effective Date of this Agreement, or in successor, superseding or amended versions of the PJM OATT that may take effect from time to time over the term of this Agreement. In the event the PJM OATT is modified such that “Network Integration Transmission Service” is no longer offered, Firm Transmission Service shall mean the type of transmission service offered under the PJM OATT that is accorded the highest level of priority for scheduling and curtailment purposes.

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

Guaranty – means a guaranty, hypothecation agreement, margins or security agreement or any other document (whether in the form attached to this BGS-CIEP Supplier Master Agreement or other form approved by the Company).

Guarantor – any party who has the authority and may agree to guarantee a BGS-CIEP Supplier’s financial obligations under this Agreement, recognizing that such a party will be obligated to meet the Company’s creditworthiness requirements for BGS-CIEP Suppliers.

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

Kilowatt or “kW” – unit of measurement of useful power equivalent to 1000 watts.

Kilowatt-hour or “kWh” – one kilowatt of electric power used over a period of one hour.

Load Serving Entity or "LSE" – an entity that has been granted the authority or has an obligation pursuant to state or local law, regulation or franchise to sell electricity to retail customers located within the PJM Control Area as that term is defined in the PJM RAA or in successor, superseding or amended versions of the PJM RAA that may take effect from time to time over the term of this Agreement.

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

Margin – the amount by which the Total Exposure Amount exceeds a BGS-CIEP Supplier’s or Guarantor’s credit limit as defined in Section 6.2 of this Agreement.

MAAC – the Mid-Atlantic Area Council of NERC or its successor.

Maximum Credit Limit - the lesser of the applicable % of TNW and the applicable credit limit cap as specified in Section 6.2 of this Agreement.

Megawatt or MW – one thousand kilowatts.

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

Merger Event – when a Party consolidates or amalgamates with, or merges into or with, or transfers all or substantially all of its assets to another entity and either (i) the resulting entity fails to assume all of the obligations of such Party hereunder or (ii) the benefits of any credit support provided pursuant to Article 6 of this Agreement fail to extend to the performance by such resulting, surviving or transferee entity of the Party’s obligations hereunder, and the resulting entity or its guarantor fails to meet the creditworthiness requirements of this Agreement. Transfer of all or substantially all of the Company’s generation assets does not qualify as a Merger Event.

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

Minimum Rating – a minimum senior unsecured debt rating as defined in Section 6.2(a)(i) of this Agreement.

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

PJM – the Pennsylvania-New Jersey-Maryland Interconnection L.L.C. or its successor.

PJM Agreements – shall have the meaning ascribed in Section 2.3 of this Agreement.

PJM Control Area – that certain Control Area encompassing systems in Pennsylvania, New Jersey, Maryland, Delaware, Virginia and the District of Columbia, as may be modified from time to time, and which is recognized by the North American Electric Reliability Council as the "PJM Control Area".

PJM OA – the PJM Operating Agreement or its successor.

PJM OATT – the prevailing PJM Open Access Transmission Tariff on file with the FERC, which sets forth the rates, terms and conditions of transmission service over transmission facilities located in the PJM Control Area, as is in effect on the Effective Date and as modified from time to time.

PJM OI – the PJM Office of Interconnection, the system operator for the PJM Control Area.

PJM RAA – the PJM Reliability Assurance Agreement or its successor.

Preliminary Hourly Energy Allocation or "PHEA" – is a quantity in kWh which, for any hour, is the preliminary calculation of the product of the BGS-CIEP Supplier's BGS-CIEP Supplier Responsibility Share and the Energy requirements portion of the BGS-CIEP Load for that hour.

Preliminary Monthly Energy Allocation or "PMEA" – is a quantity in kWh which, for any Billing Month, is the preliminary calculation of the product of the BGS-CIEP Supplier's BGS-CIEP Supplier Responsibility Share and the Energy requirements portion of the BGS-CIEP Load.

PHEA/FHEA Adjustment Amount – for any Billing Month, the monetary amount due to the BGS-CIEP Supplier or the Company, as the case may be, in order to reconcile any difference between the PHEA used for the purpose of calculating estimated payments made to the BGS-CIEP Supplier for a given hour and the FHEA used for calculating the

final payments due to the BGS-CIEP Supplier for such hour as more fully described in Article 9 hereof.

PMEA/FMEA Adjustment Amount – for any Billing Month, the monetary amount due to the BGS-CIEP Supplier or the Company, as the case may be, in order to reconcile any difference between the PMEA used for the purpose of calculating estimated payments made to the BGS-CIEP Supplier for a given month and the FMEA used for calculating the final payments due to the BGS-CIEP Supplier for such month as more fully described in Article 9 hereof.

Service Territory - the geographic areas of the State of New Jersey in which the Company serves electric Customers.

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

Statement – a monthly report prepared by the Company for the BGS-CIEP Supplier indicating the amount due to the BGS-CIEP Supplier by the Company in compensation for kWhs supplied to BGS-CIEP Customers by the BGS-CIEP Supplier during the current Billing Month, in accordance with the BGS-CIEP Supplier’s obligations under this Agreement.

Supply Day – any calendar day during the term of this Agreement on which the BGS-CIEP Supplier is providing, or is obligated by this Agreement to provide, BGS-CIEP Supply to the Company’s BGS-CIEP Customers.

Tangible Net Worth or “TNW” – the total assets less intangible assets and total liabilities. Intangible assets include benefits such as goodwill, patents, copyrights and trademarks.

Termination Payment – shall have the meaning ascribed in Section 5.4 of this Agreement.

Total Exposure Amount – an amount calculated daily for each BGS-CIEP Supplier reflecting the total credit exposure to the Company and consisting of the sum of (i) amount designated as the credit exposure under this Agreement, (ii) any amount(s) designated as the “Mark-to-Market Exposure Amount” arising under any other BGS Supply agreements providing for “BGS-FP Supply” or similar BGS service; and (iii) the amount designated as the “credit exposure” under any other BGS Supply agreements providing for “BGS-CIEP Supply” or similar BGS service; provided that in the event the amount calculated for any day is a negative number, it shall be deemed to be zero for such day.

Third Party Supplier or “TPS” – a person or entity that is duly licensed by the Board to offer and to assume the contractual and legal responsibility to provide electric generation service to retail customers located in the state of New Jersey pursuant to retail open access programs approved by the Board.

Tranche – a fixed percentage share of the BGS-CIEP Load of the Company as determined for the purposes of the auction of the Company’s BGS-CIEP Load. The fixed percentage is the Tranche size for the Company.

Transmission Charge – A rate of \$\_\_\_\_\_ per MW-day based on the applicable OATT for Firm Transmission Service, and in effect on \_\_\_\_\_, 2011 subject to adjustment under Section 15.9 of this Agreement.

Wholesale Customer – an entity (e.g., a municipality or borough) authorized to take electric service for resale to retail customers under a wholesale contract filed with the FERC.

## **ARTICLE 2: GENERAL TERMS AND CONDITIONS**

### **2.1 Capacity In Which Company Is Entering Into This Agreement**

Each BGS-CIEP Supplier agrees and acknowledges that the Company is contracting for the provision of BGS-CIEP Supply from such Supplier as the agent for Customers receiving Basic Generation Service – Commercial and Industrial Energy Pricing on the Company’s distribution system pursuant to the authorizations provided to the Company under the \_\_\_\_\_ Order. The BGS-CIEP Supplier further agrees and acknowledges that the Company will administer and monitor the BGS-CIEP Supplier’s performance in providing BGS-CIEP Supply under this Agreement and that the Company shall be entitled, on behalf of Customers, to enforce BGS-CIEP Suppliers’ obligations related to the provision of BGS-CIEP Supply. The BGS-CIEP Supplier hereby permanently and irrevocably waives any claim that Company is not entitled to seek enforcement of this Agreement on behalf of Customers. However, no Customer or group of Customers may seek enforcement of this Agreement directly against the BGS-CIEP Supplier on their own behalf, including independently or by joining in any legal action by

the Company. This Agreement does not create, assign or grant to any Customer or group of Customers any rights in or claims to damages or remedies against the BGS-CIEP Supplier independent of or different from the rights expressly granted to the Company hereunder as agent for Customers.

The Company is also contracting on its own behalf and not as agent for Customers insofar as this Agreement requires the Company: (i) to pay the BGS-CIEP Suppliers as required under this Agreement; and (ii) to provide data or to otherwise cooperate with a BGS-CIEP Supplier in connection with such BGS-CIEP Supplier's provision of BGS-CIEP Supply. The Parties acknowledge that the Agreement is a forward contract and, accordingly, the Parties hereto are entitled to the protections of section 556 of the Bankruptcy Code. The Parties therefore agree that the Agreement may be terminated by either Party upon the commencement of a proceeding by the other Party under any chapter of the Bankruptcy Code in accordance with Section 5.2 of this Agreement.

## **2.2 Parties' Obligations**

### **(a) Obligations of BGS-CIEP Supplier**

Each BGS-CIEP Supplier hereby agrees severally, but not jointly, as follows:

(i) to provide sufficient quantities of BGS-CIEP Supply on an instantaneous basis at all times to meet the BGS-CIEP Supplier Responsibility Share; without limitation, the BGS-CIEP Supplier shall be obligated to procure those services provided by the PJM OI and to perform such functions as may be required by the PJM OI that are necessary for the delivery of BGS-CIEP Supply required hereunder;

(ii) to cooperate with the Company in any regulatory compliance efforts that may be required to maintain the ongoing legitimacy and enforceability of the terms of this Agreement and to fulfill any regulatory reporting requirement associated with the provision of BGS-CIEP Supply, before the BPU, FERC or any other regulatory body asserting jurisdiction, including meeting the reporting requirements of any Energy Portfolio Standards and the BPU's Environmental Information Disclosure Standards, N.J.A.C. 14:8-3 et seq.;

(iii) to become the Load Serving Entity with respect to the provision of BGS-CIEP Supply for the BGS-CIEP Supplier Responsibility Share and to comply with all requirements of a Load Serving Entity with respect to such BGS-CIEP Supplier Responsibility Share;

(iv) to pay to the Company the PMEA/FMEA Adjustment Amount for any Billing Month in which the PMEA exceeds the FMEA, and to pay to the Company the PHEA/FHEA Adjustment Amount for any Billing Month in which a PHEA/FHEA Adjustment Amount is due to the Company as more fully described in Article 9 of this Agreement;

(v) to pay to the Company every Billing Month an amount equal to the CIEP Standby Fee times the difference between all BGS-CIEP-Eligible Customers' preliminary monthly Energy usage and all BGS-CIEP-Eligible Customers' final Energy usage as measured at the BGS-CIEP-Eligible Customers' meters, multiplied by the BGS-CIEP Supplier Responsibility Share, if the preliminary monthly Energy usage exceeds final Energy usage for that Billing Month, as more fully described in Article 9 of this Agreement;

(vi) to pay to the Company a Charge of \$\_\_\_\_\_ per Tranche, which amount was announced prior to the auction for each Tranche comprising the BGS-CIEP Supplier's BGS-CIEP Supplier Responsibility Share, in order to reimburse the Company for the total costs of the BGS-CIEP auction and related costs associated with providing BGS-CIEP administration;

(vii) to satisfy the Energy Portfolio Standards with respect to its BGS-CIEP Supplier Responsibility Share; and

(viii) to comply in a timely manner with all obligations under this Agreement imposed upon a BGS-CIEP Supplier.

**(b) Obligations of the Company**

The Company hereby agrees as follows:

(i) to pay to each BGS-CIEP Supplier every Billing Month for the charges as more fully described in Article 9 of this Agreement and subject to the exceptions set forth therein;

(ii) to pay to each BGS-CIEP Supplier the PMEA/FMEA Adjustment Amount for any Billing Month in which the FMEA exceeds the PMEA, and the PHEA/FHEA Adjustment Amount for any Billing Month in which a PHEA/FHEA Adjustment Amount is due to the BGS-CIEP Supplier as more fully described in Article 9 of this Agreement and subject to the exceptions set forth therein;

(iii) to pay to each of the BGS-CIEP Suppliers every Billing Month an amount equal to the CIEP Standby Fee times the difference between all BGS-CIEP-Eligible Customers' preliminary monthly Energy usage and all BGS-CIEP-Eligible Customers' final Energy usage as measured at the BGS-CIEP-Eligible Customers'

meters, multiplied by the BGS-CIEP Supplier Responsibility Share, if the final estimated monthly Energy usage exceeds preliminary Energy usage for that Billing Month, as more fully described in Article 9 of this Agreement and subject to the exceptions set forth therein;

(iv) to provide to each BGS-CIEP Supplier its estimated aggregate load obligation for each Supply Day twenty (20) days prior to the Supply Day, and its final estimated load obligation for each Supply Day five (5) days prior to the Supply Day;

(v) to pay each BGS-CIEP Supplier, as approved by the BPU, a percentage share equal to the BGS-CIEP Supplier Responsibility Share of such BGS-CIEP Supplier, of all amounts received from a TPS as damages, penalties or forfeited security due to the failure of such TPS to provide adequate notice in conformance with applicable BPU requirements that a Customer previously served by the TPS is switching to BGS-CIEP service or forfeited as a result of an event of default by a TPS under the Company's Third Party Supplier Agreement; provided that the amounts paid to BGS-CIEP Suppliers shall be net of any amounts retained by the Company to offset costs or losses of the Company associated with the failure of the TPS to provide adequate notice or the occurrence of an event of default under the Company's Third Party Supplier Agreement; and further provided, that the Company shall have no obligation to seek the recovery of any damages, penalties or forfeited security due from a TPS through collection efforts, judicial procedures or otherwise; and

(vi) to comply in a timely manner with all obligations under this Agreement imposed upon the Company.

**(c) Obligation of the BGS-CIEP Customers**

The Company hereby agrees on behalf of the BGS-CIEP Customers to accept the delivery of BGS-CIEP Supply necessary to meet the BGS-CIEP Load.

**2.3 PJM Services**

Each BGS-CIEP Supplier shall make all necessary arrangements for the delivery of BGS-CIEP Supply through the PJM OI. The Company will advise the PJM OI of the magnitude and location of each BGS-CIEP Supplier's actual BGS-CIEP Supplier Responsibility Share, as required by the PJM OI, for the purpose of calculating such BGS-CIEP Supplier's appropriate Firm Transmission Service obligation, Capacity obligation, Energy obligation, or other requirements related to the provision of service under this Agreement by BGS-CIEP Suppliers arising under the PJM OATT, PJM RAA, PJM OA and any other applicable PJM agreement (collectively, the "PJM Agreements"). Each BGS-CIEP Supplier shall remain responsible to PJM for the performance of its LSE obligations associated with the provision of BGS-CIEP Supply under this Agreement until the effective date of the transfer of such LSE obligations.

**2.4 Communications and Data Exchange**

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

Electronic information exchange between each BGS-CIEP Supplier and the Company under this Agreement shall employ a BGS-CIEP Supplier identification

number, assigned by the Company, which shall be consistent with the BGS-CIEP Supplier's Dunn & Bradstreet Business number. Each BGS-CIEP Supplier must be equipped with the communications capabilities necessary to comply with the communications and data exchange standards that are set by and as may, from time to time, be modified by PJM, and must bear the costs of putting in place and successfully testing all required information technology systems that will enable it to send to and receive data from the Company and PJM and to satisfy its obligations under this Agreement, the PJM Agreements and all other relevant agreements.

## **2.5 Record Retention**

The Company shall retain, for a period of two (2) years following the expiration of the term of this Agreement, necessary records so as to permit BGS-CIEP Suppliers to confirm the validity of payments due to BGS-CIEP Suppliers hereunder; provided that if a BGS-CIEP Supplier has provided notice within two (2) years of the expiration of the term of this Agreement that it disputes the validity of any payments, the Company agrees that it shall retain all records related to such dispute until the dispute is finally resolved.

## **2.6 Verification**

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

## **ARTICLE 3: REPRESENTATIONS AND WARRANTIES**

### **3.1 Supplier's Representations and Warranties**

Each BGS-CIEP Supplier hereby represents, warrants and covenants to the Company as follows:

a) such BGS-CIEP Supplier is a corporation, partnership, limited liability company or other legal entity, as set forth in Appendix A hereto, duly organized, validly existing and in good standing under the laws of the State of New Jersey or, if another jurisdiction, under the laws of such jurisdiction and, in such case, is duly registered and authorized to do business and is in good standing in the State of New Jersey;

b) such BGS-CIEP Supplier has all requisite power and authority to execute and deliver this Agreement and to carry on the business to be conducted by it under this Agreement and to enter into and perform its obligations hereunder, including satisfaction of all applicable FERC requirements;

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

d) all necessary and appropriate action that is required on the BGS-CIEP Supplier's part to execute this Agreement has been completed;

e) this Agreement is the legal, valid and binding obligation of such BGS-CIEP Supplier, enforceable in accordance with its terms;

f) there are no actions at law, suits in equity, proceedings or claims pending or, to such BGS-CIEP Supplier's knowledge, threatened against the BGS-CIEP Supplier before any federal, state, foreign or local court, tribunal or governmental agency or authority that might materially delay, prevent or hinder the BGS-CIEP Supplier's performance of its obligations hereunder;

g) it has entered into this Agreement with a full understanding of the material terms and risks of the same, and it is capable of assuming those risks;

h) the BGS-CIEP Supplier is in good standing as an LSE in PJM, is a signatory to all applicable PJM Agreements, and is in compliance with, and will continue to comply with, all obligations, rules and regulations, as established and interpreted by the PJM OI, that are applicable to LSEs as defined by the PJM Agreements; provided that the BGS-CIEP Supplier shall not be obligated to become an LSE in PJM until the date it begins providing BGS-CIEP Supply to Customers;

i) it has made its trading and investment decisions (including regarding the suitability thereof) based upon its own judgment and any advice from such advisors as it has deemed necessary and not in reliance upon any view expressed by the Company; and

j) the BGS-CIEP Supplier will comply with any and all information and data transfer protocols that may be adopted by the Company or that are set by, and from time

to time modified by, the Board; provided that each BGS-CIEP Supplier shall be entitled to exercise its reserved right to challenge any such protocols in the appropriate forum.

### **3.2 Company's Representations and Warranties**

The Company hereby represents, warrants and covenants to the BGS-CIEP Suppliers as follows:

- a) the Company is an electric utility corporation duly organized, validly existing and in good standing under the laws of the State of New Jersey;
- b) the Company has all requisite power and authority to carry on the business to be conducted by it under this Agreement and to enter into and perform its obligations hereunder;
- c) the execution and delivery of this Agreement and the performance of the Company's obligations hereunder have been duly authorized by all necessary action on the part of the Company and do not and will not conflict with, constitute a breach of or default under, any of the terms, conditions, or provisions of the Company's certificate of incorporation or bylaws or any indenture, mortgage, other evidence of indebtedness, or other agreement or instrument or any statute or rule, regulation, order, judgment, or decree of any judicial or administrative body to which the Company is a party or by which the Company or any of its properties is bound or subject;
- d) all necessary and appropriate action that is required on the Company's part to execute this Agreement has been completed;
- e) this Agreement is the legal, valid and binding obligation of the Company, enforceable in accordance with its terms;

f) the ability of the Company to pay any and all amounts due and payable under this Agreement, or upon any potential breach thereof, is not conditioned upon any governmental or administrative appropriation by the Board, the State of New Jersey or any other governmental authority;

g) it has entered into this Agreement with a full understanding of the material terms and risks of the same, and it is capable of assuming those risks;

h) there are no actions at law, suits in equity, proceedings or claims pending or, to the Company's knowledge, threatened against the Company before any federal, state, foreign or local court, tribunal or governmental agency or authority that might materially delay, prevent or hinder the Company's performance of its obligations under this Agreement;

i) with respect to those rights and entitlements conferred on Customers under this Agreement as set forth in Section 2.1 of this Agreement, the Board has conferred on the Company all requisite power and authority to execute this Agreement on behalf of such Customers;

j) that the Company's performance under this Agreement is not contingent upon the performance of Customers or the ability of Customers to pay rates;

k) that the Company shall have full responsibility for metering, billing and delivery with respect to Customers and BGS-CIEP Suppliers shall have no responsibility with respect thereto; and

l) that the Company shall be responsible for distribution services and that the BGS-CIEP Supplier shall not be responsible for distribution charges.

### **3.3 Survival of Obligations**

All representations and warranties contained in this Article are of a continuing nature and shall be maintained during the term of this Agreement. If a Party learns that any of the representations, warranties or covenants in this Agreement are no longer true during the term of this Agreement, the Party shall immediately notify the other Party via facsimile, with a hard copy of the notice delivered by overnight mail.

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

### **4.1 Commencement and Termination**

The term of this Agreement shall commence upon the date first written above (the "Effective Date"); provided that the provision of BGS-CIEP Supply by BGS-CIEP Suppliers to BGS-CIEP Customers on the Company's system shall commence at 00:01 a.m. on June 1, 2011 and shall end at midnight on May 31, 2012, unless this Agreement is terminated earlier in accordance with the provisions hereof.

### **4.2 Termination of Right to Supply BGS-CIEP**

Each BGS-CIEP Supplier agrees that termination of this Agreement for reason of an Event of Default shall terminate any right of such BGS-CIEP Supplier to provide BGS-CIEP Supply to the BGS-CIEP Customers and nullify any of the entitlements to which such BGS-CIEP Supplier became entitled as a result of being selected as a winning bidder in the competitive solicitation for BGS-CIEP Supply.

### **4.3 Survival of Obligations**

Termination of this Agreement for any reason shall not relieve the Company or any BGS-CIEP Supplier of any obligation accrued or accruing prior to such termination. Applicable provisions of this Agreement shall continue in effect after termination to the

extent necessary to provide for final billings and adjustments including, without limitation, any obligation to pay amounts tracked and retained by the Company during the term of this Agreement for the benefit of the BGS-CIEP Suppliers under Section 15.9 of this Agreement.

#### **4.4 Mutual Termination**

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

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

## **ARTICLE 5: BREACH AND DEFAULT**

### **5.1 Events of Default**

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

- (i) is the subject of a voluntary bankruptcy, insolvency or similar proceeding;
- (ii) makes an assignment for the benefit of its creditors;
- (iii) applies for, seeks consent to, or acquiesces in the appointment of a receiver, custodian, trustee, liquidator or similar official to manage all or a substantial portion of its assets;
- (iv) is dissolved (other than pursuant to a consolidation, amalgamation or merger) or is the subject of a Merger Event;
- (v) has a secured party take possession of all or substantially all of its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets;

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

(vii) in the case of a BGS-CIEP Supplier, PJM terminates the BGS-CIEP Supplier's ability to make purchases from PJM markets or PJM holds the Company responsible for the provision of Energy, Capacity, Firm Transmission Service or Ancillary Services to meet the BGS-CIEP Supplier's BGS-CIEP Supplier Responsibility Share under this Agreement;

(viii) fails to comply with the creditworthiness requirements as set forth in Article 6 of this Agreement, within the time frames set forth in this Agreement;

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

(x) in the case of the Company, fails to implement any measures that it is directed to implement by the Board pursuant to the creditworthiness review procedure adopted by the Board in its Order dated December 4, 2002 (Docket No. EX01110754);

(xi) violates any federal, state or local code, regulation or statute applicable to the supply of Energy in a manner that materially, and adversely, affects the Party's performance under this Agreement, including by way of failure to continually satisfy all applicable FERC requirements, or, in the case of a BGS-CIEP Supplier, by way of failure to maintain any other governmental approvals required for participation in the New Jersey retail Energy market as a BGS-CIEP Supplier, default on any obligation or other failure to comply with PJM requirements under the PJM Agreements or fails to comply with the Energy Portfolio Standards with respect to the BGS Supplier's BGS-CIEP Supplier Responsibility Share;

(xii) is the subject of an involuntary bankruptcy or similar proceeding;

(xiii) subject to Section 5.3 (b) of this Agreement, in the case of the Company acting on behalf of the BGS-CIEP Customers, fails to accept BGS-CIEP Supply properly tendered by the BGS-CIEP Supplier under this Agreement;

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

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

(xvi) commits an act or makes an omission that constitutes an “Event of Default” under any other agreement(s) for the provision of BGS Supply between the Company and the BGS-CIEP Supplier;

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

## **5.2 Rights Upon Default**

Upon and during the continuation of an Event of Default, the Non-Defaulting Party shall be entitled to:

- (i) pursue any and all available legal and equitable remedies;

(ii) declare an Early Termination Date of this Agreement with respect to the obligations of the Defaulting Party without any liability or responsibility whatsoever except for obligations arising prior to the date of termination, by providing written notice to the Defaulting Party; provided, however, that this Agreement shall immediately terminate automatically and without notice in the case of any Event of Default in which a Supplier is the Defaulting Party occurring under subsections (i), (ii), (iii), (iv), (v), (vi), (vii) or (viii) of Section 5.1 of this Agreement and such date of automatic termination shall be deemed the Early Termination Date of this Agreement with respect to such Supplier; and

(iii) receive Damages in accordance with Section 5.3 of this Agreement.

The Non-Defaulting Party shall be entitled to elect or pursue one or more of the above remedies.

### **5.3 Damages Resulting From an Event Of Default**

(a) **BGS-CIEP Supplier's Failure to Supply BGS-CIEP Supply or Declaration of Early Termination By Company:** Damages resulting from (i) a BGS-CIEP Supplier's failure to (A) provide BGS-CIEP Supply in conformance with Section 2.2 hereof or (B) pay PJM for purchases of any products or services from PJM, or other failure to comply with PJM requirements, such that PJM holds the Company responsible for the provision of Energy, Capacity, Firm Transmission Service or Ancillary Services to meet such BGS-CIEP Supplier's BGS-CIEP Supplier Responsibility Share under this Agreement or (ii) the occurrence of any Event of Default attributable to a BGS-CIEP Supplier resulting in Early Termination, shall include all Costs incurred by the Company, acting in a commercially reasonable manner consistent with any statutory or regulatory

requirement imposed by the Applicable Legal Authorities, in obtaining replacement services or in obtaining a replacement supplier, which Costs exceed the amounts that would have been payable to the defaulting BGS-CIEP Supplier under this Agreement. Costs incurred by the Company for the purpose of calculating Damages hereunder will consist of:

(i) the cost of Energy (including all charges for losses and congestion), Firm Transmission Service, Capacity, Ancillary Services or other elements of BGS-CIEP Supply allocated to the Company by the PJM OI due to the failure of a BGS-CIEP Supplier to meet obligations owing to the PJM OI in connection with its obligations under this Agreement;

(ii) the cost of Energy (including all charges for losses and congestion), Firm Transmission Service, Capacity, Ancillary Services or other elements of BGS-CIEP Supply purchased by the Company to replace BGS-CIEP Supply that a BGS-CIEP Supplier was obligated to supply under this Agreement during the term hereof;

(iii) administrative and legal costs associated with procuring replacement BGS-CIEP Supply; and

(iv) financial hedging costs incurred by the Company on behalf of BGS-CIEP Customers as a result of having to procure BGS-CIEP Supply not provided by a BGS-CIEP Supplier.

Without limitation of the foregoing, Damages calculated hereunder shall constitute the ultimate liability of a BGS-CIEP Supplier in the event of an Early Termination caused by an Event of Default attributable to such BGS-CIEP Supplier regardless of the reason or basis for such Early Termination. The Parties recognize,

however, that the final calculation of Damages hereunder may not be known for some time since the level of such Damages may be dependant upon the arrangements made by the Company to obtain replacement services or a replacement supplier. The Company and each BGS-CIEP Supplier agree that, until the calculation of Damages under this provision is completed, the amount and payment to the Company of the Settlement Amount on behalf of BGS-CIEP Customers in the event of an Early Termination as set forth in Section 5.4 of this Agreement shall be immediately due and owing as an estimate of all Damages ultimately determined to be due and owing. After Damages have been finally determined under this Section 5.3, the amounts of Damages due and owing will be reconciled with payments already made by the BGS-CIEP Supplier under Section 5.4 of this Agreement.

(b) **Failure By Company on Behalf of Customers To Accept BGS-CIEP Supply Tendered By BGS-CIEP Supplier:** Damages resulting from the failure of the Company on behalf of Customers to accept BGS-CIEP Supply tendered by the BGS-CIEP Supplier necessary to meet the BGS-CIEP Supplier Responsibility Share of BGS-CIEP Load under this Agreement shall consist of the positive difference (if any) between the amounts that would have been payable to the BGS-CIEP Supplier hereunder had the Company accepted the BGS-CIEP Supply tendered by the BGS-CIEP Supplier necessary to meet the BGS-CIEP Supplier Responsibility Share of BGS-CIEP Load under this Agreement minus the amount realized by the BGS-CIEP Supplier in disposing, in a commercially reasonable manner, of the BGS-CIEP Supply not accepted by the Company; provided, however, that the Company shall not be required to accept on behalf of any Customer, quantities of unbundled Energy, Ancillary Services or other component

of BGS-CIEP Supply utilized by Customers on an instantaneous basis as a function of electrical load, in excess of such Customer's instantaneous consumption of such component of BGS-CIEP Supply.

(c) **Damages Resulting From Early Termination Due To An Event of Default Attributable To the Company:** Damages resulting from Early Termination due to an Event of Default attributable to the Company shall be as set forth in Section 5.4 of this Agreement. Damages calculated in accordance with said Section 5.4 shall be the exclusive remedy available to the BGS-CIEP Supplier in the event of Early Termination resulting from an Event of Default attributable to the Company.

(d) **Other Damages:** Damages for Events of Default not specified above shall consist of the direct Damages incurred by the Non-Defaulting Party.

#### **5.4 Declaration of an Early Termination Date and Calculation of Settlement Amount and Termination Payment**

(a) **Settlement Amount:** If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the Non-Defaulting Party (in the case of an Event of Default by the Company, each BGS-CIEP Supplier shall be considered a "Non-Defaulting Party") shall have the right (i) to designate a day, no earlier than the day such notice is effective and no later than twenty (20) days after such notice is effective, as a date for Early Termination ("Early Termination Date") to accelerate all amounts owing between the Parties and to liquidate and terminate the undertakings set forth in this Agreement, (ii) to withhold any payments due to the Defaulting Party under this Agreement, and (iii) to suspend performance; provided however, that an Early Termination Date shall be deemed to occur automatically and concurrently with the Event of Default, without any requirement for the provision of notice by the Non-

Defaulting Party, with respect to an Event of Default under subsections “i”, “ii”, “iii”, “iv”, “v”, “vi”, “vii” and “viii” of Section 5.1 of this Agreement. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount with respect to the obligations under this Agreement. For the purposes of such determination, the quantity amounts of Energy (including all charges for losses and congestion), Capacity and other services provided for under this Agreement for the period following the Early Termination Date through the remainder of the term of this Agreement shall be deemed to be those quantity amounts that would have been delivered on an hourly basis, had this Agreement been in effect during the previous calendar year adjusted for such BGS-CIEP Load changes as may have occurred since the previous calendar year.

**(b) Net Out of Settlement Amounts:** The Non-Defaulting Party shall calculate a Termination Payment by aggregating all Settlement Amounts due under this Agreement or any other agreements between the Company and the BGS-CIEP Supplier for the provision of BGS Supply into a single amount: by netting out (a) all Settlement Amounts that are due or will become due to the Defaulting Party, plus at the option of the Non-Defaulting Party, any cash or other form of security then available to the Non-Defaulting Party and actually received, liquidated and retained by the Non-Defaulting Party, plus any or all other amounts due to the Defaulting Party under this Agreement or any other agreement(s) between the Company and the BGS-CIEP Supplier for the provision of BGS Supply against (b) all Settlement Amounts that are due or will become due to the Non-Defaulting Party, plus any or all other amounts due to the Non-Defaulting Party under this Agreement or any other agreement(s) between the Company and the BGS-CIEP Supplier for the provision of BGS Supply so that all such amounts shall be netted

out to a single liquidated amount; provided however, that if the BGS-CIEP Supplier is the Defaulting Party and the Termination Payment is due to the BGS-CIEP Supplier, the Company shall be entitled to retain a commercially reasonable portion of the Termination Payment, which may be equal to the entire amount of the Termination Payment, as security for additional amounts that may be determined to be due and owing by the BGS-CIEP Supplier as Damages and further provided that any previously attached security interest of the Company in such retained amounts shall continue. The Termination Payment shall be due to or due from the Non-Defaulting Party as appropriate. If the Termination Payment has been retained by the Company as security for additional amounts that may be determined to be due and owing by the BGS-CIEP Supplier, and if, upon making a final determination of Damages, the Termination Payment, or any portion thereof, is to be made to the BGS-CIEP Supplier, the Company will pay simple interest on the Termination Payment amount being made to the BGS-CIEP Supplier. Simple interest will be calculated at the lower of the Interest Index or six (6) percent per annum.

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

(d) **Disputes With Respect to Termination Payment:** If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in

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

(e) **Multiple BGS Supply Agreements:** It is the intention of the Company and the BGS-CIEP Supplier that, in the event the BGS-CIEP Supplier is a party to other agreements with the Company for the provision of BGS Supply that existed prior to the Effective Date of this Agreement or are entered into after the Effective Date of this Agreement, the Company will calculate a single Termination Payment applicable to all such agreements as set forth herein. Each BGS-CIEP Supplier that is a party to such other agreements with the Company for the provision of BGS Supply hereby agrees that such other agreements are deemed amended by this Agreement for the purpose of calculating a single Termination Payment as described herein.

### **5.5 Step-up Provision**

If any one or more BGS-CIEP Suppliers defaults in its obligations hereunder resulting in the exercise of the right of Early Termination by the Company with respect to such BGS-CIEP Supplier(s), then the Company, consistent with its Contingency Plan approved by the Board in its Order dated \_\_\_\_\_, may, at the Company's option, offer some or all Non-Defaulting Supplier(s) the optional right to assume under this Agreement additional Tranches of BGS-CIEP Load, subject to compliance with the creditworthiness provisions of Article 6 of this Agreement. The provision of any such

offer by the Company to Non-Defaulting Suppliers shall indicate the duration of the offer and the manner of acceptance thereof. Following the assumption by BGS-CIEP Supplier(s) of additional Tranches hereunder, the Company shall prepare a modified Appendix A which shall set forth the revised BGS-CIEP Supplier Responsibility Shares of the BGS-CIEP Load of the participating Non-Defaulting BGS-CIEP Supplier(s) following such assumption. This modified Appendix A shall be initialed (as a single document or in counterparts) by the Company and any affected BGS-CIEP Supplier(s) and shall thereafter be deemed a part of this Agreement, as to such affected BGS-CIEP Supplier(s), from the effective date of such modified Appendix A. A BGS-CIEP Supplier will not suffer any prejudice if it declines an offer to assume additional Tranches upon the default by another BGS-CIEP Supplier.

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

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

Agreement or any other agreement(s) between the Company and the BGS-CIEP Supplier for the provision of BGS Supply.

### **5.7 Preservation of Rights of Non-Defaulting Party**

The rights of the Non-Defaulting Party under this Agreement, including without limitation Sections 5.4 and 5.6 of this Agreement, shall be supplemental to, and not in lieu of, any right of recoupment, lien, or set-off afforded by applicable law, and all such rights are expressly preserved for the benefit of the Non-Defaulting Party.

## **ARTICLE 6: CREDITWORTHINESS**

### **6.1 Applicability**

Each BGS-CIEP Supplier agrees that it shall meet the creditworthiness requirements of this Article 6 at all times during the term of this Agreements and shall inform the Company immediately of any changes in its credit rating or financial condition. Without limitation of the foregoing, each BGS-CIEP Supplier, upon written request, shall affirmatively demonstrate to the Company, its compliance with the creditworthiness requirements set forth hereunder. The Company may establish less restrictive creditworthiness requirements under this Article 6 in a non-discriminatory manner.

### **6.2 Creditworthiness Determination**

The BGS-CIEP Supplier may submit and maintain a security deposit, in accordance with Section 6.3 below, in lieu of submitting to or being qualified under a creditworthiness evaluation. The BGS-CIEP Supplier shall have the opportunity to petition the Company to re-evaluate its creditworthiness whenever an event occurs that the BGS-CIEP Supplier believes would improve the determination made by the Company

of its creditworthiness. The Company's credit re-evaluation must be completed as soon as possible but no longer than thirty (30) days after receiving a fully documented request. The Company must provide the rationale for its determination of the credit limit and any resulting security requirement. The Company must perform its credit re-evaluation and associated security calculation in a non-discriminatory manner. BGS-CIEP Suppliers shall provide unrestricted access to audited financial statements; provided that if audited financial statements are not available, the Company may specify other types of financial statements that will be accepted.

(a) The following criteria constitute the Company's creditworthiness requirements for BGS-CIEP Suppliers that have been incorporated or otherwise formed under the laws of a state of the United States or the District of Columbia and may be utilized by BGS-CIEP Suppliers or Guarantors of BGS-CIEP Suppliers that have not been incorporated or otherwise formed under the laws of the United States. In all instances, the most current senior unsecured debt rating (or, if unavailable, the most current corporate issuer rating discounted by one notch) will be used.

(i) For BGS-CIEP Suppliers to be granted an unsecured line of credit, to cover the Total Exposure Amount the Supplier shall meet the following requirements: (1) must be rated by at least two of the following rating agencies: Standard & Poor's Ratings Services ("S&P"), Moody's Investors Service, Inc. ("Moody's"), Fitch, Inc. ("Fitch") or A.M. Best Company ("A.M. Best") and (2) must have a minimum senior unsecured debt rating (or, if unavailable, corporate issuer rating discounted one notch) of at least "BBB-" from S&P, "Baa3" from Moody's, "BBB-" from Fitch or "bbb" from A.M. Best (a "Minimum Rating"). If the BGS-CIEP Supplier is rated by only two rating

agencies, and the ratings are split, the lower rating will be used. If the BGS-CIEP Supplier is rated by three or four rating agencies and the ratings are split, the lower of the two highest ratings will be used; however, in the event that the two highest ratings are common, then such common rating will be used. The Maximum Credit Limit to cover the Total Exposure Amount will be determined based on the following table:

Credit Rating of the BGS-CIEP Supplier				Max. Credit Limit to be calculated as the lesser of the % of TNW and credit limit cap below	
S&P	Moody's	Fitch	A.M. Best	%	Credit Limit Cap
A- and above	A3 and above	A- and above	aaa	16% of TNW	\$60,000,000
BBB+	Baa1	BBB+	aa	10% of TNW	\$40,000,000
BBB	Baa2	BBB	a	8% of TNW	\$30,000,000
BBB-	Baa3	BBB-	bbb	6% of TNW	\$15,000,000
Below BBB-	Below Baa3	Below BBB-	Below bbb	0% of TNW	0

where TNW is the Tangible Net Worth.

The BGS-CIEP Supplier will be required to post cash or a letter of credit at the time of, or prior to the execution of this Agreement in an acceptable form as defined in Section 6.4(b) of this Agreement (see standard format in Appendix B) for the Total Exposure Amount under this Agreement and any other BGS Supply agreements(s) between it and the Company, exceeding the credit limit; or

(ii) For BGS-CIEP Suppliers having a Guarantor, the Guarantor (1) must be rated by at least two of the following rating agencies: S&P, Moody's, Fitch or

A.M. Best and (2) must have a minimum senior unsecured debt rating (or, if unavailable, corporate issuer rating discounted one notch) equal to the Minimum Rating. If the Guarantor is rated by only two rating agencies, and the ratings are split the lower rating will be used. If the Guarantor is rated by three or four rating agencies and the ratings are split, the lower of the two highest ratings will be used; however, in the event that the two highest ratings are common, then such common rating will be used. The Maximum Credit Limit to cover the Total Exposure Amount that could be provided through the Guaranty (see standard format in Appendix C) will be determined based on the following table:

Credit Rating of the Guarantor				Max. Credit Limit to be calculated as the lesser of the % of TNW and credit limit cap below	
S&P	Moody's	Fitch	A.M. Best	%	Credit Limit Cap
A- and above	A3 and above	A- and above	aaa	16% of TNW	\$60,000,000
BBB+	Baa1	BBB+	aa	10% of TNW	\$40,000,000
BBB	Baa2	BBB	a	8% of TNW	\$30,000,000
BBB-	Baa3	BBB-	bbb	6% of TNW	\$15,000,000
Below BBB-	Below Baa3	Below BBB-	Below bbb	0% of TNW	0

The BGS-CIEP Supplier will be granted a credit limit equal to the lesser of (i) the amount of the Guaranty at the time this Agreement is executed as such amount may be modified in any amended or substitute Guaranty provided to the Company during the term of this Agreement or (ii) the Supplier's Maximum Credit Limit. The BGS-CIEP

Suppliers will be required to post cash or letter of credit in an acceptable form as defined in Section 6.4 (b) below (see standard format in Appendix B) for the Total Exposure Amount exceeding the amount of the credit limit granted to the BGS-CIEP Supplier; or

(iii) The posting of cash or a letter of credit in an acceptable form as defined in Section 6.4 (b) of this Agreement (see standard format in Appendix B) for the Total Exposure Amount shall be required.

(b) The following standards shall apply to BGS-CIEP Suppliers or Guarantors of BGS-CIEP Suppliers that have not been incorporated or otherwise formed under the laws of a state of the United States or of the District of Columbia. For BGS-CIEP Suppliers who cannot meet the following requirements, the posting of cash or letter of credit in an acceptable form as defined in Section 6.4(b) below (see standard format in Appendix B) for the Total Exposure Amount shall be required.

(i) The BGS-CIEP Supplier shall supply such evidence of creditworthiness so as to provide the Company with comparable assurances of creditworthiness as is applicable above for BGS-CIEP Suppliers that have been incorporated or otherwise formed under the laws of a state of the United States or of the District of Columbia. The Company shall have full discretion, without liability or recourse to the BGS-CIEP Supplier, to evaluate the evidence of creditworthiness submitted by such BGS-CIEP Supplier; or

(ii) The Guarantor of a BGS-CIEP Supplier shall supply such evidence of creditworthiness so as to provide the Company with comparable assurances of creditworthiness as is applicable above for Guarantors of BGS-CIEP Suppliers that have been incorporated or otherwise formed under the laws of a state of the United States or of

the District of Columbia. The Company shall have full discretion, without liability or recourse to the Guarantor or the BGS-CIEP Supplier, to evaluate the evidence of creditworthiness submitted by such Guarantor.

(c) All BGS-CIEP Suppliers or Guarantors of BGS-CIEP Suppliers that have not been incorporated or otherwise formed under the laws of a state of the United States or of the District of Columbia shall, in addition to all documentation required elsewhere in this Section 6.2, supply the following as a condition of being granted a credit limit, up to a maximum level, for the purpose of covering the Total Exposure Amount:

(i) For BGS-CIEP Suppliers: (i) a legal opinion of counsel qualified to practice in the foreign jurisdiction in which the BGS-CIEP Supplier is incorporated or otherwise formed that this Agreement has been duly authorized, executed and delivered and is the legal, valid and binding obligation of the BGS-CIEP Supplier in the jurisdiction in which it has been incorporated or otherwise formed; (ii) the sworn certificate of the corporate secretary (or similar officer) of such BGS-CIEP Supplier that the person executing this Agreement on behalf of the BGS-CIEP Supplier has the authority to execute the Agreement and that the governing board of such BGS-CIEP Supplier has approved the execution of this Agreement; and (iii) the sworn certificate of the corporate secretary (or similar officer) of such BGS-CIEP Supplier that the BGS-CIEP Supplier has been authorized by its governing board to enter into agreements of the same type as this Agreement. The Company shall have full discretion, without liability or obligation to the BGS-CIEP Supplier, to evaluate the sufficiency of the documents submitted by the BGS-CIEP Supplier.

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

(d) Failure to provide the required security or deposit within three (3) Business Days of the Company's request shall constitute an Event of Default unless the Company agrees in writing to extend such period for providing security or deposit. In the event that a creditworthiness determination by the Company concludes that the security requirement may be reduced, the Company will notify the affected BGS-CIEP Supplier of this circumstance, and take whatever action the BGS-CIEP Supplier requests for return of the surplus.

### **6.3 Credit Exposure/ Security Calculation**

The credit exposure per tranche that will be required of BGS-CIEP Supplier under this Agreement shall be \$70,000. The credit exposure under this Agreement shall be

\$70,000 times the number of Tranches shown in Appendix A hereto. If a BGS-CIEP Supplier meets the Minimum Rating listed above, no security will be required as long as the Total Exposure Amount does not exceed the maximum credit limit of the BGS-CIEP Supplier or its Guarantor.

If a BGS-CIEP Supplier meets the Minimum Rating listed above, and the Total Exposure Amount exceeds the maximum credit limit of the BGS-CIEP Supplier or its Guarantor, cash or letter of credit in an acceptable form as defined in Section 6.4(b) of this Agreement (see standard format in Appendix B), in an amount equal to the Total Exposure Amount above the maximum credit limit of the BGS-CIEP Supplier or Guarantor will be required.

#### **6.4 Security Instruments**

At each BGS-CIEP Supplier's choice, the following are deemed to be acceptable methods for posting security, if required:

- (a) Cash; or
- (b) A standby irrevocable letter of credit acceptable to the Company issued by a bank or other financial institution with a minimum "A" senior unsecured debt rating (or, if unavailable, corporate issuer rating discounted one notch) from S&P or "A2" from Moody's (see standard format in Appendix B). The letter of credit shall state that it shall renew automatically for successive one-year or shorter periods, until terminated upon at least ninety (90) days prior written notice from the issuing financial institution. If the Company receives notice from the issuing financial institution that the letter of credit is being cancelled, the BGS-CIEP Supplier will be required to provide a substitute letter of credit from an alternative bank satisfying the minimum requirements. The receipt of the

substitute letter of credit must be effective as of the cancellation date and delivered to the Company thirty (30) days before the cancellation date of the original letter of credit. If the BGS-CIEP Supplier fails to supply a substitute letter of credit as required, then the Company will have the right to draw on the existing letter of credit and to hold the amount as security.

If the credit rating of a bank or other financial institution from which a BGS-CIEP Supplier has obtained a letter of credit falls below the levels specified in Article 6 of this Agreement, the BGS-CIEP Supplier shall have two (2) Business Days following written notice by the Company to obtain a suitable letter of credit from a bank or other financial institution that meets those standards.

## **6.5 Maintenance of Creditworthiness**

### **(a) Reporting of Changes**

Each BGS-CIEP Supplier shall promptly notify the Company of any change in its credit rating or financial condition or that of its Guarantor. The BGS-CIEP Supplier or Guarantor shall also furnish evidence of an acceptable credit rating or financial condition upon the request of the Company.

### **(b) Change in Credit Standing**

The Company will re-evaluate the creditworthiness of a BGS-CIEP Supplier whenever it becomes aware of an adverse change, through the provision of notice by such Supplier or otherwise, in the BGS-CIEP Supplier's or Guarantor's credit standing. The Company shall not require any additional security from a BGS-CIEP Supplier due to an adverse change in such BGS-CIEP Supplier's credit standing provided that the BGS-CIEP Supplier continues to meet the Company's minimum standard for an unsecured line

of credit. When an adverse change in a BGS-CIEP Supplier's credit standing causes the BGS-CIEP Supplier to no longer qualify for an unsecured line of credit from the Company, the Company shall be entitled to require additional security, prepayment, or a deposit in accordance with Sections 6.2 and 6.3 of this Agreement. The additional security must be in a form acceptable to the Company as specified in Section 6.4 of this Agreement.

#### **6.6 Calling On Security**

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

- (a) Written Notice of Default is provided to the BGS-CIEP Supplier; and
- (b) Any applicable cure period ends.

The foregoing notwithstanding, the security posted by the BGS-CIEP Supplier shall become due automatically without prior notice or right of cure in the case of any Event of Default arising under subsections (i), (ii), (iii), (iv), (v), (vi), (vii) and (viii) of Section 5.1 of this Agreement.

#### **6.7 Interest on Cash Held by Company**

The Company will pay simple interest calculated at the lower of the Interest Index or six (6) percent per annum on all cash held by the Company pursuant to this Agreement. Each Billing Month, the Company will prepare a statement of interest amounts due to the BGS-CIEP Supplier. The statement will be sent to the BGS-CIEP Supplier within three (3) Business Days after the end of the Billing Month via overnight

mail or other expeditious means. The Company shall make interest payments on the first Business Day after the 5<sup>th</sup> day of each calendar month.

### **6.8 Confidentiality**

Information supplied by a BGS-CIEP Supplier in connection with the creditworthiness process shall be deemed confidential and not subject to public disclosure, unless Applicable Legal Authorities require disclosure of the information. If information must be disclosed, then the confidentiality of the information shall be maintained consistent with the Applicable Legal Authority's rules and regulations pertaining to confidentiality. The BGS-CIEP Supplier will be given prompt notice of any request by a third party to obtain confidential information related to the BGS-CIEP Supplier's creditworthiness.

### **6.9 No Endorsement of BGS-CIEP Supplier**

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

### **6.10 Multiple BGS Supply Agreements**

It is the intention of the Company and the BGS Supplier that, in the event the BGS-CIEP Supplier is a party to BGS agreements with the Company for the provision of BGS Supply, the Company will calculate a single Margin applicable to all such agreements. Each BGS-CIEP Supplier that is a party to other agreements with the

Company for the provision of BGS Supply hereby agrees that such other agreements are deemed amended by this Agreement for the sole purpose of calculating the Margin.

**ARTICLE 7: PROCEDURES FOR ENERGY SCHEDULING, CAPACITY  
RESOURCE SUBMISSION AND TRANSMISSION  
PROCUREMENT**

The Parties must adhere to any applicable operational requirements of PJM necessary to protect the integrity of the transmission system within the PJM Control Area and the transmission systems of interconnected control areas, and must satisfy any and all PJM, MAAC and NERC criteria, when applicable. The BGS-CIEP Supplier also must adhere to any applicable operational requirements of the Company necessary to protect the integrity of the Company's local distribution system.

The BGS-CIEP Peak Load Share will be determined by the Company based on the zonal peak load contributions utilized in the PJM determination of the zonal obligations for Capacity, adjusted for contributions associated with Customers served by Third Party Suppliers, with Customers served by BGS-FP Suppliers and with Wholesale Customers. Contributions for TPSs, shall be calculated as set forth in the Company's TPS operating procedures found on the Company's website at [www.\\_\\_\\_\\_\\_.com](http://www._____.com). The BGS-CIEP Peak Load Share of a BGS-CIEP Supplier is based on the BGS-CIEP Supplier Responsibility Share.

**7.1 Load Obligations**

The Company and the BGS-CIEP Supplier acknowledge that the BGS-CIEP Customers are within the Company's metered boundaries and that the BGS-CIEP Load must be divided into BGS-CIEP Supplier obligations by applying the BGS-CIEP Supplier Responsibility Share for each BGS-CIEP Supplier as a Load Serving Entity that

must meet its PJM obligations. These load obligations include, but are not limited to, hourly Energy obligations, Capacity obligations, Ancillary Services obligations, and Firm Transmission Service obligations under the PJM Agreements.

## **7.2 Data Transmission**

### **(a) Energy**

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

### **(b) Capacity**

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

### **(c) Transmission**

The procedures for transmitting the BGS-CIEP Supplier Responsibility Share data based upon which the BGS-CIEP Supplier will meet its obligations under the PJM OATT shall be as set forth by PJM.

### **(d) Ancillary Services**

The procedures for transmitting data regarding the BGS-CIEP Supplier's Ancillary Services obligations shall be as set forth by PJM.

## **7.3 Energy Scheduling**

The Company will not provide load-forecasting services. The BGS-CIEP Supplier shall schedule Energy resources to meet its obligations with PJM as provided for in the PJM Agreements, procedures, and manuals. The Company, through an e-schedule, shall provide PJM and the BGS-CIEP Supplier with the data regarding the BGS-CIEP

Supplier Responsibility Share of the Energy obligations, as set forth by PJM. The Energy obligations for each BGS-CIEP Supplier will be determined based on its BGS-CIEP Supplier Responsibility Share of the BGS-CIEP Load. The total preliminary BGS-CIEP Energy obligation will be equal to the total Energy loads for the BGS-CIEP Customers, as calculated by the Company, including losses and unaccounted for energy.

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

### **8.1 Energy Settlement By PJM**

The settlement process occurs at PJM to reflect the BGS-CIEP Supplier's actual Energy obligations in a supply/usage reconciliation process. The Energy obligations for each BGS-CIEP Supplier will be determined based on the BGS-CIEP Supplier Responsibility Share of the BGS-CIEP Load. The reconciled total BGS-CIEP Energy obligation will be equal to the final total Energy loads for the Customers receiving BGS-CIEP service, including losses.

Any adjustments for billing and metering errors reported subsequent to the calculation of FHEA and FMEA will be proportionally allocated by the Company to the BGS-CIEP Suppliers.

### **8.2 Energy Settlement by the Company**

In the event that actual BGS-CIEP Customer consumption data is not available until after the PJM deadline for conducting the final settlement, the Company will conduct the settlement process with the BGS-CIEP Supplier. Should PJM impose penalties against the Company as a result of the BGS-CIEP Supplier's transactions or failure to meet PJM requirements, such penalties shall be passed through by the Company, to the BGS-CIEP

Supplier as part of this settlement process. In addition, all other applicable charges from PJM, including any billing adjustments, will be appropriately allocated to the BGS-CIEP Supplier.

## **ARTICLE 9: BILLING AND PAYMENT**

### **9.1 The Company Payment of Obligations to the BGS-CIEP Supplier**

The Company shall pay all amounts due to the BGS-CIEP Supplier hereunder in accordance with the following provisions:

(a) Each Billing Month, the Company will prepare a Statement of amounts due to the BGS-CIEP Supplier. Line items on this Statement will show amounts due equal to the (i) CIEP Standby Fee multiplied by the sum of the BGS-CIEP Supplier Responsibility Share of all BGS-CIEP-Eligible Customers' preliminary Energy usage as measured at the BGS-CIEP-Eligible Customers' meters; plus (ii) Energy Charges equal to the sum of the products of the hourly real-time PJM load weighted average Locational Marginal Prices for the Company's Transmission Zone multiplied by the PHEA in each hour of the Billing Month; plus (iii) Ancillary Service Charge equal to the product of \$6.00 per MWh times the PMEA for the Billing Month; plus (iv) BGS-CIEP Price equal to the product of \$\_\_\_\_\_ per MW-day multiplied by the BGS-CIEP Supplier Responsibility Share of the BGS-CIEP Capacity obligation (expressed in MW) for each day of the Billing Month in question; plus (v) the Transmission Charge multiplied by the BGS-CIEP Supplier Responsibility Share of the BGS-CIEP Firm Transmission Service obligation for each day of the Billing Month.

(b) The Statement will be sent to the BGS-CIEP Supplier within six (6) Business Days after the end of the Billing Month via overnight mail or other expeditious means.

(c) The Company shall make payment on the first Business Day after the 19<sup>th</sup> day of each calendar month provided that the Company maintains a minimum senior unsecured debt rating (or, if unavailable, corporate issuer rating discounted one notch) of at least “BBB-” from S&P, “Baa3” from Moody’s or “BBB-” from Fitch (the “Required Rating”). If the Company is rated by only two rating agencies, and the ratings are split, the lower rating will be used. If Company is rated by three rating agencies, and the ratings are split, the lower of the two highest ratings will be used, and, in the event that the two highest ratings are common, such common rating will be used.

(d) In the event that the Company’s minimum senior unsecured debt rating (or, if unavailable, corporate issuer rating discounted one notch) falls below the Required Rating, and until the Company’s minimum senior unsecured debt rating (or, if unavailable, corporate issuer rating discounted one notch) becomes equal or higher than the Required Rating, (i) the Company shall make an initial payment on the first Business Day after the 5<sup>th</sup> day of the calendar month for approximately 50% of the amount due to the BGS-CIEP Supplier for the previous calendar month (the “Initial Payment”), and (ii) the Company shall make a second payment on the first Business Day after the 19<sup>th</sup> day of the calendar month for any remaining amounts associated with the previous calendar month, which will include the difference between the Initial Payment and any amounts due equal to the (A) CIEP Standby Fee multiplied by the sum of the BGS-CIEP Supplier Responsibility Share of all BGS-CIEP-Eligible Customers’ preliminary Energy usage as

measured at the BGS-CIEP-Eligible Customers' meters; plus (B) Energy Charges equal to the sum of the products of the hourly real-time PJM load weighted average Locational Marginal Prices for the Company's Transmission Zone multiplied by the PHEA in each hour of the Billing Month; plus (C) Ancillary Service Charges equal to the product of \$6.00 per MWh times the PMEA for the Billing Month; plus (D) the BGS-CIEP Price equal to the product of \$\_\_\_\_\_ per MW-day multiplied by the BGS-CIEP Supplier Responsibility Share of the BGS-CIEP Capacity obligation (expressed in MW) for each day of the Billing Month in question; plus (E) Transmission Charges equal to the PJM OATT daily rate for the Company Transmission Zone multiplied by the BGS-CIEP Supplier Responsibility Share of the BGS-CIEP Firm Transmission Service obligation for each day of the Billing Month.

(e) To the extent that the PMEA differs from the FMEA, the Company will pay or charge the BGS-CIEP Supplier the PMEA/FMEA Adjustment Amount within the PJM deadline for conducting the final settlement. PMEA/FMEA Adjustment Amounts apply only to payments of the Ancillary Service Charge.

(f) To the extent that the FHEA differs from the PHEA, the Company will calculate the PHEA/FHEA Adjustment Amount for each hour by multiplying the difference between the two amounts by the PJM real-time LMP for the Company's zone, and will sum the negative and positive dollar values over all hours to arrive at a net PHEA/FHEA Adjustment Amount for the Billing Month. Based on the calculated net PHEA/FHEA Adjustment Amount, the Company will pay or charge the BGS-CIEP Supplier for billing adjustments (the "FHEA/PHEA Billing Adjustment") within the PJM deadline for conducting the final settlement.

(g) To the extent that the preliminary monthly Energy usage of all BGS-CIEP-Eligible Customers differs from the final monthly Energy usage as measured at the BGS-CIEP-Eligible Customers' meters, the Company will pay or charge each BGS-CIEP Supplier every Billing Month an amount equal to the CIEP Standby Fee times the difference between all BGS-CIEP-Eligible Customers' preliminary monthly Energy usage and all BGS-CIEP-Eligible Customers' final Energy usage, multiplied by the BGS-CIEP Supplier Responsibility Share.

(h) To the extent that the daily Capacity and Firm Transmission Service obligations used in the calculation detailed in Section 9.1(a) are adjusted after the PJM deadline for conducting final settlement, the Company will pay or charge the BGS-CIEP Suppliers any net difference between the payment calculated and made within the PJM deadline for conducting final settlement, and the payment calculated using the adjusted values.

(i) If each Party owes an amount to the other Party pursuant to this Agreement, including any related interest, and payments or credits, the Parties may satisfy their respective obligations to each other by netting the aggregate amounts due to one Party against the aggregate amounts due to the other Party, with the Party, if any, owing the greater aggregate amount paying the other Party the difference between the amounts.

(j) Payments shall be subject to adjustment for any arithmetic errors, computation errors, Meter Reading errors, or other errors, provided that the errors become known within one (1) year of the termination of this Agreement.

(k) The Company shall make payments of funds payable to the BGS-CIEP Supplier by electronic transfer to a bank designated by the BGS-CIEP Supplier.

(l) If a good faith dispute arises between the Company and the BGS-CIEP Supplier regarding a Statement, the disputing Party shall be obligated to pay only the undisputed portion of the Statement, if any, and shall present the dispute in writing and submit supporting documentation to the non-disputing Party within one hundred and twenty (120) calendar days from the date of the Statement in dispute. Statement disputes shall be addressed promptly, and in accordance with the dispute resolution procedures set forth in Article 11 of this Agreement. Upon resolution of a Statement dispute, any payments made to either Party will include simple interest on the payment at the lower of the Interest Index or six (6) percent per annum payable from the date that notice of a Statement dispute was received by the non-disputing Party.

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

## **9.2 Billing for BGS-CIEP Supplier's Obligations to Other Parties**

The Company shall have no responsibility for billing between: the BGS-CIEP Supplier and PJM; the BGS-CIEP Supplier and any Energy or Capacity source; or the BGS-CIEP Supplier and any other third party. The Company will be responsible for billing BGS-CIEP Customers for BGS-CIEP.

### **9.3 The BGS-CIEP Supplier Payment of Obligations to the Company**

The BGS-CIEP Supplier shall pay all Charges it incurs hereunder in accordance with the following provisions:

(a) Each Billing Month, the Company shall submit an invoice to the BGS-CIEP Supplier for all Charges owed by the BGS-CIEP Supplier under this Agreement. The BGS-CIEP Supplier shall make payment for Charges incurred on or before the due date shown on the invoice. The due date will be on the first Business Day after the 19<sup>th</sup> day of each calendar month. The invoice will be sent to the BGS-CIEP Supplier within six (6) Business Days after the end of the Billing Month via overnight mail or other expeditious means.

(b) Invoices shall be subject to adjustment for any arithmetic errors, computation errors, Meter Reading errors, or other errors, provided that the errors become known within one (1) year of the termination of this Agreement.

(c) The BGS-CIEP Supplier shall make payments of funds payable to the Company by electronic transfer to a bank designated by the Company.

(d) If a good faith dispute arises between the Company and the BGS-CIEP Supplier regarding an invoice, the disputing Party shall pay only the undisputed portion of the invoice, if any, and shall present the dispute in writing and submit supporting documentation to the non-disputing Party within one hundred twenty (120) calendar days from the due date of the invoice in dispute. Billing disputes shall be addressed promptly, and in accordance with the dispute resolution procedures set forth in Article 11 of this Agreement. Upon resolution of a billing dispute, any payments made to either Party will include simple interest on the payment at the lower of the Interest Index or six (6) percent

per annum payable from the date that notice of a bill dispute was received by the non-disputing Party.

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

## **ARTICLE 10: SYSTEM OPERATION**

### **10.1 Disconnection and Curtailment By the Company**

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

### **10.2 Inadvertent Loss of Service To BGS-CIEP Customers**

The Parties agree and acknowledge that service to BGS-CIEP Customers may be inadvertently lost due to storms, weather, accidents, breakage of equipment or other events beyond the reasonable control of the Company affecting the transmission and

distribution system of the Company. Neither Party will have any liability to the other Party for the occurrence of such events except for the Company's obligation to pursue steps for the resumption of the disrupted service as set forth in Section 10.3 below. In no event will an inadvertent loss of service affect a Party's obligation to make any payments then due or becoming due with respect to performance rendered prior to such inadvertent loss of service.

### **10.3 Good Faith Efforts**

The Company shall use good faith efforts to: (a) minimize any curtailment, interruption or reduction to the extent practicable under the circumstances; (b) provide the BGS-CIEP Supplier with prior notification of any curtailment, interruption or reduction, to the extent practicable; and (c) resume service as promptly as practicable.

### **10.4 PJM Requirements**

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

## **10.5 Compliance With Governmental Directives**

The BGS-CIEP Supplier also acknowledges and agrees that the Company may need to act in response to governmental or civil authority directives that may affect BGS-CIEP Customer load. The BGS-CIEP Supplier agrees to cooperate with the Company in order to comply with said directives.

## **ARTICLE 11: DISPUTE RESOLUTION**

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

The Company and the BGS-CIEP Supplier shall use good faith and reasonable commercial efforts to informally resolve all disputes arising out of the implementation of this Agreement. The BGS-CIEP Supplier's point of contact for all information, operations, and questions shall be the Company's Basic Generation Service Unit and the Auction Website. Any dispute between the Company and the BGS-CIEP Supplier under this Agreement may be referred to a designated senior representative of each of the Parties for resolution on an informal basis as promptly as practicable.

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

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

To the extent that this Agreement is deemed to be subject to FERC jurisdiction, absent the agreement of all parties to a proposed change, the standard of review for changes to any section of the Agreement specifying the rate(s) or other material economic terms and conditions agreed to by the Parties herein, whether proposed by a Party, a non-party, the BPU or FERC acting sua sponte, will be the “public interest” standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956).

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

### **12.1 Compliance With Applicable Legal Authorities**

The Company and the BGS-CIEP Supplier are subject to, and shall comply with, all existing or future applicable federal, State and local laws, all existing or future duly-promulgated orders or other duly-authorized actions of PJM or of Applicable Legal Authorities.

### **12.2 FERC Jurisdictional Matters**

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

the Company and/or the BGS-CIEP Supplier, if applicable, shall use reasonable commercial efforts to secure, from time to time, all appropriate orders, approvals and determinations from the FERC necessary to support this Agreement.

## **ARTICLE 13:       LIMITATION OF LIABILITY**

### **13.1   Limitations on Liability**

Except to the extent expressly set forth in this Agreement, each Party shall be liable to the other Party only for direct damages incurred as a result of such Party's failure to comply with this Agreement and no Party shall have any liability to the other Party for consequential, indirect, special or punitive damages, including lost profits or lost revenues, arising out of such Party's failure to comply with its obligations under this Agreement. Notwithstanding anything to the contrary in this Agreement, the BGS-CIEP Suppliers have no obligations or liability to other BGS-CIEP Suppliers.

This Agreement does not create any duty to any BGS-CIEP Supplier with respect to the administration of the Company's Third Party Supplier Agreements by the Company, including, without limitation, with respect to the credit and security provisions of the Company's Third Party Supplier Agreements and Article 11 thereof. Nor will the Company have any liability to any BGS-CIEP Supplier for any act or failure to act in connection with such administration. If any dispute arises among the BGS-CIEP Suppliers regarding the allocation of forfeited security (net of the Company's costs as described in Section 11.3 of the Company's Third Party Supplier Agreements) due to BGS-CIEP Suppliers pursuant to Article 11 of the Company's Third Party Supplier Agreements, then such forfeited security (net of the Company's costs as described in

Section 11.3 of the Company's Third Party Supplier Agreements) will be deposited into an interest-bearing account pending final disposition of such dispute.

### **13.2 Risk of Loss**

Solely for purposes of determining risk of loss and for determining the indemnity obligations under Article 14 of this Agreement, the Company shall be deemed to have custody and control of the electric Energy delivered by a BGS-CIEP Supplier upon receipt thereof into the Company's distribution system and until delivery thereof at the retail electric meter of the Customer; and each BGS-CIEP Supplier shall be deemed to have custody and control of the electric Energy at all times prior to receipt thereof by the Company. Each BGS-CIEP Supplier shall at all times be deemed to hold title to electric Energy until delivery at the retail electric meter of the Customer at which time title shall be deemed to pass to such Customer. The Party deemed to have custody and control of electric Energy shall, among the Parties to this Agreement, be responsible for all loss or damage to property or injury or death to persons arising in connection with such electric Energy while in its custody and control and shall indemnify the other Parties with respect to same as set forth in Article 14 of this Agreement.

## **ARTICLE 14: INDEMNIFICATION**

### **14.1 Indemnification**

(a) Should the Company become the defendant in, or obligor for, any third party claims and/or liabilities for losses, penalties, expenses, damage to property, injury to or death of any person including a Party's employees or any third parties, that were caused by or occur in connection with an act or omission of a BGS-CIEP Supplier with respect to an obligation arising under or in connection with this Agreement, or for which

such BGS-CIEP Supplier has otherwise assumed liability under the terms of this Agreement, such BGS-CIEP Supplier shall defend (at the Company's option), indemnify and hold harmless the Company, its shareholders, board members, directors, officers and employees, from and against any and all such third party claims and/or liabilities, except to the extent that a court of competent jurisdiction determines that the losses, penalties, expenses or damages were caused wholly or in part by the gross negligence or willful misconduct of the Company. The Company may, at its own expense, retain counsel and participate in the defense of any such suit or action.

(b) Should a BGS-CIEP Supplier (the "Indemnified Supplier") become the defendant in, or obligor for, any third party claims and/or liabilities for losses, penalties, expenses, damage to property, injury to or death of any person including a Party's employees or any third parties, that were caused by or occur in connection with an act or omission of the Company or another BGS-CIEP Supplier with respect to an obligation arising under or in connection with this Agreement, or for which the Company or such other BGS-CIEP Supplier has otherwise assumed liability under the terms of this Agreement, the Company or such BGS-CIEP Supplier shall defend (at the option of the Indemnified Supplier), indemnify and hold harmless the Indemnified Supplier, its shareholders, board members, directors, officers and employees, from and against any and all such third party claims and/or liabilities, except to the extent that a court of competent jurisdiction determines that the losses, penalties, expenses or damages were caused wholly or in part by the gross negligence or willful misconduct of the Indemnified Supplier. The Indemnified Supplier may, at its own expense, retain counsel and participate in the defense of any such suit or action.

## **14.2 Survives Agreement**

The obligation of a Party to defend, indemnify, and hold harmless another Party under this Article shall survive termination of this Agreement, and shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for either Party under any statutory scheme, including any Worker's Compensation Acts, Disability Benefit Acts or other Employee Benefit Acts.

## **ARTICLE 15: MISCELLANEOUS PROVISIONS**

### **15.1 Notices**

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

If to a BGS-CIEP Supplier:

Notification information for each BGS-CIEP Supplier is set forth on Appendix A hereto.

If to the Company to:

Copy to:

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

be deemed to have been received by the recipient if the recipient confirms receipt telephonically or in writing.

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

The failure of a Party to insist on any one or more instances upon strict performance of any provisions of this Agreement, or to take advantage of any of its rights hereunder, shall not be construed as a waiver of any such provisions or the relinquishment of any such right or any other right hereunder, which shall remain in full force and effect. No term or condition of this Agreement shall be deemed to have been waived and no breach excused unless such waiver or consent to excuse is in writing and signed by the Party claimed to have waived or consented to excuse.

### **15.3 Assignment**

Parties shall not assign any of their rights or obligations under this Agreement without obtaining (a) any necessary regulatory approval(s); and (b) the prior written consent of the non-assigning Party, which consent shall not be unreasonably withheld; provided that the Company agrees that it shall grant its consent to a proposed assignment by a BGS-CIEP Supplier if the proposed assignee meets all of the Company's creditworthiness requirements then in effect under Article 6 of this Agreement; and further provided that a BGS-CIEP Supplier wishing to assign its interests hereunder shall not be obligated to obtain the consent of any other BGS-CIEP Supplier. No assignment of this Agreement shall relieve the assigning Party of any of its obligations under this Agreement until such obligations have been assumed by the assignee and all necessary consents have been obtained. Any assignment in violation of this Section 15.3 shall be void; provided, however, the Company may assign any or all of its rights and obligations

under this Agreement, without the BGS-CIEP Supplier's consent, to any entity succeeding to all or substantially all of the assets of the Company, if such assignee agrees, in writing, to be bound by all of the terms and conditions hereof and all necessary regulatory approvals are obtained. The BGS-CIEP Supplier may, with prior written notice to the Company but without obtaining the approval of the Company, assign the accounts, revenues or proceeds under this Agreement to a third party. The Company agrees that, following receipt of such notice of the assignment of accounts, revenues or proceeds and such other documentation that the Company may reasonably request, the Company will pay amounts becoming due to the assigning BGS-CIEP Supplier under this Agreement directly to the designated assignee; provided, however, that nothing herein shall enlarge or expand the rights of such designated assignee beyond the rights granted to the BGS-CIEP Supplier and the right of such designated assignee to receive payments shall be subject to all defenses, offsets and claims of the Company arising under this Agreement. The Company further agrees that, in the event necessary regulatory approvals to effectuate an assignment have been sought in good faith but that action by the regulatory body is pending, the Company shall accept the performance of the proposed assignee as a Party to this Agreement, as co-obligor with the Party proposing to assign its interest, until such approvals are obtained; provided that in the event the regulatory body declines to grant its approval (or in the discretion of the Company, the application seeking approval is still pending without action by the regulatory body after ninety (90) days), the request for approval of the assignment shall be deemed to have been rejected.

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

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

#### **15.5 Headings**

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

#### **15.6 Third Party Beneficiaries**

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

#### **15.7 General Miscellaneous Provisions**

(a) This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between the Parties (or any of them), or to impose any partnership obligation or liability upon any Party. The obligations of the BGS-CIEP Suppliers are expressly agreed to be several and not joint. No Party shall have any right, power, or authority to enter into any agreement or undertaking for, or on

behalf of, or to act as or be an agent or representative of, or to otherwise bind, any other Party.

(b) Cancellation, expiration or Early Termination of this Agreement shall not relieve the Parties of obligations that by their nature survive such cancellation, expiration or termination, including warranties, remedies, promises of indemnity and confidentiality.

(c) Should any provision of this Agreement be held invalid or unenforceable, such provision shall be invalid or unenforceable only to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable any other provision hereof unless it materially changes the agreement of the Parties.

(d) Each of the Parties acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms. This Agreement is intended by the Parties as a final expression of their agreement. The Parties further agree that this Agreement is the complete and exclusive statement of agreement and supersedes all proposals (oral or written), understandings, representations, conditions, warranties, covenants and all other communications between the Parties relating thereto.

## **15.8 Taxes**

All present and future federal, state, municipal or other taxes imposed by any taxing authority by reason of the provision of BGS-CIEP Supply to BGS-CIEP Customers by a BGS-CIEP Supplier under this Agreement shall be the liability of the BGS-CIEP Supplier, except for New Jersey State Sales and Use Taxes, which will be the Company's responsibility to collect from BGS-CIEP Customers for remittance to the applicable taxing authority. Should a BGS-CIEP Supplier be required to remit any New

Jersey State Sales and Use Taxes directly to the applicable taxing authority, other than taxes previously collected by the BGS-CIEP Supplier on behalf of the Company, the Company will defend and indemnify the BGS-CIEP Supplier for such Sales and Use Taxes and will pay to the BGS-CIEP Supplier all such tax amounts upon demand. Each BGS-CIEP Supplier shall pay all such taxes to the applicable taxing authority to the extent required or permitted by law. If any transaction is exempt from the payment of any such taxes, the affected BGS-CIEP Supplier will, if requested, provide the Company with valid tax exemption certificates. Should the Company be required to remit any such taxes directly to any applicable taxing authority, other than taxes previously collected by the Company directly from a BGS-CIEP Supplier, the BGS-CIEP Supplier will defend and indemnify the Company and will pay to the Company all such tax amounts upon demand.

If new taxes are imposed on Energy, Capacity, Firm Transmission Service or Ancillary Services after the Effective Date of this Agreement, within forty-five (45) days of the final adoption of any such new taxes, the Company will notify the BGS-CIEP Suppliers that such new tax has been adopted, will seek approval from the Board to collect the new taxes from BGS-CIEP Customers, and will provide the BGS-CIEP Suppliers with a copy of the Company's petition seeking such approval from the Board. Upon receipt of Board approval of the collection of the new taxes from BGS-CIEP Customers, the BGS-CIEP Supplier will be excused from liability for payment of those new taxes.

## **15.9 Changes in Transmission Rates for Firm Transmission Service**

(a) If during the term of this Agreement, a filing is made with the FERC to increase or decrease the rates for Firm Transmission Service, including any charge or surcharge imposed on BGS-CIEP Customers receiving Firm Transmission Service, then the following procedures shall apply:

(i) within forty-five (45) days of the date upon which the filing is made with the FERC, the Company will notify the BGS-CIEP Suppliers that such rate filing has been made, and will seek approval from the Board to increase or decrease the rates charged to BGS-CIEP Customers by the amount of such rate increase or decrease for Firm Transmission Service; provided that, if the rate increase or decrease for the Firm Transmission Services is to the demand component of such rate, the rate increase or decrease sought by the Company may be stated on a dollar per kilowatt basis, or as a dollar per kilowatt-hour charge or reduction based on a load factor for transmission service equal to the load factor for transmission service over the previous twelve (12) months; and further provided that the Company will provide the BGS-CIEP Suppliers with a copy of the Company's petition seeking such approvals from the Board;

(ii) upon receipt of Board approval for the increase or decrease in the rates charged to BGS-CIEP Customers, the Company shall begin collecting the new rate (calculated with respect to the increase or decrease) from the BGS-CIEP Customers;

(iii) in the event of a rate decrease, the Transmission Charge shall be deemed to be decreased by the rate decrease to BGS-CIEP Customers approved by the BPU;

(iv) in the event of a rate increase the following provisions shall

apply: (a) commencing with the date that the Company begins collecting the rate increase approved by the BPU from the BGS-CIEP Customers, the Company shall track that portion of the rates charged to BGS-CIEP Customers comprised by the rate increase and shall retain such tracked amounts for the benefit of the BGS-CIEP Suppliers; (b) upon approval by the FERC, in a Final FERC Order and not subject to refund, of the proposed rate increase for Firm Transmission Service, the following shall occur: (A) the Transmission Charge shall be deemed to be increased by the rate increase to BGS-CIEP Customers approved by the BPU; and (B) the Company shall promptly pay each BGS-CIEP Supplier, in proportion to its BGS-CIEP Supplier Responsibility Share, the amounts tracked and retained for the benefit of BGS-CIEP Suppliers during the term of this Agreement; provided, however, that in the event only a proportion of the proposed rate increase for Firm Transmission Service is approved by FERC, in a Final FERC Order and not subject to refund, the Transmission Charge shall be increased only by that portion of the proposed rate increase approved by the FERC and the BGS-CIEP Suppliers shall be paid only that portion of the tracked and retained amounts associated with the rate increase approved by the FERC; and further provided that in the event FERC approves less than the entirety of the proposed rate increase or rejects the proposed rate increase in its entirety, all amounts tracked and retained by the Company for the benefit of the BGS-CIEP Suppliers associated with the rejected rate increase for Firm Transmission Service (or the rejected portion of the proposed rate increase for Firm Transmission Service), shall be credited by the Company against future rates paid by BGS-CIEP Customers and the BGS-CIEP Suppliers shall have no right in or to such amounts. The Company will pay simple interest on amounts tracked and retained

hereunder, calculated at the lower of the Interest Index or six (6) percent per annum; and

(v) Nothing herein shall prevent or restrict the participation of the Company or the BGS-CIEP Suppliers in any FERC or judicial proceedings associated with any proposed rate increase or decrease for Firm Transmission Service, in sponsoring, supporting, opposing, challenging or otherwise addressing such proposed rate increases or decreases.

(b) If, prior to the Effective Date of this Agreement, a filing is made with the FERC to increase or decrease the rates for Firm Transmission Service, including any charge or surcharge imposed on customers receiving Firm Transmission Service, and the Company seeks the approval of the BPU to increase or decrease the rates charged to BGS-CIEP Customers by the amount of such rate increase or decrease for Firm Transmission Services, then the following procedures shall apply:

(i) upon receipt of Board approval for the increase or decrease in the rates charged to BGS-CIEP Customers, the Company shall begin collecting the new rate (calculated with respect to the increase or decrease) from the BGS-CIEP Customers;

(ii) in the event of a rate decrease, the Transmission Charge shall be deemed to be decreased by the rate decrease to BGS-CIEP Customers approved by the BPU;

(iii) in the event of a rate increase the following provisions shall apply:  
(a) commencing with the later of (x) the date that the Company begins collecting the rate increase approved by the BPU from the BGS-CIEP Customers or (y) June 1, 2011 if the Company begins collecting the rate increase approved by the BPU from the BGS-CIEP Customers prior to June 1, 2011, the Company shall track that portion of the rates

charged to BGS-CIEP Customers comprised by the rate increase and shall retain such tracked amounts for the benefit of the BGS-CIEP Suppliers; (b) upon approval by the FERC, in a Final FERC Order and not subject to refund, of the proposed rate increase for Firm Transmission Service, the following shall occur: (A) the Transmission Charge shall be deemed to be increased by the rate increase to BGS-CIEP Customers approved by the BPU; and (B) the Company shall promptly pay each BGS-CIEP Supplier, in proportion to its BGS-CIEP Supplier Responsibility Share, the amounts tracked and retained for the benefit of BGS-CIEP Suppliers during the term of this Agreement; provided, however, that in the event only a proportion of the proposed rate increase for Firm Transmission Service is approved by FERC, in a Final FERC Order and not subject to refund, the Transmission Charge shall be increased only by that portion of the proposed rate increase approved by the FERC and the BGS-CIEP Suppliers shall be paid only that portion of the tracked and retained amounts associated with the rate increase approved by the FERC; and further provided that in the event FERC approves less than the entirety of the proposed rate increase or rejects the proposed rate increase in its entirety, all amounts tracked and retained by the Company for the benefit of the BGS-CIEP Suppliers associated with the rejected rate increase for Firm Transmission Service (or the rejected portion of the proposed rate increase for Firm Transmission Service), shall be credited by the Company against future rates paid by BGS-CIEP Customers and the BGS-CIEP Suppliers shall have no right in or to such amounts. The Company will pay simple interest on amounts tracked and retained hereunder, calculated at the lower of the Interest Index or six (6) percent per annum; and

(iv) Nothing herein shall prevent or restrict the participation of the

Company or the BGS-CIEP Suppliers in any FERC or judicial proceedings associated with any proposed rate increase or decrease for Firm Transmission Service, in sponsoring, supporting, opposing, challenging or otherwise addressing such proposed rate increases or decreases.

(c) In the event that, at the beginning of the term of this Agreement, PJM Transmission Charges include charges approved by FERC subject to refund without a Final FERC Order and such charges are being collected from BGS-CIEP Customers pursuant to BPU approval, these charges will be treated as rate increases pursuant to subsection 15.9(a)(iv) of this Agreement.

(d) Nothing herein to the contrary withstanding, in the event that the Company, in the exercise of its good faith judgment, cannot determine whether, or the extent to which, a filing at the FERC seeking a change in rates (including a filing seeking a change in rate design) for Firm Transmission Service, should be considered an increase or decrease in rates for the purposes of the preceding paragraphs, the Company may seek a ruling requesting such a determination from the BPU within ten (10) Business Days of the filing at the FERC. The Company shall thereafter implement the rate increase or rate decrease for Firm Transmission Service, if any, through an appropriate adjustment in the Transmission Charge in accordance with the directives of the BPU in its order.

#### **15.10 Use of the Word "Including"**

The word "including", when following any general statement or term, is not to be construed as limiting the general statement or term to the specific items or matters set

forth or to similar items or matters, but rather as permitting the general statement or term to refer to all other items or matters that could reasonably fall within its broadest possible scope.

### **15.11 Federal Acquisition Regulation**

If any of the following clauses prescribed by the Federal Acquisition Regulation (“FAR”), 48 Code of Federal Regulations Chapter 1, should be deemed to apply to this Agreement, the BGS-CIEP Supplier shall comply with the requirements of such clause(s), and shall include the terms or substance of such clause(s) in its subcontracts, as and to the extent required by the FAR:

- 1) Clean Air and Water: §52.223-2;
- 2) Contract Work Hours and Safety Standards Act-Overtime Compensation: §52.222-4;
- 3) Equal Opportunity: §52.222-26;
- 4) Affirmative Action for and Employment Reports on Special Disabled and Vietnam Era Veterans: §52.222-35 and §52.222-37;
- 5) Affirmative Action for Handicapped Workers: §52.222-36;
- 6) Utilization of Small Business Concerns and Small Disadvantaged Business Concerns and Small Business and Small Disadvantaged Business Subcontracting Plan: §52.219-8 and §52-219-9.

In case of a conflict between the provisions of the FAR and the balance of this Agreement, the requirements of the FAR shall prevail.

### **15.12 Binding Terms**

This Agreement and the rates, terms and conditions herein shall remain in effect for the entire term hereof and each Party (including the Company acting on behalf of Customers) agrees not to seek any change to such rates, terms and conditions pursuant to the FPA, if the FPA is deemed to have jurisdiction over this Agreement, including on the grounds that they are not just and reasonable.

### **15.13 Amendment**

This Agreement, including the appendices hereto, cannot be amended without the written agreement of all Parties and the approval of the Board prior to such amendment becoming effective.

### **15.14 Counterparts**

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

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

ATTEST:

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

[SUPPLIER SIGNATURES APPEAR ON SUCCEEDING PAGES]

**APPENDIX A TO BGS-CIEP SUPPLIER MASTER AGREEMENT,  
DATED \_\_\_\_\_, 2011,  
BY AND BETWEEN \_\_\_\_\_  
AND THE BGS-CIEP SUPPLIERS**

BGS Supplier

BGS Supplier  
Responsibility Share

\_\_\_\_\_

\_\_\_\_\_

Address for Notice

The address for any notice to \_\_\_\_\_ provided pursuant to Section 15.1 of the BGS-CIEP Supplier Master Agreement shall be the following:

For Credit Related Issues:

Name  
Address  
Telephone  
Fax  
E-Mail

For Notices, Section 15.1:

Name  
Address  
Telephone  
Fax  
E-Mail

**APPENDIX B TO BGS-CIEP SUPPLIER MASTER AGREEMENT,  
DATED \_\_\_\_\_, 2011,  
BY AND BETWEEN \_\_\_\_\_  
AND THE BGS-CIEP SUPPLIERS**

**Sample BGS-CIEP Letter of Credit**

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

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

To: [One of the following:

Atlantic City Electric Company (“ACE”) or Jersey Central Power & Light Company (“JCP&L”) or Public Service Electric and Gas Company (“PSE&G”) or Rockland Electric Company (“RECO”)]

1. We hereby establish in your favor this irrevocable transferable Letter of Credit (this “Letter of Credit”) for the account of \_\_\_\_\_ (the “Applicant”), in the amount of \$ \_\_\_\_\_, effective immediately and available to you at sight upon demand at our counters at (Location) and expiring 364 days from date of issuance or any extension thereof (in the form of Annex 5), unless terminated earlier in accordance with the provisions hereof or otherwise extended.
  
2. This Letter of Credit is issued at the request of the Applicant, and we hereby irrevocably authorize you to draw on us, in accordance with the terms and conditions hereof, up to the maximum amount of this Letter of Credit, subject to reduction as provided in paragraph 12 hereof. This Letter of Credit may be drawn upon an Event of Default under the BGS-FP Supplier Master Agreement(s) between the Applicant and you, dated \_\_\_\_\_ and the BGS-CIEP Supplier Master Agreement(s) between the Applicant and you, dated \_\_\_\_\_.

3. A partial or full drawing hereunder may be made by you on any Business Day on or prior to the expiration of this Letter of Credit by delivering, by no later than 11:00 A.M. (New York, NY time<sup>1</sup>) on such Business Day to \_\_\_\_\_ (Bank), \_\_\_\_\_ (address), (i) a notice executed by you in the form of Annex 1 hereto, appropriately completed and duly signed by your Authorized Officer and (ii) your draft in the form of Annex 2 hereto, appropriately completed and duly signed by your Authorized Officer. Authorized Officer shall mean President, Treasurer, any Vice President or any Assistant Treasurer.
4. We may, but shall not be obligated to, accept any request to issue a substitute Letter of Credit. Such request shall be in an Availability Certificate in the form of Annex 3 hereto by you to us for exchange for a new Letter of Credit in the amount set forth in an Availability Certificate, which amount shall not exceed the present value of this Letter of Credit. Upon acceptance by us of any such request to issue a substitute Letter of Credit for exchange, the new Letter of Credit shall be issued in the amount as set forth in the Availability Certificate.
5. We hereby agree to honor a drawing hereunder made in compliance with the terms and provisions of this Letter of Credit by transferring in immediately available funds the amount specified in the draft delivered to us in connection with such drawing to such account at such bank in the United States as you may specify in your draft delivered to us pursuant to Paragraph 3 hereof, by 3:00 P.M. (New York, NY time) on the date of such drawing, if delivery of this requisite document is made prior to

11:00 AM (New York, NY time) on a Business Day pursuant to Paragraph 3 herein above, but at the opening of business on the first Business Day next succeeding the date of such drawing if delivery of the requisite document is made on or after 11:00 AM (New York, NY time) on any Business Day pursuant to Paragraph 3 herein above.

6. If a demand for payment made by you hereunder does not, in any instance, conform to the terms and conditions of this Letter of Credit, we shall give you prompt notice (not exceeding three (3) Business Days following the date of receipt of the documents) that the demand for payment was not effected in accordance with the terms and conditions of this Letter of Credit, stating the reasons that the demand for payment was not effected in accordance with such terms and conditions, and that we will upon your instructions hold any documents at your disposal or return the same to you. Upon being notified that the demand for payment was not effected in conformity with this Letter of Credit, you may attempt to correct any such non-conforming demand for payment to the extent that you are entitled to do so, provided, however, in such event a conforming demand for payment must be timely made in accordance with the terms of this Letter of Credit.
  
7. This Letter of Credit shall automatically terminate and be delivered to us for cancellation on the earliest of (i) the making by you of the drawings in an amount equal to the maximum amount available to be made hereunder, (ii) the date we issue a new letter of credit in exchange for this Letter of Credit in accordance with Paragraph

---

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

4 herein above, (iii) the date we receive from you a Certificate of Expiration in the form of Annex 4 hereto, or (iv) the above-stated expiration date hereof.

8. As used herein:

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

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

9. This Letter of Credit is assignable and transferable, in accordance with Annex 6, to an entity who you certify to us in the form of Annex 6, and we hereby consent to such assignment or transfer, provided that this Letter of Credit may not otherwise be amended or modified without consent from us, you and the Applicant, and except as otherwise expressly stated herein, is subject to the Uniform Customs and Practice for Documentary Credits – 2007 Revision, ICC Publication No. 600, or any successor publication thereto (the “UCP”). Any and all transfer fees, expenses and costs shall be borne by the Applicant. This Letter of Credit shall, as to matters not governed by the UCP, be governed and construed in accordance with New York law, without regard to principles of conflicts of law. Transfers fees shall be borne by the Applicant.

10. This Letter of Credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, changed, amplified or limited by reference to any

document, instrument or agreement referred to herein, except for Annexes 1 through 6 hereto and the notices referred to herein; and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except as set forth above.

11. We certify that as of \_\_\_\_\_(date) we \_\_\_\_\_ (“Bank”) satisfy the senior unsecured debt rating of “A” from Standard & Poor’s Ratings Services or “A2” from Moody’s Investors Service Inc.
12. The amount which may be drawn by you under this Letter of Credit shall be automatically reduced by the amount of any drawings paid through us referencing this Letter of Credit No. \_\_\_\_\_. Partial drawings are permitted hereunder.
13. Faxed document(s) are acceptable. Presentation by fax must be made to fax number \_\_\_\_\_ confirmed by telephone to \_\_\_\_\_.
14. In the event of act of God, riot, civil commotion, insurrection, war, terrorism or by any strikes or lock outs, or any cause beyond our control, that interrupts our business, and causes the place for presentation of this Letter of Credit to be closed for business on the last day of presentation, the expiration date of this Letter of Credit shall be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.
15. This original Letter of Credit has been sent to the beneficiary EDC located at \_\_\_\_\_ above (as per Applicant’s instructions). The aggregate amount paid to the EDC during the validity of this Letter of Credit will not exceed the amount of this Letter of Credit. Any demands or communications in the form of the attached Annexes (except for Annex 5) or other communications directed to us under this Letter of Credit

must be signed by an Authorized Officer of the EDC. Acceptance or rejection of any amendments to this Letter of Credit or any extensions pursuant to Annex 5 must be signed by an Authorized Officer of the EDC.

Very truly yours,  
(Bank)

\_\_\_\_\_  
By: \_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
By: \_\_\_\_\_  
Name:  
Title:

**Annex 1 to Letter of Credit**

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

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

To: (Bank)  
(Address)

Attention: Standby Letter of Credit Unit

Ladies and Gentlemen:

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

1. Capitalized terms used herein that are defined herein shall have the meanings ascribed thereto in the Letter of Credit;
2. "Pursuant to Paragraph 2 of the Letter of Credit No. \_\_\_\_\_, dated \_\_\_\_\_, 20\_\_, the undersigned is entitled to make a drawing under the Letter of Credit in the amount of \$ \_\_\_\_\_, inasmuch as there is an Event of Default under any BGS Supplier Master Agreement between the Applicant and us.
3. We acknowledge that, upon your honoring the drawing herein requested, the amount of the Letter of Credit available for drawing shall be automatically decreased by an amount equal to this drawing.

Very truly yours,

EDC name

By \_\_\_\_\_

Name:

Title:

Date:

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

**Annex 2 to Letter of Credit**

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

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

ON [Business Day immediately succeeding  
date of presentation]

PAY TO: EDC

Attn:

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

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

FOR VALUE RECEIVED AND CHARGE TO ACCOUNT OF LETTER OF CREDIT  
NO. \_\_\_\_\_ OF

(Bank)  
(Address)

EDC

By \_\_\_\_\_

Name:

Title:

**Annex 3 to Letter of Credit**

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

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

To: (Bank)  
(Address)

Attention: Standby Letter of Credit Unit

Ladies and Gentlemen:

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

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

EDC  
Address

Very truly yours,

EDC  
By \_\_\_\_\_  
Name:  
Title:  
Date:

APPLICANT NAME

By: \_\_\_\_\_  
Name:  
Title:  
Date:

Agreed and Accepted:  
(Bank)

By \_\_\_\_\_  
Name:  
Title:  
Date:

**Annex 4 to Letter of Credit**

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

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

To: (Bank)  
(Address)

Attention: Standby Letter of Credit Unit

Ladies and Gentlemen:

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

EDC

By \_\_\_\_\_

Name:

Title:

Date:

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

**Annex 5 to Letter of Credit**

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

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

To \_\_\_\_\_(EDC):

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

On the expiration date of the Letter of Credit no. \_\_\_\_\_, we will issue a new  
Letter of Credit No. \_\_\_\_\_ to expire on \_\_\_\_\_(date). This new  
Letter of Credit No. \_\_\_\_\_ will, aside from the expiration date be in the  
amount and form of our Letter of Credit No. \_\_\_\_\_.

Very truly yours,

BANK \_\_\_\_\_

By \_\_\_\_\_

Name:

Title:

Date:

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

**Annex 6 to Letter of Credit**

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

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

To:  
Bank  
Bank Address

To Whom It May Concern:  
Re: Credit \_\_\_\_\_  
Issued by \_\_\_\_\_  
Advice No \_\_\_\_\_

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

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

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

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

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

The advice of such Letter of Credit is returned herewith, and we ask you to endorse the transfer on the reverse thereof, and forward it direct to the transferee with your customary notice of transfer.

Enclosed is a certified check in the amount of \$\_\_\_\_\_ in payment of your transfer commission and in addition we agree to pay to you on demand any expenses that may be incurred by you in conjunction with this transfer.

Very Truly Yours

\_\_\_\_\_  
(signature of EDC)

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

(Name of authenticating party)

---

(Authorized signature of authenticating party)

Name

Title

**APPENDIX C TO BGS-CIEP SUPPLIER MASTER AGREEMENT,  
DATED \_\_\_\_\_, 2011,  
BY AND BETWEEN \_\_\_\_\_  
AND THE BGS-CIEP SUPPLIERS**

**GUARANTY**

GUARANTY (this "Guaranty"), dated as of \_\_\_\_\_, made by \_\_\_\_\_ (the "Guarantor"), a corporation organized and existing under the laws of \_\_\_\_\_ in favor of \_\_\_\_\_ (the "Guaranteed Party"), a corporation organized and existing under the laws of the State of New Jersey.

Terms not defined herein take on the meaning given to them in the BGS-FP Supplier Master Agreement(s) dated \_\_\_\_\_ and/or the BGS-CIEP Supplier Master Agreement(s) dated \_\_\_\_\_ (the "Agreement(s)"). Guarantor enters into this Guaranty in consideration of, and as an inducement for Guaranteed Party having entered into or entering into the "Agreement(s)" with \_\_\_\_\_ [Name], a \_\_\_\_\_ [State] corporation (the "BGS Supplier"), which may involve the extension of credit by the Guaranteed Party. Guarantor, subject to the terms and conditions hereof, hereby unconditionally and absolutely guarantees to the Guaranteed Party the full and prompt payment when due, subject to an applicable grace period and upon demand in writing from the Guaranteed Party to the Guarantor's attention at the address for Guarantor set forth in Section 11 hereof of any and all amounts payable by the BGS Supplier to the Guaranteed Party arising out of the Agreement(s), and,

1. The Guarantor, as primary obligor and not merely as surety, hereby irrevocably and unconditionally guarantees the full and prompt payment when due (whether by acceleration or otherwise) of the principal and interest on any sums due and payable by the BGS Supplier as a result of an Event of Default under the Agreement(s) (including, without limitation, indemnities, damages, fees and interest thereon, pursuant to the terms of the Agreement(s)). Notwithstanding anything to the contrary herein, the maximum aggregate liability of the Guarantor under this Guaranty shall Option 1 [in no event exceed \_\_\_\_\_.] Option 2 [in no event exceed the lesser of [the credit limit amount] or the sum of the Total Exposures Amounts under the Agreement(s).] All such principal, interest, obligations and liabilities, collectively, are the "Guaranteed Obligations". This Guaranty is a guarantee of payment and not of collection.
2. The Guarantor hereby waives diligence, acceleration, notice of acceptance of this Guaranty and notice of any liability to which it may apply, and waives presentment and all demands whatsoever except as noted herein, notice of protest, notice of dishonor or nonpayment of any such liability, suit or taking of other action by any Guaranteed Party against, and any other notice to, any party liable thereon (including

the Guarantor or any other guarantor), filing of claims with a court in the event of the insolvency or bankruptcy of the BGS Supplier, and any right to require a proceeding first against the BGS Supplier.

3. The Guaranteed Party may, at any time and from time to time, without notice to or consent of the Guarantor, without incurring responsibility to the Guarantor and without impairing or releasing the obligations of the Guarantor hereunder, upon or without any terms or conditions: (i) take or refrain from taking any and all actions with respect to the Guaranteed Obligations, any Document or any person (including the BGS Supplier) that the Guaranteed Party determines in its sole discretion to be necessary or appropriate; (ii) take or refrain from taking any action of any kind in respect of any security for any Guaranteed Obligation(s) or liability of the BGS Supplier to the Guaranteed Party; or (iii) compromise or subordinate any Guaranteed Obligation(s) or liability of the BGS Supplier to the Guaranteed Party including any security for such Guaranteed Obligation(s) or liability of the BGS Supplier to the Guaranteed Party.
4. Subject to the terms and conditions hereof, the obligations of the Guarantor under this Guaranty are absolute and unconditional and, without limiting the generality of the foregoing, shall not be released, discharged or otherwise affected by: (i) any extension, renewal, settlement, compromise, waiver, consent, discharge or release by the BGS Supplier concerning any provision of the Agreement(s) in respect of any Guaranteed Obligations of the BGS Supplier; (ii) the rendering of any judgment against the BGS Supplier or any action to enforce the same; (iii) the existence, or extent of, any release, exchange, surrender, non-perfection or invalidity of any direct or indirect security for any of the Guaranteed Obligations; (iv) any modification, amendment, waiver, extension of or supplement to any of the Agreement(s) or the Guaranteed Obligations agreed to from time to time by the BGS Supplier and the Guaranteed Party; (v) any change in the corporate existence (including its constitution, laws, rules, regulations or powers), structure or ownership of the BGS Supplier or the Guarantor, or any insolvency, bankruptcy, reorganization or other similar proceedings affecting the BGS Supplier or its assets, the Guarantor or any other guarantor of any of the Guaranteed Obligations; (vi) the existence of any claim, set-off or other rights which the Guarantor may have at any time against the BGS Supplier, the Guaranteed Party or any other corporation or person, whether in connection herewith or in connection with any unrelated transaction; provided that nothing herein shall prevent the assertion of any such claim by separate suit or compulsory counterclaim; (vii) the invalidity, irregularity or unenforceability in whole or in part of the Agreement(s) or any Guaranteed Obligations or any instrument evidencing any Guaranteed Obligations or the absence of any action to enforce the same, or any provision of applicable law or regulation purporting to prohibit payment by the BGS Supplier of amounts to be paid by it under the Agreement(s) or any of the Guaranteed Obligations; and (viii) except for a failure to comply with any applicable statute of limitations, any other act or omission to act or delay of any kind of the BGS Supplier, any other guarantor, the Guaranteed Party or any other corporation or person or any other event, occurrence or circumstance

whatsoever which might, but for the provisions of this paragraph, constitute a legal or equitable discharge of the Guarantor's obligations hereunder.

5. The Guarantor hereby irrevocably waives (a) any right of reimbursement or contribution, and (b) any right of salvage against the BGS Supplier of any collateral security or guaranty or right of offset held by the Guaranteed Party.
6. The Guarantor will not exercise any rights, which it may acquire by way of subrogation until all Guaranteed Obligations to the Guaranteed Party pursuant to the Agreement(s) have been paid in full.
7. Subject to the terms and conditions hereof, this Guaranty is a continuing one and all liabilities to which it applies or may apply under the terms hereof shall be conclusively presumed to have been created in reliance hereon. Except for a failure to comply with any applicable statute of limitations, no failure or delay on the part of the Guaranteed Party in exercising any right, power or privilege hereunder, and no course of dealing between the Guarantor and the Guaranteed Party, shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights, powers and remedies herein expressly provided are cumulative and not exclusive of any rights, powers or remedies, which the Guaranteed Party would otherwise have. No notice to or demand on the Guarantor in any case shall entitle the Guarantor to any other or further notice of demand in similar or other circumstances or constitute a waiver of the rights of the Guaranteed Party to any other or further action in any circumstances without notice or demand.
8. This Guaranty shall be binding upon the Guarantor and upon its successors and assigns and shall inure to the benefit of and be enforceable by the Guaranteed Party and its successors and assigns; provided, however, that the Guarantor may not assign or transfer any of its rights or obligations hereunder without the prior written consent of the Guaranteed Party. The assignment rights of the Guaranteed Party will be in accordance with the terms of the underlying Agreement(s).
9. Neither this Guaranty nor any provision hereof may be changed, waived, discharged or terminated except upon written agreement of the Guaranteed Party and the Guarantor.
10. The Guarantor agrees that its liability as guarantor shall continue and remain in full force and effect in the event that all or any part of any payment made hereunder or any obligation or liability guaranteed hereunder is recovered (as a fraudulent conveyance, preference or otherwise) rescinded or must otherwise be reinstated or returned due to bankruptcy or insolvency laws or otherwise.
11. All notices and other communications hereunder shall be made at the addresses by hand delivery, by the next day delivery service effective upon receipt or by certified mail return receipt requested (effective upon scheduled weekday delivery day) or

telefacsimile (effective upon receipt of evidence, including telefacsimile evidence, that telefacsimile was received)

If to the Guarantor:  
[To be completed]

If to the Guaranteed Party:  
[To be completed]

12. If claim is ever made upon the Guaranteed Party for repayment or recovery of any amount or amounts received in payment or on account of any of the Guaranteed Obligations and the Guaranteed Party repays all or part of such amount by reason of (a) any judgment, decree or order of any court or administrative body having jurisdiction over such payee or any of its property, or (b) any settlement or compromise of any such claim effected by such payee with any such claimant (including the Guarantor), then and in such event the Guarantor agrees that any such judgment, decree, order, settlement or compromise shall be binding upon it, notwithstanding any revocation hereof or the cancellation of the Agreement(s) or other instrument evidencing any liability of the Guarantor, and the Guarantor shall be and remain liable to the Guaranteed Party hereunder for the amount so repaid or recovered to the same extent as if such amount had never originally been received by any such payee.
13. The Guarantor hereby certifies that it satisfies the Minimum Rating as defined in the Agreement(s).
14. This Guaranty shall remain in full force and effect until all Guaranteed Obligations have been fully and finally performed, at which point it will expire. The Guarantor may terminate this Guaranty upon thirty (30) days prior written notice to the Guaranteed Party which termination shall be effective only upon receipt by the Guaranteed Party of alternative means of security or credit support, as specified in the Agreement(s) and in a form reasonably acceptable to the Guaranteed Party. Upon the effectiveness of any such expiration or termination, the Guarantor shall have no further liability under this Guaranty, except with respect to the Guaranteed Obligations entered into prior to the time the expiration or termination is effective, which Guaranteed Obligations shall remain guaranteed pursuant to the terms of this Guaranty until finally and fully performed.
15. The Guarantor represents and warrants that: (i) it is duly organized and validly existing under the laws of the jurisdiction in which it was organized and has the power and authority to execute, deliver, and perform this Guaranty; (ii) no authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over the Guarantor is required on the

part of the Guarantor for the execution, delivery and performance of this Guaranty except for those already made or obtained; (iii) this Guaranty constitutes a valid and legally binding agreement of the Guarantor, and is enforceable against the Guarantor, except as the enforceability of this Guaranty may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditor's rights generally and by general principles of equity; and (iv) the execution, delivery and performance of this Guaranty by the Guarantor have been and remain duly authorized by all necessary corporate or comparable action and do not contravene any provision of its \_\_\_\_\_ [insert appropriate corporate organizational document, such as Declaration of Trust, Limited Liability Agreement, Articles of Incorporation or by-laws] or any law, regulation or contractual restriction binding on it or its assets.

16. This Guaranty and the rights and obligations of the BGS Supplier and the Guarantor hereunder shall be construed in accordance with and governed by the laws of the State of New Jersey. The Guarantor and Guaranteed Party jointly and severally agree to the exclusive jurisdiction of State and federal courts located in the State of New Jersey over any disputes arising or relating to this Guaranty and waive any objections to venue or inconvenient forum. The Guarantor and Guaranteed Party each hereby irrevocably waive any and all rights to trial by jury with respect to any legal proceeding arising out of or relating to this Guaranty.
17. This writing is the complete and exclusive statement of the terms of this Guaranty and supersedes all prior oral or written representations, understandings, and agreements between the Guaranteed Party and the Guarantor with respect to subject matter hereof. The Guaranteed Party and the Guarantor agree that there are no conditions to the full effectiveness of this Guaranty.
18. Every provision of this Guaranty is intended to be severable. If any term or provision hereof is declared to be illegal or invalid for any reason whatsoever by a court of competent jurisdiction, such illegality or invalidity shall not affect the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable. This Guaranty may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.
19. No Trustee or shareholder of Guarantor shall be held to any liability whatsoever for any obligation under this Guaranty, and such Guaranty shall not be enforceable against any such Trustee in their or his or her individual capacities or capacity. This Guaranty shall be enforceable against the Trustees of Guarantor only as such, and every person, firm, association, trust or corporation having any claim or demand arising under this Guaranty and relating to Guarantor, its shareholders or Trustee shall look solely to the trust estate of Guarantor for the payment or satisfaction thereof.

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

[GUARANTOR]

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

Accepted and Agreed to:

(EDC)

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