

**EXECUTION COPY**

**AGREEMENT FOR THE PURCHASE AND SALE**

**OF FIRM CAPACITY AND ENERGY**

**BETWEEN**

**BIG RIVERS ELECTRIC CORPORATION**

**AND THE**

**KENTUCKY MUNICIPAL ENERGY AGENCY**

**JULY 13, 2016**

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EXHIBITS

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**AGREEMENT FOR THE PURCHASE AND SALE  
OF FIRM CAPACITY AND ENERGY  
BETWEEN BIG RIVERS ELECTRIC CORPORATION AND  
KENTUCKY MUNICIPAL ENERGY AGENCY**

This AGREEMENT FOR THE PURCHASE AND SALE OF FIRM CAPACITY AND ENERGY (this "Agreement") is made and entered into as of this 13th day of July, 2016 ("Effective Date"), between **Big Rivers Electric Corporation** (hereinafter referred to as "Seller"), a generation and transmission cooperative organized and existing under the laws of the Commonwealth of Kentucky, and **Kentucky Municipal Energy Agency**, an inter-local agency organized and existing under the laws of the Commonwealth of Kentucky (hereinafter referred to as "Buyer").

WHEREAS, Seller is a generation and transmission cooperative engaged in, among other things, the sale of electric power at wholesale;

WHEREAS, Seller owns, operates, or has rights to several electric generating resources with a total installed capacity of 1,889 megawatts, [REDACTED]  
[REDACTED] and

WHEREAS, Buyer wishes to purchase from Seller, and Seller wishes to sell to Buyer, firm electric energy and capacity, as set forth herein;

NOW THEREFORE, in consideration of the foregoing premises, the mutual agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby covenant and agree as follows:

**ARTICLE I**

**DEFINITIONS**

Section 1.1. Definitions. When used in this Agreement, including any exhibits hereto, the following terms, whether used in the singular or plural, shall have the following definitions. Capitalized terms that are not defined herein shall have the meanings assigned to them in the MISO Tariff.

"AAA" has the meaning set forth in Section 15.3(a).

"Affiliate" means, with respect to any Person, any other Person that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person. For this purpose, "control" means the direct or indirect ownership of a majority of the outstanding capital stock or other equity interests having ordinary voting power, or otherwise having the power, directly or indirectly, to direct or cause the direction of the management and policies of a Person.

"Agreement" has the meaning set forth in the preamble.

“Bankruptcy Proceeding” means with respect to a Person, such Person (i) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due, (ii) makes a general assignment, arrangement or composition with or for the benefit of its creditors, (iii) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency Law or other similar Law affecting creditors’ rights, or a petition is presented for its winding-up or liquidation, and solely with respect to any such proceeding or petition that is instituted or presented by a party other than the Party with respect to which such petition or proceeding relates is not dismissed within sixty (60) days after the filing thereof, (iv) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger), (v) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets, (vi) causes or is subject to any event with respect to it which, under applicable Law, has an analogous effect to any of the events specified in clauses (i) through (v), or (vii) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts

“Business Day” means a day that is not a Saturday, a Sunday or a day on which banking institutions are not required to be open, or are authorized or required to close, in the Commonwealth of Kentucky.

“Buyer” has the meaning set forth in the preamble.

“Buyer Event of Default” has the meaning set forth in Section 11.2.

“Buyer Investment Grade Rating” means any rating of Buyer’s general credit, or of Buyer’s long-term bonds, of at least BBB- from Fitch, BBB- from S&P, or Baa3 from Moody’s.

“Capacity” means the ability of generating equipment to produce Energy, measured in megawatts.

“Claim Notice” has the meaning set forth in Section 12.4.

[REDACTED]

“Contract Capacity” means the quantity of capacity set forth in Section 4.2, as such may have been modified by Buyer’s notice provided pursuant to Section 3.3(b), Section 3.4 or Section 3.6.

“Contract Term” has the meaning set forth in Article II.

“Credit Rating” means with respect to an entity providing a Qualifying Letter of Credit, on the relevant date of determination, the respective ratings then assigned to such entity’s unsecured, senior long-term debt, or deposit obligations (not supported by third party credit enhancement) by a Ratings Agency. If no rating is assigned to such entity’s unsecured, senior

long-term debt or deposit obligations by any Ratings Agency, then "Credit Rating" shall mean the general corporate credit rating or long-term issuer rating assigned by a Ratings Agency, as the case may be.

"Day-Ahead Market Price" means the Day-Ahead Ex Ante LMP at the [REDACTED]

"Day-Ahead Schedule" has the meaning set forth in Section 5.2.

"Default Interest Rate" means, for any date, the lesser of (i) the highest rate permitted by Law or (ii) the Interest Rate plus an annual rate of 2% converted to a daily rate.

"Delivered Firm Energy" means the quantity of Firm Energy, Scheduled by Buyer and delivered by Seller to Buyer at the Delivery Point in the relevant time period, expressed in MWh.

"Delivery Point" means the [REDACTED]

"Demand" has the meaning set forth in Section 15.3(a).

"Effective Date" has the meaning set forth in the preamble.

"Energy" means electricity (measured in kilowatt-hours or megawatt-hours, as the case may be).

"Facility" has the meaning set forth in the recitals.

"Facility Energy Price" means the price determined in accordance with Exhibit A.

"Firm Capacity Price" means [REDACTED] subject to adjustment solely as provided for in Section 7.3 and Section 7.4.

"Firm Energy" means Energy associated with the Contract Capacity.

"Fitch" means Fitch Ratings, Inc. or its successor.

"Force Majeure" has the meaning set forth in Section 14.1.

"Indemnitee" has the meaning set forth in Section 12.3.

"Indemnitor" has the meaning set forth in Section 12.3(a).

"Interest Rate" means, for any date, the prime rate reported in *The Wall Street Journal's* "Money Rates" column (or any similar column published in *The Wall Street Journal* in replacement thereof) for the immediately preceding Business Day, converted to a daily rate. In the event *The Wall Street Journal* ceases to report the prime rate, the prime rate for purposes of this Agreement shall be the prevailing prime rate (or base rate) charged by major banks in the United States of America.

"KPSC" means the Public Service Commission of Kentucky.

"kW" means kilowatt (a unit of Capacity).

"kWh" means kilowatt-hour (a unit of Energy).

"KyMEA Member" means any municipal electric utility member of Buyer.

"KyMEA Member AR Agreement" has the meaning set forth in Section 3.4.

"Law" means any law, rule, regulation, order, writ, judgment, decree or other legal or regulatory determination by a court, regulatory agency or governmental authority of competent jurisdiction.

"Letter of Credit Default" means the occurrence of any of the following events with respect to any Qualifying Letter of Credit:

- (a) The issuer of the Qualifying Letter of Credit fails to maintain a Credit Rating of at least "A-" by S&P and "A3" by Moody's and total assets of at least \$10,000,000,000 (Ten Billion Dollars);
- (b) The issuer of the Qualifying Letter of Credit fails to comply with or perform its obligations under the Qualifying Letter of Credit;
- (c) The issuer of the Qualifying Letter of Credit disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Qualifying Letter of Credit;
- (d) The issuer of the Qualifying Letter of Credit fails to honor the beneficiary Party's properly documented request to draw on such Qualifying Letter of Credit;
- (e) Such Qualifying Letter of Credit fails or ceases to be in full force and effect at any time; or
- (f) The issuer of the Qualifying Letter of Credit becomes subject to a Bankruptcy Proceeding;

provided that no Letter of Credit Default shall occur or be continuing in any event with respect to a Qualifying Letter of Credit after the time such Qualifying Letter of Credit is canceled or returned.

"Losses" means amounts incurred by an Indemnitee as a result of Third Party Claims, including reasonable attorneys' fees and costs of investigation, litigation, damage, expenses, settlement and judgment.

"MISO" means the Midcontinent Independent System Operator, Inc., or its successor.

“MISO Tariff” means the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff, including all schedules or attachments thereto, as amended from time to time, or any successor tariff.

“Modification” has the meaning set forth in Section 15.4.

“Monthly Energy Charge” has the meaning set forth in Section 7.2.

“Monthly Reservation Charge” has the meaning set forth in Section 7.1.

“Moody’s” means Moody’s Investor Services, Inc., or its successor.

“MW” means megawatt (one MW equals 1,000 kW).

“MWh” means megawatt-hour (one MWh equals 1,000 kWh).

“Operating Committee” has the meaning set forth in Section 5.7.

“Party” or “Parties” means one of Seller or Buyer, or both Seller and Buyer, or their permitted assigns and transferees, as the context requires.

“Planning Reserve Capacity” means capacity up to and including ██████ of Contract Capacity if and as may be required of Buyer in accordance with any Resource Adequacy Program.

“Person” means any natural person, corporation, partnership, limited liability company, firm, association, trust, governmental authority or any other entity, whether acting in an individual, fiduciary or other capacity.

“Post-Day-Ahead Schedule” means an adjustment to the Day-Ahead Schedule that can be made by Buyer in accordance with Section 5.3 of this Agreement.

“Proposal” has the meaning set forth in Section 15.4.

“Prudent Utility Practices” shall mean the practices, methods and acts including but not limited to the generally accepted practices, methods and acts engaged in or approved by the operators of similar electric generating facilities which at the time such practice, method or act is employed, and in the exercise of reasonable judgment in light of the facts known at such time, would be expected to accomplish the desired result in a workmanlike manner, consistent with (a) applicable Laws and governmental requirements, and (b) commercially reasonable reliability, safety and environmental protection and (c) reasonably consistent with manufacturer’s technical advisory recommendations. Prudent Utility Practices shall not require the use of the optimum practice, method or act, but only require the use of acceptable practices, methods or acts generally accepted in the independent power industry in the United States.

“Qualifying Letter of Credit” means an irrevocable standby letter of credit with an initial term of at least one year for the benefit of a Party, issued by a U.S. commercial bank, a U.S. branch of a foreign bank, the National Rural Utilities Cooperative Finance Corporation or

CoBank ACB, with such bank having (a) a Credit Rating of at least "A-" from S&P and "A3" from Moody's, and (b) total assets (determined in accordance with GAAP) of at least \$10,000,000,000 (Ten Billion Dollars), and which letter of credit (i) is substantially in the form of Exhibit D or another form of letter of credit reasonably satisfactory to the beneficiary Party, (ii) permits automatic renewal of the relevant Qualifying Letter of Credit (which may be subject to an outside stated expiration date), and (iii) may be utilized by the beneficiary Party to satisfy all present and future payment obligations of the other Party under this Agreement when due.

"Ratings Agency" means S&P, Moody's, Fitch or any other rating agency agreed to by the Parties in writing.

"Real-Time Market Price" means the Real-Time Ex Post LMP at the [REDACTED]

"Resource Adequacy Program" means any resource adequacy requirement or other form of capacity demonstration obligation applicable in any balancing authority area where Buyer's load is located, pursuant to tariffs, regulatory requirements, or other binding criteria applicable to Buyer.

"RUS" means the Rural Utilities Service, an agency of the United States Department of Agriculture.

"Schedule" or "Scheduling" or "Scheduled" means Buyer communicating to Seller that a particular amount of Firm Energy is to be delivered at the Delivery Point, in accordance with Section 5.2 and/or Section 5.3.

"Scheduled Firm Energy" means the quantity of Firm Energy that is Scheduled by Buyer to be delivered for a given time period, expressed in MWh.

"Scheduling Day" means Monday through Friday, excluding holidays observed by MISO.

"Seller" has the meaning set forth in the preamble.

"Seller Event of Default" has the meaning set forth in Section 11.1.

"Seller Investment Grade Rating" means any rating of Seller's general credit, or of Seller's long-term debt, of at least BBB- from Fitch, BBB- from S&P, or Baa3 from Moody's.

"Service Commencement Date" means 00:00:00 Eastern Standard Time on June 1, 2019.

"Service Month" has the meaning set forth in Section 7.1.

"S&P" means S&P Global Ratings, a business division of Standard & Poor's Financial Services, LLC, or its successor.

"Third Party Claims" has the meaning set forth in Section 12.3(a).

“Transmission Provider(s)” means the Person or Persons transmitting Scheduled Firm Energy on behalf of Buyer from the Delivery Point.

**ARTICLE II**

**TERM**

Section 2.1. Initial Term. The term of this Agreement shall commence on the Effective Date, and shall continue in effect through May 31, 2029 (the “Contract Term”), unless earlier terminated or extended in accordance with the terms of this Agreement. The Capacity and Energy transactions provided for by this Agreement shall begin on the Service Commencement Date and continue in effect through the end of the Contract Term, unless the Agreement is terminated early in accordance with the terms of this Agreement.

Section 2.2. [REDACTED]

**ARTICLE III**

**CONTINGENCIES; CAPACITY ADJUSTMENTS**

Section 3.1. RUS Approval.

(a) The obligations of the Parties pertaining to scheduling, delivery, sale, purchase, and payment for Capacity and Energy under this Agreement are conditioned on approval hereof by RUS. No later than thirty (30) days after the Effective Date, Seller shall make an appropriate submission to RUS seeking the authorization for Seller to enter into and perform all of its obligations under this Agreement. Seller shall use commercially reasonable efforts to secure RUS approval. Buyer shall (at Seller’s expense) cooperate with and assist Seller in securing the necessary approval from RUS; provided that to the extent any information to be provided by Buyer to RUS is deemed confidential information by Buyer, Seller will request that RUS maintain the confidentiality of any information designated by Buyer as confidential.

(b) In the event RUS should require as a condition of approval of this Agreement any material modifications of this Agreement that are unacceptable to either Seller or Buyer, each in its reasonable discretion, Seller and Buyer shall, within sixty (60) days from receipt of notice of the condition, negotiate in good faith to modify this Agreement so as to secure RUS approval. Notwithstanding the foregoing, nothing in this Section 3.1 shall be construed to require either Seller or Buyer to consent to any modification of this Agreement or

any other condition or requirement imposed by RUS. If the Parties cannot agree on amendments to this Agreement that will satisfy RUS, this Agreement shall be terminated, without penalty or any further obligation on the part of Seller or Buyer, by either Party providing written notice of such termination to the other Party on or before one hundred twenty (120) days from receipt of notice of the condition.

(c) If the RUS has not provided its approval by two hundred seventy (270) days from the Effective Date, this Agreement may be terminated by Buyer providing notice to Seller, without penalty or any further obligation on the part of Seller or Buyer. If the RUS has not provided its approval by three hundred sixty five (365) days from the Effective Date, this Agreement may be terminated by either Party providing notice to the other Party, without penalty or further obligation on the part of Seller or Buyer.

Section 3.2. KPSC Approval.

(a) The obligations of the Parties pertaining to scheduling, delivery, sale, purchase, and payment for Capacity and Energy under this Agreement are conditioned on approval hereof by the KPSC. No later than thirty (30) days after the Effective Date, Seller shall make an appropriate submission to KPSC seeking the authorization for Seller to enter into and perform all of its obligations under this Agreement, and requesting expedited processing of Seller's application. Seller shall use commercially reasonable efforts to secure KPSC approval. Buyer shall (at Seller's expense) cooperate with and assist Seller in securing the necessary approval from KPSC; provided that to the extent any information to be provided by Buyer to KPSC is deemed confidential information by Buyer, Seller will seek confidential treatment pursuant to the KPSC's regulations and Law of any information designated as confidential by Buyer. Buyer acknowledges that it will be required to intervene in the KPSC proceeding to protect the confidentiality of any information deemed confidential only by it.

(b) In the event KPSC should require as a condition of approval of this Agreement any material modifications of this Agreement that are unacceptable to either Seller or Buyer, each in its reasonable discretion, Seller and Buyer shall, within sixty (60) days from receipt of notice of the condition, negotiate in good faith to modify this Agreement so as to secure KPSC approval. Notwithstanding the foregoing, nothing in this Section 3.2 shall be construed to require either Seller or Buyer to consent to any modification of this Agreement or any other condition or requirement imposed by KPSC. If the Parties cannot agree on amendments to this Agreement that will satisfy KPSC, this Agreement shall be terminated, without penalty or any further obligation on the part of Seller or Buyer, by either Party providing written notice of such termination to the other Party on or before one hundred twenty (120) days from receipt of notice of the condition.

(c) If the KPSC has not provided its approval by two hundred seventy (270) days from the Effective Date, this Agreement may be terminated by Buyer providing notice to Seller, without penalty or any further obligation on the part of Seller or Buyer. If the KPSC has not provided its approval by three hundred sixty five (365) days from the Effective Date, this Agreement may be terminated by either Party providing notice to the other Party, without penalty or further obligation on the part of Seller or Buyer.

Section 3.3. [REDACTED]

[REDACTED]

[REDACTED]

Section 3.4. Buyer's Sales to Members. The obligations of the Parties pertaining to scheduling, delivery, sale, purchase, and payment for Capacity and Energy under this Agreement are conditioned on the execution by Buyer and KyMEA Members of agreements pursuant to which Buyer will sell, and the KyMEA Members will purchase, the full Capacity and Energy requirements of such KyMEA Members ("KyMEA Member AR Agreements"), where the reasonably projected collective annual peak demand for calendar year 2019 of the KyMEA Members under such executed agreements is at least 200 MW. If, within one hundred eighty (180) days after the Effective Date, agreements sufficient to satisfy the foregoing condition have not been entered into by Buyer and KyMEA Members, Buyer shall provide notice to Seller of the failure of this condition.

Section 3.5. Deadline for Satisfaction or Waiver of Contingencies. The responsible Party for each contingency in this Article III will deliver written notice to the other Party by October 1, 2017, listing each contingency for which it is responsible and the extent to which the contingency has been satisfied, not satisfied, or not satisfied but waived. If all contingencies set forth in this Article III have not been satisfied or waived by the responsible party by October 1, 2017, this Agreement may be terminated by either Party providing notice to the other Party on or before October 31, 2017, without penalty or further obligation on the part of Seller or Buyer.

Section 3.6. [REDACTED]

[REDACTED]

[REDACTED]

ARTICLE IV

PURCHASE AND SALE

Section 4.1. Product. Subject to and in accordance with the terms and conditions of this Agreement, during the period from the Service Commencement Date to the end of the Contract Term, Seller shall sell and make available to Buyer at the Delivery Point, and Buyer shall purchase and pay for, Contract Capacity and Firm Energy in amounts Scheduled by Buyer from time to time pursuant to Article V.

Section 4.2. Contract Capacity. The Contract Capacity shall be [REDACTED] subject to adjustment under Section 3.3(b), Section 3.4 or Section 3.6. The Contract Capacity shall at all times be stated in MW.

Section 4.3. [REDACTED]

Section 4.4. Sources of Firm Energy. It is the Parties' understanding that the source(s) of Firm Energy to be provided to Buyer in accordance with the Schedules submitted pursuant to

Article V will depend upon MISO's market operations based on the results of MISO's security-constrained economic dispatch.

Section 4.5. Designated Capacity for Resource Adequacy; Designated Network Resources.

(a) If at any time Buyer is subject to a Resource Adequacy Program that requires Buyer to identify specific generating resources underlying its firm power contracts, then

(i) Seller shall, upon the request of Buyer, identify Capacity from Seller's system resources (up to an amount equal to the sum of the Contract Capacity and the Planning Reserve Capacity) that Buyer may designate as Capacity necessary to satisfy the requirements of such Resource Adequacy Program. Seller shall identify such Capacity, together with such supporting information regarding the characteristics of the resources that Buyer needs in connection with its designation of such Capacity pursuant to the terms of the Resource Adequacy Program, at least sixty (60) days prior to the deadline for Buyer's submission of such information in accordance with the Resource Adequacy Program. If at any time an entity implementing or enforcing such Resource Adequacy Program determines that such Capacity designation is not sufficient to satisfy Buyer's obligations under the Resource Adequacy Program (for reasons other than that the level of Planning Reserve Capacity required under such Resource Adequacy Program associated with this Agreement is greater than 16% of Contract Capacity), then as soon as reasonably possible the Parties shall undertake good faith negotiations to identify revised or additional Capacity designations that are sufficient to establish Buyer's compliance with the Resource Adequacy Program, subject to the limits on Seller's obligation to provide Planning Reserve Capacity.

(ii) Alternatively, if permitted under the terms of the Resource Adequacy Program, Seller may elect to register as the party responsible for Buyer's compliance with such Resource Adequacy Program for the portion of Buyer's load that is equal to the Contract Capacity.

(b) If at any time additional information regarding the resources supporting Seller's obligations under this Agreement is required by any Transmission Provider(s) in order for this Agreement to qualify as a designated network resource or is otherwise required in connection with the obligations of Buyer under an applicable transmission tariff, Seller shall (at Buyer's expense) reasonably cooperate with and assist Buyer in providing the required information; provided that to the extent any information to be provided by Seller to any Transmission Provider(s) is deemed confidential information by Seller, Seller's obligation to provide such information may be conditioned upon such Transmission Provider(s) agreeing to maintain its confidentiality pursuant to a confidentiality agreement.

Section 4.6. Title and Risk of Loss. Title to and risk of loss related to Scheduled Firm Energy shall transfer from Seller to Buyer at the Delivery Point. Seller warrants that it will deliver to Buyer the Firm Energy Scheduled by Buyer free and clear of all liens, security

interests, claims and encumbrances or any interest therein or thereto by any Person arising prior to delivery at the Delivery Point.

ARTICLE V

SCHEDULING; OPERATING COMMITTEE

Section 5.1. Contract Entitlement. Buyer shall have the right to Schedule Firm Energy, up to the total Contract Capacity, for delivery by Seller at the Delivery Point on and after the Service Commencement Date. Buyer shall not have the right to schedule energy associated with Planning Reserve Capacity.

Section 5.2. Day-Ahead Dispatch.

(a) Seller will cooperate and make commercially reasonable efforts to provide to Buyer information and projections of the Facility Energy Price applicable for each Service Month, to assist Buyer in determining its Day-Ahead Schedule(s) in such Service Month. Seller shall update its projection of the Facility Energy Price during the course of the Service Month.

(b) By no later than 0800 Eastern Standard Time each Scheduling Day, Buyer shall provide its Schedule to Seller by email or other reasonable means clearly identifying for each hour of the following operating day(s) the quantity of Firm Energy to be delivered by Seller at the Delivery Point for the account of Buyer (the "Day-Ahead Schedule"). The Day-Ahead Schedule shall be binding on Seller and Buyer, except as modified pursuant to Section 5.3. Seller and Buyer may agree in writing to a different day-ahead Scheduling procedure at any time, and the Parties agree that the deadline for submission of such Schedules shall be adjusted to match any changes in the bid submission deadlines for applicable MISO markets.

(c) [REDACTED]

Section 5.3. Scheduling Changes.

[REDACTED]

[REDACTED]

(c) The revised megawatt quantity for any hour will serve as the basis for the calculation of the Energy Charge for that hour.

[REDACTED]

Section 5.4. Transmission Scheduling. The Parties acknowledge and agree that the provisions of this Article V do not govern transmission scheduling obligations and practices associated with the Firm Energy beyond the Delivery Point. Such activities, including the timing of providing any notifications to the applicable Transmission Providers, will be governed by the applicable transmission tariffs. For the avoidance of doubt, Seller shall take all commercially reasonable actions to support Buyer's scheduling of transmission service.

Section 5.5. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Section 5.6. Recording. Buyer and Seller each consents to the creation of a tape or electronic recording of all Scheduling-related telephone conversations between Buyer and Seller

(with or without the use of a warning tone). Any such recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any proceeding or action relating to a dispute regarding Scheduling under this Agreement. In addition, Buyer and Seller each waives any further notice of such monitoring or recording, and agrees to notify such of its officers, employees and agents of such monitoring or recording and to obtain any necessary consent of such officers, employees and agents as required by applicable Law, regulation or tariff.

**Section 5.7. Operating Committee.** The Parties shall form a committee to exchange information and coordinate with respect to matters relating to the performance of this Agreement ("Operating Committee"). Each Party shall appoint one representative to serve on the Operating Committee. The Parties shall notify each other in writing of such appointments and any changes thereto. The Operating Committee shall have no authority to modify the terms or conditions of this Agreement. Seller shall schedule meetings of the Operating Committee by mutual agreement of the representatives no less frequently than annually. Matters to be reviewed by the Operating Committee shall include, without limitation, (1) Seller's annual budgets for costs that are included in the Facility Energy Price, (2) Seller's schedules for planned maintenance of the Facility, forced or scheduled maintenance outages, deratings of any units on the Seller's system that could potentially affect the normal planning reserves of the Seller's system that support the reliability provisions of the Agreement, (3) fuel procurement strategy and implementation, and (4) beginning in 2025, projections of the components of the Firm Capacity Price for the extension of the Contract Term presented in Exhibit E. Meetings of the Operating Committee may be conducted in person or by telephone, and each Party may elect to have one or more individuals attend any such meeting on behalf of the Party in addition to the Party's appointed representative. Within a reasonable time after the conclusion of each meeting of the Operating Committee, Seller shall provide a written summary or summaries of such meeting, including a description of issues discussed and decisions agreed upon by the Parties. The Parties intend that confidential information provided by a Party in conjunction with the activities of the Operating Committee will be subject to the Mutual Confidentiality Agreement attached to this Agreement as Exhibit G.

## ARTICLE VI

### FAILURE TO DELIVER OR RECEIVE

**Section 6.1. Seller's Failure.** Seller's obligations to sell and deliver shall be excused only to the extent that, and for the period during which, such performance is prevented by Force Majeure or by the non-performance of Buyer. If Seller fails to deliver to Buyer all or part of the Firm Energy Scheduled by Buyer, through the timely submission of FinScheds as provided for in Section 5.5, and such failure is not excused, then Seller shall pay or credit Buyer an amount equal to the Day-Ahead Market Price or Real-Time Market Price, as appropriate, for each MWh of Scheduled Energy for which Seller failed to submit a FinSched. If Seller fails to deliver as a result of any other unexcused action or unexcused failure to act, Seller shall compensate Buyer for any incremental cost of Capacity and Energy incurred by Buyer as a result thereof.

**Section 6.2. Buyer's Failure.** Buyer's obligation to receive Firm Energy Scheduled by Buyer shall be excused only to the extent that, and for the period during which, such

performance is prevented by Force Majeure or by the non-performance of Seller. In the event of any such failure to receive Scheduled Firm Energy as a result of failing to confirm the FinSched, if such failure is not excused as provided in this Section 6.2, then, for the portion of Scheduled Firm Energy for which there was a non-excused failure to confirm the FinSched,

(a) Seller shall assess a charge to Buyer equal to the product of such Scheduled Firm Energy times the Facility Energy Price, and

(b) Seller shall provide a credit to Buyer equal to the product of such Scheduled Firm Energy times the lesser of (i) the Day-Ahead Market Price or Real-Time Market Price, as applicable, or (ii) the Facility Energy Price.

## ARTICLE VII

### CHARGES

Section 7.1. Monthly Reservation Charge. For each calendar month of the Contract Term beginning with the Service Commencement Date (each, a "Service Month"), Buyer's "Monthly Reservation Charge" shall be the product of the Firm Capacity Price and the Contract Capacity. The Monthly Reservation Charge shall be deemed to compensate the Seller for any Planning Reserve Capacity that may be required pursuant to Section 4.5. Accordingly, there shall be no separate charge for Planning Reserve Capacity. In accordance with Article VIII, the Monthly Reservation Charge (and all other monthly charges described herein) shall be invoiced in the month immediately following the Service Month, with any corrections thereto made as soon as practicable. Notwithstanding the foregoing, if the Agreement is terminated at a time other than at the end of a calendar month, the Monthly Reservation Charge for the final Service Month shall be pro-rated accordingly.

Section 7.2. Monthly Energy Charge. The "Monthly Energy Charge" shall be equal to the product of the Delivered Firm Energy in that Service Month and the Facility Energy Price for that Service Month as determined pursuant to Exhibit A.

Section 7.3. Firm Capacity Price. [REDACTED]

Section 7.4.

[REDACTED]

Section 7.5.

[REDACTED]

ARTICLE VIII

BILLING AND PAYMENT

Section 8.1. Billing. On or before the tenth (10th) day following the end of each Service Month, Seller shall deliver to Buyer an invoice detailing the total Delivered Firm Energy, measured in MWh, for each day of the Service Month, the Facility Energy Price for the Service Month, and the total charges and credits to be paid by Buyer for the Monthly Reservation Charge, the Monthly Energy Charge, and any other charges properly assessed and credits owed to Buyer pursuant to this Agreement, for such Service Month. For any month in which charges for unexcused failure to receive apply pursuant to Section 6.2, Seller shall also provide with the invoice documentation reasonably supporting the Day-Ahead Market Price or Real-Time Market Price, as appropriate for each applicable hour. In each invoice, any amounts owed by Seller to Buyer (including, without limitation, under Section 4.5(a)(i) or Section 6.1) shall be netted against the amounts owed by Buyer to Seller.

Section 8.2. Payment. Buyer shall make payment of the invoice to Seller within thirty (30) days after Buyer's receipt of the invoice by means of wire transfer of immediately available funds, or other acceptable method agreed to in writing by Seller and Buyer.

Section 8.3. Late Payments by Buyer. If for any reason other than as permitted by and in accordance with Section 8.4 below, Buyer pays less than the full amount of the invoice, interest on the unpaid amount shall accrue at the Default Interest Rate for each calendar day from the due date to the date paid.

Section 8.4. Disputes. [REDACTED]

Section 8.5. Adjustments. Any adjustments to amounts invoiced and paid for a given Service Month (e.g., to reflect resolution of any dispute and/or billing corrections) shall be made on the next monthly invoice following the event giving rise to such adjustment. Where the adjustment is to rectify an overpayment, and to the extent allowed by Law, Seller shall provide a credit that includes interest accrued from the original payment date to the date of the credit, at the Interest Rate. Where the adjustment is to rectify an underpayment, and to the extent allowed by Law, Seller shall provide a charge that includes interest accrued from the original payment due date to the date of the charge, at the Interest Rate. If any credit exceeds the amount that would otherwise be due for the current Service Month, or if any credit would be due following Buyer's payment of the final invoice, Seller shall pay the net refund to Buyer no later than when the invoice would otherwise be due for such Service Month (or, if Buyer has paid the final invoice, no later than fifteen (15) days of calculation of the adjustment).

Section 8.6. Audit. Buyer has the right with reasonable prior notice, at the sole expense of Buyer, to examine the records of Seller during regular business hours to the extent reasonably necessary to verify the accuracy of any invoice, or calculations provided with or supporting such invoice, rendered pursuant to this Agreement. If any such examination reveals any inaccuracy in any invoice, or calculations provided with or supporting such invoice, the necessary adjustments in such invoice, or calculations provided with or supporting such invoice, and the payments made pursuant to such inaccurate invoice, or calculations provided with or supporting such invoice, shall be adjusted in the next invoice, provided that Buyer brought it to the attention of Seller within twenty four (24) months after issuance of the inaccurate invoice. This Section 8.6 shall survive any termination of this Agreement for a period of two (2) years from the date on which the last invoice is rendered to Buyer pursuant to this Agreement.

Section 8.7. Records. Seller shall develop, maintain and keep originals or copies of all accounting records, statistical information, and supporting documents relating to the performance of its obligations hereunder in accordance with the longest of the applicable record-retention requirements of the RUS, KPSC, MISO and all other regulatory bodies and taxing authorities having jurisdiction over Seller; provided that all such applicable accounting records shall be retained for at least two (2) years and so long as any dispute exists regarding such information or payments due under this Agreement. All such records shall be available for inspection by Buyer during regular business hours, and Buyer shall have the right (at Buyer's expense) to make copies thereof.

## ARTICLE IX

### CREDITWORTHINESS

Section 9.1. Financial Information. Seller may require Buyer to provide financial information reasonably needed to ascertain Buyer's ability to perform under this Agreement. Buyer may require Seller to provide financial information reasonably needed to ascertain Seller's ability to perform under this Agreement.

Section 9.2. Credit Support.

(a) Buyer's Obligations. [REDACTED]

[REDACTED]

(b) Seller's Obligations.

[REDACTED]

(c)

[REDACTED]

ARTICLE X

TRANSMISSION ARRANGEMENTS; MISO MARKET

Section 10.1. Seller's Obligations.

[REDACTED]

Section 10.2. Buyer's Obligations.

[REDACTED]

Section 10.3.

[REDACTED]

[REDACTED]

ARTICLE XI

DEFAULT AND REMEDIES

Section 11.1. Seller Event of Default. The following shall constitute events of default on the part of Seller ("Seller Event of Default"):

(a) Seller fails to pay or credit any amount due to Buyer under this Agreement and such failure continues for five (5) days following receipt of written notice thereof from Buyer.

(b) Seller becomes subject to a Bankruptcy Proceeding.

(c) Any representation or warranty made by the Seller herein is false or misleading in any material respect when made.

(d) Seller consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity (i) fails to assume all the obligations of the Seller hereunder pursuant to an agreement reasonably satisfactory to Buyer, absent Buyer's consent permitting Seller to retain the Agreement pursuant to Section 13.2(b), or (ii) is not at least as creditworthy as Seller.

(e) Seller commits a breach of its material covenants or obligations under this Agreement not otherwise excused by Force Majeure, other than a payment default as set forth in Section 11.1(a), unless:

(i) Seller commences and diligently proceeds to cure such breach upon delivery of written notice of such breach from Buyer; and

(ii) the breach is cured within ten (10) days of delivery of such written notice; provided, however, that if (A) such breach is not, by its nature, capable of being cured within such ten (10) day period, and (B) Seller is diligently and in good faith proceeding to attempt to cure such breach, Seller shall be allowed such additional time, which shall in no event exceed an additional twenty (20) days, as may reasonably be required to cure such breach.

(f) [REDACTED]

Section 11.2. Buyer Event of Default. The following shall constitute an event of default on the part of Buyer ("Buyer Event of Default"):

(a) Buyer fails to pay any amount due to Seller under this Agreement and such failure continues for five (5) days following receipt of written notice thereof from Seller.

(b) Buyer becomes subject to a Bankruptcy Proceeding.

(c) Any representation or warranty made by Buyer is false or misleading in any material respect when made.

(d) Buyer consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity (i) fails to assume all the obligations of Buyer under this Agreement by operation of Law or pursuant to an agreement reasonably satisfactory to the Seller, or (ii) is not at least as creditworthy as Buyer.

(e) Buyer commits a breach of its material covenants or obligations under this Agreement not otherwise excused by Force Majeure, other than a payment default as set forth in Section 11.2(a), unless:

(i) Buyer commences and diligently proceeds to cure such breach upon delivery of written notice of such breach from Seller; and

(ii) the breach is cured within ten (10) days of delivery of such written notice; provided, however, that if (A) such breach is not, by its nature, capable of being cured within such ten (10) day period, and (B) Buyer is diligently and in good faith proceeding to attempt to cure such breach, Buyer shall be allowed such additional time, which shall in no event exceed an additional twenty (20) days, as may reasonably be required to cure such breach.

(f) The occurrence of a Letter of Credit Default where such Letter of Credit Default is not cured within three (3) Business Days after its occurrence by Buyer providing to Seller a valid Qualifying Letter of Credit, provided that if the Letter of Credit Default is the result of the issuer of the Qualifying Letter of Credit failing to maintain the required Credit Rating and total assets, Buyer shall be allowed such additional time, which shall in no event exceed an additional twenty (20) days, as may reasonably be required to cure such breach.

Section 11.3. Procedure and Remedies.

[REDACTED]

[REDACTED]

Section 11.4. Rights of Specific Performance. In addition to the remedies specified hereunder, upon the occurrence of a Seller Event of Default or a Buyer Event of Default, which does not arise from the failure to make a payment of money hereunder, the non-defaulting Party shall have a right to obtain equitable relief, including specific performance of the defaulting Party's non-monetary obligations hereunder.

**ARTICLE XII**

**INDEMNIFICATION**

Section 12.1. Indemnity by Seller. Subject to the terms and conditions set forth in this Article XII and except to the extent caused by the fraud, negligence or the willful misconduct or willful breach of any obligation under this Agreement of any Indemnitee, Seller shall indemnify and hold Buyer and its Affiliates, members, directors, officers, attorneys, employees, subcontractors, agents and assigns harmless for, from and against any and all Losses that any of them may sustain or suffer as a consequence of the breach of any covenant or agreement made or undertaken by Seller in this Agreement.

Section 12.2. Indemnity by Buyer. Subject to the terms and conditions set forth in this Article XII and except to the extent caused by the fraud, negligence or the willful misconduct or willful breach of any obligation under this Agreement of any Indemnitee, Buyer shall indemnify and hold Seller and its Affiliates, members, directors, officers, attorneys, employees, subcontractors, agents and assigns harmless for, from and against any and all Losses, that any of them may sustain or suffer as a consequence of the breach of any covenant or agreement made or undertaken by Buyer in this Agreement.

Section 12.3. Further Qualifications Respecting Indemnification. The right of a Person listed as being entitled to indemnification in Section 12.1 or Section 12.2 (an "Indemnitee") to be indemnified hereunder shall be subject to the following further qualifications:

(a) Upon receipt of notice of any demand, assertion, claim, action or proceeding, judicial, governmental or otherwise, from any third party (such third party actions being collectively referred to herein as "Third Party Claims"), the Indemnitee shall give written notice thereof to the indemnifying Party (the "Indemnitor") as soon as reasonably practicable, but not later than thirty (30) days after the date the Indemnitee obtains actual knowledge of the basis or alleged basis for the right of indemnity;

(b) In computing Losses, such amounts shall be computed net of any related recoveries to which the Indemnitee is entitled under insurance policies, or other related payments received from third parties, and net of any tax benefits actually received by the Indemnitee or for which it is eligible, taking into account the income tax treatment of such indemnification; and

(c) The Indemnitee shall use commercially reasonable efforts to mitigate all Losses for which indemnification may be available hereunder, including availing itself of any defenses, limitations, rights of contribution, claims against third parties and other rights at Law or equity. The Indemnitee's commercially reasonable efforts shall include the reasonable expenditure of money to mitigate or otherwise reduce or eliminate any Loss for which indemnification would otherwise be due, such expenditures being included in indemnified Losses hereunder.

Section 12.4. Procedures Respecting Third Party Claims. In notifying the Indemnitor of any Third Party Claim (the "Claim Notice"), the Indemnitee shall provide the Indemnitor with a copy of such Third Party Claim or other documents received and shall otherwise make available to the Indemnitor all relevant information material to the defense of such claim and within the Indemnitee's possession. The Indemnitor shall have the right, by written notice given to the Indemnitee within fifteen (15) days after the date of the Claim Notice, to assume and control the defense of the Third Party Claim that is the subject of such Claim Notice, including the employment of counsel selected by the Indemnitor after consultation with the Indemnitee, and the Indemnitor shall pay all expenses of, and the Indemnitee shall cooperate fully with the Indemnitor in connection with, the conduct of such defense. The Indemnitee shall have the right to employ separate counsel in any such proceeding and to participate in (but not control) the defense of such Third Party Claim, but the fees and expenses of such counsel shall be borne by the Indemnitee unless the Indemnitor shall otherwise agree in writing; provided, however, if the named parties to any such proceeding (including any impleaded parties) include both the Indemnitee and the Indemnitor, the Indemnitor requires that the same counsel represent both the Indemnitee and the Indemnitor, and representation of both Parties by the same counsel would be inappropriate due to actual or potential differing interests between them, then the Indemnitee shall have the right to retain its own counsel. If the Indemnitor shall have failed to assume the defense of any Third Party Claim in accordance with the provisions of this Section 12.4, then, as among the Parties, the Indemnitee shall have the absolute right to control the defense of such Third Party Claim, and, if and when it is finally determined that the Indemnitee is entitled to indemnification from the Indemnitor hereunder, the fees and expenses of the Indemnitee's counsel shall be borne by the Indemnitor; provided that the Indemnitor shall be entitled, at its

expense, to participate in (but not control) such defense. The Indemnitor shall have the right to settle or compromise any such Third Party Claim for which it is providing indemnity so long as such settlement does not impose any obligations on the Indemnitee (except with respect to (a) obligations to pay money (which amounts, if payable by the Indemnitee, shall constitute Losses) and (b) providing releases of the third party). The Indemnitor shall be liable for any settlement effected by the Indemnitee without the Indemnitor's consent only if the Indemnitee has assumed the defense because the Indemnitor has failed or refused to do so.

## ARTICLE XIII

### ASSIGNMENT

#### Section 13.1. Assignment by Buyer.

(a) Buyer may, with prompt prior notice to but without the need for consent of Seller, assign all of its rights and obligations hereunder to any entity that (i) acquires all or substantially all of Buyer's business and/or assumes Buyer's obligations to provide service under the KyMEA Member AR Agreements, (ii) is of at least equal creditworthiness, and (iii) assumes in writing all of Buyer's obligations hereunder, which assumption shall be materially in the form attached as Exhibit F hereto or otherwise in form and substance reasonably acceptable to Seller.

(b) Unless Seller consents in writing to Buyer retaining this Agreement, if Buyer transfers all or substantially all of its business to another party, Buyer shall assign all of its rights and obligations hereunder to the entity that acquires such business.

#### Section 13.2. Assignment by Seller.

(a) Notwithstanding any other provision of this Agreement to the contrary, and without any other action being required pursuant to this Agreement, Seller may, without the written consent of Buyer and without relieving itself from liability hereunder or committing a Seller Event of Default, assign, transfer, mortgage or pledge this Agreement to create a security interest for the benefit of the United States of America, acting through the RUS, or other secured party (directly or through an indenture trustee or other collateral agent; collectively, including such indenture trustee or other collateral agent, a "Secured Party"). Thereafter, a Secured Party, without the written consent of Buyer and without committing a Seller Event of Default, may (i) cause this Agreement (and all obligations hereunder) to be sold, assigned, transferred or otherwise disposed of to a third party pursuant to the terms governing such security interest, or (ii) if RUS first acquires this Agreement pursuant to 7 U.S.C. § 907 or if any other Secured Party otherwise first acquires this Agreement, sell, assign, transfer or otherwise dispose of this Agreement (and all obligations hereunder) to a third party; provided, however, that in either case (A) Seller is in default of its obligations that are secured by such security interest and that the applicable Secured Party has given Buyer written notice of such default; and (B) the applicable Secured Party has given Buyer not less than thirty (30) days' prior written notice of its intention to sell, assign, transfer or otherwise dispose of this Agreement (and all obligations hereunder) indicating the identity of the intended third-party assignee or purchaser.

(b) If Seller transfers all or substantially all of its business (including the Facility) to another Person whose creditworthiness and capability of performing this Agreement are at least equal to Seller's, then unless Buyer consents in writing to the Seller retaining this Agreement (which consent may be denied by Buyer in its sole discretion), Seller shall, with prompt prior notice to but without the need for consent of Buyer, assign this Agreement and all of Seller's rights and interest hereunder to the Person to which Seller's business is being transferred, and shall require such assignee to assume in writing all obligations of Seller, which assumption shall be materially in the form attached as Exhibit F hereto or otherwise in form and substance reasonably acceptable to Buyer.

Section 13.3. Other Assignments. Except as provided in Section 13.1 and Section 13.2, any proposed assignment by Buyer shall require the prior written consent of Seller, and any proposed assignment by Seller shall require the prior written consent of Buyer. In each case, consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that it shall be reasonable for Buyer to require as condition(s) to its consent to an assignment of this Agreement to a Person by Seller that (i) the Facility will be assigned and transferred to the same Person, (ii) such Person has sufficient Capacity resources to provide equivalent or greater support for the performance of Seller's obligations hereunder, and/or (iii) such Person has creditworthiness at least equal to Seller.

Section 13.4. Notice. Irrespective of whether consent is required, notice of any proposed assignment shall be given to the other Party at least sixty (60) days prior to the date of the assignment. Any purported assignment made without complying with the requirements of this Article XIII shall be null and void.

Section 13.5. Effect of Assignment on Party Status. No assignment shall relieve the assignor of its obligations hereunder in the event the assignee fails to perform, unless the other Party agrees in writing in advance to waive the assignor's continuing obligations pursuant to this Agreement. To the extent an assignment occurs in accordance with the terms of this Article XIII other than Section 13.2(a), the assignee's creditworthiness and ability to perform this Agreement are at least equal to that of the assignor, and the assignee expressly agrees in writing to assume all of the assignor's rights and obligations so assigned, the other Party shall release the assignor from any further liability in respect of the rights and obligations so assigned.

#### ARTICLE XIV

#### FORCE MAJEURE

Section 14.1. Force Majeure. The term "Force Majeure" shall mean causes beyond the reasonable control of, and without the fault or negligence (including failure to comply with Prudent Utility Practices) of, the Party claiming Force Majeure, including, but not limited to, acts of God; earthquake; storm; fire; lightning; epidemic; war; riot or civil disturbance; or sabotage. Notwithstanding the foregoing, under no circumstances shall Force Majeure include any of the following: (i) changes in market conditions that affect the cost of or demand for power; (ii) [REDACTED] (ii) any lack of profitability to a Party or other financial consideration of a Party; (iii) unavailability of the Facility or other Capacity resources owned or controlled by Seller; (iv)

unavailability of transmission service to the Delivery Point from any specific source of supply; or (v) unavailability of transmission service from the Delivery Point to Buyer's load.

Section 14.2. Effect on Performance.

(a) If a Party is rendered wholly or partly unable to perform its obligations under this Agreement because of Force Majeure, that Party shall be excused from whatever performance it is unable to perform due to the Force Majeure to the extent so affected, provided that:

(i) the Party affected by such Force Majeure, as soon as reasonably practical after the commencement of such effect, gives the other Party prompt oral notice, followed by a written notice within forty-eight (48) hours after such oral notice, fully describing the particulars of the occurrence;

(ii) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure;

(iii) the Party whose performance is affected by such Force Majeure uses its commercially reasonable efforts to overcome and remedy its inability to perform as soon as possible; and

(iv) the event of Force Majeure must not have been caused by or contributed to by any negligent or intentional act, error or omission of the affected Party or any of its Affiliates, and must not be caused by or contributed to by any failure to comply with any Law by the affected Party or any of its Affiliates, or by any breach or default of this Agreement by the affected Party or any of its Affiliates.

(b) Notwithstanding anything in this Article XIV to the contrary, no payment obligation arising under this Agreement prior to the date of an event of Force Majeure shall be excused by such event of Force Majeure.

ARTICLE XV

DISPUTE RESOLUTION

Section 15.1. [REDACTED]

[REDACTED]

Section 15.2 [REDACTED]

Section 15.3 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Section 15.4 [REDACTED]

ARTICLE XVI

REPRESENTATIONS AND WARRANTIES

Section 16.1. Mutual Representations. Each Party represents and warrants to the other Party that, as of the Effective Date, but with respect to Big Rivers, subject to the approvals described in Sections 3.1 and 3.2:

- (a) it is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its organization or incorporation;
- (b) it has the power to execute and deliver this Agreement and to perform its obligations under this Agreement and has taken all necessary corporate, company, partnership, governmental and/or other actions to authorize such execution and delivery and performance of such obligations;
- (c) its execution and delivery of this Agreement and its performance of its obligations under this Agreement do not violate or conflict with any Law applicable to it; with any provision of its charter or bylaws (or comparable constituent documents); with any order or judgment of any court or other agency of government applicable to it or any of its assets; or with any contractual restriction binding on or affecting it or any of its assets;

(d) except as otherwise permitted herein, it has neither initiated nor received written notice of any action, proceeding or investigation pending, nor to its knowledge is any such action, proceeding or investigation threatened (or any basis therefor known to it) that questions the validity of this Agreement, or that would materially or adversely affect its rights or obligations as a Party;

(e) all authorizations of and exemptions, actions or approvals by, and all notices to or filings with, any governmental authority that are required to have been obtained or made by it at the time this representation is made with respect to this Agreement have been obtained or made and are in full force and effect, and all conditions of any such authorizations, exemptions, actions or approvals have been complied with; and

(f) subject to the approval of RUS and/or KPSC to the extent applicable, this Agreement constitutes the Party's legal, valid and binding obligation, enforceable against it in accordance with its terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application, regardless of whether enforcement is sought in a proceeding in equity or at Law).

Section 16.2. Exclusivity of Seller Representations. The representations and warranties made by Seller in this Agreement are in lieu of and are exclusive of all other representations and warranties, including any implied warranties of merchantability, suitability or fitness for any particular purpose or any other implied warranty. Seller hereby disclaims any such other or implied representations or warranties, notwithstanding the delivery or disclosure to Buyer or its directors, officers, employees, agents or representatives of any documentation or other information.

Section 16.3. Buyer Additional Representations. Buyer represents, warrants and agrees to and with Seller that except as otherwise provided herein, with respect to its contractual obligations hereunder and performance thereof, it will not claim immunity on the grounds of its status as a municipality or municipal entity under Law or similar grounds with respect to itself or its revenues or assets from (i) suit, (ii) jurisdiction of court (including a court located outside the jurisdiction of its organization), (iii) relief by way of injunction, order for specific performance or recovery of property, (iv) attachment of assets, or (v) execution or enforcement of any judgment.

Section 16.4. Opinions of Counsel. As a condition to the Effective Date, each Party shall provide to the other Party an opinion of counsel that the Party providing the opinion:

(a) is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its organization or incorporation;

(b) has the power to execute and deliver this Agreement and to perform its obligations under this Agreement and has taken all necessary corporate, company, partnership, governmental and/or other actions to authorize such execution and delivery and performance of such obligations;

(c) its execution and delivery of this Agreement and its performance of its obligations under this Agreement do not violate or conflict with any Law applicable to it; with any provision of its charter or bylaws (or comparable constituent documents); with any order or judgment of any court or other agency of government applicable to it or any of its assets; or with any contractual restriction binding on or affecting it or any of its assets; and

(d) this Agreement constitutes the Party's legal, valid and binding obligation, enforceable against it in accordance with its terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application, regardless of whether enforcement is sought in a proceeding in equity or at Law).

## ARTICLE XVII

### NOTICES

Except as otherwise specified in this Agreement, any notice, request, demand, statement or payment provided for in this Agreement shall be in writing and shall be sufficiently given if (a) delivered by overnight mail, overnight courier or hand delivered against written receipt, or (b) transmitted and received by electronic transmission and confirmed by hard copy delivered by one of the methods specified in part (a); and in all cases addressed as set forth in Exhibit C or to such other address as may be designated by a Party from time to time by notice to the other Party in accordance with this Article XVII. Any such notice shall be effective only upon delivery and receipt thereof.

## ARTICLE XVIII

### MISCELLANEOUS

Section 18.1. No Consequential Damages. Except to the extent (a) awarded on a Third Party Claim (except a Third Party Claim brought by a KyMEA Member or a distribution member of Seller that could have been asserted as claim for breach of this Agreement by Buyer or Seller, respectively) or (b) arising out of fraud or criminal conduct, in the event of any breach of the obligations of a Party hereto, the breaching Party shall be liable hereunder solely for direct and actual damages and under no circumstances shall a Party be liable hereunder for any consequential (including, but not limited to, lost profits and business interruption), incidental, special, punitive, exemplary, indirect or other similar damages.

Section 18.2. Entire Agreement. This Agreement, including the exhibits hereto and all amendments hereto, contain the complete agreement between the Parties with respect to the matters contained herein and supersedes all other negotiations or agreements, whether written or oral, with respect to the subject matter hereof.

Section 18.3. Governing Law; Venue and Jurisdiction.

(a) This Agreement shall be governed by, construed, interpreted and applied in accordance with the laws of the Commonwealth of Kentucky, without giving effect to any principle regarding conflict of laws that would result in the application of the laws of any other jurisdiction.

(b) The Parties hereby irrevocably submit to the exclusive jurisdiction of the United States District Court for the Western District of Kentucky (or, if that court refuses jurisdiction, in the Franklin County, Kentucky Circuit Court) for the purposes of any cause of action arising out of or based upon this Agreement or relating to the subject matter hereof that is not subject to the exclusive jurisdiction of the KPSC or the FERC, or for the enforcement of any arbitration award hereunder.

Section 18.4. Non-Waiver. No delay or failure by a Party to exercise any of its rights, powers or remedies under this Agreement following any breach or default by the other Party shall be construed to be a waiver of any such breach or default, or any acquiescence therein, or of or in any similar breach or default thereafter occurring, nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind on the part of a Party of any breach or default, or any waiver on the part of a Party of any provision or condition of this Agreement, shall be effective only if in writing and then only to the extent specifically set forth in such writing.

Section 18.5. Severability. If an arbitration panel, court or regulatory agency having jurisdiction over the Parties or over this Agreement determines that any of the provisions of this Agreement, or any part thereof, is invalid, void, illegal or unenforceable, the remainder of this Agreement, or the application of such provision to Persons or circumstances other than those as to which it is held invalid, will nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated is not affected in any manner materially adverse to either Party. Upon any such determination of invalidity, the Parties shall, within ten (10) days of such determination, commence to negotiate in good faith new provisions to restore this Agreement as nearly as possible to its original intent and effect.

Section 18.6. Interpretation; Headings. All pronouns and any variations thereof refer to the masculine, feminine or neuter, singular or plural, as the context may require. Unless otherwise expressly provided, the words "include," "includes" and "including" do not limit the preceding words or terms and shall be deemed to be followed by the words "without limitation." The headings herein are for convenience and reference purposes only and shall in no way affect the meaning or interpretation of the provisions of this Agreement.

Section 18.7. No Partnership or Joint Venture. This Agreement does not establish and should not be construed as establishing any partnership or joint venture by and between the Parties, and neither of the Parties shall have any duties, obligations or liabilities arising under such a relationship.

Section 18.8. Confidentiality. Concurrently with the Effective Date hereof, the Parties have entered into the Confidentiality Agreement attached hereto as Exhibit G. The obligations of the Parties under that Confidentiality Agreement shall survive the expiration or termination of this Agreement.

Section 18.9. No Third-Party Benefits. This Agreement shall not impart any rights enforceable by any third party (other than permitted successors or assignees bound by this Agreement). Nothing in this Agreement, express or implied, shall be construed to create any interest, beneficial or otherwise, for any third party.

Section 18.10. Amendment. Except as provided in Section 3.3(b), Section 3.6(a), and Section 3.6(b), this Agreement may not be amended or modified except by a written instrument signed by Seller and Buyer that receives required review and approval by the KPSC and the RUS.

Section 18.11. Further Assurances. Each Party agrees to execute and deliver all further instruments and documents, and take any further action that may be reasonably necessary to effect the purpose and intent of this Agreement.

Section 18.12. Counterparts; Electronic Copies. This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Any electronic copies hereof or signature hereon shall, for all purposes, be deemed originals.

Section 18.13. Expenses. Each Party shall pay its own costs and expenses, including the fees and expenses of its agents, representatives, advisors, counsel and accountants, necessary for the negotiation, preparation, execution and delivery of this Agreement.

[Signatures begin on next page]

EXECUTION COPY

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

**BIG RIVERS ELECTRIC CORPORATION**

By: *Robert W. Berry*  
Name: *Robert W. Berry*  
Title: *President and CEO*

**KENTUCKY MUNICIPAL ENERGY AGENCY**

By: *Ronno W. Hagen*  
Name: *Ronno W. Hagen*  
Title: *CHAIRMAN*

Exhibit A

[Exhibit A has been redacted in its entirety.]

Exhibit B

[Exhibit B has been redacted in its entirety.]

EXECUTION COPY

Exhibit C

**ADDRESSES FOR NOTICE TO PARTIES**

**TO SELLER:**

Robert Berry  
President and CEO  
Big Rivers Electric Corporation  
201 Third Street  
Henderson, KY 42420  
Email: [Bob.Berry@bigrivers.com](mailto:Bob.Berry@bigrivers.com)

With copies to:

Mark Eacret  
Vice President Energy Services  
Big Rivers Electric Corporation  
201 Third Street  
Henderson, KY 42420  
Email: [Mark.Eacret@bigrivers.com](mailto:Mark.Eacret@bigrivers.com)

Sullivan, Mountjoy, Stainback & Miller,  
P.S.C.  
100 St. Ann Street  
Owensboro, KY 42303  
Attention: James M. Miller  
Email: [jmiller@smsmlaw.com](mailto:jmiller@smsmlaw.com)

**TO BUYER:**

Kentucky Municipal Energy Agency  
c/o Rubin & Hays  
450 South Third Street  
Louisville, KY 40202

With copies to:

Rubin & Hays  
450 South Third Street  
Louisville, KY 40202  
Email: [csmusson@rubinhays.com](mailto:csmusson@rubinhays.com)

nFront Consulting LLC  
2465 Southern Hills Ct  
Oviedo, FL 32765  
Email:  
[johnpainter@nFrontConsulting.com](mailto:johnpainter@nFrontConsulting.com)

Exhibit D

[Exhibit D has been redacted in its entirety.]

Exhibit E

[Exhibit E has been redacted in its entirety.]

**FORM OF INSTRUMENT OF ASSIGNMENT AND ASSUMPTION**

This Instrument of Assignment and Assumption (this "Assignment"), dated as of [\_\_\_\_], 20[\_\_\_] (the "Effective Date"), is entered into by and between [Assignor], a [\_\_\_\_] ("Assignor"), and [Assignee], a [\_\_\_\_] ("Assignee").

WHEREAS, Assignor and [Buyer/Seller] are parties to that certain Agreement for the Purchase and Sale of Firm Capacity and Energy, dated as of [\_\_\_\_] (as amended through the date hereof, the "PPA").

WHEREAS, in accordance with Section [\_\_\_\_] of the PPA, Assignor intends to assign to Assignee all of Assignor's rights and interests under the PPA, and Assignee intends to assume all of Assignor's obligations arising from and after the Effective Date, and the parties intend Assignor to be released from any further liability thereunder to the extent arising from and after the Effective Date.

WHEREAS, the parties hereto desire to execute and deliver this Assignment for the purpose of effecting the assignment and transfer by Assignor to Assignee, and the acceptance and assumption by Assignee, of the PPA and all rights, liabilities and obligations of "[Seller/Buyer]" (as defined in the PPA) thereunder.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee, intending to be legally bound, agree and covenant as follows:

1. Assignor hereby assigns and transfers to Assignee, and Assignee hereby accepts and assumes and agrees to perform the PPA, and all of Assignor's rights, liabilities and obligations thereunder, to the extent arising from and after the Effective Date. Assignee hereby assumes and agrees to pay, discharge, perform and be responsible for all liabilities and obligations arising or accruing under or in respect of the PPA to the extent arising from and after the Effective Date.

2. Nothing in this Assignment, express or implied, is intended or shall be construed to confer upon or give to any Person, other than Assignor and Assignee, and their respective successors and assigns, any remedy or claim under or by reason of this Assignment or any term, covenant, condition, promise or agreement hereof, and all of the terms, covenants, conditions, promises and agreements contained in this Assignment shall be for the sole and exclusive benefit of Assignor and Assignee, and their respective successors and assigns.

3. This Assignment shall be governed by and construed and enforced in accordance with, and this Assignment and all matters arising out of or relating in any way whatsoever (whether in contract, tort or otherwise) to this Assignment shall be governed by, the laws of the Commonwealth of Kentucky.

**MUTUAL CONFIDENTIALITY AGREEMENT**

This Mutual Confidentiality Agreement (“**Agreement**”) is made as of July 13, 2016 (“**Effective Date**”) between **Kentucky Municipal Energy Agency**, an inter-local agency organized and existing under the laws of the Commonwealth of Kentucky (“**KyMEA**”), and **Big Rivers Electric Corporation**, a Kentucky corporation (“**Company**”). KyMEA and Company are each a “**Party**” in this Agreement and both are referred to as “**Parties**”.

WHEREAS, the Parties have entered into an “**Agreement for the Purchase and Sale of Firm Capacity and Energy Between Big Rivers Electric Corporation and Kentucky Municipal Energy Agency**” dated July 13, 2016 (the “**PPA**”);

WHEREAS, during the term of the PPA, the Parties may disclose to each other, orally, in writing, by inspection or otherwise, Confidential Information (as defined herein) necessary for the Parties to perform and administer the PPA, including but not limited to participate in the “**Operating Committee**” created in Section 5.7 of the PPA; and

WHEREAS, both Parties desire to establish and set forth their individual rights and obligations with respect to Confidential Information (as defined herein) that may be exchanged between them in connection with the performance and administration of the PPA.

NOW THEREFORE, in consideration of the mutual covenants set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties mutually agree as follows:

1. **Disclosure of Confidential Information.** For purposes of this Agreement, an “**Affiliate**” is a person or entity directly or indirectly controlling, controlled by, or under common control with a Party, including a member. “**Representatives**” are a Party’s or its Affiliate’s directors, officers, employees, agents, advisors (including attorneys, accountants and financial advisors) and consultants. Either Party, when it or its Representatives disclose information to the other Party or its Representatives or when it or its Representatives otherwise give the other Party or its Representatives access to information, is sometimes referred to herein as a “**Disclosing Party**,” and either Party, when receiving information from a Disclosing Party or its Representatives, is sometimes referred to herein as a “**Receiving Party**.” Each Party shall be deemed to be a Receiving Party with respect to Confidential Information that is developed or created by the joint efforts of the Parties. Confidential Information requested by a Party for use solely by its consultant in advising that Party may be provided directly to that Party’s consultant by the Disclosing Party and made subject to the consultant agreeing to accept, in writing, the terms and conditions of this Agreement. “**Confidential Information**” as used in this Agreement shall mean the information of or relating to a Disclosing Party or the PPA that is (i) normally kept confidential by the Disclosing Party, (ii) disclosed (whether orally or in writing) or made available to or observable by the Receiving Party or its

Representatives in any form or media (whether tangible, digital, magnetic or otherwise) at any time after the Effective Date, and (iii) expressly designated by the Disclosing Party in writing as Confidential Information at the time of disclosure to the Receiving Party. Confidential Information does not include information that would otherwise constitute Confidential Information of a Disclosing Party to the extent that the Receiving Party can demonstrate (and bear the burden of proof) that:

- (a) the Confidential Information of the Disclosing Party is, at the time of disclosure, part of the public domain;
- (b) the Confidential Information of the Disclosing Party became part of the public domain, by publication or otherwise, except by breach of the provisions of this Agreement;
- (c) the Confidential Information of the Disclosing Party can be established by written evidence or digital or other electronic records to have been in the possession of the Receiving Party at the time of disclosure;
- (d) the Confidential Information of the Disclosing Party is received by the Receiving Party from a third party without similar restrictions and without breach of this Agreement; or
- (e) the Confidential Information of the Disclosing Party was developed by employees or agents of the Receiving Party independently of and without reliance upon any Confidential Information of the Disclosing Party and demonstrated by the written records thereof.

**2. Treatment of Confidential Information.**

- (a) The Receiving Party shall hold the Disclosing Party's Confidential Information in trust and confidence and shall use reasonable care to preserve the confidential nature of Confidential Information of the Disclosing Party and in any event use at least the same degree of care as the Receiving Party uses in the protection of its own confidential and proprietary information. The Receiving Party shall not disclose Confidential Information to any third party other than its Representatives, and will disclose Confidential Information only to its Representatives as may be permitted by applicable law who need to know the Confidential Information in connection with the performance and administration of the PPA, who are informed of its confidential nature and are directed to hold the Confidential Information in trust and confidence. The Receiving Party shall be fully responsible for any breach of this Agreement by any of its Representatives.
- (b) In the event that a Receiving Party is requested or required (by deposition, interrogatory, request for documents, subpoena, civil investigative demand, or similar process) to disclose any Confidential Information, the Receiving Party shall (1) to the extent not prohibited by law, provide the Disclosing Party with

prompt written notice of such request or requirement prior to making such disclosure, (2) exercise its reasonable efforts to obtain reliable assurance that confidential treatment will be accorded such Confidential Information, (3) at the request and expense of the Disclosing Party, cooperate with the Disclosing Party in any effort to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information or to resist or narrow the scope of such request or requirement, and (4) furnish only that portion of the Confidential Information which the Receiving Party is advised by legal counsel is legally required.

- (c) Notwithstanding the foregoing provisions of this Section 2, a Receiving Party may disclose Confidential Information to a governmental authority in connection with any application or other communication to such governmental authority that may be required in connection with the PPA.
  - (d) Notwithstanding the foregoing provisions of this Section 2, if KyMEA receives a request under the Kentucky Open Records Act (KRS 61.870 et seq.) to disclose any Confidential Information, KyMEA shall, in addition to any other duty under this Agreement, notify the Company of such request within 24 hours of receipt of the request and at that time provide to the Company a copy of the request. KyMEA shall permit the Company to participate in KyMEA's analysis of the request, the determination of the appropriate response to the request, and any subsequent review or appeal of KyMEA's response to the request. KyMEA shall immediately, and no less than 24 hours before providing any response to the request, notify the Company of its final decision on a response to the Open Records Act request. If, in the absence of an express waiver under this Agreement, KyMEA is, in the opinion of KyMEA's legal counsel, required to disclose the Confidential Information in response to the Open Records Act request, KyMEA may disclose only such of the Confidential Information to the party requiring disclosure as, in the opinion of the KyMEA's legal counsel, is required by applicable law, rule or regulation.
3. **Materials.** All materials containing Confidential Information furnished to the Receiving Party by the Disclosing Party in any form (whether tangible, digital, magnetic or otherwise) and any tangible, digital, magnetic or other machine readable embodiments of the Disclosing Party's Confidential Information created by the Receiving Party shall remain the property of the Disclosing Party. Upon the expiration or termination of this Agreement and at the written request of the Disclosing Party, the Receiving Party shall return to the Disclosing Party or destroy all materials containing Confidential Information that were provided to the Receiving Party by the Disclosing Party within two years prior to the expiration or termination of this Agreement, and all copies thereof. Notwithstanding the foregoing requirements for a Receiving Party's return or destruction of a Disclosing Party's Confidential Information: (a) a Receiving Party's accounting, legal, financial and other advisors may retain copies of a Disclosing Party's Confidential Information and work product that includes such Confidential Information in accordance with policies and procedures implemented by such advisors in order to comply with

applicable law, regulation or professional standards; and (b) a Receiving Party shall not be required to return, erase or destroy (1) information that is commingled with other electronic records that are collected and maintained by the Receiving Party as an archived computer system backup in a separate secure facility as part of information technology backup procedures in accordance with security and/or disaster recovery procedures maintained in the normal course of business, (2) information that is included in a Receiving Party's disclosures to its (or an Affiliate's) board of directors or similar governing body or the record of deliberations of its (or an Affiliate's) board of directors or similar body in connection with the consideration of matters related to the performance or administration of the PPA and maintained with the Receiving Party's official records of such proceedings, (3) information that is incorporated into an agreement between the Parties, or (4) information in the possession of the Receiving Party or its Representatives if, in the opinion of legal counsel to the Receiving Party or its Representatives, such destruction would be unlawful or would violate any order, judgment, writ or decree to which the Receiving Party or its Representatives are subject to or by which they are bound. Notwithstanding the return or destruction of Confidential Information or the foregoing right to retain Confidential Information, the Receiving Party and its Representatives will continue to be bound by the obligations of confidentiality hereunder.

4. **No Representations or Warranties.** The Disclosing Party does not make any representations or warranties as to the accuracy or completeness of Confidential Information that the Disclosing Party or its Representatives may disclose or make available to the Receiving Party or its Representatives or the fitness of any such information for any particular purpose of the Receiving Party or any other person, except for such representations and warranties that may be included in the PPA.
5. **Term and Termination.**
  - (a) This Agreement shall terminate two years after the expiration or other termination of the PPA. If this Agreement is terminated prior to the expiration or other termination of the PPA, the Receiving Party's obligations under Sections 2 and 3 shall survive until the latter of (i) two years after the expiration or other termination of the PPA and (ii) the final return or destruction of materials containing Confidential Information by the Receiving Party pursuant to Section 3 of this Agreement.
  - (b) Upon termination of this Agreement, the Receiving Party shall cease to use the Disclosing Party's Confidential Information and shall comply with Section 3 within sixty (60) days after receipt of a Disclosing Party's written request for return and/or destruction of materials and records that include the Disclosing Party's Confidential Information. Upon the request of the Disclosing Party, an officer of the Receiving Party shall certify that the Receiving Party has complied with its obligations in Section 3.
6. **Successors and Assigns.** Neither Party shall assign its rights or obligations arising under this Agreement without the other Party's prior written consent. This Agreement will be for

the benefit of the Disclosing Party's successors and assigns, and will be binding on Receiving Party's successors and assigns, and shall be assigned and assumed in connection with any assignment by a Party of its rights and obligations under the PPA.

**8. General Provisions.**

- (a) This Agreement shall be governed by and construed in accordance with the laws of the United States and of the Commonwealth of Kentucky, without reference to its conflicts of laws provisions.
- (b) Any notice provided for or permitted under this Agreement will be treated as having been given when given as notice is required to be given in the PPA.
- (c) The Receiving Party agrees that breach of the provisions of this Agreement by the Receiving Party or its Representatives may cause the Disclosing Party irreparable damage for which recovery of money damages would be inadequate. The Disclosing Party will, therefore, be entitled to seek timely injunctive relief, without proof of actual damages, in any court of competent jurisdiction to protect the Disclosing Party's rights under this Agreement, in addition to all remedies available at law.
- (d) In the event of litigation relating to this Agreement, if a court of competent jurisdiction determines in a final order, not subject to further appeal, that a Party or its Representatives has breached the provisions of this Agreement, the non-breaching Party shall be entitled to recover its costs and expenses (including reasonable attorneys' fees and expenses) incurred in connection with such litigation.
- (e) This Agreement may be amended or supplemented only by a writing that is signed by duly authorized representatives of both Parties.
- (f) No term or provision hereof will be considered waived by either Party, and no breach excused by either Party, unless such waiver or consent is in writing signed on behalf of the Party against whom the waiver is asserted. No consent by either Party to, or waiver of, a breach by either Party, whether express or implied, will constitute a consent to, waiver of, or excuse of any other, different, or subsequent breach by either Party.
- (g) If any part of this Agreement is found invalid or unenforceable, that part will be amended to achieve as nearly as possible the same economic effect as the original provision and the remainder of this Agreement will remain in full force.
- (h) This Agreement constitutes the entire agreement between the Parties relating to this subject matter and supersedes all prior or simultaneous representations, discussions, negotiations, and agreements, whether written or oral.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

**Kentucky Municipal Energy Agency**

By: *Ronald W. Herd*

Printed Name: Ronald W. Herd

Title: Chairman

**Big Rivers Electric Corporation**

By: *Mark J. Lacroix*

Printed Name: Mark J. Lacroix

Title: VP Energy Services