EXECUTION COPY

ASSET PURCHASE AGREEMENT

by and between

KGEN HOT SPRING LLC,

as Seller,

KGEN POWER CORPORATION,

solely with respect to Section 6.6, Section 6.12, Section 6.15(c), Section 10.3 and Section 11.12,

and

ENTERGY ARKANSAS, INC,

as Purchaser

Dated as of April 28, 2011

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ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT, dated as of April 28, 2011, is made and entered into by and between KGen Hot Spring LLC, a limited liability company organized and existing under the laws of the State of Delaware ("*Seller*"), and, solely with respect to Section 6.6, Section 6.12, Section 6.15(c), Section 10.3 and Section 11.12, KGen Power Corporation, a corporation organized and existing under the laws of the State of Delaware ("*KGen*"), on the one hand, and Entergy Arkansas, Inc., a corporation organized and existing under the laws of the State of Arkansas ("*Purchaser*"), on the other hand.

RECITALS

ESI issued the Entergy System's Summer 2009 Request for Proposals for Long-Term Supply-Side Resources on or about September 24, 2009, and in response, Seller submitted a proposal setting forth commercial terms on which Seller would agree to sell the Project (as defined herein) to one or more of the Entergy Operating Companies (as defined herein).

Seller's proposal was selected by ESI for further consideration as a primary award and, after a period of negotiation, Seller and ESI, as agent for Purchaser, entered into a letter of intent, dated November 16, 2010, for the sale of all of Seller's right, title and interest in and to the Project and certain related properties and assets and, in connection therewith, the assumption by Purchaser of certain related liabilities of Seller.

KGen joins in this Agreement for the limited purposes expressly set forth in Section 6.6, Section 6.12, Section 6.15(c), Section 10.3 and Section 11.12 hereunder to induce Purchaser to enter into the terms and conditions set forth herein and acknowledges that it will derive a material and substantial benefit from the Transactions.

Consistent with the letter of intent, Seller desires to sell, transfer and assign to Purchaser, and Purchaser desires to purchase from Seller, all of Seller's right, title and interest in and to the Project and certain related properties and assets, and in connection therewith, Purchaser has agreed to assume certain related liabilities of Seller, on the terms and subject to the conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the foregoing recitals and the agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, do hereby agree as follows:

ARTICLE I.
DEFINITIONS

Section 1.1. Certain Defined Terms. The following terms, when used in this Agreement with initial letters capitalized, have the meanings set forth below:

"*Acceptable Purchaser LTSA*" has the meaning set forth in Section 3.5(b).

"*Action*" means any action, arbitration, grievance, suit, proceeding (including any proceeding related to a Permit) of any nature, civil, criminal, regulatory or otherwise, in law or in equity, by or before any Governmental Authority or arbitrator or a Governmental Authority audit or investigation.

"*Affiliate*" has the meaning set forth in Rule 12b-2 of the General Rules and Regulations under the Exchange Act and, with respect to Seller, Operator and GEII shall also include any ERISA Affiliate thereof.

"*Agreement*" means this Asset Purchase Agreement, together with the Schedules and Exhibits hereto.

"*Allocation*" has the meaning set forth in Section 3.9.

"*Ancillary Agreements*" means (i) the Bill of Sale, (ii) the Deed, (iii) the Assignment and Assumption Agreement, (iv) the Escrow Agreement and (v) any and all additional agreements, certificates, documents, and instruments that may be executed and delivered by any Party or any Affiliate thereof at or in connection with the Closing.

"*Approved Contractor*" means (a) a qualified independent professional contractor, experienced in estimating casualty, or other damage, as the case may be, and the scope and cost of repairs required by the Casualty Event or other occurrence, as the case may be, approved by Purchaser (with such approval not to be unreasonably withheld, conditioned or delayed) to perform work hereunder pursuant to the terms of this Agreement, (b) SAIC Energy, Environment and Infrastructure, LLC (f/k/a R.W. Beck Inc.) and (c) each contractor listed on Schedule AC but solely with respect to the types of work specified following such contractor's name on such Schedule.

"*APSC*" means the Arkansas Public Service Commission.

"*Assignment and Assumption Agreement*" means the Assignment and Assumption Agreement, substantially in the form of Exhibit A, to be executed and delivered by Seller and Purchaser at the Closing.

"*Assumed Liabilities*" has the meaning set forth in Section 2.3.

"*Bankrupt*" means, with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, (ii) has a petition filed or commenced against it for a proceeding or cause of action under any bankruptcy, insolvency, reorganization, or similar law and such petition is not dismissed within thirty (30) days of its filing, (iii) makes an assignment or any general arrangement for the benefit of creditors, (iv) otherwise becomes bankrupt or insolvent (however evidenced), (v) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (vi) is generally unable to pay its debts as they fall due.

"*Baseline Inventory Value*" has the meaning set forth in Section 3.5(a).

"*Bill of Sale*" means a Bill of Sale, substantially in the form of Exhibit B, to be executed and delivered by Seller at the Closing.

"*Business*" means the business of operating the Project and generating and delivering electric energy and capacity and other electric products and services from the Project.

"*Business Combination Transaction*" means a merger, consolidation, share exchange, tender offer, business combination, reorganization, recapitalization, liquidation, dissolution, joint venture or other similar transaction.

"*Business Day*" means any day on which Federal Reserve member banks in New York, New York and Houston, Texas are open for business.

"*Capacity Release Rules*" has the meaning set forth in Section 6.4(e).

"*Capacity Test Tolerance*" means three (3) MW.

"*Capital Spares*" means the equipment listed on Schedule CS and any replacements or substitutions thereof procured by Seller pursuant to or in accordance with the LTSA.

"*Casualty Event*" has the meaning set forth in Section 6.8(a).

"*Casualty Event Notice*" has the meaning set forth in Section 6.8(b).

"*Central Prevailing Time*" or "*CPT*" means standard time or daylight savings time, as applicable to the central time zone.

"*CERCLA*" means the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 *et seq*.

"*Closing*" has the meaning set forth in Section 3.1.

"*Closing Date*" has the meaning set forth in Section 3.1.

"*Closing Inventory Report*" means an Inventory Report dated as of the Closing Date.

"*Closing Inventory Value*" has the meaning set forth in Section 3.5(a).

"*COBRA*" means the Consolidated Omnibus Budget Reconciliation Act of 1985.

"*Code*" means the Internal Revenue Code of 1986.

"*Collective Bargaining Agreement*" means any and all agreements, verbal or written, between (i) any member of the KGen Group or Operator and (ii) a trade union, labor organization, collective bargaining representative or employee representative of any KGen Group Employee or Operator Employee concerning terms and conditions of employment of such Employee, as well as all modifications of, or amendments to, such agreements, and any Laws that interpret or apply such agreements.

"*Commercially Reasonable Efforts*" means efforts that (i) are reasonably within, or should have been reasonably within, the contemplation of the Parties on the Effective Date and are otherwise consistent with past practices of purchasers and sellers of similar assets in transactions of a similar kind and nature and (ii) do not require the performing Party to expend funds or incur obligations other than expenditures and obligations that are customary and reasonable in transactions of a similar kind and nature.

"*Condemnation Value*" has the meaning set forth in Section 6.18(a).

"*Confidentiality Agreement*" means that certain Confidentiality Agreement, dated as of August 24, 2010, between KGen Power Management Inc., an Affiliate of Seller that is organized and existing under the Laws of the State of Delaware, and ESI, an Affiliate of Purchaser that is organized and existing under the Laws of the State of Delaware.

"*Consents*" means consents, authorizations, approvals, releases, waivers, estoppel certificates, and any similar agreements or approvals.

"*Consumables*" means any and all of the following items of Inventory intended to be used or consumed at the Project in the ordinary course of the conduct of the Business: lubricants, chemicals, fluids, oils, filters, fittings, connectors, seals, gaskets, hardware, wire and other similar materials; maintenance, shop and office supplies; fuel supplies (including diesel fuel), if any, on hand and stored at, or in transit to, the Project Real Property as of the Closing; and all other materials, supplies and other items consumed at the Project in the ordinary course of the Business.

"*Contract*" means any binding contract, agreement, Collective Bargaining Agreement, purchase order, transaction under a master agreement, license, sublicense, lease, sublease, sale and purchase order, easement, mortgage, security agreement, instrument, guaranty, commitment, or other contract, whether written or oral.

"*Contract Capacity*" means a Project Capacity of 620 MW.

"*Contract CO Emission Rate*" means a Project CO Emission Rate within the limits specified in the State of Arkansas Department of Environmental Quality Air Pollution Control Title V Permit No. 1936-AOP-R4 to Operate Air Emissions Equipment held by KGen Hot Spring LLC, issued on August 10, 2009, including the Title IV Acid Rain Permit ORIS Code 55418 and the CAIR Permit.

"*Contract Heat Rate*" means a Project Heat Rate of 7,100 Btu/kWh.

"*Contract NO_x Emission Rate*" means a Project NO_x Emission Rate within the limits specified in the State of Arkansas Department of Environmental Quality Air Pollution Control Title V Permit No. 1936-AOP-R4 to Operate Air Emissions Equipment held by KGen Hot Spring LLC, issued on August 10, 2009, including the Title IV Acid Rain Permit ORIS Code 55418 and the CAIR Permit.

"*Damaged Portion*" has the meaning set forth in Section 6.8(a).

"*Deductible*" has the meaning set forth in Section 9.1(b).

"*Deed*" means one or more deeds substantially in the form of Exhibit C.

"*Defending Party*" has the meaning set forth in Section 9.6(d).

"*Easements*" has the meaning set forth in Section 2.1(c).

"*Effective Date*" means the date on which this Agreement has been executed and delivered by Seller and Purchaser, as specified in the introductory paragraph of this Agreement.

"*Electric Interconnection Facilities*" means all structures, facilities, equipment, substations, auxiliary equipment, devices and apparatus that are owned, operated or controlled by Seller, which are directly or indirectly required or installed to interconnect and deliver electric energy from the Project to the applicable delivery points to or on the Transmission System or otherwise, including electric transmission and/or distribution lines, transformation, switching, electric metering equipment, any other metering equipment, communications equipment, and safety equipment, including equipment required to protect (i) the electrical system to which the Project is connected and its customers from faults occurring at the Project and (ii) the Project from faults occurring on the electrical system to which the Project is connected or on other electrical systems to which such electrical system is directly or indirectly connected.

"*Emission Allowances*" means all authorizations to emit specified units of Hazardous Substances or any other regulated pollutant from the Project or the Project Site, which units are established and required by a Governmental Authority with jurisdiction over the Project or the Project Site under Environmental Law, including under (i) an air pollution control and emission reduction program, (ii) a program designed to mitigate impairment of water resources, including coastal and inland waters, navigable waters, surface waters, watersheds, well water or groundwater, or (iii) any other pollution reduction program, in each case regardless of whether the Governmental Authority establishing such authorizations designates such authorizations by a name other than "allowances" (*e.g.*, as offsets or credits).

"*Employee*" means, with respect to a Person, any individual who would be treated as a full-time, part-time, or other employee of such Person by applicable federal, state or local Laws, including Tax and employment Laws; provided, that with respect to Operator and GEII, Employees thereof for purposes of this Agreement shall be deemed to mean only those Employees who are, or were, primarily dedicated to work at the Project Site in connection with the Purchased Assets and the Business.

"*Employee Pension Benefit Plan*" has the meaning set forth in ERISA § 3(2).

"*Employee Plan*" means and includes each Employee Pension Benefit Plan, each Employee Welfare Benefit Plan, and each other plan, Contract, program, fund or policy, whether written or oral, qualified or non-qualified, funded or unfunded, foreign or domestic, providing for (i) severance pay or benefits, stay pay, salary continuation, change in control payments or benefits, bonuses, profit-sharing, equity options, employee stock ownership or other forms of incentive compensation; (ii) vacation or vacation pay, holiday or holiday pay, sickness or other time-off or sick pay; (iii) health, welfare, medical, dental, disability, life, accidental death and

dismemberment, employee assistance, educational assistance, relocation or fringe benefits or perquisites, including post-employment benefits; and (iv) deferred compensation, defined benefit or defined contribution, thrift savings, retirement, early retirement or pension benefits, or equity grants that covers any Employee, or that is maintained, administered, sponsored, made available or with respect to which contributions are made or required to be made by Seller or any ERISA Affiliate of Seller in respect of Employees or their beneficiaries or with respect to which Seller or any of its Affiliates has any ongoing obligation or liability whatsoever.

"*Employee Welfare Benefit Plan*" has the meaning set forth in ERISA § 3(1).

"*Encumbrances*" means any and all mortgages, pledges, claims, security interests, options, warrants, purchase rights (including rights of first refusal), liens (statutory or otherwise), installment sales agreements, easements, activity and use restrictions and limitations, exceptions, rights-of-way, deed restrictions, defects or imperfections of title, encumbrances and charges of any kind.

"*Entergy Operating Companies*" means, as of the Effective Date, Entergy Arkansas, Inc., Entergy Gulf States Louisiana, L.L.C., Entergy Louisiana, LLC, Entergy Mississippi, Inc., Entergy New Orleans, Inc., and Entergy Texas, Inc.

"*Environment*" means the environment, including any of the following media and any living organism or systems supported by any such media: (i) land, including surface land, sub-surface strata, sea bed and riverbed under water (as described in clause (ii) hereof); (ii) water, including coastal and inland waters, navigable waters, surface waters, ground waters, drinking water supplies and waters in surface and sub-surface strata; and (iii) air, including indoor and outdoor air and air within buildings and other man-made or natural structures above or below ground.

"*Environmental Assessment*" means a "Phase I" environmental site assessment with respect to the Project and the Project Real Property, dated not more than one hundred eighty (180) days prior to the Closing Date, that may be prepared at Purchaser's discretion by the Environmental Consultant on behalf of Seller and Purchaser in such time and manner as to satisfy CERCLA § 101(35)(B), 42 U.S.C. § 9601(35)(B) and the regulations thereunder defining "all appropriate inquiry," 40 C.F.R. Part 312, and ASTM E1527-05; provided, however, for the avoidance of doubt, the environmental site assessment shall not include any "Phase II" or other intrusive or invasive environmental investigations or sampling, testing or the collection of any environmental media.

"*Environmental Claim*" means any written notice, claim, suit (whether in law or in equity), demand or other written communication by any Person alleging or asserting a Party's or any other Person's actual or potential liability for investigation, response, investigation costs, cleanup or Remediation costs, compliance costs, enforcement costs, response costs, fees, defense costs, capital expenditures (whether incurred to construct, repair, restore, replace, Remediate or modify any of the Purchased Assets as necessary for a Party to perform its obligations under this Agreement or otherwise) or the funding necessary therefor, actual damages, consequential damages, punitive damages, claims for contribution or indemnity, damages to natural resources or other property, personal injuries (including those arising from or related to toxic torts), fines

or penalties, based on or resulting from, in whole or in part, (i) the presence or Release of any Hazardous Substance at any location, whether or not on property owned by such Person, (ii) circumstances forming the basis of any violation or alleged violation of or legal obligation or liability pursuant to any Environmental Law, or (iii) claims for Remediation or costs associated with Remediation.

"*Environmental Condition*" means the presence or Release of a Hazardous Substance in the Environment with respect to the Project or the Project Real Property (wherever migrating) that is in violation of an Environmental Permit in effect and enforceable on or prior to the Closing Date or that is not allowed, approved or permitted by an Environmental Permit and for which there is an obligation under Environmental Law to engage in any monitoring, investigation, assessment, treatment, cleanup, containment, removal, mitigation, reporting, response or restorative work, or with respect to which a Governmental Authority with jurisdiction over such matter has required in writing the foregoing activities under Environmental Laws.

"*Environmental Consultant*" means AECOM, Inc., or such other recognized environmental consulting firm as shall be selected by Purchaser and reasonably acceptable to Seller.

"*Environmental Laws*" means all Laws and Environmental Permits relating to pollution or protection of the Environment, including Laws relating to Releases of Hazardous Substances or the manufacture, processing, distribution, use, treatment, storage, transport, disposal or handling of Hazardous Substances, including CERCLA, the Federal Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq., the Clean Air Act, 42 U.S.C. § 7401 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. § 5101 et seq., the Toxic Substances Control Act, 15 U.S.C. §§ 2601 through 2629, the Oil Pollution Act, 33 U.S.C. § 2701 et seq., the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11001 et seq., the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. §§ 136 et seq.), the Solid Waste Disposal Act (42 U.S.C. §§ 6901 et seq.), the Occupational Safety and Health Act (20 U.S.C. §§ 651 et seq.) (to the extent related to Hazardous Substances or other matters pertaining to the Environment), the Safe Drinking Water Act, 42 U.S.C. §§ 300f through 300j, the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. § 1201 et seq., Arkansas Water and Air Pollution Control Act, Ark. Code Ann. § 8-4-101, et seq., and the Arkansas Solid Waste Management Act, Ark. Code Ann. § 8-6-201, et seq. and any and all similar Laws of the United States of America, the State of Arkansas or any other Governmental Authority having jurisdiction over the Project, the Project Real Property, Seller or the Business.

"*Environmental Liability*" means any Loss that (i) arises under or relates to any Environmental Condition existing on or prior to the Closing or any related Environmental Claim or (ii) is attributable to any event, action or omission occurring or condition or circumstance existing on or prior to the Closing in violation of any Environmental Law.

"*Environmental Permit*" means any Permit required, issued, or administratively continued under or in connection with any Environmental Law, including any Order, consent

decree, judgment or binding agreement issued or entered into by a Governmental Authority under any applicable Environmental Law relating to the Project or the Project Site.

"*ERISA*" means the Employee Retirement Income Security Act of 1974.

"*ERISA Affiliate*" means any trade or business (whether or not incorporated) that is or ever has been under common control, or which is or ever has been treated as, or deemed to be, a single employer, with Seller under Section 4001(b)(1) of ERISA or Section 414 of the Code.

"*Escrow Account*" means the account established and to be maintained by the Escrow Agent pursuant to the Escrow Agreement.

"*Escrow Agent*" means SunTrust Bank, or such other escrow agent that is mutually designated by Seller and Purchaser between the Effective Date and the Closing.

"*Escrow Agreement*" means the Escrow Agreement, in the form of Exhibit D, to be executed and delivered by Escrow Agent, Seller and Purchaser at the Closing, as amended by such changes as may be mutually agreed to by Seller and Purchaser.

"*ESI*" means Entergy Services, Inc.

"*Estimated Closing Adjustment*" has the meaning set forth in Section 3.8(a).

"*Estimated Closing Statement*" has the meaning set forth in Section 3.8(a).

"*Estimated Purchase Price*" has the meaning set forth in Section 3.8(a).

"*Exchange Act*" means the Securities Exchange Act of 1934.

"*Excluded Assets*" has the meaning set forth in Section 2.2.

"*Excluded Liabilities*" has the meaning set forth in Section 2.4.

"*Excluded Project Contracts*" has the meaning set forth in Section 2.2(c).

"*Expiration Date*" means the date that is the third anniversary of the Effective Date; provided, that if prior to the Closing (i) (A) a Casualty Event occurs, (B) Seller has made the determination pursuant to Section 6.8(a) or Section 6.8(d) that the Damaged Portion resulting from such Casualty Event would reasonably be expected to be Repaired on or before sixty (60) days prior to the Expiration Date and (C) despite Seller's compliance with Section 6.8, the Damaged Portion is not Repaired in accordance with Good Industry Practices and the other requirements of this Agreement on or before one hundred twenty (120) days prior to the third anniversary of the Effective Date, the "Expiration Date" for purposes of Section 10.1(b) shall be extended such that there are one hundred twenty (120) days between (1) the date on which the Damaged Portion is Repaired in accordance with Good Industry Practices and the other requirements of this Agreement and (2) the "Expiration Date" or (ii) (A) a Testing Defect occurs, (B) Seller has given a Late Testing Notice pursuant to Section 6.7(g) and (C) despite Seller's compliance with Section 6.7, the Testing Repair is not completed on or before one hundred

twenty (120) days prior to the third anniversary of the Effective Date, the "Expiration Date" for purposes of Section 6.7(g) and Section 10.1(b) shall be extended such that there are one hundred twenty (120) days between (1) the date on which such Testing Repair is completed and (2) the "Expiration Date"; provided, further, that in no event shall the Expiration Date be extended pursuant to clause (i) or (ii) above more than sixty (60) days beyond the third anniversary of the Effective Date.

"*Expiring Covenants*" means the covenants in Section 6.1 (Effort to Close), Section 6.3 (Conduct Pending Closing), Section 6.7 (Plant Performance Test), Section 6.13 (Notice of Certain Events; Reporting Obligations) and Section 6.23 (IDA Bond Property).

"*Federal Power Act*" means the Federal Power Act, 16 U.S.C. § 791 *et seq*.

"*FERC*" means the Federal Energy Regulatory Commission.

"*Final Plant Performance Reduction Amount*" has the meaning set forth in Section 6.7(k).

"*Final Plant Performance Test Results*" has the meaning set forth in Section 6.7(j).

"*Fuel*" means natural gas of sufficient quality to meet all technical specifications of the Project.

"*GAAP*" means generally accepted accounting principles as in effect from time to time in the United States, applied on a consistent basis.

"*Gas Interconnection Facilities*" means all structures, pipelines, facilities, equipment, auxiliary equipment, devices and apparatus that are owned, operated or controlled by Seller, which are directly or indirectly required or installed to interconnect and deliver natural gas from the applicable delivery points for natural gas from Texas Eastern Transmission Company's natural gas pipeline to the Project's electric generation units.

"*Gas Transportation Agreements*" means (i) the Ozark Gas Transportation Agreements, (ii) (a) Amended and Restated Firm (Rate Schedule FT) Transportation Service Agreement, effective as of November 1, 2010, between CenterPoint Energy Gas Transmission Company (f/k/a Reliant Energy Gas Transmission Company) and Seller (TSA No. 1002755), (b) Amended and Restated Firm (Rate Schedule FT) Transportation Service Agreement, effective as of May 1, 2011, between CenterPoint Energy Gas Transmission Company (f/k/a Reliant Energy Gas Transmission Company) and Seller (TSA No. 1002908), (c) Interruptible (Rate Schedule IT) Transportation Service Agreement, dated August 15, 2001, between CenterPoint Energy Gas Transmission Company (f/k/a Reliant Energy Gas Transmission Company) and KGen Hot Spring LLC (f/k/a Duke Energy Hot Spring, LLC) (TSA No. 1002853), and (d) Corrected Rate Schedule PHS Service Agreement (Park/Loan), effective as of May 1, 2011, between CenterPoint Energy Gas Transmission Company and KGen Hot Spring LLC (TSA No. 1007861), and (iii) (a) Service Agreement for Rate Schedule FT-1, dated as of April 1, 2010, between Texas Eastern Transmission, LP and Seller (Contract No. 910756-R1), (b) Service Agreement for Rate Schedule MLS-1, dated as of April 1, 2010, between Texas Eastern Transmission, LP and KGen Hot Spring LLC (Contract No. 910757-R1), and (c) the letter

agreement, dated April 1, 2010, re: Negotiated Rate Agreement, collectively, and, each a Gas Transportation Agreement.

"*GEII*" means General Electric International, Inc.

"*Good Industry Practices*" means those practices, methods and acts generally employed in the independent power generation industry at the particular time in question, in the exercise of reasonable judgment in light of the facts known at the time the decision in question was being made, would have been expected to accomplish the desired result of such decision consistent with good independent power generation practices and the requirements of applicable Laws. Good Industry Practices are not limited to the optimum practices, methods or acts to the exclusion of all others, but rather include a spectrum of possible practices, methods or acts commonly employed in the independent power generation industry during the relevant period in light of the circumstances.

"*Governmental Authority*" means any federal, state, local, foreign or other governmental subdivision, regulatory or administrative agency, commission, body, court, tribunal, arbitral panel, or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory, Tax or other authority or power over the matters specified or, if such matters are not specified, over Seller or Purchaser or their respective Affiliates, each to the extent related to the Project, the Project Site, the Transactions or any related matter, and each as applicable.

"*Hazardous Substance*" means and includes any hazardous or toxic substance or waste, any contaminant or pollutant or any chemical, element, compound, mixture or substance, whether solid, liquid or gaseous, regulated as toxic or hazardous under applicable Environmental Laws, including (i) natural gas, petrochemical or petroleum products, oil, coal ash, radioactive materials, radon gas, asbestos or asbestos-containing material, polychlorinated biphenyls or transformers or other equipment that contains polychlorinated biphenyls, lead-based paint or urea formaldehyde foam insulation, (ii) any and all chemicals, materials, substances or wastes defined or regulated as "*hazardous substances*," "*hazardous materials*," "*hazardous constituents*," "*restricted hazardous materials*," "*extremely hazardous substances*," "*hazardous wastes*," "*extremely hazardous wastes*" "*restricted hazardous wastes*," "*toxic substances*," "*toxic pollutants*," "*toxic air pollutants*," "*pollutants*," "*contaminants*" or words of similar meaning and regulatory effect, including as the foregoing may be defined under any Environmental Law, and (iii) any and all other chemicals, materials, wastes or substances, the exposure to or treatment, storage, transportation, use, disposal or Release of which is prohibited, limited or regulated by any applicable Environmental Law.

"*Hinds Purchase Agreement*" means that certain Asset Purchase Agreement, dated April 28, 2011, between KGen Hot Spring, LLC, and Entergy Mississippi, Inc.

"*HOPA Agreement*" means that certain Home Office Payment Agreement, dated as of June 2, 2004, by and among Seller, the IDA Bond Trustee and KGen LLC (as assignee of KGen Partners LLC pursuant to the HOPA Assignment and Assumption Agreement, dated as of July 23, 2004).

"*HSR Act*" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. §§ 15c-15h, 18a.

"*IDA Bond*" means that certain $351,318,588.83 Industrial Development Revenue Bond (Duke Energy Hot Spring, LLC Project) No R-2, dated June 17, 2002, held by KGen LLC as the registered owner.

"*IDA Bond Contracts*" mean, collectively, the IDA Bond, the IDA Bond Indenture, the IDA Lease Agreement, the IDA Bond Guaranty, the HOPA Agreement and the IDA Tax Agreement.

"*IDA Bond Guaranty*" means that certain Guaranty Agreement, dated as of December 1, 2000, by and between the Seller and the IDA Bond Trustee in connection with the IDA Bond.

"*IDA Bond Indenture*" means that certain Trust Indenture, dated as of December 1, 2000, between Hot Spring County, Arkansas to IDA Bond Trustee, related to the IDA Bond.

"*IDA Bond Other Property*" has the meaning set forth in Section 2.1(d).

"*IDA Bond Real Property*" has the meaning set forth in Section 2.1(a).

"*IDA Bond Property*" means the IDA Bond Real Property and the IDA Bond Other Property.

"*IDA Bond Trustee*" means U.S. Bank, N.A. (as successor to Wachovia Bank, National Association), as trustee under the IDA Bond Indenture.

"*IDA Lease Agreement*" means that certain Lease Agreement, dated as of December 1, 2000, between Hot Spring County, Arkansas and Seller.

"*IDA Tax Agreement*" means that certain Agreement, dated December 15, 2000, by Seller and accepted by Hot Spring County, Arkansas and Acknowledged and Accepted by the Malvern Special School District, re: obligation to make annual donations in lieu of ad valorum taxes that would be paid to the State of Arkansas, Hot Spring County, the Malvern Special School District and/or other political subdivisions.

"*Imaged Document*" has the meaning set forth in Section 11.3.

"*Indemnitee*" has the meaning set forth in Section 9.6(a).

"*Indemnitor*" has the meaning set forth in Section 9.6(a).

"*Indemnity Notice*" written notification pursuant to Section 9.6(g) of a claim for payment or indemnity under Article IX by an Indemnitee that does not involve a Third Party Claim, specifying the nature of and basis for such claim.

"*Independent Accounting Firm*" means PricewaterhouseCoopers LLP.

"*Initial Plant Performance Test*" has the meaning set forth in Section 6.7(d).

"*Initial Post-Closing Adjustment*" has the meaning set forth in Section 3.8(d).

"*Insurable Real Property*" means the Owned Real Property, IDA Bond Real Property and all Easements appurtenant thereto to the extent such Easements constitute real property.

"*Intellectual Property*" means intellectual property of any kind or character, including (i) inventions, improvements thereto, and patents, patent applications, and patent disclosures, (ii) trademarks, service marks, trade dress, logos, brand names, trade names, domain names and corporate names, including all goodwill associated therewith, and all applications, registrations, and renewals in connection therewith, (iii) copyrightable works, copyrights, and related applications, registrations, and renewals, and (iv) trade secrets, know-how, and tangible or intangible proprietary business information, software, computer programs, source and object codes, databases, and data.

"*Intellectual Property Rights*" means (i) all proprietary or other legally enforceable rights with respect to Intellectual Property, including license and similar rights provided under any Contract relating to the Purchased Assets, or any other Law under any jurisdiction that provides protective or other rights with respect to Intellectual Property, including patent, copyright, trademark, service mark, design patent, industrial design, and semi-conductor chip, mask work, trade secret, database, and internet Law, and (ii) all rights to sue and recover damages for infringement, dilution, misappropriation or other violation of such rights.

"*Interconnection Facilities*" means all of the Electric Interconnection Facilities and Gas Interconnection Facilities.

"*Inventory*" means any and all of the parts, equipment, supplies and other items of inventory intended to be used or consumed at the Project in the ordinary course of the Business, including (i) Consumables; (ii) new, repaired or refurbished equipment, components, assemblies, or sub-assemblies; (iii) spare, replacement or other parts (including capital and non-capital spare parts); (iv) tools, special tools, or similar equipment; and (v) all associated materials, supplies, and other goods and other similar items of movable property; provided, that for the avoidance of doubt, no Capital Spares shall be considered Inventory hereunder.

"*Inventory Report*" means an inventory report prepared by Seller in the form set forth in Schedule 2.1(e).

"*KGen*" has the meaning set forth in the introductory paragraph of this Agreement.

"*KGen Board*" shall have the meaning set forth in Section 6.6(b)(ii).

"*KGen Group*" means KGen and its subsidiaries.

"*KGen Intervening Event*" means an event, change, development, effect, condition, circumstance, matter, occurrence or state of facts that (i) is material to KGen, (ii) was not reasonably foreseeable on the Effective Date, and (iii) becomes known to the KGen Board only after the Effective Date; provided, however, that in no event shall any of the following constitute or lead to a KGen Intervening Event: (A) any action taken by either Party pursuant to and in compliance with its obligations under this Agreement, and the consequences of any such action;

(B) the receipt, existence or terms of a Takeover Proposal or any inquiry relating thereto or the consequences thereof; or (C) any project, proposal, offer, negotiation or undertaking commenced, discussed or considered by the KGen Board prior to the Effective Date.

"*KGen Notice of Intervening Event*" shall have the meaning set forth in Section 6.6(b)(ii).

"*KGen Recommendation*" shall have the meaning set forth in Section 6.6(b)(ii).

"*KGen Recommendation Change*" shall have the meaning set forth in Section 6.6(b)(ii).

"*Knowledge*" means the extent of the knowledge, as of the applicable time, of the individuals listed in Schedule 1.1A (with respect to Seller) or Schedule 1.1B (with respect to Purchaser) after the due inquiry by such individuals (or their replacements or successors) of other individuals employed by the applicable Party or any of its Affiliates who would reasonably be expected to have knowledge of such event, fact, circumstance, condition or other matter.

"*kW*" means kilowatt.

"*Late Testing Notice*" shall have the meaning set forth in Section 6.7(g).

"*Laws*" means all applicable federal, state, local, municipal, foreign or other laws, constitutions, statutes, rules, regulations, ordinances, Orders, codes and other legal requirements (excluding Permits) issued, enacted, adopted, promulgated, implemented or otherwise put into effect by or under the authority of any Governmental Authority, including the common law, Environmental Laws and NERC requirements, including the NERC reliability standards promulgated pursuant to 18 CFR 39.

"*Leased Personal Property*" has the meaning set forth in Section 4.8(a).

"*Letter of Intent*" means that letter of intent, dated November 16, 2010, between KGen and Entergy Services, Inc., as agent for Purchaser.

"*Load-Following Capacity and Energy*" has the meaning set forth in Section 4.14(b).

"*Losses*" has the meaning set forth in Section 9.1(a).

"*LTSA*" means the Long-Term Service Agreement, dated as of December 20, 2000, between Seller and GEII.

"*Material Adverse Effect*" means, with respect to Seller, any occurrence set forth in clause (a) or (b) of this definition, and, with respect to Purchaser, any occurrence set forth in clause (a) of this definition:

(a) any event, fact, circumstance or condition materially impairing such Party's authority, right, or ability to (i) perform any of its material obligations under this Agreement or any Ancillary Agreement to which it is a party or (ii) consummate the Transactions by the Expiration Date; or

(b) any change (together with all other changes taken together) in, or effect on, the Purchased Assets that is materially adverse to the operations or physical condition of the Purchased Assets taken as a whole, or the assets, properties, financial condition or results of operations of the Business taken as a whole, except that any adverse change or effect to the extent it is due to the following shall be excluded from this clause (b):

(i) a change in the economic conditions of the national or regional electric industry generally affecting such national or regional electric industry as a whole except to the extent that such changes have a materially disproportionate effect on the Purchased Assets relative to other gas-fired generation facilities located in Arkansas;

(ii) a change in the price of natural gas or other commodities for the Purchased Assets;

(iii) a change in market prices for real estate;

(iv) a change in market prices for the sale and purchase of electric generating facilities or capacity, energy, or other products or services therefrom;

(v) an act of terrorism, war (whether or not declared) or military action, excluding acts that cause material physical damage to the Project or gas transportation or water or commodity delivery service to, or electric transmission service or water/effluent/waste disposal from, the Project Site or prevent or materially restrict the intended use of the Project;

(vi) a change in Laws, including those governing national, regional, state or local electric transmission or distribution systems, except to the extent that such changes have a materially disproportionate effect on the Purchased Assets relative to other gas-fired generation facilities located in Arkansas;

(vii) general United States or global economic conditions affecting capital or financial markets generally; and

(viii) the transactions contemplated by this Agreement and the Ancillary Agreements, and any action taken pursuant to and in accordance with this Agreement or any Ancillary Agreement in effect.

"*Monthly Inventory Report*" means an Inventory Report prepared monthly by or for Seller.

"*Monthly Operating Report*" means a monthly management report for the applicable period, including technical discussions of capacity availability, energy production, operations and maintenance and regulatory compliance of the Project, with attached reports covering such matters as have been covered in reports previously provided by Seller or are otherwise reasonably requested by Purchaser.

"*MW*" means megawatt.

"*Natural Gas Act*" means the Natural Gas Act, 15 U.S.C. § 717 *et seq.*

"*NERC*" means the North American Electric Reliability Corporation.

"*New Pipeline*" has the meaning set forth in Section 6.22.

"*Non-Assigned Asset*" has the meaning set forth in Section 6.5(c).

"*Non-Defending Party*" has the meaning set forth in Section 9.6(d).

"*Notice of Inquiry*" has the meaning set forth in Section 6.12(c).

"*Notice of Superior Offer*" shall have the meaning set forth in Section 6.12(d)(ii).

"*Notice of Third Party Claim*" has the meaning set forth in Section 9.6(a).

"*Notice Period*" means the period that is thirty (30) days from the date of receipt by the Indemnitor of a Notice of Third Party Claim or Indemnity Notice, as applicable.

"*O&M Agreement*" means the Operation and Maintenance Agreement, dated as of October 16, 2009, between Seller and Operator.

"*Off-Site Location*" means any real property related to or used in connection with the Project other than the Project Real Property.

"*Operator*" means NAES Corporation.

"*Order*" means any legally binding order, injunction, judgment, decree, ruling, writ, or assessment of a Governmental Authority or decision of an authorized arbitrator.

"*Organizational Documents*" means the articles of incorporation, certificate of incorporation, certificate of formation, bylaws, operating agreement, certificate of limited partnership, partnership agreement and all other similar documents, instruments or certificates executed, adopted or filed in connection with the creation, formation or organization of a Person, including amendments thereto.

"*Owned Real Property*" has the meaning set forth in Section 2.1(a).

"*Ozark*" means Ozark Gas Transmission, L.L.C.

"*Ozark Gas Transportation Agreements*" means (i) the Service Agreement Under Rate Schedule FTS, Contract No. 820095-R1 dated April 1, 2010 between Ozark and Seller, and (ii) the Negotiated Rate for Rate Schedule FTS Service Agreement No. 820095 dated April 1, 2010 between Ozark and Seller.

"*Party*" means Seller or Purchaser, as the context requires; "*Parties*" means, collectively, Seller and Purchaser.

"*Permits*" means any and all (i) permits, registrations, licenses, franchises, certificates and Consents of Governmental Authorities, including Environmental Permits, to the extent related to the Project or the Business, and (ii) pending applications for any new permit, registration, license, franchise, certificate or Consent of any Governmental Authority or the renewal, extension or modification of any permit, registration, license, franchise, certificate or Consent of any Governmental Authority.

"*Permitted Encumbrances*" means (i) liens for Property Taxes and other governmental charges and assessments (x) that are not yet due and payable or (y) the validity of which is being contested in good faith by appropriate proceedings as described in Part I of Schedule 1.1C, (ii) mechanics', materialmens', laborers', carriers', workers', repairers' and other similar liens arising in the ordinary course of business by operation of Law for sums not yet due and payable (provided, that, with respect to any such Encumbrances that will be in existence at Closing, such Encumbrances shall only be Permitted Encumbrances to the extent that the underlying obligations are agreed to be or deemed to be Assumed Liabilities under this Agreement), (iii) the Encumbrances described in Part II of Schedule 1.1C and any and all other Encumbrances that will be and are discharged or released either prior to, or simultaneously with, the Closing, (iv) all matters (other than those set forth in Items 1, 2(a)-(d), 3(h)-(j), 3(p)-(r), 3(nn) and 3(pp) of Schedule B-Section II of the Title Commitment) revealed as exceptions on Schedule B-Section II of the Title Commitment, (v) Encumbrances with respect to any of the Purchased Assets and created by or resulting from the acts or omissions of Purchaser or this Agreement, (vi) any imperfection of title or similar non-monetary Encumbrance that individually or in the aggregate with other such Encumbrances could not reasonably be expected to materially adversely affect Purchaser's ability to operate and maintain the Project and conduct the Business, and (vii) the state of facts shown on the Survey.

"*Permitted Transaction*" means any inquiry, proposal or offer by a Third Party reasonably acceptable to Purchaser that would otherwise constitute a Takeover Proposal (excluding the proviso in the definition of "Takeover Proposal") but that (a)(i) excludes the capital stock and assets (including the Purchased Assets) of Seller, or (ii) relates to a Business Combination Transaction involving KGen or any direct or indirect subsidiary of KGen (other than Seller) or a sale of the capital stock or other equity interests (as applicable) or the assets of KGen or any direct or indirect subsidiary of KGen (other than Seller) and (b) would not affect, limit or otherwise modify the obligations of KGen (or its successor) or Seller to effect the Transactions in any material and adverse manner, or decrease in any material respect the likelihood of Seller being able to consummate the sale of the Purchased Assets contemplated by this Agreement. For these purposes, any Consent of any Person, or any condition to closing the Takeover Proposal purporting to constitute a Permitted Transaction, that would decrease in any material respect the likelihood of receipt by KGen or Seller of any Consent, or which would reasonably be likely to impose additional restrictions on Purchaser or the Purchased Assets following Closing, will preclude such Takeover Proposal from constituting a Permitted Transaction.

"*Person*" means any individual, partnership, joint venture, corporation, limited liability company, estate, trust, association or unincorporated organization, any Governmental Authority or any other entity.

"*Plant Performance Parameter*" means each of (i) Contract Capacity, (ii) Contract Heat Rate, (iii) Contract NO_x Emission Rate, and (iv) Contract CO Emission Rate; collectively, the "*Plant Performance Parameters*."

"*Plant Performance Re-Test*" has the meaning set forth in Section 6.7(d).

"*Plant Performance Test*" means a plant performance test performed in accordance with Good Industry Practices, the protocols and procedures attached hereto as Schedule 6.7, and the requirements of this Agreement and based on American Society of Mechanical Engineers (ASME) standards to determine (i) the Project Capacity, (ii) the Project Heat Rate and (iii) the amount of and rates of CO and NOx emission of the generating units at the Project.

"*Plant Performance Test Contractor*" means General Physics Corporation or such other independent, experienced and reputable contractor as the Parties may agree upon in a writing signed by the Parties.

"*Plant Performance Test Report*" has the meaning set forth in Section 6.7(b).

"*Plant Performance Test Results*" has the meaning set forth in Section 6.7(b).

"*Post-Closing Confidentiality Agreement*" means the confidentiality agreement to be executed and delivered by KGen and Purchaser at the Closing in the form attached hereto as Exhibit E.

"*Post-Closing Statement*" has the meaning set forth in Section 3.8(b).

"*PPA*" means one or more Power Purchase Agreements, if any, between Purchaser and/or an Affiliate of Purchaser and Seller relating to the purchase and sale of capacity, energy and ancillary services from the Project.

"*Pre-Closing Period*" means any period of time beginning and ending on or prior to the Closing Date.

"*Precedent Agreement*" has the meaning set forth in Section 6.22.

"*Predecessor-in-Interest*" means any prior owner of, or predecessor-in-interest with respect to, the Project, including Duke Energy North America, LLC and its Affiliates.

"*Prepaid Items*" has the meaning set forth in Section 2.1(k).

"*Project*" means the nominal 620 MW natural gas-fueled electrical generation plant located on the Project Site, and all related assets and properties, real, personal and mixed, and interests therein, owned, operated or controlled by Seller, including two GE combustion turbines with mechanical chillers, two Aalborg heat recovery steam generators, one GE steam turbine, ancillary equipment, Interconnection Facilities, Protective Apparatus, the Project Real Property, the Tangible Personal Property, and the Inventory and, subject to the other terms hereof, any additions thereto or replacements to any of the foregoing. A general description of the generation plant component of the Project is provided in Schedule 1.1D.

"*Project Capacity*" means the full-load dependable net electric generating capability of the Project, adjusted to Reference Conditions and expressed in whole kW (with a fractional kW amount below 0.5 being rounded down to the nearest whole kW and a fractional MW amount equal to or above 0.5 being rounded up to the nearest whole kW), determined pursuant to a Plant Performance Test.

"*Project CO Emission Rate*" means the Project's emission rate of CO (in lbs./MMBtu), determined pursuant to a Plant Performance Test.

"*Project Contract*" means any Contract (other than licenses or similar rights relating to Intellectual Property), excluding this Agreement and, as and when executed, the Ancillary Agreements, to which Seller is a party, or by which Seller or any of the Purchased Assets is bound, that primarily relates to or has the primary purpose of supporting the Project or the Business.

"*Project Heat Rate*" means the net heat rate (in Btu/kWh – HHV) of the electric generating units of the Project in the 2 x 1 combined-cycle mode at the Project's baseload operating capabilities, adjusted to Reference Conditions, determined pursuant to a Plant Performance Test.

"*Project Insurance Policies*" means all insurance policies (including all fidelity bonds and other surety arrangements) carried by or for the benefit of Seller or any Affiliate thereof with respect to the ownership, use, operation or maintenance of the Project, the Project Site or the Business, including all liability, workers compensation, executive risk, fiduciary liability (or any other ERISA plan of protection), all-risk property insurance, self-insurance arrangements, retrospective assessments and business interruption and/or outage policies in respect thereof.

"*Project NO_x Emission Rate*" means the Project's emission rate of NO_x (in lbs./MMBtu), determined pursuant to a Plant Performance Test.

"*Project Real Property*" means the Owned Real Property, the IDA Bond Real Property and the Easements.

"*Project Site*" means (i) the approximately 393-acre parcel of land upon which the Project is located, in Hot Spring, Arkansas, as described in Part I and Part II of Schedule 2.1(a), and (ii) the Easements.

"*Property Tax*" means any Tax resulting from and relating to the assessment of real or personal property by any Governmental Authority.

"*Proposed Post-Closing Adjustment*" has the meaning set forth in Section 3.8(b).

"*Proratable Item*" means any Proratable Non-Tax Item or Proratable Tax Item.

"*Proratable Non-Tax Item*" means any item of receipt or disbursement under a Purchased Project Contract or Purchased License, including any Prepaid Item thereunder, covering a period both prior to and following the Closing and incurred by or on behalf of Seller prior to the Closing

in the ordinary course of business consistent with past practice and the provisions of this Agreement.

"*Proratable Tax Item*" means the Property Taxes assessed with respect to the Project Real Property and the Taxable Project Personal Property for the year in which the Closing of the Transactions occurs. For the avoidance of doubt, no Tax other than a Property Tax shall be a Proratable Tax Item.

"*Protective Apparatus*" means such equipment and apparatus that are owned, operated or controlled by Seller, including protective relays, circuit breakers and the like, necessary or appropriate to isolate the Project from the electrical system to which they are connected consistent with Good Industry Practices.

"*Proxy Statement*" has the meaning set forth in Section 4.22.

"*Purchase Price*" has the meaning set forth in Section 3.4.

"*Purchased Assets*" has the meaning set forth in Section 2.1.

"*Purchased Intellectual Property*" has the meaning set forth in Section 2.1(b).

"*Purchased Inventory*" has the meaning set forth in Section 2.1(e).

"*Purchased Licenses*" has the meaning set forth in Section 4.13(b).

"*Purchased Permits*" has the meaning set forth in Section 2.1(g).

"*Purchased Project Contracts*" has the meaning set forth in Section 2.1(f).

"*Purchased Warranties*" has the meaning set forth in Section 2.1(i).

"*Purchaser*" has the meaning set forth in the introductory paragraph of this Agreement.

"*Purchaser Claims*" has the meaning set forth in Section 9.1(a).

"*Purchaser Group*" has the meaning set forth in Section 9.1(a).

"*Purchaser Match Period*" has the meaning given to that term in Section 6.12(d)(ii).

"*Purchaser's Consents*" means the notices to or Consents of any Person other than a Governmental Authority required by Purchaser to be made or obtained by or on behalf of Purchaser prior to consummation of the Transactions, as specified in Part I of Schedule 5.3.

"*Purchaser's Regulatory Approvals*" means the notices to, applications or other filings with or Consents of or from any Governmental Authority of competent jurisdiction over any of Purchaser (including Purchaser's retail operations), any Affiliates of Purchaser, the Project, or the Transactions to be filed, made or obtained by Purchaser or any of its Affiliates that Purchaser deems necessary or advisable for it to consummate the Transactions, including approval from a Governmental Authority having jurisdiction over Purchaser (i) to proceed with the Transactions

on the terms set forth herein and in the Ancillary Agreements and recover all costs associated with the Transactions on terms acceptable to Purchaser in its sole and absolute discretion (through base rates, fuel adjustment charges, and/or such other rates or charges as may be applied pursuant to a rider or otherwise) pursuant to a finding that the consummation of the Transactions by Purchaser is prudent and in the public interest, and (ii) providing for such other regulatory treatment, including with respect to timing, scope, and means of recovery, as is acceptable to Purchaser in its sole and absolute discretion. Purchaser's Regulatory Approvals are set forth in Part II of Schedule 5.3.

"*Purchaser's Required Consents*" means the Purchaser's Consents marked with an asterisk on Part I of Schedule 5.3.

"*Reference Conditions*" has the meaning set forth in Schedule 6.7.

"*Release*" has the meaning set forth in Environmental Laws, including CERCLA, but also shall include any actual or threatened release, spill, leak, discharge, abandonment, disposal, pumping, pouring, emitting, emptying, injecting, leaching, dumping or deposit into the Environment or any of the Project Real Property, any Hazardous Substance, including the abandonment or discarding of any Hazardous Substance in barrels, drums, or other containers, into or within the Environment.

"*Remediation*" means any action taken in accordance with or required under Environmental Laws to address an Environmental Condition, or the Release or presence of Hazardous Substances into or in the Environment at the Project Real Property or any Off-Site Location, including (i) monitoring, investigation, assessment, treatment, clean-up, containment, remediation, removal, mitigation, response or restoration work; (ii) obtaining any Permit necessary to conduct any such work; (iii) preparing and implementing any plan or study for such work; (iv) obtaining a written notice from a Governmental Authority with jurisdiction under Environmental Laws that no material additional work is required by such Governmental Authority; (v) any response to, or preparation for, any inquiry, hearing or other proceeding by or before any Governmental Authority with respect to any such Environmental Condition, Release or presence of Hazardous Substances; and (vi) any other activity that is taken in accordance with or required under Environmental Laws to address an Environmental Condition, or the presence or Release of Hazardous Substances in or into the Environment at the Project Real Property or any other Off-Site Location.

"*Repair*" means, with respect to any Damaged Portion, Repair Portion or Testing Defect, the repair or restoration of the Damaged Portion, Repair Portion or Testing Defect to good working order in accordance with Good Industry Practices, including with respect to any engineering, design, procurement or installation performed by or for Seller or its Affiliates in connection with such repair or restoration. The term "repair or restoration" (and similar terms) shall be broadly construed, and shall include or allow for the replacement of all or any portion of the Damaged Portion, Repair Portion or Testing Defect.

"*Representatives*" means, as to any Person, its officers, directors, employees, agents, partners, members, counsel, accountants, financial advisers, investment bankers and consultants.

"*Resolution Period*" means the period ending thirty (30) days following receipt by an Indemnitee of a written notice from an Indemnitor stating that it disputes all or any portion of a claim set forth in a Notice of Third Party Claim or an Indemnity Notice.

"*Restricted Employee*" has the meaning set forth in Section 6.11(e).

"*SEC*" means the United States Securities and Exchange Commission.

"*Seller*" has the meaning set forth in the introductory paragraph of this Agreement.

"*Seller Claims*" has the meaning set forth in Section 9.2(a).

"*Seller Condition Failure* " means, on any date of determination, (1) the conditions in Section 8.3, (the satisfaction of which shall, for purposes of determining whether a Seller Condition Failure exists, be determined on the basis of whether or not such preliminary or permanent Order is in effect at the end of the TP1 Closing Delay Period or the TP2 Closing Delay Period, as applicable), Section 8.4(a) (other than the condition to obtain FERC authorization under Section 203 of the Federal Power Act and the condition that the applicable waiting period, and any and all applicable extensions thereof, for the Transactions under the HSR Act shall have expired or terminated) or Section 8.4(b) have not been satisfied or waived by Seller in its sole and absolute discretion or (2) Seller has not satisfied the Seller requirements in Section 7.1, Section 7.5, Section 7.6 and Section 7.7(h) necessary for the Purchaser conditions to Closing set forth therein to be satisfied.

"*Seller's Consents*" means the notices to or Consents of any Person other than a Governmental Authority that are required to be made or obtained by or on behalf of Seller or any of its Affiliates prior to the Closing in order to avoid the violation or breach of, or the default under, or the creation of an Encumbrance on the Purchased Assets pursuant to, any Law or any Project Contract or license (or similar right) relating to Intellectual Property to which Seller or any of its Affiliates is a party or to which any of the Purchased Assets are subject. Seller's Consents are specified in Part I of Schedule 4.3.

"*Seller Group*" has the meaning set forth in Section 9.2(a).

"*Seller's Regulatory Approvals*" means the notices to, applications or other filings with or Consents of or from any Governmental Authority that are necessary for Seller to consummate the Transactions and to be made or obtained by or on behalf of Seller prior to the Closing. Seller's Regulatory Approvals are specified in Part II of Schedule 4.3.

"*Seller's Required Consents*" means the Seller's Consents marked with an asterisk on Part I of Schedule 4.3.

"*Site Indemnity Agreement*" means that certain letter agreement, dated October 27, 2010, between KGen and ESI, as agent for the Entergy Operating Companies.

"*Special Meeting*" shall have the meaning set forth in Section 6.6(b)(i).

"*Stockholder Approval*" means the affirmative vote of the holders of shares representing a majority of the voting power of the outstanding shares of capital stock of KGen authorizing the sale of the Purchased Assets pursuant to this Agreement.

"*Subsequent Transaction*" has the meaning given to that term in Section 10.3(a)(v).

"*Superior Offer*" means a Takeover Proposal (but replacing references to "20% or more" in the definition thereof with "50% or more") that (i) is fully financed, (ii) has no condition for a vote of the Third Party's equityholders on any matter, or the consent of its debt holders or lenders (in each case except as would be obtained at or prior to the time at which a definitive agreement with respect to such Takeover Proposal would be executed), (iii) is otherwise on terms that the KGen Board has determined in good faith, by resolution duly adopted, after consultation with KGen's outside legal and financial advisors (which shall include a nationally recognized investment banking firm) and considering such factors as the KGen Board considers to be appropriate (including the conditionality and the timing and likelihood of consummation of such proposal) are more favorable to KGen or the KGen stockholders from a financial point of view than the Transactions, and (iv) the KGen Board has determined in good faith is reasonably capable of being consummated in a timely manner on the terms proposed.

"*Superior Offer Documentation*" has the meaning given to that term in Section 6.12(d)(i).

"*Survey*" means, collectively, as-built surveys of the Insurable Real Property prepared by Randall A. Mansfield, PLS, of Smith, Roberts, Baldischwiler, LLC, as Project No. 112,682 and dated as of March 1, 2011, and prepared by Paxton R. Singleton, RPLS, of Global Surveying Consultants, Inc., as Project No. 11-1014.00, and dated as of February 23, 2011.

"*Takeover Proposal*" means any proposal or offer from one or more Third Parties relating to (a) any Business Combination Transaction with Seller, (b) any Business Combination Transaction or direct or indirect acquisition or purchase by one or more Third Parties, in a single transaction or a series of related transactions, including by means of the acquisition of capital stock of KGen, Seller or any of their respective Affiliates, of assets or properties that constitute 20% or more of the assets of Seller or 20% or more of equity interests (measured by economic or voting power) of Seller, in each case other than the Transactions, or (c) the acquisition by KGen, Seller or any of their respective Affiliates of any Third Party in a Business Combination Transaction in which the shareholders of the Third Party immediately prior to consummation of such Business Combination Transaction will, immediately following such Business Combination Transaction, directly or indirectly own more than 20% of Seller's consolidated assets or outstanding capital stock, including the issuance by KGen, Seller or any of their respective Affiliates of any class of equity interests (measured by economic or voting power) as consideration for assets or securities of the Third Party that would result in the shareholders of such Third Party owning stock of KGen, Seller or any of their respective Affiliates that would represent, directly or indirectly, ownership of 20% or more of the capital stock or assets of Seller; provided, however, that in no event shall the term "Takeover Proposal" include a Permitted Transaction.

"*Tangible Personal Property*" has the meaning set forth in Section 2.1(d).

"*Target Closing Date*" has the meaning set forth in Section 6.7(c).

"*Tax*" means any federal, state, local or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, carbon, Btu, fuel, environmental, customs duties, tariff, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property (including assessments, fees or other charges based on the use or ownership of real property, Property Tax, and ad valorem tax), personal property, transactional, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated or other tax of any kind whatsoever, including any interest, penalty or addition thereto, whether disputed or not, including any item for which liability arises as a transferee or secondary liability in respect to any tax (whether imposed by Law, contractual agreement or otherwise), and any liability in respect of any tax as a result of being a member of any affiliated, consolidated, combined, unitary or similar group.

"*Tax Return*" means any return, report, information return, declaration, claim for refund or other document, together with all amendments and supplements thereto, including all related or supporting information, required to be supplied to any Governmental Authority responsible for the administration of Laws governing Taxes, including information returns or reports with respect to backup withholding and other payments to third parties.

"*Taxable Project Personal Property*" means all property subject to ad valorem property Tax that is not Project Real Property.

"*Termination Order*" has the meaning set forth in Section 10.1(c)(i).

"*Testing Defect*" shall have the meaning set forth in Section 6.7(g).

"*Testing Party*" means, with respect to the Initial Plant Performance Test, Seller and, with respect to any other Plant Performance Test, the Party causing the Plant Performance Test to be performed pursuant to Section 6.7.

"*Testing Repair*" shall have the meaning set forth in Section 6.7(g).

"*TETCO*" has the meaning set forth in Section 6.22.

"*Third Party*" means any Person other than Purchaser, KGen, or any of their respective Affiliates.

"*Third Party Claim*" means a claim, demand or Action instituted or threatened by any Person, other than one made or threatened by a member of the Seller Group or the Purchaser Group, (i) for the enforcement of its rights under or relating to this Agreement or (ii) for which a specific remedy is provided under this Agreement. "Third Party Claim" shall include any claim, other than a claim by a member of the Seller Group or the Purchaser Group, for the costs of conducting Remediation or seeking an Order or demanding that a Person undertake Remediation.

"*Title Commitment*" means the title commitments attached hereto as Exhibit F.

"*Title Insurer*" has the meaning set forth in Section 7.8.

"*Title Policy*" has the meaning set forth in Section 7.8.

"*Total Cost*" has the meaning set forth in Section 6.8(c).

"*TP1 Closing Delay Period*" means a period equal to the number of days from the expiration of Transaction Period 1, through the Trigger Day (regardless of whether the Trigger Day occurs in Transaction Period 2 or thereafter); it being understood and agreed that if the Trigger Day occurs during Transaction Period 1, there shall be no TP1 Closing Delay Period.

"*TP2 Closing Delay Period*" means a period equal to the number of days from the expiration of Transaction Period 2, through the Trigger Day; it being understood and agreed that if the Trigger Day occurs during Transaction Period 2, there shall be no TP2 Closing Delay Period but there shall be a TP1 Closing Delay Period.

"*Transaction Period 1*" means the period from the Effective Date through the last day of the fifteenth (15^{th}) consecutive month after the Effective Date.

"*Transaction Period 2*" means a period beginning on the first day after the expiration of Transaction Period 1 through the last day of the twelfth (12^{th}) consecutive month thereafter.

"*Transactions*" means the transactions contemplated by this Agreement and the Ancillary Agreements.

"*Transfer Tax*" means any sales, gross receipts, transfer, transaction, excise, value added, use, real property transfer, stamp, or other similar Tax, including any related penalties, interest and additions thereto.

"*Transmission System*" means the transmission system of Purchaser and the other Entergy Operating Companies (or any Person succeeding to the ownership or control thereof, including any regional transmission organization), including the substation to which the Project is interconnected.

"*Trigger Day*" means the day identified in a written notice from Purchaser to Seller as the day on which Purchaser in its sole and absolute discretion has determined that the condition set forth in Section 7.4(a) has been satisfied or waived by Purchaser; provided that the Trigger Day may be no more than one (1) Business Day prior to the date that such notice is received by Seller.

"*Uncapped Purchaser Representations*" has the meaning set forth in Section 9.2(b).

"*Uncapped Seller Representations*" has the meaning set forth in Section 9.1(b).

"*Warm-up Line Improvement Project Testing*" means testing of the warm-up line improvement project the results of which confirm the successful completion of the warm-up line improvement project for the prevention of further degradation of the bow in the steam turbine rotor during hot start conditions by ensuring steam is admitted at the proper temperature, with such testing to be performed under hot start conditions.

"*WARN Act*" means the Worker Adjustment and Retraining Notification Act of 1988.

Section 1.2. Certain Interpretive Matters. In this Agreement, unless the context otherwise requires or this Agreement otherwise specifies:

(a) the singular number includes the plural number and vice versa;

(b) reference to any Person includes such Person's successors and assigns but, if applicable, only if such successors and assigns are permitted by this Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity;

(c) reference to any gender includes each other gender;

(d) reference to any agreement (including this Agreement), document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof;

(e) reference to any Article, Section, Schedule or Exhibit means such Article, Section, Schedule or Exhibit of or to this Agreement, and references in any Article, Section, Schedule, Exhibit or definition to any clause means such clause of such Article, Section, Schedule, Exhibit or definition unless otherwise specified;

(f) the phrase "ordinary course of business consistent with past practice" shall be deemed to include practices consistent with Seller's obligations under a PPA;

(g) any accounting term used and not otherwise defined in this Agreement or any Ancillary Agreement has the meaning assigned to such term in accordance with GAAP;

(h) "hereunder," "hereof," "hereto" and words of similar import are references to this Agreement as a whole and not to any particular Section or other provision hereof or thereof;

(i) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term;

(j) relative to the determination of any period of time, "from" means "from and including," "to" means "to but excluding" and "through" means "through and including;"

(k) reference to any Law (including statutes and ordinances) means such Law as amended, modified codified or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder;

(l) all calculations and computations pursuant to this Agreement shall be carried and rounded to the nearest two (2) decimal places;

(m) reference to any "day," "month" or "year" shall be to a calendar day, month or year;

(n) this Agreement and any documents or instruments delivered pursuant hereto shall be construed without regard to the identity of the Person who drafted the various provisions of the same and any rule of construction that a document is to be construed against the drafting party shall not be applicable either to this Agreement or such other documents and instruments;

(o) the captions of the various Articles, Sections, Exhibits and Schedules of this Agreement have been inserted only for convenience of reference and do not modify, explain, enlarge or restrict any of the provisions of this Agreement;

(p) all amounts in this Agreement are stated and shall be paid in United States currency; and

(q) in the event of any conflict that cannot be reasonably reconciled between the provisions of this Agreement and those of any Exhibit or Schedule, the provisions of this Agreement shall control and prevail.

ARTICLE II.
PURCHASE AND SALE

Section 2.1. Purchased Assets. Upon the terms and subject to the conditions contained in this Agreement, at the Closing Seller, or, in the case of the IDA Bond Property, either Seller or Hot Spring County, Arkansas (in Seller's sole and absolute discretion), shall sell, convey, assign, transfer and deliver, to Purchaser, and Purchaser shall purchase and acquire from (x) Seller, all of the right, title and interest of Seller in and to the assets, properties and rights, of every kind, character and nature, whether real, personal, or mixed, fixed, contingent, or otherwise, tangible or intangible, known or unknown, accrued or unaccrued, or carried or not carried on the books and records of Seller, and wherever situated, primarily relating to, used at, or held for use at the Project or in the Business and, solely with respect to the Intellectual Property set forth on Schedule 2.1(b), all of the right, title and interest of the Affiliates of Seller set forth in Schedule 2.1(b), and (y) with respect to the IDA Bond Property only, Hot Spring County, Arkansas, if applicable, and, in each case as the same shall exist on the Closing Date and excluding the Excluded Assets (collectively, the "*Purchased Assets*"), free and clear of all Encumbrances, other than Permitted Encumbrances. The Purchased Assets include:

(a) (i) all parcels of real property and fee simple interests described in Part I of Schedule 2.1(a), and all appurtenances thereto, together with all buildings, fixtures, component parts, other constructions and other improvements thereon and thereto, including all construction work in progress (collectively, the "*Owned Real Property*") and (ii) each parcel of real property subject to the IDA Lease Agreement and described in Part II of Schedule 2.1(a) (the "*IDA Bond Real Property*");

(b) (i) all Intellectual Property of Seller used primarily with respect to or in connection with the Project or the Business, including the Purchased Licenses, other than Intellectual Property Rights retained by Seller pursuant to Section 2.2(h) and (ii) the Intellectual Property listed in Schedule 2.1(b), owned by the Affiliates of Seller as designated therein, including all right, title, and interest, if any, of Seller or any of its Affiliates in and to the names

"Hot Spring Generating Station," "Hot Spring Generation Facility," "Hot Spring Power Facility," "Hot Spring Power Plant" and "Hot Spring Plant" (and excluding, for the avoidance of doubt, any right to use the name of Seller or any of its Affiliates or any related or similar trade name, trademark, service mark, corporate name, corporate logo or any part, derivative or combination thereof) (collectively, the "*Purchased Intellectual Property*");

(c) all licenses, rights of way and easements appurtenant to or benefiting the Owned Real Property or the IDA Bond Real Property and easements in gross, held by Seller as well as the right, by way of license, right-of-way, easement, or the like, to permit access to the Project or to locate or operate the Business, including those described in Schedule 2.1(c) (collectively, the "*Easements*");

(d) all tangible personal and other property (other than the IDA Bond Real Property) subject to the IDA Lease Agreement (the "*IDA Bond Other Property*"), all machinery (mobile or otherwise), equipment, vehicles, pumps, fittings, tools, furniture, furnishings, meters and metering equipment, Leased Personal Property, Capital Spares and other tangible movable property that is located at the Project Site, or acquired by Seller for use or consumption at the Project, that is not Inventory, including assets temporarily off-site for repair or other purposes, assets being shipped to Seller, or the Project Site, and assets housed or kept off-site, and including the property listed or described in Schedule 2.1(d) (collectively, the "*Tangible Personal Property*");

(e) all Inventory, including the Inventory listed or described in Schedule 2.1(e) (collectively, the "*Purchased Inventory*");

(f) subject to Section 2.2(c) and Section 6.5(c), all Project Contracts (i) listed or described in Schedule 2.1(f) (including all Project Contracts added to Schedule 2.1(f) between the Effective Date and the Closing Date with the written consent of Purchaser) and (ii) entered into by Seller in the ordinary course of business consistent with past practices and added to Schedule 2.1(f) by Seller (x) under which the aggregate payments by Purchaser under such Project Contract will be $500,000 or less, (y) that are terminable on thirty (30)-days' notice or less without penalty and under which Purchaser would not be required or reasonably expected to spend more than $100,000 in any such thirty (30)-day notice period or (z) pursuant to which Seller purchases Inventory that replaces Inventory used by Seller between the Effective Date and the Closing in the ordinary course of business consistent with past practices, it being understood that, for purposes of clauses (x), (y) and (z), each individual purchase order shall be deemed a Project Contract (as opposed to the corresponding master agreement) and that the aggregate amount of the payment obligations of Purchaser under the Project Contracts described in and permitted under clause (ii) above shall not exceed $3,500,000 (collectively, the "*Purchased Project Contracts*");

(g) subject to Section 6.5(c), all Permits held or filed by Seller in connection with the ownership, lease, use, operation, maintenance or repair of the Project or the Business, including those listed or described in Schedule 2.1(g) (collectively, the "*Purchased Permits*"), to the extent legally transferable by sale;

(h) all books, records, documents, drawings, reports, operating data, operating safety and maintenance manuals, inspection reports, engineering design plans, blueprints, specifications and procedures and similar items primarily relating to, or used in support of, the Purchased Assets, the Project or the Business and owned by, or in the care, custody or control of, Seller ((x) to the extent such transfer is not prohibited by Law and (y) with respect to items not owned by Seller, absent any present restriction on such transfer), including (i) Environmental logs, data sheets, studies, reports, and records, including correspondence received by or sent to Governmental Authorities; (ii) Permit records and files; (iii) emergency, accident, incident, safety and inspection reports and records, including reports submitted to the U.S. Department of Labor's Occupational Safety & Health Administration, to the extent resulting in or requiring physical changes to the Project and not protected by a legal privilege benefiting Seller or prohibited by Law from being transferred to Purchaser; (iv) operating, maintenance, and repair logs, data sheets, reports and records; (v) vendor lists and vendor purchase orders and records; (vi) engineering design and construction drawings and plans, including as-built drawings, blueprints, and specifications; (vii) records, plans, reports, and drawings relating to the Project Real Property; and (viii) drawings in AutoCAD or similar programs, OEM manuals, and other existing information and data (in electronic form where applicable) necessary to enable parallel migration to Purchaser's information systems, and the right to use and duplicate the foregoing (whether such drawings, information, and data currently exist or need to be generated by Seller using Commercially Reasonable Efforts), all in a format and on a medium reasonably requested by Purchaser, it being understood and agreed that Seller may make and keep additional copies of any of the foregoing, subject to the Post-Closing Confidentiality Agreement, and shall use Commercially Reasonable Efforts to cause any such contractual restrictions on transfer to be waived or otherwise removed;

(i) subject to Section 6.5(c), all unexpired warranties, indemnities, and guarantees made or given by manufacturers, contractors, architects, engineers, consultants, vendors, suppliers and other third parties in connection with or relating to the Project, including the warranties and indemnities provided by GEII in connection with work performed or equipment, items or material provided under the LTSA, and the warranties and guarantees listed or described in Schedule 2.1(i), other than those described in Section 2.2(m) (collectively, the "*Purchased Warranties*");

(j) all claims or causes of action of Seller against third parties related to the Project or the Business, including indemnification claims, contribution claims, warranty claims, and claims for refunds, prepayments, offsets, recoupment, insurance proceeds, condemnation awards, judgments and the like, other than the claims or causes of action described in Section 2.2(k);

(k) all advance payments, prepayments, prepaid expenses, deposits or the like (other than Proratable Items, the treatment of which is addressed in Section 3.6), in each case to the extent related to the Project or the Business and made by or on behalf of Seller before the Closing Date and applicable to periods on or after the Closing Date, including the items listed or described in Schedule 2.1(k) (collectively, the "*Prepaid Items*"); and

(l) subject to Section 6.5(c), all accounts, rights, or allowances involving Emission Allowances, if any, that have been or will be granted or allocated to or purchased for the Project.

Section 2.2. Excluded Assets. Notwithstanding anything in this Agreement to the contrary, nothing in this Agreement shall constitute or be construed as conferring on Purchaser, and Purchaser shall not be entitled or required to purchase or acquire, any right, title or interest in, to or under the following assets, interests, properties, rights, licenses or Contracts (collectively, the "*Excluded Assets*") and such assets, interests, properties, rights, licenses and Contracts shall be excluded from and shall not constitute Purchased Assets:

(a) all Tangible Personal Property or Inventory consumed or disposed of prior to the Closing in the ordinary course of business consistent with past practice and the provisions of this Agreement, including Section 6.3, and any Ancillary Agreement in effect or any PPA;

(b) all of the assets, properties, rights or interests owned, used, occupied or held by or for the benefit of Seller or any of its Affiliates that are listed or described in Schedule 2.2(b);

(c) all of the rights and interests of Seller and its Affiliates in, to, under or pursuant to any Project Contract listed or described in Schedule 2.2(c) (collectively, the "*Excluded Project Contracts*");

(d) all of the rights of Seller and its Affiliates under, and any funds and property held in trust or any other funding vehicle pursuant to, any Employee Plan (and in particular, but without limitation, neither Purchaser nor any of its Affiliates shall be deemed to have assumed or acquired any right to any Employee Plan by reason of any provision of this Agreement);

(e) except to the extent constituting Purchased Assets under Section 2.1(h) or otherwise hereunder, the books and records of Seller and its Affiliates, including Seller's minute books, limited liability company interest books, ledger and company seal;

(f) cash, cash equivalents, bank deposits, accounts and notes receivable, trade or otherwise, other than the Prepaid Items, of Seller and its Affiliates;

(g) certificates of deposit, shares of stock, securities, bonds, debentures, evidences of indebtedness, and interests in joint ventures, partnerships, limited liability companies and other entities of Seller and its Affiliates;

(h) all Intellectual Property Rights listed or described in Schedule 2.2(h);

(i) all rights of Seller and its Affiliates arising under this Agreement, the Ancillary Agreements or any other instrument or document executed and delivered pursuant to the terms of this Agreement or any Ancillary Agreement;

(j) all refunds or credits, if any, of Taxes due to or from Seller or its Affiliates, to the extent provided hereunder;

(k) the claims or causes of action against third parties to the extent solely relating to or arising under (i) the Pre-Closing Period (except to the extent expressly provided otherwise herein or in any Ancillary Agreement) (ii) an Excluded Project Contract or the Intellectual Property Rights listed or described in Schedule 2.2(h), or (iii) this Agreement, the Ancillary Agreements or any other instrument or document executed and delivered pursuant to the terms of this Agreement or the Ancillary Agreements;

(l) all agreements, arrangements, commitments and other Contracts of any nature in respect of any intercompany transaction between Seller, on the one hand, and any of its Affiliates, on the other hand, whether or not such transaction relates to any contribution to capital, loan, the provision of goods or services, tax sharing arrangements, payment arrangements, intercompany advances, charges or balances, or the like; and

(m) all unexpired warranties, indemnities, and guarantees made or given by manufacturers, contractors, architects, engineers, consultants, vendors, suppliers and other third parties in connection with or relating to the Project that solely relate to (i) the Pre-Closing Period or (ii) an Excluded Project Contract or the Intellectual Property Rights listed or described in Schedule 2.2(h).

Section 2.3. Assumption of Liabilities.

Upon the Closing, Purchaser shall assume, and shall thereafter pay, perform and discharge as and when due, (a) all liabilities and obligations of Seller and, solely with respect to the Intellectual Property set forth on Schedule 2.1(b), the Affiliates of Seller set forth on Schedule 2.1(b), under the Purchased Project Contracts, the Purchased Licenses and the Purchased Permits (subject to Section 6.5), solely to the extent allocable to the period after the Closing Date and not resulting from any breach or default by, or waiver or extension given by or to, Seller or any breach of this Agreement or any Ancillary Agreement by Seller; (b) all liabilities and obligations prorated to Purchaser under Section 3.6; and (c) subject to the other terms of this Agreement, including Article VI and Article IX, Section 2.4, and the Ancillary Agreements, all liabilities and obligations relating to, based in whole or in part on any event, fact, circumstance or condition (or set of events, facts, circumstances or conditions) occurring or existing in connection with, or arising out of (i) the financing, ownership, lease, possession, use, operation, repair, maintenance, or replacement of the Project, the Project Real Property of any of the Purchased Assets, solely to the extent allocable to the period after the Closing, including (A) the delivery, receipt, movement, use, sale, conveyance, transfer, removal or disposal of any fuel, power (including any ancillary service), water, waste or any other Purchased Asset to or from the Project at any time after the Closing, (B) compliance or non-compliance with Laws or Permits (including Environmental Laws) after the Closing, including fines, penalties, charges, and costs, and interest thereon, except to the extent arising from conditions existing or events occurring prior to the Closing, (C) any Environmental Condition or Environmental Liability after the Closing, in each case arising from conditions existing or events occurring solely after the Closing, and (D) any obligation or liability representing indebtedness for money borrowed (or any refinancing thereof) or (ii) any other business, undertaking, or activity of Purchaser, any of its Affiliates, or any future owner or operator of the Project or the Project Real Property, in any such case described in this Section 2.3, after the Closing (collectively, the "*Assumed Liabilities*").

Section 2.4. Excluded Liabilities. Except for the Assumed Liabilities, Seller shall retain, and Purchaser shall not assume or be obligated to pay, perform or otherwise discharge or be responsible or liable pursuant to this Agreement or otherwise with respect to, any liability or obligation of Seller or any of its Affiliates, whether or not of, associated with, or arising from any of the Purchased Assets, and whether fixed, contingent or otherwise, known or unknown, accrued or unaccrued, carried or not carried on the books and records of Seller or any of its Affiliates, tangible or intangible (collectively, the "*Excluded Liabilities*"), including:

(a) any liability or obligation relating to, based in whole or in part on any event, fact, circumstance or condition (or set of events, facts, circumstances or conditions) occurring or existing in connection with, or arising out of, (i) the financing, ownership, lease, possession, use, operation, repair, maintenance, or replacement of the Project, the Project Real Property or any of the Purchased Assets on or prior to the Closing, including (A) the delivery, receipt, movement, use, sale, conveyance, transfer, removal or disposal of any fuel, power (including any ancillary service), water, waste or any other Purchased Asset (or any Excluded Asset, including former assets) to or from the Project at any time as of or prior to the Closing, (B) compliance or non-compliance with Laws or Permits (including Environmental Laws) as of or prior to the Closing, including fines, penalties, charges, and costs, and interest thereon, (C) any Environmental Condition or Environmental Liability in each case arising from conditions existing or events occurring as of or prior to the Closing and (D) any obligation or liability representing indebtedness for money borrowed (or any refinancing thereof) or (ii) any other business, undertaking, or activity of Seller, any of its Affiliates, or any present or former owner (including any Predecessor-in-Interest) or operator of the Project or the Project Real Property, as of or prior to the Closing;

(b) any liability or obligation arising out of or related to the performance or non-performance by Seller as of or prior to the Closing of any Contract or Permit, including any breach by Seller of, default by Seller under, or waiver or extension given by or to Seller with respect to the performance of, any covenant, representation, term or other provision of any of the Purchased Project Contracts, Purchased License or Purchased Permits and that would have been, but for such breach, default, waiver or extension, paid, performed or otherwise discharged on or prior to the Closing;

(c) except as otherwise provided in Section 6.5(b), any liability or obligation of Seller incurred in connection with obtaining any Consent relating to the sale, conveyance, assignment, transfer or delivery of the Purchased Assets to Purchaser or the consummation of the Transactions hereunder;

(d) any liability or obligation of Seller in respect of the pending or threatened Actions set forth (or that should have been set forth) in Schedule 4.6 and the facts and circumstances relating to such matters;

(e) any liability or obligation (i) with respect to any Tax for which Seller is responsible or liable under Section 6.2 or Section 6.10, (ii) with respect to any Tax attributable or allocable to the purchase, sale, ownership, lease, possession, use, operation, repair, maintenance, or replacement of any of the Project as of or prior to the Closing (or any other assets, properties, rights or interests associated, at any time on or prior to the Closing, with the Business), except

for Taxes for which Purchaser is liable under Section 6.2, or (iii) for which Seller is liable under any Contract providing for the allocation, indemnification or sharing of Taxes;

(f) other than those liabilities or obligations to the extent created directly by the actions of Purchaser or an Affiliate of Purchaser (and, for the avoidance of doubt, that are not derivative of any liabilities or obligations of Seller or any Affiliate of Seller), any liability or obligation relating to any Employee, former Employee, agent, contractor or representative of Seller, Operator or GEII or any of their respective Affiliates, including any liability or obligation related to, arising out of or with respect to: (A) any Employee Plan or Contract or (B) any event, fact, circumstance, occurrence or exposure (or set of events, facts, circumstances, occurrences or exposures) occurring at any time during any period prior to the Closing, in each case whenever any claims arising therefrom or relating thereto mature or are asserted; including any liability or obligation for or relating to (i) the withholding or payment of any federal, state or local income, employment, unemployment, or other Tax; (ii) compensation, severance benefits, vacation pay, continuation coverage, expenses, or any other similar type claim arising under Law relating to employment prior to the Closing or as a result of the consummation of the Transactions; (iii) employment, wage and hour restriction, equal employment opportunity, affirmative action, discrimination, retaliation, tort, or immigration and naturalization Law or any Law relating to employee benefits, employment discrimination, leave, accommodation, severance, labor relations, hiring or retention, safety, any employment contracts or agreements, unemployment, privacy, medical privacy, wages and hours of employees or any other terms or conditions of employment or any other employment-related matter or workplace issue, including COBRA; (iv) any Collective Bargaining Agreement or collective bargaining, labor or labor relations Law; (v) any workers' compensation or any other employee health, accident, disability or safety claim; or (vi) any action (including any action taken in connection with the consummation of the Transactions) that is or could be construed as a "plant closing" or "mass layoff," as those terms are defined in the WARN Act.

(g) any liability or obligation prorated to Seller under Section 3.6; and

(h) any liability or obligation to the extent relating to any Excluded Asset or other asset that is not a Purchased Asset and the ownership, operation and conduct of any business in connection therewith or therefrom.

ARTICLE III.
CLOSING; PURCHASE PRICE

Section 3.1. Closing. Subject to the terms and conditions hereof, the consummation of the Transactions (the "*Closing*") shall take place at the Houston office of Bracewell & Giuliani, LLP, 711 Louisiana Street, Suite 2300, Houston, Texas 77002, at 10:00 a.m. local time, ten (10) Business Days following the date on which the conditions set forth in Article VII and Article VIII, other than those conditions that by their nature are to be satisfied at the Closing, have been either satisfied or waived by the Party for whose benefit such conditions exist, or on such other date or at such other place and time as the Parties may mutually agree. Notwithstanding the foregoing, if the final day of the month in which the Closing is scheduled to occur is a Business Day, the Parties shall use Commercially Reasonable Efforts to cause the Closing to occur on such day. The date on which the Closing occurs is referred to herein as the

"*Closing Date*." The Closing shall be effective immediately upon receipt of the Purchase Price by Seller on the Closing Date; provided, however, that if the Closing occurs on the last day of a month, the Closing shall be deemed effective as of 11:59:59 p.m. CPT on the Closing Date.

Section 3.2. Seller Closing Deliverables. At the Closing, Seller shall deliver, or cause to be delivered, to Purchaser the following:

(a) each Ancillary Agreement to which Seller is a party, executed by a duly authorized representative of Seller, and each document, if any, required to be delivered to Purchaser by Seller in accordance with the provisions of any Ancillary Agreement, executed by a duly authorized representative of Seller;

(b) each document required to be delivered to Purchaser by Seller pursuant to Article VII;

(c) copies of each Seller's Consent obtained by Seller with respect to the sale and purchase of the Purchased Assets or the consummation of the Transactions, including with respect to the transfer of any Purchased Project Contract or Purchased License;

(d) evidence, in form and substance reasonably satisfactory to Purchaser, demonstrating that Seller has obtained all of the Seller's Regulatory Approvals and Seller's Required Consents;

(e) Seller's affidavit and gap indemnity agreement, in substantially the form attached hereto as Exhibit G, and any other documents and instruments that may reasonably be required by the Title Insurer in order to issue the Title Policy, executed by a duly authorized representative of Seller;

(f) a certificate and affidavit of non-foreign status of Seller pursuant to Section 1445 of the Code, in substantially the form attached hereto as Exhibit H, executed by a duly authorized representative of Seller (or Seller's tax parent Affiliate, as applicable);

(g) the Post-Closing Confidentiality Agreement, executed by a duly authorized representative of KGen;

(h) to the extent Seller elects for the IDA Bond Property to be transferred to Purchaser from Hot Spring County, Arkansas, (i) a Deed, executed by a duly authorized representative of Hot Spring County, Arkansas, pursuant to which the IDA Bond Property described therein is transferred to Purchaser and (ii) other documents properly executed by Seller or Hot Spring County, Arkansas as and to the extent contemplated by Section 6.23; and

(i) such other documents and instruments reasonably required by Purchaser to consummate the Transactions, properly executed by Seller to the extent required.

Section 3.3. Purchaser Closing Deliverables. At the Closing, Purchaser shall deliver, or cause to be delivered, to Seller (and with respect to clause (a)(i) below, to the Escrow Agent), the following:

(a) (i) $38,000,000 (the "*Escrow Amount*"), which shall be paid by Purchaser to the Escrow Agent by wire transfer of immediately available funds for deposit into the Escrow Account and (ii) the Purchase Price (in accordance with Section 3.4) minus the Escrow Amount by wire transfer of immediately available funds to the account or accounts designated by Seller in writing at least three (3) Business Days prior to the Closing Date;

(b) each Ancillary Agreement to which Purchaser is a party, properly executed by Purchaser, and each document required to be delivered to Seller by Purchaser in accordance with the provisions of any Ancillary Agreement, executed by a duly authorized representative of Purchaser, if applicable;

(c) each document required to be delivered to Seller by Purchaser pursuant to Article VIII;

(d) copies of each Purchaser's Consent obtained by Purchaser with respect to the sale and purchase of the Purchased Assets or the consummation of the Transactions,

(e) evidence, in form and substance reasonably satisfactory to Seller, demonstrating that Purchaser has obtained Purchaser's Regulatory Approvals and Purchaser's Required Consents;

(f) the Post-Closing Confidentiality Agreement, executed by a duly authorized representative of Purchaser; and

(g) such other documents and instruments reasonably required by Seller to consummate the Transactions, executed by a duly authorized representative of Purchaser if applicable.

Section 3.4. Purchase Price. The purchase price for the Purchased Assets shall be:

(a) Two Hundred Fifty Three Million Dollars ($253,000,000), if (i) the Trigger Day falls prior to the expiration of Transaction Period 1 or (ii) a Seller Condition Failure has occurred and is continuing at the end of the later to terminate (as measured from the Trigger Day) of the TP1 Closing Delay Period and the TP2 Closing Delay Period;

(b) Two Hundred Fifty Eight Million Dollars ($258,000,000), if (i) the Trigger Day occurs after the expiration of Transaction Period 1 and (ii) on or before the end of the TP1 Closing Delay Period, (1) the conditions in Section 8.3 (the satisfaction of which shall, for purposes of this Section 3.4(b), be determined on the basis of whether or not such preliminary or permanent Order is in effect as of the applicable date of determination), Section 8.4(a) and Section 8.4(b) have been satisfied or waived by Seller in its sole and absolute discretion and (2) Seller has satisfied the Seller requirements in Section 7.1, Section 7.5, Section 7.6 and Section 7.7(h) necessary for the Purchaser conditions to Closing set forth therein to be satisfied; or

(c) Two Hundred Sixty Three Million Dollars ($263,000,000), if (i) the Trigger Day occurs after the expiration of Transaction Period 2 and (ii) on or before the expiration of the TP2 Closing Delay Period, (1) the conditions in Section 8.3 (the satisfaction of

which shall, for purposes of this Section 3.4(c), be determined on the basis of whether or not such preliminary or permanent Order is in effect as of the applicable date of determination), Section 8.4(a) and Section 8.4(b) have been satisfied or waived by Seller in its sole and absolute discretion and (2) Seller has satisfied the Seller requirements in Section 7.1, Section 7.5, Section 7.6 and Section 7.7(h) necessary for the Purchaser conditions to Closing set forth therein to be satisfied;

the applicable amount, subject to adjustment as provided herein (as adjusted, the "*Purchase Price*"); provided, however, that if there is a modification to the Purchase Price based on the Final Plant Performance Test Results pursuant to Section 6.7, then each of the unadjusted Purchase Prices set forth in clauses (a), (b), and (c) above shall apply solely to the extent provided in Section 6.7; and provided, further, that if the Closing is delayed as a result of the occurrence of (i) any Casualty Event, or (ii) any of the circumstances described in Section 6.7(g), Section 6.7(k) or Section 6.7(l), then, notwithstanding anything to the contrary, the Purchase Price, prior to any adjustment made herein, shall be the Purchase Price that would have applied, as determined by this Section 3.4, on the date that the Closing would have occurred pursuant to Section 3.1 if such delay had not occurred.

Section 3.5. Inventory and Capital Spares Adjustments.

(a) The Parties agree that the Purchase Price assumes that the aggregate value of the Purchased Inventory included in the Purchase Price is $1,600,000 (the *"Baseline Inventory Value"*). The Purchase Price shall be adjusted by the difference between the Baseline Inventory Value and the aggregate value of the Purchased Inventory as of the Closing (the "*Closing Inventory Value*"). The Closing Inventory Value shall be determined in the same manner as the Baseline Inventory Value (*i.e.,* based on the lower of cost or market and otherwise consistent with Seller's past practices). The Purchase Price shall be (i) increased by the amount by which the Closing Inventory Value exceeds the Baseline Inventory Value or (ii) decreased by the amount by which the Closing Inventory Value is less than the Baseline Inventory Value; provided, however, that there shall be no adjustment to the Purchase Price under this Section 3.5 unless the difference between the Baseline Inventory Value and the Closing Inventory Value exceeds one percent (1%) of the Baseline Inventory Value.

(b) The Parties agree that the Purchase Price assumes that the Capital Spares as set forth on Schedule CS as of the Effective Date will be available to Purchaser so long as Purchaser has executed a long-term services agreement or similar agreement with GEII or an Affiliate thereof on terms acceptable to Purchaser in its sole and absolute discretion; provided, however, that notwithstanding the forgoing, such agreement shall entitle Purchaser to use the Capital Spares of Seller that would then otherwise belong to Seller under its LTSA (such agreement, the "*Acceptable Purchaser LTSA*"). In the event that Purchaser has executed the Acceptable Purchaser LTSA but the Capital Spares provided thereunder as of Closing do not include all of the Capital Spares listed on Schedule CS as of the Effective Date, then the Purchase Price shall be decreased by an amount equal to the value of such Capital Spares as set forth on Schedule CS.

Section 3.6. Proratable Items. Except as otherwise provided in this Agreement, each Proratable Item, if any, shall be prorated between Seller and Purchaser as of the

Closing without any duplication of payment under the Purchased Project Contracts, the Purchased Licenses, this Agreement or otherwise. Seller shall be solely responsible and liable for the portion of any Proratable Item related to the time period (Tax year period for a Proratable Tax Item) ending on or prior to the Closing. Purchaser shall be solely responsible and liable for the portion of any such Proratable Item related to the time period (Tax year period for a Proratable Tax Item) after the Closing; provided, however, that, notwithstanding anything to the contrary herein, Purchaser shall not be responsible or liable for or receive any amount under this Section 3.6 that constitutes an Excluded Liability or an Excluded Asset. In the case of a Proratable Non-Tax Item that is subject to graduated pricing based on volumes, the proration for such Proratable Non-Tax Item shall be based on the average unit price during the applicable time period.

Section 3.7. Other Purchase Price Adjustments. In addition to the adjustments contemplated by Sections 3.4, 3.5 and 3.6, the Purchase Price shall be adjusted in accordance with Section 3.8 and as contemplated by other provisions of this Agreement or any Ancillary Agreement, including Section 6.7(k), Section 6.8(a), Section 6.8(e), Section 6.8(f), Section 6.18(b), Section 6.18(c) and Section 9.7 (for tax purposes). Outstanding amounts payable between the Parties pursuant to Section 6.2 shall be netted and added, if Purchaser is the net payor, or debited, if Seller is the net payor, to the Purchase Price at the Closing.

Section 3.8. Procedures for Closing and Post-Closing Adjustments.

(a) All adjustments to the Purchase Price pursuant to Section 3.5 and Section 3.6 shall be based upon the applicable amounts accrued through the Closing or paid for the most recent year or other appropriate period for which such amounts paid are available. At least twenty (20) but not more than thirty (30) days prior to the then anticipated Closing Date, Seller shall prepare and deliver to Purchaser an estimated closing statement (the "*Estimated Closing Statement*") that includes and sets forth the actual amounts as of the Closing Date of the adjustments required by this Agreement or, if and to the extent the actual amounts are unavailable, Seller's reasonable best estimate of all adjustments to the Purchase Price required by this Agreement to be made as of the Closing using the best available information (as may be modified under this Section 3.8, the "*Estimated Closing Adjustment*"). No later than ten (10) days after Purchaser's receipt of the Estimated Closing Statement, Purchaser shall provide to Seller its good faith objections, if any, to the Estimated Closing Adjustment in writing. If Purchaser objects to the Estimated Closing Adjustment within such period, the Parties shall attempt to resolve their differences by good faith negotiation. If the Parties are unable to reach resolution prior to the anticipated Closing Date or if Purchaser does not timely object to the Estimated Closing Adjustment as provided above, the Purchase Price shall be adjusted at the Closing by the amount of the Estimated Closing Adjustment, as modified to reflect any agreement reached between the Parties on any item in dispute. The Purchase Price as adjusted by the Estimated Closing Adjustment or such other amount agreed to by the Parties shall be the "*Estimated Purchase Price*."

(b) On or before sixty (60) days after the Closing Date, Purchaser shall prepare and deliver to Seller a final closing statement (the "*Post-Closing Statement*") setting forth Purchaser's determination of all adjustments to the Purchase Price required by this Agreement to be made as of the Closing to the extent not reflected in the Estimated Purchase

Price (the "*Proposed Post-Closing Adjustment*"); provided, however, that any post-Closing adjustment with respect to a Proratable Tax Item or another item for which Purchaser, despite its use of Commercially Reasonable Efforts, has not received the information necessary for determination of the actual adjustment shall be made on or before thirty (30) days after Purchaser's receipt of the information necessary to render a final post-Closing adjustment for such Proratable Tax Item or other item and shall otherwise be subject to the procedures set forth in this Section 3.8. The Post-Closing Statement shall be prepared using the identical (when possible) or substantially the same (when not) accounting principles, policies, methods and procedures as Seller used in connection with the calculation or determination of the items reflected on the Estimated Closing Statement.

(c) Each Party shall furnish promptly, and cause its Representatives to furnish promptly, to the other Party and its Representatives any and all documents, material, data and other information reasonably requested by such other Party in connection with calculation or determination of any item reflected (or that should have been reflected) in the Estimated Closing Adjustment or the Post-Closing Statement, as applicable, and, to the extent reasonably necessary, allow prompt, reasonable access of such other Party and its Representatives to programs and software used to prepare the Estimated Closing Adjustment or the Post-Closing Statement and information relating thereto.

(d) On or before thirty (30) days after Purchaser's delivery of the Post-Closing Statement to Seller, Seller may object in good faith to the Proposed Post-Closing Adjustment in writing, stating in reasonable detail each of its objections thereto and the basis therefor and its proposed calculation of any disputed adjustment. If and to the extent Seller does not dispute or timely object to an amount in the Proposed Post-Closing Adjustment, the Estimated Purchase Price shall be further adjusted (the "*Initial Post-Closing Adjustment*") by the amount in the Proposed Post-Closing Adjustment not in dispute or not timely objected to. The Initial Post-Closing Adjustment shall be effective as of the earlier of the date Purchaser receives Seller's written objections to the Proposed Post-Closing Adjustment or the date such objections are due and not provided.

(e) If Seller objects in good faith to the Proposed Post-Closing Adjustment as provided above, the Parties shall attempt to resolve all such objections by good faith negotiation. If the Parties are able to resolve any such objection, the Purchase Price shall be promptly adjusted in accordance with Section 3.8(g). If the Parties are unable to resolve any such objection after the lapse of forty-five (45) days after Purchaser's delivery to Seller of the Proposed Post-Closing Adjustment, then either Party may submit in writing its proposed adjustments of the Estimated Purchase Price, relating solely to adjustments pursuant to Section 3.5 or Section 3.6, to the Independent Accounting Firm. Each such proposed adjustment shall be materially in accordance with the most recent proposed adjustment made by such Party to the other Party during their good faith negotiations over the item in dispute. In addition, the Parties shall submit such calculations, materials, memoranda, arguments, briefs and evidence in support of their respective positions, and in accordance with such procedures, as the Independent Accounting Firm may require or determine.

(f) On or before twenty (20) Business Days following the due date of such submissions, as to each adjustment of the Estimated Purchase Price in dispute, the Independent

Accounting Firm shall select, for each adjustment of the Estimated Purchase Price in dispute, an adjustment of the Estimated Purchase Price proposed by one of the Parties. The Independent Accounting Firm shall have no authority to alter any such proposal in any way absent manifest error. Each such determination by the Independent Accounting Firm shall be final, binding and conclusive on the Parties as to such adjustments of the Estimated Purchase Price for all purposes and shall not be subject to any further challenge of any kind by the Parties.

(g) Upon the determination of the appropriate adjustments, the Parties shall effectuate such adjustments by including them in the payments to occur at the Closing or, if such adjustments result in payments being due from one Party to the other after the Closing, by the Party from whom such payment is due delivering the payment to the other Party no later than two (2) Business Days after such determination, in immediately available funds or in any other manner as reasonably requested by the payee, together with interest thereon from the Closing Date to the date of payment at a variable rate of interest equal to the "prime rate" as published in *The Wall Street Journal* from time to time during the applicable period.

(h) Subject to the foregoing, the Independent Accounting Firm may determine the issues in dispute following such procedures, consistent with the provisions of this Agreement, as it deems appropriate and with reference to the amounts in issue. The Parties do not intend to impose any particular procedures upon the Independent Accounting Firm, it being the desire of the Parties that any such disagreement shall be resolved as expeditiously and inexpensively as reasonably practicable. Each Party shall provide the Independent Accounting Firm with such access to documents and personnel as the Independent Accounting Firm may reasonably request and otherwise shall cooperate with the Independent Accounting Firm in the conduct of its work under this Section 3.8; provided, however, that a Party shall have no obligation to provide the Independent Accounting Firm access to any information protected by legal privilege. The Parties agree that the Independent Accounting Firm shall have no liability to the Parties in connection with services, except for acts of bad faith, willful misconduct or gross negligence, and the Parties shall provide such indemnities to the Independent Accounting Firm as it may reasonably request consistent with the foregoing.

(i) The fees and disbursements of the Independent Accounting Firm shall be paid one-half by Seller and one-half by Purchaser.

Section 3.9. Allocation of Purchase Price. Purchaser and Seller shall use their Commercially Reasonable Efforts to jointly agree within one hundred eighty (180) days after the Closing Date to an allocation of the Purchase Price (and any liabilities properly included therein for tax purposes) among the Purchased Assets and Assumed Liabilities that is consistent with the allocation methodology provided by Section 1060 of the Code and the regulations promulgated thereunder (the "*Allocation*"). Notwithstanding the foregoing, in the event Purchaser and Seller cannot agree as to the Allocation, each Party shall be entitled to take its own position in any Tax Return, Tax proceeding or audit.

ARTICLE IV.
REPRESENTATIONS AND WARRANTIES OF SELLER

Seller hereby represents and warrants to Purchaser as follows:

Section 4.1. Organization and Existence. Seller is a limited liability company, duly formed, validly existing and in good standing under the laws of the State of Delaware, and has all requisite limited liability company power and authority to own, use, lease and operate its properties and to carry on the Business. Seller is duly qualified to do business and is in good standing in Arkansas and each other jurisdiction in which the properties owned, leased or operated by it or the nature of the business conducted by it makes such qualification necessary, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Seller.

Section 4.2. Execution, Delivery and Enforceability. Seller has all requisite limited liability company power and authority to execute and deliver, and, subject to obtaining the Stockholder Approval, to perform its obligations under, this Agreement and the Ancillary Agreements to which Seller is or becomes a party and to consummate the Transactions. The execution and delivery by Seller of this Agreement and the Ancillary Agreements to which Seller is or becomes a party, and, subject to obtaining the Stockholder Approval, the performance by Seller of its obligations hereunder and thereunder and the consummation by Seller of the Transactions have been, and will be, as applicable duly and validly authorized by all necessary limited liability company action required by Seller, and, except for the Stockholder Approval, no other approvals from the holders of any of Seller's equity or debt securities are necessary to authorize the same. Assuming the due authorization, execution and delivery by Purchaser of this Agreement and the Ancillary Agreements to which Purchaser is or becomes a party, this Agreement constitutes, and each Ancillary Agreement to which Seller is or becomes a party when executed and delivered by Seller shall constitute, the valid and legally binding obligations of Seller, as applicable, enforceable against it in accordance with their respective terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application relating to or affecting the enforcement of creditors' rights and by general equitable principles. As of the Effective Date, the KGen Board has, by resolution duly adopted at a meeting duly called, (i) approved this Agreement and the Transactions, (ii) deemed such Transactions expedient and for the best interests of KGen, (iii) directed that a resolution authorizing the sale of the Purchased Assets pursuant to this Agreement be submitted to the holders of the outstanding shares of common stock of KGen for their approval at a meeting of the stockholders of KGen duly called and held for such purpose, and (iv) subject to Section 6.6 and Section 6.12, determined to recommend that the stockholders of KGen approve such resolution.

Section 4.3. No Violation. Assuming receipt of the Seller's Consents set forth in Part I of Schedule 4.3, the Seller's Regulatory Approvals set forth in Part II of Schedule 4.3, the additional Consents and notices set forth in Part III of Schedule 4.3 and Purchaser's Regulatory Approvals, and assuming the expiration or termination of the applicable waiting period under the HSR Act, neither the execution and delivery by Seller of this Agreement or any of the Ancillary Agreements to which Seller is or becomes a party nor Seller's performance or compliance with any provision hereof or thereof, nor Seller's consummation of the Transactions will:

(a) violate, conflict with or result in a breach of any of the provisions of the Organizational Documents of Seller;

(b) conflict with, result in a breach of, constitute (with due notice or lapse of time or both) a default, or give rise to any right of termination, purchase, first refusal, cancellation, acceleration or guaranteed payment, in each case under the terms, conditions or provisions of any (i) Project Contract or license or similar right relating to Intellectual Property to which Seller is a party or to which any of the Purchased Assets are subject, or (ii) material Purchased Project Contract or material Purchased License;

(c) result in a material violation, conflict or breach of any Law or Permit applicable to Seller, any of the Purchased Assets or the Business; or

(d) result in the creation or imposition of, or given any Person (other than Purchaser) the right to create or impose, any Encumbrance, other than a Permitted Encumbrance, upon any of the Purchased Assets,

except, in the case of subclause (i) of clause (b) above, for such conflicts, breaches, or defaults (or rights of termination, purchase, first refusal, cancellation, acceleration or guaranteed payment) which would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Seller.

Section 4.4. Compliance with Laws. Except as set forth in Schedule 4.4, (i) Seller is not and, to Seller's Knowledge, Operator is not, in material violation of any Law applicable to Seller, the Purchased Assets or the conduct of the Business, and (ii) to Seller's Knowledge, neither Seller nor Operator is under investigation or threatened to be under investigation by a Governmental Authority with respect to the Purchased Assets or the conduct of the Business; provided that the only representations and warranties made with respect to the absence of any violation by Seller or Operator of any (a) Environmental Law applicable to Seller, the Purchased Assets or the Business, are set forth in Section 4.15 and (b) Tax Law applicable to Seller, the Purchased Assets or the Business, are set forth in Section 4.16.

Section 4.5. Bankruptcy Matters. Seller is not Bankrupt and there are no claims or proceedings pending or being contemplated by Seller, or, to Seller's Knowledge, threatened against Seller, that could reasonably be expected to result in it being or becoming Bankrupt.

Section 4.6. Litigation.

(a) Except as set forth in Schedule 4.6, there is no Action pending or, to Seller's Knowledge, threatened against or involving (i) Seller or any of its Affiliates or, to Seller's Knowledge, Operator, before or being conducted by any Governmental Authority or arbitrator relating to the Purchased Assets or the conduct of the Business, or the consummation of any of the Transactions, or (ii) any Employee Plan (or any fiduciary or sponsor of any Employee Plan), in which Employees engaged in the performance of services for the Project or for the operation of the Purchased Assets participate, of Seller or any of its Affiliates or, to Seller's Knowledge, of Operator before or being conducted by or for any Governmental Authority or arbitrator, in each case that, individually or in the aggregate, would reasonably be expected to result, or has resulted, in (A) the institution of legal proceedings to prohibit or restrain the performance by Seller of its obligations under this Agreement or any of the Ancillary Agreements or the consummation of the Transactions, (B) a claim against Purchaser or any of its Affiliates for damages as a result of Seller entering into this Agreement or any of the Ancillary Agreements or the consummation of the Transactions, (C) a Material Adverse Effect on Seller, (D) the creation of an Assumed Liability or (E) the imposition of an Encumbrance other than a Permitted Encumbrance upon any of the Purchased Assets.

(b) There is no Order enjoining Seller from engaging in or continuing any conduct or practice, or requiring Seller to take any material action, in connection with the Purchased Assets or the Business, and neither Seller nor any of its Affiliates is subject to any outstanding Order relating to the Purchased Assets or the Business, other than, in each case, Orders of general applicability.

Section 4.7. Owned Real Property; IDA Bond Real Property; Easements.

(a) Part I of Schedule 2.1(a) sets forth a complete and accurate description of each parcel of real property owned by Seller and primarily used or held for use in the Project or the Business which is material to the Project or the Business. Schedule 2.1(c) sets forth a complete and accurate description of each of the Easements primarily used or held for use at the Project or in the Business which is material to the Project or the Business. Seller has made available to Purchaser accurate and complete copies of the following documents, to the extent in Seller's possession: (i) the deeds (and other documents of conveyance whereby the Owned Real Property was acquired by Seller), (ii) any title insurance policies (including any and all endorsements thereto) insuring fee simple absolute title to the Owned Real Property, including rights in any Easements appurtenant to or benefiting the Owned Real Property, to the extent such Easements constitute real property, (iii) documents referenced in such policies and (iv) ALTA/ACSM surveys related to the Owned Real Property and any Easements appurtenant to or benefiting the Owned Real Property.

(b) Seller has good and marketable fee simple absolute title of record to all of the Owned Real Property, free and clear of all Encumbrances except Permitted Encumbrances. Except for the Easements referenced in Section 4.7(d), Seller has valid and subsisting rights in all of the Easements as grantee, free and clear of all Encumbrances except Permitted Encumbrances.

(c) Part II of Schedule 2.1(a) sets forth a complete and accurate description of each parcel of real property which is subject to the IDA Lease Agreement. Seller has made available to Purchaser accurate and complete copies of the IDA Lease Agreement and, to the extent in Seller's possession, (i) any title insurance policies (including any and all endorsements thereto) insuring fee simple absolute or leasehold title to the IDA Bond Real Property, including rights in any Easements appurtenant to or benefiting the IDA Bond Real Property, (ii) documents referenced in such policies and (iii) ALTA/ACSM surveys related to the IDA Bond Real Property and any easements appurtenant to or benefiting the IDA Bond Real Property.

(d) Seller has, as of the Effective Date, a good and valid leasehold interest in the IDA Bond Property and the Easements benefitting the IDA Bond Real Property free and clear of all Encumbrances except Permitted Encumbrances. At the Closing, Purchaser will have (i) good and marketable fee simple absolute title of record to all of the IDA Bond Real Property and (ii) valid and subsisting rights as grantee in all Easements benefiting the IDA Bond Real Property, in each case, free and clear of all Encumbrances except Permitted Encumbrances.

(e) Seller is in possession of all of the Owned Real Property and Easements appurtenant to or benefiting the Owned Real Property and has adequate rights of ingress and egress with respect thereto, including all buildings, structures, facilities, fixtures and other improvements thereon. As of the Closing, Purchaser will be in possession of all IDA Bond Real Property and Easements appurtenant to or benefiting the IDA Bond Real Property and have adequate rights of ingress and egress with respect thereto, including all buildings, structures, facilities, fixtures and other improvements thereon.

(f) Except as set forth on Schedule 4.7, there are no Actions pending or, to Seller's Knowledge, threatened by any Person involving (i) the exercise or a claim of eminent domain or similar right over or with respect to all or any material portion of the Owned Real Property or the IDA Bond Real Property or any material portion of real property subject to any Easement appurtenant to or benefiting the Owned Real Property or the IDA Bond Real Property, including any of the improvements thereon, therein, or thereunder or (ii) a reduction of, or increase in, the assessed value of any of the Project Real Property, excluding annual determinations of assessed valuation pursuant to Tax Laws.

(g) With respect to any transmission line owned or controlled by Seller and serving the Project, (i) the entire and continuous length of each such transmission line and related improvements necessary for the conduct of the Business is covered by recorded Easements in favor of Seller (or its Predecessors-in-Interest and their successors and assigns) to the extent such Easements constitute real property and are in recordable form, or is located on the Owned Real Property, (ii) the Easements or instruments by which Seller acquired the Owned Real Property grant Seller (or its Predecessors-in-Interest and their successors and assigns) the right to construct, operate, and maintain such transmission line and related improvements in, over, under, and across the real property covered thereby and (iii) each such transmission line and related improvements is located within the contiguous Project Site and does not encroach upon any adjoining real property.

(h) None of the Project Real Property, including buildings, structures, facilities, fixtures and other improvements, or the conduct of the Business, contravenes or

violates any building or zoning Law applicable to the Project Real Property other than as would not, individually or in the aggregate, reasonably be expected to interfere in any material respect with the operation of the Business; provided that the only representations and warranties made with respect to the absence of any violation of the Project Real Property of any Environmental Law are set forth in Section 4.15. None of the Project Real Property, including buildings, structures, facilities, fixtures and other improvements contravenes or violates any administrative, occupational safety and health or other Law applicable to the Project Real Property (whether or not permitted on the basis of prior nonconforming use, waiver or variance), and none of the Project Real Property serves any adjoining or other real property for any purpose or is subject to any restrictions relating to flood zoning; other than, in any such case, as would not, individually or in the aggregate, reasonably be expected to interfere in any material respect with the operation of the Business.

Section 4.8. Leased Property.

(a) Except for the IDA Bond Other Property, Schedule 4.8 sets forth a complete and accurate description of each item of Tangible Personal Property leased or licensed to Seller (the "*Leased Personal Property*") as of the Effective Date.

(b) Seller has good and valid leasehold interests in the Leased Personal Property that is material to the ownership, use, operation or maintenance of the Project, in each case, that is included in the Purchased Assets.

(c) The property held pursuant to the IDA Lease Agreement is the only real property leasehold estate held by Seller.

Section 4.9. Tangible Personal Property and Inventory.

(a) (i) Schedules 2.1(d) and 2.1(e) set forth, respectively, a complete and accurate description of (i) the Tangible Personal Property and Inventory included in the Purchased Assets other than the Leased Personal Property and (ii) each item of Tangible Personal Property or Inventory that is material to the ownership, use, operation or maintenance of the Project, in each case, that is included in the Purchased Assets.

(b) The register of Inventory as of March 31, 2011, is set forth on Schedule 4.9.

(c) Except for the Leased Personal Property and the IDA Bond Other Property, Seller has good and valid title to the Tangible Personal Property and Inventory, free and clear of all Encumbrances except Permitted Encumbrances. At the Closing, Purchaser will have good and valid title to the Tangible Personal Property and Inventory, free and clear of all Encumbrances except Permitted Encumbrances. As of the Closing, no Tangible Personal Property or Inventory included in the Purchased Assets is owned by any Person other than Seller, except for the Leased Personal Property.

Section 4.10. Project Contracts.

(a) There are no material Project Contracts except for (i) the Purchased Project Contracts and (ii) the Excluded Project Contracts. Seller has made available to Purchaser complete and accurate copies, in all material respects, of all Purchased Project Contracts and Excluded Project Contracts (including all written amendments, modifications, extensions, renewals and supplements thereto). No Affiliate of Seller is a party to a Contract that would constitute a Project Contract if Seller, rather than such Affiliate of Seller, were a party thereto.

(b) Except as set forth in Schedule 4.10, no default, event or condition that, with notice or lapse of time or both, would constitute a default of Seller or, to Seller's Knowledge, any counterparty thereto has occurred or exists under any of the Purchased Project Contracts, except such defaults, events or conditions as (i) to which requisite waivers have been duly obtained or (ii) would not (A) result in any Assumed Liability or (B) give rise to any right of termination under such Purchased Project Contract.

(c) No material Action is pending or, to Seller's Knowledge, threatened against Seller challenging the enforceability of any Purchased Project Contract.

(d) Each Purchased Project Contract constitutes the valid and binding obligation of Seller and, to Seller's Knowledge, the other parties thereto, is in full force and effect and is enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application relating to or affecting the enforcement of creditors' rights and by general equitable principles.

Section 4.11. Permits.

(a) Part I of Schedule 4.11 sets forth a complete and correct list of all material Permits (excluding Environmental Permits, which are the subject of Section 4.15) held by Seller or any of its Affiliates in respect of the Purchased Assets and the conduct of the Business, and, to Seller's Knowledge, Part II of Schedule 4.11 sets forth a complete and correct list of all material Permits (excluding Environmental Permits, which are the subject of Section 4.15) held by Operator on behalf of Seller in respect of the Purchased Assets and the conduct of the Business. The Permits listed in Schedule 4.11, constitute all of the material Permits (excluding the Environmental Permits, which are the subject of Section 4.15) required by Law for the ownership, lease, use, operation, maintenance and repair of the Purchased Assets, as currently operated directly or indirectly by Seller, and the conduct of the Business, as currently conducted directly or indirectly by Seller. Except as set forth in Part III of Schedule 4.11, since August 5, 2004, Seller, an Affiliate of Seller or, to Seller's Knowledge, Operator, as the case may be, held at the time required all Permits (excluding Environmental Permits, which are the subject of Section 4.15) required by Law for the ownership, lease, use, operation, maintenance, or repair of the Purchased Assets or the conduct of the Business as operated or conducted by Seller, any of its Affiliates or Operator.

(b) Each Purchased Permit (excluding Environmental Permits, which are the subject of Section 4.15) is valid and in full force and effect and, as of the Closing, is held by

Seller. To Seller's Knowledge, no event has occurred that permits the revocation, suspension, limitation or termination of, or the adverse modification, suspension, impairment or limitation in any material respect of, any Purchased Permit (excluding Environmental Permits, which are the subject of Section 4.15). There is, to Seller's Knowledge, no event, fact, circumstance or condition (or set of events, facts, circumstances or conditions) arising out of the ownership, lease, use, operation, maintenance or repair of the Project or the Purchased Assets or the conduct of the Business during the last twelve (12) months that would reasonably be expected to in either case (i) prevent Seller from obtaining the prompt renewal, extension or transfer in connection with the Transactions of any Permit listed (or which should have been listed) on Part I or Part II of Schedule 4.11 with an associated cost not in excess of standard renewal, extension or transfer fees or (ii) require a modification of any Permit listed (or which should have been listed) on Part I or Part II of Schedule 4.11 (other than a modification already obtained); provided, however, nothing in this third sentence of Section 4.11 (A) ensures the prompt renewal, extension or transfer to Purchaser, or the costs associated therewith, of any Permit listed (or which should have been listed) on Part I or Part II of Schedule 4.11 or (B) addresses any delays, rejections, excess costs or modifications, if any, that may arise or relate to the identity or regulatory status of Purchaser.

(c) Except as set forth in Part IV of Schedule 4.11, to Seller's Knowledge, (i) Seller and its Affiliates are, and throughout Seller's ownership of the Project have been, in compliance in all material respects with the Purchased Permits and (ii) Operator is, and during its operation of the Project has been, in compliance in all material respects with the Permits listed in Part II of Schedule 4.11 and all of its obligations with respect thereto, except in the case of (i) and (ii) above for Environmental Permits, which are the subject of Section 4.15.

Section 4.12. Warranties. To Seller's Knowledge, Seller holds and has the right to enforce all of the material Purchased Warranties.

Section 4.13. Intellectual Property.

(a) Part I of Schedule 4.13 sets forth all material Purchased Intellectual Property owned by Seller or any of its Affiliates.

(b) Part II of Schedule 4.13 sets forth all material Purchased Intellectual Property held or possessed (but not owned) by Seller or an Affiliate of Seller that is used in the Business or by the Project. Part II(A) of Schedule 4.13 sets forth the licenses and similar rights pursuant to which Seller or any of its Affiliates holds or possesses the material Intellectual Property Rights described in Part II of Schedule 4.13 (the "*Purchased Licenses*"). All Intellectual Property Rights set forth in Part II of Schedule 4.13 consist of licenses and similar rights granted by or from Persons who are not Affiliates of Seller.

(c) Except as set forth in Part III of Schedule 4.13, as of the Effective Date, Seller and its Affiliates own, free and clear of all Encumbrances except Permitted Encumbrances, or possess, and as of the Closing, Seller owns, free and clear of all Encumbrances except Permitted Encumbrances, or possesses all Intellectual Property Rights listed in Schedule 4.13.

(d) The possession or use by Seller, any of its Affiliates or, to Seller's Knowledge, Operator of Purchased Intellectual Property and the business and activities of Seller and its Affiliates related to the Business or the Project, including Seller's obligations in this Agreement, do not, to the Knowledge of Seller, violate or infringe upon the Intellectual Property Rights of any Person. No Person has notified Seller, any of its Affiliates or, to Seller's Knowledge, Operator that Seller, any of its Affiliates, or Operator is violating or infringing upon the Intellectual Property Rights of any Person. To Seller's Knowledge, no Person is infringing upon or violating any Purchased Intellectual Property.

(e) Assuming receipt of the Consents described in Part IV of Schedule 4.13, Seller has the right to provide and transfer to Purchaser for Purchaser's use in connection with the Business and the Project all of the material Purchased Intellectual Property.

Section 4.14. Condition and Sufficiency of Assets.

(a) Except as set forth in Schedule 4.14(a), all of the Tangible Personal Property and Purchased Inventory, and all improvements to the Project Real Property, including all buildings, fixtures, component parts, other constructions and other improvements thereon, thereto, or thereunder, (i) are in good operating condition and repair, subject only to ordinary wear and tear, and (ii) have been maintained by or for Seller since December 7, 2010, in accordance with Good Industry Practices in all material respects.

(b) Except for the Excluded Assets listed on Part I of Schedule 4.14(b) and the Non-Assigned Assets for which Seller's Consents have not been obtained as of the Closing, the Purchased Assets constitute all of the assets, properties, rights (including all real property rights and Intellectual Property Rights) and interests reasonably necessary for the use, operation and maintenance of the Project on the Closing Date according to Good Industry Practices and (ii) each of the Project's generation units to be capable of (A) operating on a consistent basis in accordance with the performance requirements specified on Part II of Schedule 4.14(b) and (B) making available and delivering Load-Following Capacity and Energy to the Transmission System. "*Load-Following Capacity and Energy*" means the megawatt output level capable, as of a given moment, of being continuously produced and made available, and the electric energy delivered, or to be delivered, in accordance with the specifications set forth on Part III of Schedule 4.14(b).

(c) As of the Closing, no Affiliate of Seller owns an interest in the Purchased Assets (other than indirectly through such Affiliate's ownership interest in Seller).

Section 4.15. Environmental Matters.

(a) (i) The representations and warranties set forth in this Section 4.15(a) relate exclusively to the period of Seller's ownership or control of the Project or any of the Project Real Property. Seller makes no representations and warranties under this Section 4.15 with respect to any period prior to Seller's ownership or control of the Project or any of the Project Real Property, except as set forth in Section 4.15(a)(ii). Part A of Schedule 4.15 sets forth a complete and correct list of all material Environmental Permits and all pending applications for any new material Environmental Permits or the renewal, extension or

modification of any material Environmental Permit held by Seller or any of its Affiliates in respect of the Purchased Assets and the conduct of the Business, and, to Seller's Knowledge, Part B of Schedule 4.15 sets forth a complete and correct list of all material Environmental Permits and all pending applications for any new material Environmental Permit or the renewal, extension or modification of any material Environmental Permit held by Operator on behalf of Seller in respect of the Purchased Assets and the conduct of the Business.

(ii) Except as set forth in Part I of Schedule 4.15, the Project and the Project Real Property are and, since August 5, 2004, have been in compliance in all material respects with all applicable Environmental Laws (including Laws requiring Seller to obtain, maintain, and comply with Environmental Permits) and Environmental Permits. The Seller has obtained and, at all times required, maintained in full force and effect all material Environmental Permits required by Law for the ownership, lease, use, operation, maintenance or repair of the Project, the conduct of the Business and the occupation of the Project Real Property. Each Environmental Permit that is a Purchased Permit is valid and in full force and effect and, as of the Closing, is held by Seller. To Seller's Knowledge, no event has occurred that permits or requires the revocation, suspension, limitation or termination of, or the adverse modification, suspension, impairment or limitation in any material respect of, any material Environmental Permit.

(iii) Except as set forth in Part II of Schedule 4.15, neither Seller nor, to Seller's Knowledge, Operator has generated, transported, used, stored, treated, disposed of, handled or managed Hazardous Substances relating to the Project or the Project Real Property except in compliance in all material respects with all applicable Environmental Laws and Environmental Permits.

(iv) Except as set forth in Part III of Schedule 4.15, to Seller's Knowledge, no Environmental Condition exists at, on, or under the Project Real Property, no Hazardous Substance has been Released by the Project or at, on, or under the Project Real Property and no Hazardous Substance has migrated from the Project Real Property, in each case except in compliance in all material respects with all Environmental Laws and applicable Environmental Permits or as has been Remediated to the satisfaction of the applicable Governmental Authorities and in compliance in all material respects with all Environmental Laws and applicable Environmental Permits. All such Remediations are described in Part III of Schedule 4.15.

(v) Except as set forth in Part IV of Schedule 4.15, there is not any pending or, to Seller's Knowledge, threatened, Environmental Claim with respect to the Project or the Project Real Property. To Seller's Knowledge, Seller does not have any Environmental Liability relating to the Project or the Project Real Property.

(vi) Except as set forth on Part V of Schedule 4.15, to Seller's Knowledge, no above-ground storage tanks, underground storage tanks or other storage or process tanks (in each case, containing any material quantity of any Hazardous Substance) are or have been owned, operated, leased or used at the Project Real Property. Except as set forth on Part V of Schedule 4.15, to Seller's Knowledge, the Project and the Project Real Property do not and have not contained asbestos or asbestos-containing

material, polychlorinated biphenyls or equipment containing the foregoing, regulated concentrations of lead or lead-based paint, or urea formaldehyde foam insulation.

(vii) Seller has not sought or obtained, and, to Seller's Knowledge, no other Person has sought or obtained, environmental insurance with respect to the Project or the Project Real Property.

(viii) No Encumbrance under any Environmental Law exists or has been imposed or, to Seller's Knowledge, threatened to be imposed by any Governmental Authority on the Project or the Project Real Property and, to Seller's Knowledge, there are no events, facts, circumstances, or conditions (or set of events, facts, circumstances, or conditions) that are otherwise reasonably likely to restrict, encumber or result in the imposition of any Encumbrance under any Environmental Laws with respect to the ownership, occupancy, or use of the Project or the Project Real Property.

(b) To Seller's Knowledge, the representations and warranties set forth in Section 4.15(a) are true and correct with respect to the period prior to Seller's ownership or control of the Project or the Project Site.

(c) Section 4.14(b) and this Section 4.15 contain the sole and exclusive representations and warranties of Seller with respect to environmental, health and safety matters, including all maters arising under Environmental Laws or relating to Environmental Conditions, Environmental Liabilities, Environmental Claims or Hazardous Substances.

Section 4.16. Tax Matters.

(a) Seller or an Affiliate of Seller has prepared in good faith and duly and timely filed, or caused to be duly and timely filed, all Tax Returns relating to the Business or the Project and required to be filed by Seller or any of its Affiliates with the applicable Governmental Authority or Person. All Tax Returns described above are true, correct and complete in all material respects.

(b) All Taxes imposed on or with respect to the Business or the Project, or for which Seller or any of its Affiliates is or could be liable, whether to Governmental Authorities (as, for example, under Law) or to other Persons (as, for example, under Tax allocation agreements or partnership agreements) with respect to all taxable periods, or portions thereof, ending on or before the Closing, and required to be paid by Seller or any of its Affiliates to Governmental Authorities or other Persons, have been paid, whether or not shown as due on the Tax Returns described in Section 4.16(a).

(c) Seller and its Affiliates have complied in all material respects with all Tax Laws and all Tax agreements applicable to the Business or the Project.

(d) Neither Seller nor any of its Affiliates is a party to any Action, nor is any Action, to Seller's Knowledge, threatened for the assessment or collection of any Tax relating to the Business or the Project. No deficiency notice or report has been received, directly or indirectly, by Seller or any of its Affiliates in respect of any Tax relating to the Business or the

Project that has not resulted in a final binding settlement and payment to the applicable Governmental Authority or Person.

(e) Except as set forth in Part I of Schedule 4.16, (i) (A) to Seller's Knowledge, no Tax Return of Seller or any of its Affiliates relating to the Business or the Project is under examination by the Internal Revenue Service or other Governmental Authority; (B) all deficiencies asserted as a result of any such examination have been paid or finally settled; and (C) no issue has been raised by the Internal Revenue Service or other Governmental Authority in any such examination that, by application of the same or similar principles, would reasonably be expected to result in a proposed deficiency for Seller or any its Affiliates for any other taxable period not so examined or (ii) the period for assessment of the Taxes in respect of each such Tax Return was required to be filed (taking into account any and all applicable extensions and waivers) has expired.

(f) Except as set forth in Part II of Schedule 4.16, there are no outstanding agreements or waivers extending the statutory period of limitation applicable to any Tax Return for any taxable period.

(g) None of the Purchased Assets secures, directly or indirectly, any debt the interest on which is tax-exempt under Section 103(a) of the Code.

Section 4.17. Employee Matters. Seller has no Employee engaged primarily in the performance of services, including operation, management, administrative or similar services, for the Project, the operation of the Purchased Assets or the conduct of the Business. The Purchased Assets and Assumed Liabilities include no rights, liabilities or obligations with respect to any Employee (including any former or future Employee) of any Person, including any right, liability or obligation arising out of or related to any Employee Plan or Contract or under any employment, collective bargaining, labor or labor relations Law (other than rights, liabilities or obligations to the extent created directly by the actions of Purchaser or an Affiliate of Purchaser with respect to such Employee (and, for the avoidance of doubt, that are not derivative of any liabilities or obligations of Seller or any Affiliate of Seller)).

Section 4.18. Insurance. Part I of Schedule 4.18 sets forth a list of all material Project Insurance Policies held by Seller or its Affiliates as of the Effective Date. Seller has provided or made available to Purchaser true and complete copies of the material Project Insurance Policies. All material Project Insurance Policies are in full force and effect in accordance with their terms, and no written notice of cancellation in respect of any material Project Insurance Policy has been received by Seller or any of its Affiliates. Part II of Schedule 4.18 sets forth, as of the Effective Date, by year, for the current policy year and each of the three (3) preceding policy years, exclusively as applied to the Project, (a) a statement describing each material claim under any Project Insurance Policy on a "ground up" basis and setting forth (i) the name of each claimant, (ii) a description of the Project Insurance Policy under which the claim was made by insurer, type of insurance, and coverage period and (iii) the amount and a brief description of the claim; and (b) a statement describing the loss experience for all material claims that were self-insured, including the number and aggregate cost of such claims.

Section 4.19. Regulatory Status. Seller was determined by FERC to be an exempt wholesale generator within the meaning of Section 32 of the Public Utility Holding Company Act of 1935 by order dated March 12, 2001, in Docket No. EG01-65-000. The Project and Seller have met, and will continue to meet until the consummation of the Transactions at the Closing, all applicable requirements for the maintenance of such exempt wholesale generator status.

Section 4.20. Pipeline Status. With respect to any pipeline owned by Seller and serving the Project, to Seller's Knowledge, such pipeline has (i) been owned at all times by the owner of the Project, (ii) been used only for the delivery of Fuel to the Project, and (iii) only transported Fuel owned by the owner of the Project. Seller owns, leases or controls no pipeline located on an Easement or outside the parcel of land described in Schedule 2.1(a).

Section 4.21. Brokers. Neither Seller nor any Affiliate thereof has employed an agent, broker, finder, investment or commercial banker, or any other Person, in connection with this Agreement or any of the Transactions so as to give rise to any broker's, finder's or similar fee, commission or payment payable by Purchaser or any of its Affiliates.

Section 4.22. Proxy Statement. A draft of the proxy statement to be mailed to the stockholders of KGen pursuant to Section 6.6(a) in respect of the Transactions is attached hereto as Exhibit J, which draft is substantially similar to that which will be submitted to the stockholders of KGen (such draft, together with such changes as may be made in advance of its submission to the stockholders of KGen, the "*Proxy Statement*"). When mailed to the stockholders of KGen, the Proxy Statement will comply, in all material respects, with the requirements of Law applicable thereto. Notwithstanding the foregoing, Seller makes no representation or warranty with respect to any information supplied by or on behalf of Purchaser which is contained in the Proxy Statement.

ARTICLE V.
REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser hereby represents and warrants to Seller as follows:

Section 5.1. Organization and Existence. Purchaser is a corporation, duly organized, validly existing and in good standing under the laws of the State of Arkansas and has all requisite corporate power and authority to own, use, lease and operate its properties and to carry on its business as now being conducted. Purchaser is duly qualified to do business and is in good standing in Arkansas and each other jurisdiction in which the properties owned, leased or operated by it or the nature of the business conducted by it makes such qualification necessary, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Purchaser.

Section 5.2. Execution, Delivery and Enforceability. Purchaser has all requisite corporate power and authority to execute and deliver, and to perform its obligations under, this Agreement and the Ancillary Agreements to which it is or becomes a party and to consummate the Transactions. The execution and delivery by Purchaser of this Agreement and the Ancillary Agreements to which Purchaser is or becomes a party, the performance by

Purchaser of its obligations hereunder and thereunder and the consummation by Purchaser of the Transactions have been duly and validly authorized by all necessary corporate action required on the part of Purchaser and no other approvals from the holders of any of Purchaser's equity or debt securities are necessary to authorize the same. Assuming the due authorization, execution and delivery by Seller of this Agreement and the Ancillary Agreements to which Seller is or becomes a party, this Agreement constitutes, and the Ancillary Agreements to which Purchaser is or becomes a party when executed by Purchaser shall constitute, the valid and legally binding obligations of Purchaser, enforceable against Purchaser in accordance with their respective terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application relating to or affecting the enforcement of creditors' rights and by general equitable principles.

Section 5.3. No Violation. Assuming receipt of Purchaser's Consents set forth in Part I of Schedule 5.3, Purchaser's Regulatory Approvals set forth in Part II of Schedule 5.3, the additional Consents and notices set forth in Part III of Schedule 5.3 and assuming the expiration or termination of the applicable waiting periods under the HSR Act, neither the execution and delivery by Purchaser of this Agreement or any of the Ancillary Agreements to which Purchaser is or becomes a party, nor Purchaser's compliance with any provision hereof or thereof, nor Purchaser's consummation of the Transactions will:

(a) violate, conflict with, or result in a breach of any provisions of the Organizational Documents of Purchaser;

(b) result in a violation under, conflict with, result in a breach of, constitute (with due notice or lapse of time or both) a default, or give rise to any right of termination, cancellation, acceleration or guaranteed payment, in each case under the terms, conditions or provisions of any material note, bond, mortgage, loan agreement, deed of trust, indenture, license or agreement or other instrument or obligation to which Purchaser is a party or by which Purchaser is bound; or

(c) violate, conflict with or result in a breach of any Law or Permit applicable to Purchaser or any of its assets.

Section 5.4. Litigation. Except as set forth in Schedule 5.4, there is no Action pending or, to Purchaser's Knowledge, threatened against or involving Purchaser or any of its Affiliates before or being conducted by any Governmental Authority or arbitrator that, individually or in the aggregate, would reasonably be expected to result, or has resulted, in (a) the institution of legal proceedings to prohibit or restrain the performance by Purchaser of Purchaser's obligations under this Agreement or any of the Ancillary Agreements to which Purchaser is or becomes a party or the consummation of the Transactions, (b) a claim against Seller or any of its Affiliates for damages as a result of Purchaser entering into this Agreement or any of the Ancillary Agreements or the consummation by Purchaser of the Transactions or (c) a material delay in or material impairment of Purchaser's performance of its obligations under this Agreement or any of the Ancillary Agreements or a material impairment of the authority, right or ability of Purchaser to consummate the Transactions.

Section 5.5. Brokers. Neither Purchaser nor any Affiliate thereof has employed an agent, broker, finder, investment or commercial banker, or any other Person, in connection with this Agreement or any of the Transactions so as to give rise to any broker's, finder's or similar fee, commission or payment payable by Seller or any of its Affiliates.

Section 5.6. Acceptable Purchaser LTSA. Purchaser has entered into an Acceptable Purchaser LTSA on or prior to the Effective Date and such Acceptable Purchaser LTSA is valid and binding and will become effective upon the Closing and has not been modified or amended in such a manner as would cause such agreement not to qualify as an Acceptable Purchaser LTSA under the terms of this Agreement.

Section 5.7. No Additional Representations and Warranties. Purchaser acknowledges and agrees that, except for the representations and warranties of Seller expressly set forth in this Agreement or any Ancillary Agreement to which Seller is a party: (a) Seller has not made, and does not make, any representation or warranty, express or implied, oral or written, relating to the Purchased Assets, the Project or the Business, and (b) the Purchased Assets shall be transferred to Purchaser in their condition at the time of Closing without any further representation or warranty whatsoever. Nothing in this Section 5.7 is intended to or shall reduce or limit the liability of Seller with respect to any breach of a representation or warranty of Seller expressly set forth in this Agreement or any Ancillary Agreement to which Purchaser is a party.

ARTICLE VI.
COVENANTS OF THE PARTIES

Section 6.1. Efforts to Close.

(a) Subject to the terms and conditions herein, each of the Parties shall cooperate, and shall cause their Representatives to cooperate, with the other and use Commercially Reasonable Efforts to consummate and make effective, as soon as reasonably practicable, the Transactions. Such actions shall include (i) in the case of Seller, exercising Commercially Reasonable Efforts to (A) obtain each of the Consents of any Governmental Authority or other Person required for the Closing to occur or required to transfer, convey and assign the Purchased Assets and the Assumed Liabilities to Purchaser at the Closing, including Seller's Regulatory Approvals and Seller's Consents, (B) effect all other necessary notifications, registrations and filings, including filings under Laws, and all other necessary filings with any Governmental Authority having jurisdiction over Seller or the Project, (C) obtain the instruments and documents described in Section 3.2(e), (D) release or remove, or obtain the release or removal of, all Encumbrances described in Part II of Schedule 1.1C, and (E) satisfy all conditions of Seller to the Closing set forth herein, and (ii) in the case of Purchaser, exercising Commercially Reasonable Efforts to (A) obtain each of the Consents of any Governmental Authority or other Person required for the Closing to occur or required to receive the Purchased Assets and assume the Assumed Liabilities from Seller at the Closing, including Purchaser's Regulatory Approvals and Purchaser's Consents, (B) effect all other necessary notifications, registrations and filings, including filings under Laws, and all other necessary filings with any Governmental Authority having jurisdiction over Purchaser or the Project, (C) order and obtain the Title Policy and (D) satisfy all conditions of Purchaser to the Closing set forth herein. The Parties acknowledge that a request for network transmission service for the Project was filed

with the Independent Coordinator of Transmission on behalf of Purchaser on or about November 15, 2010.

(b) Nothing in Section 6.1(a) is intended to or shall vary the terms of any discretion or judgment (however expressed) granted to a Party herein or in any Ancillary Agreement. For the avoidance of doubt, and without limiting the generality of the foregoing, nothing in this Agreement shall require Purchaser or any Affiliate of Purchaser to offer, accept, or fulfill any term, condition or limitation on the Purchaser's Regulatory Approvals that is unsatisfactory to Purchaser in its sole and absolute discretion, including any term or condition requiring Purchaser (or any of its Affiliates) to dispose of, sell, or transfer ownership or control of any of its assets, properties or businesses, hold or retain separate particular assets or categories of assets, properties or businesses, or agree to divest, dispose of or hold separate one or more assets or properties or conditioning approval or authorization on any of the same.

Section 6.2. Transaction Expenses. Except as otherwise provided in this Agreement (including the remainder of this Section 6.2) or any Ancillary Agreement, all costs and expenses incurred in connection with this Agreement and the Transactions shall be paid by the Party incurring such expenses, whether or not the Closing occurs. The Parties agree that:

(a) all costs associated with preliminary title reports or commitments concerning the Project Site or the Purchased Assets, the Title Policy, Survey and the endorsements set forth on Schedule 6.2 shall be borne by Purchaser;

(b) all documentary, Purchased Project Contract, Purchased License and Consent or conveyance or assignment fees or similar charges or costs (other than those with respect to the transfer or assignment of a Permit or the Emission Allowances), if any, including Taxes, shall be borne by Seller;

(c) all Permit or Emission Allowance transfer or assignment fees or similar charges or costs, if any, including Taxes, shall be borne by Purchaser;

(d) all recording fees and charges with respect to the transfer of real property from Seller to Purchaser in connection with this Agreement or any Ancillary Agreement shall be borne by Seller;

(e) all amounts charged by the Environmental Consultant in connection with the Environmental Assessment shall be borne one-half by Purchaser and one-half by Seller; and

(f) the filing fee payable in connection with the notifications required to be filed under the HSR Act with respect to the Transactions shall be borne one-half by Purchaser and one-half by Seller.

All costs and expenses payable by one Party to the other Party under this Section 6.2 shall be settled (i) upon or within thirty (30) days after termination or expiration of this Agreement or (ii) if the Closing occurs, at the Closing or thereafter in accordance with Sections 3.7 and 3.8.

Section 6.3. Conduct Pending Closing.

(a) From the Effective Date through the Closing, unless Purchaser shall otherwise consent in writing, which consent shall not be unreasonably withheld, conditioned or delayed, and except for (i) actions required by Law, (ii) actions permitted by this Agreement or any Ancillary Agreement or necessary to consummate the Transactions and expressly contemplated hereunder or thereunder, (iii) actions consented to by or directed by Purchaser or an Affiliate of Purchaser under a PPA and (iv) reasonable actions taken in response to an emergency or an event of force majeure in accordance with Good Industry Practices and promptly disclosed in writing to Purchaser, Seller shall, and, where applicable, shall cause its Affiliates and use Commercially Reasonable Efforts to the extent permitted under the O&M Agreement and the LTSA, as applicable, to cause, Operator and GEII to, conduct the Business and operate and maintain the Project (or cause the Project to be operated and maintained) in accordance with all Laws and Permits in all material respects and in the ordinary course of business consistent with past practices and Good Industry Practices, including (A) operating and maintaining the systems, equipment and machinery of the Project that are Purchased Assets in compliance with all Laws and Permits in all material respects and Good Industry Practices, including compliance with the manufacturer's technical requirements and information and, to the extent applicable, the LTSA in all material respects, (B) making timely and complete application to the applicable Governmental Authority for the renewal of any material Seller's Permit so as to effectuate such renewal reasonably prior to the scheduled expiration date of such Seller's Permit and (C) using Commercially Reasonable Efforts to preserve the good will of lessors, suppliers, licensors, agents, contractors, and other Persons having a material business relationship with Seller or any of its Affiliates with respect to the Project or the Business or Governmental Authorities having jurisdiction over the Project, the Project Real Property or the Business. In addition, with respect to each Contract that would be a Purchased Project Contract or a Purchased License entered into by Seller or any of its Affiliates from and after the Effective Date through the Closing that includes a Purchased Warranty, Seller shall, and where applicable, shall cause its Affiliates to, use Commercially Reasonable Efforts to cause each such Contract to permit Seller or its Affiliates to freely assign such Purchased Warranty to Purchaser without the consent of any Person.

(b) From the Effective Date through the Closing, unless Purchaser shall otherwise consent in writing, which consent shall not be unreasonably withheld, conditioned or delayed, and except for actions required by Law, actions permitted by this Agreement or an Ancillary Agreement or necessary to consummate the Transactions or the transactions contemplated by the Ancillary Agreements and expressly contemplated hereunder or thereunder, actions consented to by or directed by Purchaser or a Purchaser Affiliate under a PPA and, subject to the other terms of this Agreement, reasonable actions taken in response to an emergency or an event of force majeure in accordance with Good Industry Practices and promptly disclosed in writing to Purchaser, Seller shall not, and, where applicable to the Purchased Assets or the Business, shall cause its Affiliates and, use Commercially Reasonable Efforts to the extent permitted under the O&M Agreement to cause Operator, not to:

(i) (A) amend, supplement or otherwise modify in any material respect, or terminate or, except as required by its terms, renew or extend any (1) Purchased Project Contract, (2) Purchased License or (3) Seller's Permit, (B) waive

any material default by, material term of or material right against, or release, settle or compromise any material claim against, any other party to a Purchased Project Contract, Purchased License or the LTSA, arising out of or related to such Contract, or (C) enter into any new Purchased Project Contract (other than as provided in Section 2.1(f)) or Purchased License;

(ii) sell, lease, license, transfer or otherwise dispose of, or remove from the Project, or make or enter into any Contract for the sale, lease, license, transfer, disposition or removal of, any material asset or property that would be included in the Purchased Assets, except for (A) the disposition of Consumables, or the transfer, disposition or removal of obsolete, broken, damaged or worn-out assets, in the ordinary course of business consistent with past practices and Good Industry Practices, (B) any sale, lease, license, transfer, or disposition of such assets or properties made to Purchaser or its Affiliates, and (C) the conversion of fuel into electric energy in the ordinary course of business;

(iii) permit, allow or cause any of the Purchased Assets to become subject to any Encumbrance, other than a Permitted Encumbrance;

(iv) resolve, settle or compromise any Environmental Claim or any Action under any Law (including Environmental Law) pending before or being conducted by a Governmental Authority, arbitrator or mediator relating to the Business or the Purchased Assets, except to the extent such resolution, settlement or compromise is an Excluded Liability and would not (A) require or involve any post-Closing Remediation or (B) have a material and adverse affect upon Purchaser's ownership, operation or use of, or the value of, the Purchased Assets, or Purchaser's conduct of the Business, after the Closing;

(v) incur any obligation for borrowed money secured by the Purchased Assets other than extensions of credit and similar events in the ordinary course of business or, except for credit support provided to Purchaser, guarantee with the Purchased Assets, or otherwise make the Business liable for the obligations of any Person, other than any obligations for borrowed money, extensions of credit or guarantees that would be discharged on or prior to the Closing;

(vi) delay beyond its due date the payment or discharge of any account payable or other obligation or liability that, upon or after the Closing, would be an Assumed Liability or could reasonably be expected to adversely affect, in any material respect, the operation, maintenance or physical condition of the Purchased Assets or the conduct of the Business;

(vii) sell, transfer, swap, or otherwise make unavailable to Purchaser at the Closing any of the Emission Allowances, except for the surrender of Emissions Allowances to the issuing Governmental Authority in the ordinary course of business consistent with past practices and in accordance with the requirements of Laws;

(viii) make any material change to the levels of Inventory maintained at the Project, except in the ordinary course of business consistent with past practices and in accordance with Good Industry Practices;

(ix) make any fundamental change to the Business;

(x) hire any Employee who would be an Employee of Seller, or assume any obligation or liability under Law, where Seller would be an employer of any individual primarily dedicated to work at the Project Site in connection with the Purchased Assets and the Business; or

(xi) authorize or commit to do or agree to take, whether in writing or otherwise, any of the foregoing prohibited actions.

(c) Nothing in this Section 6.3 shall preclude Seller or any Affiliate of Seller from (i) paying, prepaying or otherwise satisfying any liability that, if outstanding as of the Closing Date, would be an Assumed Liability or an Excluded Liability, provided that no Assumed Liability or obligation that could reasonably be expected to adversely affect, in any material respect, the operation, maintenance or physical condition of the Purchased Assets or the conduct of the Business is created or increased by or otherwise arises out of the satisfaction of such liability, (ii) incurring any liability or obligation to any third party in connection with obtaining such party's Consent to any Transaction, provided that any and all such liabilities and obligations so incurred are Excluded Liabilities or (iii) acquiring any asset that would be an Excluded Asset.

Section 6.4. Regulatory Approvals.

(a) Seller and Purchaser each shall make and file, or cause to be made and filed, with the United States Federal Trade Commission and the United States Department of Justice all notifications and filings required to be made and filed under the HSR Act with respect to the Transactions. The Parties shall consult with each other as to the appropriate time to make such notifications and filings and shall cooperate with each other with respect to the development and coordination of submission of such notifications and filings. Purchaser and Seller shall use good faith efforts to make such notifications and filings with the United States Federal Trade Commission and the United States Department of Justice on or before August 31, 2011.

(b) Purchaser and Seller shall use good faith efforts to file with the FERC on or before August 31, 2011, the joint application of the Parties seeking authorization of the Transactions pursuant to Section 203 of the Federal Power Act.

(c) Purchaser shall use good faith efforts to file with the FERC on or before October 31, 2011, its application seeking authorization to recover the costs of any positive acquisition adjustment and related amortization expenses in connection with the Transactions pursuant to Section 205 of the Federal Power Act.

(d) Purchaser shall use good faith efforts to file with the APSC on or before July 15, 2011, its application seeking regulatory approval of the Transaction.

(e) Seller and Purchaser shall use good faith efforts to file on or before August 31, 2011, (i) a temporary waiver of at least 90 days of the FERC's capacity release rules as set forth in 18 C.F.R. § 284.8 ("*Capacity Release Rules*") and other related FERC policies and requirements with respect to the Gas Transportation Agreements, including the shipper-must-have-title policy, the prohibition on buy-sell arrangements, the prohibition on tying, posting and bidding requirements, and the restrictions on capacity releases above or below the applicable maximum rate, and (ii) any waivers of the FERC Gas Tariff governing service provided pursuant to a Gas Transportation Agreement necessary to relieve Seller of any and all liability under such Gas Transportation Agreement (solely to the extent such liability is allocable to the period after the Closing Date and not resulting from any breach or default by, or waiver or extension given by or to, Seller). Notwithstanding the foregoing, the Parties agree to continue to evaluate whether such a waiver is necessary for all such Gas Transportation Agreements, and, in the event that the Parties mutually agree that such a waiver is not required, the Parties shall not be required to seek the same.

(f) The Parties acknowledge and agree that a Party shall be deemed to have acted in good faith if any of the application filings described in Section 6.4(a), Section 6.4(b), Section 6.4(c), Section 6.4(d), and Section 6.4(e) is delayed beyond the date provided therein as a result of any need to address in such application or resolve any material legal or regulatory risk or issue prior to submission of such application, including any issue arising from communications with the Department of Justice, Federal Trade Commission, FERC or APSC staff, as applicable, any issue concerning application sequencing or docket congestion, and any newly issued or promulgated Law or official guidance.

(g) Purchaser shall, with respect to Purchaser's Regulatory Approvals, and Seller shall, with respect to Seller's Regulatory Approvals:

(i) use Commercially Reasonable Efforts to prevent the entry in a judicial or administrative proceeding brought by any Governmental Authority or any other Person for a permanent or preliminary injunction, temporary restraining order or other similar Order that would make unlawful, prevent or delay consummation of the Transactions; and

(ii) promptly take, in the event that such an injunction or similar Order has been issued in such a proceeding, any and all Commercially Reasonable Efforts, including the appeal thereof and the posting of a bond to vacate, modify or suspend such injunction or Order so as to permit the consummation of the Transactions on a schedule as close as possible to that contemplated by this Agreement.

(h) With respect to the Seller's Regulatory Approvals and Purchaser's Regulatory Approvals referenced in Sections 6.4(a) and 6.4(b), Purchaser and Seller shall, upon the request of the other, mutually execute and deliver a joint defense agreement regarding such applications in substantially the form attached hereto as Exhibit I.

Section 6.5. Permit, Emission Allowance and Purchased Project Contract Transfers.

(a) Purchaser shall have primary responsibility for securing, at its expense, the transfer or re-issuance at or after the Closing of the Purchased Permits and the Emission Allowances held by or for Seller or any Affiliate thereof, as and when required by Law. Subject to Section 6.2(c), Seller shall use, prior to, on and, if applicable, after the Closing, at its expense, Commercially Reasonable Efforts to cooperate and assist Purchaser with, and shall cause its Affiliates and its and their respective Representatives to use Commercially Reasonable Efforts to cooperate and assist Purchaser with, the transfer and re-issuance of the Purchased Permits and Emission Allowances, including by timely executing and delivering any and all reasonably required forms or providing timely and appropriate notices and information to Governmental Authorities for Purchaser to timely obtain all Purchased Permits and Emission Allowances to be transferred or re-issued to it pursuant to Section 2.1(g) or 2.1(l) and by enforcing legal rights available to it under the terms of the Purchased Permits and Emission Allowances.

(b) Other than as provided in Section 6.5(a) with respect to Purchased Permits and Emission Allowances, Seller shall have primary responsibility for securing, at its expense, Seller's Consents. Subject to Section 6.2(b), Purchaser shall use, prior to, on and, if applicable, after the Closing, and at its expense, Commercially Reasonable Efforts to cooperate and assist Seller with, and shall cause its Representatives to use Commercially Reasonable Efforts to cooperate and assist Seller with, securing Seller's Consents including by timely executing and delivering any and all reasonably required documentation and providing any reasonably required information to any Person from whom a Seller's Consent is sought as so reasonably requested by Seller or such Person.

(c) Seller shall not be obligated or permitted, without Purchaser's prior consent, to transfer a Purchased Permit or Emission Allowance to Purchaser or its designee or a Purchased Project Contract, Purchased License or Purchased Warranty to Purchaser without the applicable Seller's Consent having been obtained if the transfer by Seller or assumption by Purchaser of the same would constitute a breach or default under the Purchased Permit, Emission Allowance, Purchased Project Contract, Purchased License or Purchased Warranty or violate any Law (each a "*Non-Assigned Asset*"). If any such Seller's Consent is not obtained prior to the Closing, to the extent and for so long as the applicable Non-Assigned Asset shall not have been transferred to Purchaser or its designee, Seller shall, following the Closing, to the extent permitted by Law, hold such Non-Assigned Asset in trust for the use and benefit of Purchaser or its designee, and shall take such other actions (including entering into written agreements, notice of which shall, with respect to each Purchased Permit or Emission Allowance that is a Non-Assigned Asset, be provided, to the extent required by Law, by Purchaser to the Governmental Authority transferring or re-issuing such Non-Assigned Asset) as Purchaser may reasonably request in order to place Purchaser or its designee in a substantively similar position to that which would have been in effect if such Seller's Consent had been obtained, or to provide Purchaser or its designee the full rights, privileges and benefits of, any such Non-Assigned Asset not transferred to Purchaser or its designee. To the extent permitted by Law, Purchaser shall agree to perform for the benefit of Seller and comply with the obligations of Seller, at Purchaser's expense, with respect to the Non-Assigned Assets, to the extent such obligations are reasonably capable of being performed and complied with by Purchaser, from and after the Closing through the completion of the transfer or re-issuance of the Non-Assigned Asset to Purchaser or its designee or the expiration thereof according to its terms. Nothing in this Section 6.5 shall limit a Party's obligations or liabilities under Article III and Section 6.1 or Section 6.2.

(d) With respect to any applicable compliance period that begins on or before the Closing Date and ends after the Closing Date, (i) Seller shall be responsible for procuring and transferring to Purchaser's or its designated agent's account, on or before the end of such compliance period, sufficient Emission Allowances for such compliance period as required under Law with respect to the Project or the Business for the portion of such period up to and including the Closing (such responsibility, an Excluded Liability), and (ii) Purchaser shall be responsible for procuring and transferring to its own or its designated agent's account, on or before the end of each such compliance period sufficient Emission Allowances for such compliance period as required under Law with respect to the Project or the Business for the portion of such period after the Closing (such responsibility, an Assumed Liability). The Parties agree that, with respect to each such compliance period, Purchaser shall, or shall cause its designated agent to, prepare and timely file all notices and other filings, and take any other commercially reasonable actions, as necessary to comply in all material respects with Laws regarding Emission Allowances for such compliance period with respect to the applicable emissions allocable to the Project or the Business for each such entire compliance period. The Parties further agree that, notwithstanding the transfer to Purchaser or its designated agent pursuant to Section 2.1(l) of the Emission Allowances, the following Emission Allowances included in such Emission Allowances shall be held by Purchaser or its designated agent for the benefit of Seller and used or otherwise applied by Purchaser or its designated agent to satisfy all or part, as applicable, of Seller's responsibilities pursuant to subsection (i) above for each such applicable compliance period: (A) unused and valid Emission Allowances granted with respect to all compliance periods ending on or before the Closing Date; and (B) the portion of the Emission Allowances granted with respect to any of the applicable compliance periods beginning on or before the Closing Date and ending after the Closing Date allocated to Seller based on the total Emission Allowances granted with respect to any such period, multiplied by the percentage representing the number of days during such period that occurred on or prior to the Closing Date divided by the total number of days in such period. After the completion of such actions with respect to all such compliance periods, any excess Emission Allowances with respect to the Project or the Business shall be the sole property of Purchaser.

Section 6.6. KGen Proxy Statement; Recommendations.

(a) *KGen Proxy Statement.* As promptly as practicable after the Effective Date, but in no event more than fifteen (15) Business Days after the Effective Date, KGen shall cause the Proxy Statement to be mailed to the stockholders of KGen. If any communication proposed to be made by KGen or any of its Representatives generally to the stockholders of KGen will refer to or comment upon the Transactions, prior to the release or issuance of such communication, KGen shall provide Purchaser a reasonable opportunity to review and comment on the portion of such communication that refers to or comments upon the Transactions.

(b) KGen Special Meeting of Stockholders.

(i) *Holding Special Meeting*. As promptly as practicable after the Effective Date, but in any event (subject to the last sentence of Section 6.6(b)(iii)) within thirty (30) days after KGen mails the Proxy Statement to the stockholders of KGen pursuant to Section 6.6(a), KGen shall in accordance with applicable Law and KGen's certificate of incorporation, bylaws and other similar documents duly call, give notice of,

convene and hold a special meeting of stockholders (the "*Special Meeting*") for the purpose of obtaining the Stockholder Approval. KGen shall use its Commercially Reasonable Efforts to solicit from its stockholders proxies in favor of a resolution authorizing the sale of the Purchased Assets pursuant to this Agreement and use its Commercially Reasonable Efforts to take all other action necessary or advisable to secure the Stockholder Approval in compliance with all applicable Laws; and

(ii) *KGen Recommendation to Stockholders*. The Board of Directors of KGen (the "*KGen Board*") shall recommend that the stockholders of KGen approve a resolution authorizing the sale of the Purchased Assets pursuant to this Agreement at the Special Meeting (the "*KGen Recommendation*"), and shall not withdraw, qualify, amend or modify the KGen Recommendation, and no director or executive officer of KGen shall make any statement to the stockholders of KGen, or otherwise directly or indirectly communicate with the stockholders of KGen or with the financial press or general public in a manner that is inconsistent with, the KGen Recommendation (any of the foregoing, a "*KGen Recommendation Change*"), except that:

(A) the KGen Board may make a KGen Recommendation Change in connection with a Takeover Proposal in accordance with Section 6.12; and

(B) if a KGen Intervening Event shall have occurred, the KGen Board may make a KGen Recommendation Change in response to such KGen Intervening Event before the Stockholder Approval has been obtained if the KGen Board determines in good faith, after consulting with its outside legal advisors, that the failure by the KGen Board to make a KGen Recommendation Change in response to such KGen Intervening Event would be inconsistent with its fiduciary duties under applicable Law.

Notwithstanding clause (B) above, the KGen Board shall not be permitted to make a KGen Recommendation Change in response to a KGen Intervening Event unless, at least fifteen (15) days prior to the KGen Board taking such action, KGen shall have provided written notice to Purchaser (a "*KGen Notice of Intervening Event*") (1) describing the KGen Intervening Event, and (2) stating that the KGen Board intends to make a KGen Recommendation Change in response to such KGen Intervening Event, and the KGen Board's reasons for making such KGen Recommendation Change. KGen agrees that after delivering a KGen Notice of Intervening Event, Purchaser will be permitted to propose to KGen revisions to the terms of the Transactions such that the KGen Board will no longer be required to make a KGen Recommendation Change, and that KGen and its Representatives will consider in good faith any such revisions to the terms of the Transactions.

(iii) *Obligation to Hold Special Meeting Continues*. Prior to the termination of this Agreement, the obligation of KGen pursuant to Section 6.6(b)(i) to call, give notice of, convene and hold the Special Meeting and to hold a vote of KGen's stockholders on the adoption of this Agreement and the approval of the sale of the Purchased Assets at the Special Meeting shall not be limited or otherwise affected by the commencement, disclosure, announcement or submission to it of any Takeover Proposal

(whether or not a Superior Offer), occurrence of a KGen Intervening Event or by a KGen Recommendation Change. In any case in which the KGen Board makes a KGen Recommendation Change, and unless this Agreement is sooner terminated, (i) KGen shall nevertheless submit the resolution regarding the matters contemplated by this Agreement to a vote of its stockholders in accordance with Section 6.6(b)(i) and (ii) the Proxy Statement and any and all accompanying materials (including the proxy card) shall be identical in form and content to the Proxy Statement and any and all accompanying materials (including the proxy card) that would have been prepared by KGen had no KGen Recommendation Change been made, except for appropriate changes to the disclosure in the Proxy Statement (x) stating that such KGen Recommendation Change has been made, (y) describing matters relating to the KGen Intervening Event or Superior Offer, as applicable, to the extent required by applicable Law, and (z) providing such other information as would be required to be disclosed to comply in all material respects with Section 14(a) of the Exchange Act and the rules and regulations promulgated thereunder if KGen's solicitation of its stockholders were subject to Section 14(a) of the Exchange Act and the rules and regulations promulgated thereunder. KGen agrees that, prior to the termination of this Agreement, it shall not submit to the vote of its stockholders any Takeover Proposal (whether or not a Superior Offer, but excluding any Permitted Transaction) or propose to do so. KGen may postpone or adjourn the Special Meeting or delay the solicitation of proxies to the extent necessary to ensure that any supplement or amendment to the Proxy Statement required by Law (including Section 14(a) of the Exchange Act and the rules and regulations promulgated thereunder as if KGen's solicitation of its stockholders were subject to Section 14(a) of the Exchange Act and the rules and regulations promulgated thereunder) is provided to KGen's stockholders or, if as of the time for which the Special Meeting is scheduled, there are insufficient shares of stock of KGen represented (either in person or by proxy) to constitute a quorum necessary to conduct the business of the Special Meeting.

Section 6.7. Plant Performance Tests.

(a) The Parties agree that this Section 6.7 shall govern the performance of Plant Performance Tests under this Agreement. All Plant Performance Tests shall be performed in accordance with the requirements of this Agreement. The Testing Party shall bear the costs to conduct the applicable Plant Performance Test and shall reimburse the other Party for the reasonable, documented, out-of-pocket costs and expenses, if any, incurred by such other Party to conduct such Plant Performance Test (i) upon or within thirty (30) days after termination or expiration of this Agreement or (ii) if the Closing occurs, at the Closing. Without limiting the foregoing or the terms of Schedule 6.7, (i) Seller shall be responsible for providing all test instrumentation, equipment, systems, tools, material, labor (including testing specialists), utilities, and services necessary to conduct a Plant Performance Test, and (ii) Purchaser shall schedule and dispatch the Project's electric generation units as required by the Plant Performance Test and purchase the electric energy dispatched to Purchaser therefrom pursuant to the payment terms set forth in any PPA then in effect or, if no such agreement is then in effect, on payment terms mutually agreed to by the Parties. If a Plant Performance Test cannot be performed in accordance with the requirements herein at the time of a scheduled Plant Performance Test due to an equipment failure or malfunction at the Project, a force majeure, or other unplanned outage, the Testing Party shall cause the Plant Performance Test to be rescheduled as soon as possible

after such unplanned outage has been remedied. Seller may terminate in its discretion, any Plant Performance Test during the conduct thereof and such test shall not be deemed a "Plant Performance Test" for purposes of Section 6.7 (other than this Section 6.7(a)); provided, that if Seller does elect to so terminate such a test, Seller shall cause the Plant Performance Test to be rescheduled as soon as possible and shall be deemed the "Testing Party" with respect to such test for purposes of this Section 6.7(a).

(b) For each Plant Performance Test, the Testing Party shall deliver the final written report of the Plant Performance Test Contractor (the "*Plant Performance Test Report*") that documents, explains and certifies the performance and final results of such Plant Performance Test (the "*Plant Performance Test Results*") to the other Party promptly after receipt thereof from the Plant Performance Test Contractor, but in any event within thirty (30) days of such Plant Performance Test. The Plant Performance Test Report shall include the calibration records for the test instrumentation and otherwise meet the requirements set forth in Schedule 6.7. The Testing Party shall provide the other Party with (i) reasonable advance notice of and a reasonable opportunity to witness the Plant Performance Test, (ii) any draft written report prepared by the Plant Performance Test Contractor and delivered to the Testing Party and (iii) a reasonable opportunity to participate in any material communication between the Testing Party and the Plant Performance Test Contractor related to the Plant Performance Test.

(c) The Parties agree that Plant Performance Testing shall be conducted in connection with the Closing. To facilitate planning for such Plant Performance Testing, Purchaser shall notify Seller of its reasonable best estimate of the Closing Date (as may be modified pursuant to clauses (g) or (h) below, the "*Target Closing Date*") on or before 140 days prior to such date.

(d) No earlier than 120 days prior to the Target Closing Date, but no later than ninety (90) days prior to such Target Closing Date, Seller shall conduct, at its expense, a Plant Performance Test (the "*Initial Plant Performance Test*"). If the Plant Performance Test Results of the Initial Plant Performance Test indicate that one or more of the Plant Performance Parameters was not achieved, then either Seller or Purchaser may, upon five (5) days' prior written notice to the other Party, elect to conduct, at its expense, no later than forty-five (45) days prior to such Target Closing Date and using the same Plant Performance Test Contractor that performed the Initial Plant Performance Test, another Plant Performance Test (a "*Plant Performance Re-Test*").

(e) If the Plant Performance Test Results of a Plant Performance Re-Test indicate that one or more of the Plant Performance Parameters was not achieved, then either Seller or Purchaser may, upon five (5) days' prior written notice to the other Party, elect to conduct, at its expense, no later than forty-five (45) days prior to the Target Closing Date, and using the same Plant Performance Test Contractor that performed the Initial Plant Performance Test and any Plant Performance Re-Tests, additional Plant Performance Re-Tests.

(f) If a Party has elected to conduct a Plant Performance Re-Test in accordance with this Section 6.7, such Party shall be the Testing Party for purposes of such Plant Performance Re-Test and shall cause the Plant Performance Re-Test to be conducted. If more

than one Party has made such an election, the Party first delivering notice of such election to the other Party in accordance with this Agreement shall be deemed the Testing Party.

(g) In the event that the Plant Performance Test Results of the Initial Plant Performance Test or a Plant Performance Re-Test indicate that one or more of the Plant Performance Parameters was not achieved, Seller determines in good faith that such failure was due to one or more identified, non-speculative mechanical, electrical or other physical defects of the Project (a "*Testing Defect*") and Seller desires to Repair such Testing Defect at its sole cost and expense and conduct a Plant Performance Re-Test but despite the use of Commercially Reasonable Efforts Seller cannot complete such Repair and perform such Plant Performance Re-Test at least forty-five (45) days prior to the Target Closing Date, then:

(i) Seller shall be required to provide to Purchaser notice ("*Late Testing Notice*") of its intention to perform such Plant Performance Re-Test and indicate, in reasonable detail, the Testing Defect that caused its failure to achieve one or more of the Plant Performance Parameters, the remedial actions that it intends to take to Repair such Testing Defect (such repair, a "*Testing Repair*") and the expected time for commencement and completion of such Testing Repair and Purchaser shall promptly notify Seller, upon receipt of a Late Testing Notice, as to whether it has any information that would require it to provide notice to Seller under Section 6.7(h) (and, if so, it shall provide such notice and Section 6.7(h) shall govern);

(ii) Seller shall use Commercially Reasonable Efforts to complete the Testing Repair as soon as reasonably practicable in accordance with Good Industry Practices and the terms of this Agreement;

(iii) if:

(A) the satisfaction of the Plant Performance Test condition under Section 7.12 is the last condition to Purchaser's obligations to be satisfied (other than those conditions that by their nature are satisfied at the Closing), Seller shall designate a new Target Closing Date that is at most one hundred and twenty (120) days (but no fewer than ninety (90) days) after Seller's completion date for the Testing Repair (but in no event shall the Target Closing Date be extended beyond the Expiration Date); or

(B) the satisfaction of the Plant Performance Test condition under Section 7.12 is not the last condition to Purchaser's obligations be satisfied (other than those conditions that by their nature are satisfied at the Closing), Seller shall notify Purchaser in writing of the completion date of such Testing Repair at least fifteen (15) days prior thereto and Purchaser shall designate a new Target Closing Date that is one hundred and twenty (120) days after Seller's completion date for the Testing Repair (but in no event shall the Target Closing Date be extended beyond the Expiration Date);

and, where the Target Closing Date is so extended, the provisions of this Section 6.7 shall apply as if such new Target Closing Date were the original Target Closing Date established hereunder;

(iv) Seller shall use Commercially Reasonable Efforts to cooperate with Purchaser, include Purchaser in meetings, communications and inspections relating to any Testing Repair conducted under this Section 6.7(g) and otherwise keep Purchaser reasonably informed with respect to any Testing Repair in order to enable Purchaser to make a reasonable, informed evaluation of the quality, sufficiency, and acceptability thereof. Seller shall use Commercially Reasonable Efforts to obtain customary warranties related to any Testing Repairs that are freely assignable to Purchaser. Purchaser shall have the right to approve the completion of any Testing Repairs which such approval will be prompt and will not be unreasonably withheld, conditioned or delayed. All Testing Repairs performed pursuant to this Section 6.7(g) shall be performed by an Approved Contractor.

(v) For purposes of this Section 6.7, any Testing Defect that constitutes parts, machinery, equipment, facilities, systems or others items shall not be considered Repaired if (A) such "Repair" is temporary or transitional in nature or such parts, machinery, equipment, facilities, systems or other items are not, in all material respects, safely and properly connected to, or integrated and operating safely and properly with, the other machinery, equipment, facilities, systems and/or items to which it is connected or integrated or with which it operates, or (B) the operating performance and capabilities of such machinery, equipment, facilities, systems or items or the Project shall have diminished as a result of such Testing Defect or "Repair" or the cost to operate and maintain such machinery, equipment, facilities or systems or the Project following such Testing Defect or "Repair" shall be greater as a result of such Testing Defect or "Repair", in each case, by more than an immaterial amount relative to the operating performance and capabilities or costs prior to the Testing Defect or "Repair; provided, however, that if the operating performance or capability that has diminished as a result of a Testing Defect is Project Capacity or Project Heat Rate, or if such increased operation and maintenance cost is due to the Project having a lower Project Capacity or higher Project Heat Rate than prior to the Testing Defect, then clause (B) shall not apply.

(h) If, after completion of the Initial Plant Performance Test or a Plant Performance Re-Test, Purchaser obtains new information that it cannot achieve Closing within 120 days of the date on which the Initial Plant Performance Test or latest Plant Performance Re-Test was completed due to Purchaser's inability to obtain Purchaser's Regulatory Approvals by such date, then either Seller or Purchaser may, upon five (5) days' prior written notice to the other Party, elect to conduct, at its expense, no later than forty-five (45) days prior to a new Target Closing Date prior to the Expiration Date determined by Purchaser based on its reasonable good faith estimate of the Closing Date (in the event that either such Party desires a Plant Performance Re-Test), and using the same Plant Performance Test Contractor, a new Initial Plant Performance Test as provided in Section 6.7(d).

(i) In addition, if the Plant Performance Test Results for the Initial Plant Performance Test or a Plant Performance Re-Test establish that the Project NO_x Emission Rate

exceeds the Contract NO_x Emission Rate and/or the Project CO Emission Rate exceeds the Contract CO Emission Rate and Seller has, or reasonably believes it has, corrected such failure, then Seller shall promptly notify Purchaser of such belief and either Party may, upon five (5) days' prior written notice to the other Party, elect to conduct, at its expense, using the same Plant Performance Test Contractor, a Plant Performance Re-Test as provided herein.

(j) The "*Final Plant Performance Test Results*" shall be the Plant Performance Test Results for either (i) the Initial Plant Performance Test, if no Plant Performance Re-Test has been conducted, or (ii) the most recent Plant Performance Re-Test, if one or more Plant Performance Re-Tests have been conducted.

(k) The applicable unadjusted Purchase Price set forth in Section 3.4(a), (b) or (c) shall be reduced to reflect the Final Plant Performance Test Results by the amount determined pursuant to this Section 6.7(k) (such amount, the "*Final Plant Performance Reduction Amount*"). The Final Plant Performance Reduction Amount shall be (i) the amount that is the aggregate effect of sub-clauses (i) and (ii) of this Section 6.7(k), to the extent such amount would require a reduction in the unadjusted Purchase Price, or (ii) zero, in the event such amount would require an increase in the unadjusted Purchase Price.

(i) If the Final Plant Performance Test Results establish that the Project Capacity is below the Contract Capacity, then (A) the unadjusted Purchase Price set forth in Section 3.4(a) shall be reduced by $408.06 for each kW by which the Project Capacity is below the Contract Capacity less the Capacity Test Tolerance, (B) the unadjusted Purchase Price set forth in Section 3.4(b) shall be reduced by $416.13 for each kW by which the Project Capacity is below the Contract Capacity less the Capacity Test Tolerance and (C) the unadjusted Purchase Price set forth in Section 3.4(c) shall be reduced by $424.19 for each kW by which the Project Capacity is below the Contract Capacity less the Capacity Test Tolerance; provided, however, that in no event shall (1) the unadjusted Purchase Price set forth in Section 3.4(a) be reduced by more than $16,000,000, (2) the unadjusted Purchase Price set forth in Section 3.4(b) be reduced by more than $16,316,424, and (3) the unadjusted Purchase Price set forth in Section 3.4(c) be reduced by more than $16,632,456, in each case as a result of this Section 6.7(k)(i). If a Purchase Price reduction pursuant to this Section 6.7(k)(i) would exceed the applicable amount set forth in clause (1), (2) or (3) of this Section 6.7(k)(i), Purchaser shall have the right to terminate this Agreement on account thereof, upon written notice to Seller provided within thirty (30) days of Purchaser's receipt of the Final Plant Performance Test Results. Purchaser shall be entitled to make full use of the time provided in the previous sentence (even if the full use of such time would delay the Closing) to determine whether to exercise its termination right hereunder, and any such delay in the Closing will be considered a delay caused by Seller for purposes of determining the applicable Transaction Period and Purchase Price payable at the Closing.

(ii) If the Final Plant Performance Test Results establish that the Project Heat Rate exceeds the Contract Heat Rate, then each of the unadjusted Purchase Prices set forth in clauses (a), (b), and (c) of Section 3.4 shall be reduced by $70,000 for each Btu/kWh by which the Project Heat Rate exceeds the sum of (A) the Contract Heat Rate and (B) either (1) a tolerance of 100 Btu/kWh, if the Closing occurs on or before

eighteen (18) months after the Effective Date, or (2) a tolerance of 150 Btu/kWh, if the Closing occurs more than eighteen (18) months after the Effective Date; provided, however, that in no event shall any unadjusted Purchase Price set forth in clause (a), (b) or (c) of Section 3.4 be reduced by more than $16,000,000 as a result of this Section 6.7(k)(ii). If a Purchase Price reduction pursuant to this Section 6.7(k)(ii) would exceed $16,000,000, Purchaser shall have the right to terminate this Agreement on account thereof upon written notice to Seller provided within thirty (30) days of Purchaser's receipt of the Final Plant Performance Test Results. Purchaser shall be entitled to make full use of the time provided in the previous sentence (even if the full use of such time would delay the Closing) to determine whether to exercise its termination right hereunder, and any such delay in the Closing will be considered a delay caused by Seller for purposes of determining the applicable Transaction Period and the Purchase Price payable at the Closing.

(l) If the Final Plant Performance Test Results establish that the Project NO_x Emission Rate exceeds the Contract NO_x Emission Rate and/or the Project CO Emission Rate exceeds the Contract CO Emission Rate, Seller shall, at its expense, use Commercially Reasonable Efforts to correct any such failure to achieve the Contract NO_x Emission Rate and/or Contract CO Emission Rate, as applicable, as soon as reasonably possible, but in no event later than a date sufficient to allow the Closing to occur by the Expiration Date. Any delay in the Closing as a result of the Final Plant Performance Test Results establishing that the Project NO_x Emission Rate exceeds the Contract NO_x Emission Rate and/or the Project CO Emission Rate exceeds the Contract CO Emission Rate will be considered a delay caused by Seller for purposes of determining the applicable Transaction Period and Purchase Price payable at the Closing.

(m) Notwithstanding anything herein to the contrary, Seller shall not be entitled to any increase in the Purchase Price or any other compensation from Purchaser if the Final Plant Performance Test Results reflect (i) a Project Capacity above the Contract Capacity, (ii) a Project Heat Rate below the Contract Heat Rate, (iii) a Project NO_x Emission Rate below the Contract NO_x Emission Rate, or (iv) a Project CO Emission Rate below the Contract CO Emission Rate.

Section 6.8. Risk of Loss; Casualty Events.

(a) (i) If, before the Closing, all or any portion of the Purchased Assets, including the Project Real Property, are damaged or destroyed (the portion of the Purchased Assets so damaged or destroyed, the "*Damaged Portion*"), whether by fire, theft, vandalism, flood, wind, explosion or other casualty (each instance thereof, a "*Casualty Event*") which Seller estimates in good faith based on Good Industry Practices (i) will result in total out-of-pocket costs to Repair the Damaged Portion (disregarding any proceeds that Seller and/or Affiliates of Seller would reasonably be expected to receive from the applicable Project Insurance Policies in respect of such Damaged Portion) less than $2,000,000 and (ii) would not reasonably be expected to be materially adverse to the operations or physical condition of the Purchased Assets taken as a whole, Seller will: (A) in the event that Seller reasonably determines that such Damaged Portion would reasonably be expected to be Repaired in accordance with Good Industry Practices at least sixty (60) days prior to the Expiration Date either: (1) Repair or cause to be Repaired the Damaged Portion in accordance with Good Industry Practices at least sixty

(60) days prior to the Expiration Date (in which case Seller shall be entitled to all proceeds of Project Insurance Policies related to such Casualty Event, whether paid prior to, at or following Closing (and Purchaser agrees to hold in trust any such proceeds received by it and promptly pay the same over to Seller)) and the remaining provisions of this Section 6.8 shall not apply to such Casualty Event (unless Seller fails to Repair such Damaged Portion in accordance with Good Industry Practices at least sixty (60) days prior to the Expiration Date in which case Section 6.8(a)(ii) shall apply) or (2) send a Casualty Event Notice and proceed as otherwise provided in this Section 6.8 or (B) where Seller does not reasonably believe that such Damaged Portion can be Repaired in accordance with Good Industry Practices at least sixty (60) days prior to the Expiration Date, apply the provisions of Section 6.8(a)(ii).

(ii) If this provision is applicable as provided in Section 6.8(a)(i), then Purchaser shall proceed with the Transactions and Close and may elect to either (A) require Seller to complete (or cause the completion of) such Repair after the Closing as provided herein at Seller's expense, or (B) (1) complete such Repair as required herein after the Closing at its (i.e., the Purchaser's) own expense and (2) reduce the Purchase Price by the total remaining out-of-pocket costs reasonably estimated by Seller to Repair the Damaged Portion (disregarding any proceeds that Seller and/or Affiliates of Seller would reasonably be expected to receive from the applicable Project Insurance Policies in respect of such Damaged Portion) as determined in accordance with Section 6.8(a).

(b) Seller shall notify Purchaser promptly in writing (the "*Casualty Event Notice*") of a Casualty Event which Seller estimates in good faith based on Good Industry Practices (i) will result in total out-of-pocket costs to Repair the Damaged Portion (disregarding any proceeds that Seller and/or Affiliates of Seller would reasonably be expected to receive from the applicable Project Insurance Policies in respect of such Damaged Portion) of greater than or equal to $2,000,000, (ii) would reasonably be expected to materially and adversely affect the Purchased Assets or (iii) would not reasonably be expected to be Repaired on or before sixty (60) days prior to the Expiration Date. The Casualty Event Notice shall include (i) the material facts and circumstances surrounding the Casualty Event, (ii) a good faith preliminary assessment of the effect of the Casualty Event on the Project, the Business and the Purchased Assets and (iii) whether or not, and the extent to which, the losses sustained as a result of such Casualty Event are covered by one or more Project Insurance Policies then in effect. Seller shall update and revise the information required to be provided to Purchaser under this Section 6.8 promptly after such information becomes known to Seller.

(c) As promptly as practicable, but in no event later than thirty (30) days after Purchaser's receipt of any Casualty Event Notice, Seller shall determine, in good faith, whether the Damaged Portion would reasonably be expected to be Repaired on or before sixty (60) days prior to the Expiration Date and the estimated Total Cost of such Repair. In making such determination, Seller, with Purchaser's prior written consent, which shall not be unreasonably withheld, conditioned or delayed, shall select an Approved Contractor, to (i) review the Damaged Portion and estimate the scope, cost and duration of the work required to Repair the Damaged Portion or (ii) agree to perform the work required to Repair the Damaged Portion pursuant to contractual arrangements, the terms and conditions of which are reasonably acceptable to Seller and Purchaser. Nothing herein shall prevent the selection of the Approved Contractor pursuant to a bidding process. Seller shall rely upon such estimate or contract (absent

fraud or manifest material error), as applicable, in making the determination required by the first sentence of this Section 6.8(c). Seller shall be solely responsible for the costs and expenses of obtaining such estimate or contract. "*Total Cost*" as used in this Section 6.8 shall mean (i) the total out-of-pocket costs to Repair the Damaged Portion less (ii) the sum of any proceeds that Seller and/or Affiliates of Seller would reasonably be expected to receive from the applicable Project Insurance Policies in respect of such Damaged Portion (excluding business interruption insurance).

(d) If Seller determines pursuant to Section 6.8(c) that the Damaged Portion would reasonably be expected to be Repaired as required herein on or before sixty (60) days prior to the Expiration Date for a Total Cost of $13,500,000 or less, then (i) Seller shall bear the costs of and, as between the Parties, exclusive responsibility for Repairing the Damaged Portion in accordance with Good Industry Practices and the other applicable terms of this Agreement, on or before sixty (60) days prior to the Expiration Date, (ii) Seller shall promptly commence and diligently pursue such Repair, until completion thereof, in accordance with its applicable obligations under this Agreement, including Section 6.1, and (iii) the Closing shall be delayed for such reasonable time as is necessary to accomplish the completion of such Repair, but in no event shall such completion be later than sixty (60) days prior to the Expiration Date. Seller shall be entitled to any and all proceeds of Project Insurance Policies with respect to such Casualty Event whether paid prior to, at or following Closing and Purchaser hereby agrees to hold any such proceeds in trust for Seller and promptly pay the same over to Seller.

(e) If Seller determines pursuant to Section 6.8(c) that the Damaged Portion would not reasonably be expected to be Repaired as required herein on or before sixty (60) days prior to the Expiration Date or that the Damaged Portion would not reasonably be expected to be Repaired as required herein for a Total Cost of $13,500,000 or less, then (i) Purchaser may elect to have Seller (A) proceed with the Transactions, (B) reduce the Purchase Price by the estimated Total Cost of such Repair as determined in accordance with this Section 6.8, (C) further reduce the Purchase Price by the sum of (1) all proceeds Seller or any Affiliate of Seller has received from the applicable Project Insurance Policy prior to the Closing in respect of the applicable Damaged Portion (excluding business interruption insurance) and (2) the aggregate amount of all undisputed covered claims arising out of the Casualty Event made by Seller or any of its Affiliates under the applicable Project Insurance Policies, to the extent proceeds from such claims have not been received by Seller or any of its Affiliates as of the Closing, (D) transfer or cause to be transferred to Purchaser at the Closing, for no additional consideration, the irrevocable right to (1) all proceeds Seller or any Affiliate Seller may be entitled to after the Closing from the applicable Project Insurance Policy in respect of the applicable Damaged Portion (excluding business interruption insurance), other than such proceeds for which the Purchase Price was reduced pursuant to clause (C)(2) above, and (2) any and all rights (including defenses), claims and causes of action of any kind that Seller or any of its Affiliates may have against any insurer or third party for damages or losses to the extent arising out such Casualty Event and allocable to the period after the Closing and (E) preserve and maintain the Project in its then-current state in accordance with Good Industry Practices and the other applicable terms of this Agreement pending the Closing, or (ii) either Party may terminate this Agreement. Each Party shall notify the other in writing of any termination of this Agreement elected by such Party pursuant to clause (B) above as promptly as practicable, but in no event later than 60-days after the determination described in the first sentence of this Section 6.8(e) is made. If Purchaser does

not elect to terminate this Agreement pursuant to this Section 6.8(e) on or before such 60-day period, Purchaser shall be deemed to have required Seller to take the actions set forth in Section 6.8(e)(i) and if Seller does not elect to terminate this Agreement pursuant to Section 6.8(e)(ii) on or before such 60-day period, Seller shall be deemed to have waived its right to terminate in respect of such Casualty Event under Section 6.8(e)(ii). If Purchaser elects the option described in clause (i) above and Seller elects the option described in clause (ii) above, then, irrespective of which election is made first, Purchaser's election shall be disregarded and Seller's election shall be given effect.

(f) If Seller has made the determination pursuant to Section 6.8(d) that the Damaged Portion would reasonably be expected to be Repaired as required herein on or before sixty (60) days prior to the Expiration Date and, despite Seller's compliance with the terms hereof, the Damaged Portion is not Repaired in accordance with Good Industry Practices and the other applicable requirements of this Agreement on or before sixty (60) days prior to the Expiration Date, then Purchaser may, in its sole and absolute discretion, either (i) proceed with the Transactions and (A) require Seller to complete (or cause the completion of) such Repair after the Closing as provided herein at Seller's expense or (B) (1) complete such Repair as required herein after the Closing at its (i.e., the Purchaser's) own expense, (2) reduce the Purchase Price by the positive difference, if any, of (x) the sum of the amount of the proceeds received by Seller and its Affiliates from the applicable Project Insurance Policies (excluding business interruption insurance) prior to the Closing minus (y) the amount of the reasonable, documented out-of-pocket costs expended by Seller on the Repair of such Damaged Portion prior to the Closing and (3) require Seller and, if and to the extent applicable, its Affiliates to transfer or cause to be transferred to Purchaser at the Closing the irrevocable right to all rights (including defenses), claims and causes of action that Seller and its Affiliates may have against any insurer or third party for damages or losses to the extent arising out such Casualty Event and allocable to the period after the Closing or (ii) terminate this Agreement. Purchaser shall notify Seller in writing of any termination of this Agreement pursuant to clause (ii) above on or before thirty (30) days prior to the Expiration Date.

(g) With respect to any Casualty Event where the aggregate cost of the Repair of the Damaged Portion as required herein equals or exceeds $2,000,000, Seller shall not grant its acceptance of any Repair of a Damaged Portion (in whole or in part) under this Section 6.8 without Purchaser's prior written consent, which shall not be unreasonably withheld, conditioned or delayed.

(h) For purposes of this Section 6.8, any Damaged Portion that constitutes parts, machinery, equipment, facilities, systems or others items shall not be considered Repaired if (i) such "Repair" is temporary or transitional in nature or such parts, machinery, equipment, facilities, systems or other items are not, in all material respects, safely and properly connected to, or integrated and operating safely and properly with, the other machinery, equipment, facilities, systems and/or items to which it is connected or integrated or with which it operates, or (ii) the operating performance and capabilities of such machinery, equipment, facilities, systems or items or the Project (including, if applicable, energy output, heat rate, emissions quantities) shall have diminished as a result of such Casualty Event or "Repair" or the cost to operate and maintain such machinery, equipment, facilities or systems or the Project following such Casualty Event or "Repair" shall be greater as a result of such Casualty Event or "Repair", in each case, by

more than an immaterial amount relative to the operating performance and capabilities or costs prior to the Casualty Event or "Repair."

(i) Seller shall use Commercially Reasonable Efforts to cooperate with Purchaser, include Purchaser in meetings, communications and inspections relating to any Repair conducted under this Section 6.8 (other than Section 6.8(a)) in order to enable Purchaser to make a reasonable, informed evaluation of the quality, sufficiency, and acceptability thereof, and complete such Repair on or before sixty (60) days prior to the Expiration Date. All work performed for Seller pursuant to this Section 6.8 shall be performed in accordance with Good Industry Practices and the other applicable terms of this Agreement.

(j) If any Casualty Event has occurred, then, provided Seller complies with this Section 6.8 with respect to such Casualty Event Seller shall not be deemed to be in breach of any representation, warranty or covenant in this Agreement nor shall such Casualty Event constitute a Material Adverse Effect, and, without limiting the foregoing, Purchaser shall not be entitled to any indemnity pursuant to Article IX, to the extent Seller's breach or non-compliance with such representation, warranty or covenant is due solely to the occurrence of such Casualty Event.

Section 6.9. Insurance.

(a) Purchaser acknowledges that, effective upon the Closing, except as provided in Section 6.9(c), Seller or any Affiliate thereof shall terminate or modify the Project Insurance Policies to exclude coverage of the Purchased Assets by Seller or any Affiliate thereof.

(b) From the Effective Date through the earlier of (i) the Closing or (ii) the termination of this Agreement, Seller shall maintain, or cause to be maintained, all Project Insurance Policies held by or for the benefit of Seller as of the Effective Date, provided that, Seller may replace or cause to be replaced any Project Insurance Policies with other policies with substantially similar coverage; provided, further, that with respect to any replacement of current insurers, Seller shall engage financially sound and reputable insurers as per A.M. Best Company ratings.

(c) Notwithstanding Section 6.9(a), Seller shall not (and shall not permit any Affiliate of Seller to) terminate or modify coverage under any "occurrence"-based Project Insurance Policy in such a manner as to prevent Seller from obtaining the benefit of such Project Insurance Policy after the Closing with respect to the Purchased Assets for insured Losses caused by events, facts, or circumstances occurring prior to the Closing.

(d) Seller shall cause Purchaser to be named as an "additional insured," and shall cause the insurer to waive any right of subrogation against Purchaser and its Affiliates, under each of the occurrence-based Project Insurance Policies in effect at any time from the Effective Date through the earlier of the Closing or the termination of this Agreement. After the Closing, Seller, at its own cost and expense, shall (i) subject to Section 6.8, take, and cause its Affiliates to take, all steps necessary or reasonably requested by Purchaser to collect or assist in the collection from applicable insurers of any Loss incurred by Purchaser and covered by any of the Project Insurance Policies (to the extent such Loss has not been paid to Purchaser by Seller),

and (ii) subject to Section 6.8, cooperate, and cause its Affiliates to cooperate, with and use Commercially Reasonable Efforts to assist Purchaser in the settlement, compromising, or arbitration of any claim of Purchaser under or with respect to any of the Project Insurance Policies in respect of such Loss.

Section 6.10. Tax Matters.

(a) Any and all Transfer Taxes incurred in connection with this Agreement, the Ancillary Agreements and the Transactions shall be borne by Seller. Seller shall timely prepare and file, to the extent required by Law, all necessary Tax Returns and other documentation with respect to all such Transfer Taxes, and timely pay the amount shown as due on such Tax Returns to the applicable Governmental Authority. Purchaser will be entitled to receive such Tax Returns and other documentation reasonably in advance of filing, but not less than ten (10) Business Days prior to the due date of such Tax Returns, and such Tax Returns and other documentation shall be subject to Purchaser's approval, which shall not be unreasonably withheld or delayed. To the extent required by Law, but subject to such review and approval, Purchaser or the appropriate Affiliate of Purchaser, as applicable, shall join in the execution of any such Tax Return or other documentation. To the extent the Transactions constitute a sale of tangible personal property, Purchaser and Seller intend for such sale to qualify as an isolated or occasional sale of tangible personal property pursuant to Ark. Code Ann § 26-52-401(17). Purchaser shall cooperate with Seller to provide all applicable certificates and other documentation necessary to obtain available Tax-exempt status for the Transactions. In preparing and reviewing such Tax Returns, the Parties shall cooperate and act in good faith to resolve any disagreement between them or with any Governmental Authority related to such Tax Returns.

(b) With respect to Proratable Tax Items, Purchaser shall prepare and timely file all Tax Returns required to be filed after the Closing with respect to the Purchased Assets, and shall duly and timely pay all such Taxes shown to be due on such Tax Returns. Purchaser's preparation of any such Tax Returns shall be subject to Seller's approval, which shall not be unreasonably withheld, conditioned or delayed. Purchaser shall make each such Tax Return available for Seller's review and approval no later than twenty (20) Business Days prior to the due date for filing such Tax Return; provided, however, that Seller's failure to approve any such Tax Return shall not limit Purchaser's obligation to timely file such Tax Return and duly and timely pay all Taxes shown to be due thereon. Not less than five (5) Business Days prior to the due date of any such Taxes, Seller shall pay to Purchaser the portion of the amount shown as due on such Tax Return that is the responsibility of Seller and, to the extent required by Law, Seller or, if applicable, the appropriate Affiliate shall join in the execution of any such Tax Return. In preparing and reviewing such Tax Returns, the Parties shall cooperate and act in good faith to resolve any disagreement between them or with any Governmental Authority related to such Tax Returns.

(c) Seller's preparation of any Tax Return relating to an Encumbrance for Property Taxes on or related to the Purchased Assets that will arise after the Closing Date shall be subject to Purchaser's approval, which shall not be unreasonably withheld, conditioned or delayed. Seller shall make each such Tax Return available for Purchaser's review and approval no later than twenty (20) Business Days prior to the due date for filing such Tax Return;

provided, however, that Purchaser's failure to approve any such Tax Return shall not limit Seller's obligation to timely file such Tax Returns and duly and timely pay all Taxes shown to be due thereon. Not less than five (5) Business Days prior to the due date of any such Taxes, Purchaser shall pay to Seller the portion of the amount shown as due on such Tax Return that is, as determined in accordance with Sections 3.6 and 3.8, the responsibility of Purchaser and, to the extent required by Law, Purchaser or any of its Affiliates shall join in the execution of any such Tax Return. In preparing and reviewing such Tax Returns, the Parties shall cooperate and act in good faith to resolve any disagreement between them or with any Governmental Authority related to such Tax Returns.

(d) Any refund received for Taxes paid or payable with respect to the Purchased Assets shall be promptly paid (or to the extent payable but not paid due to offset against other Taxes shall be promptly paid by the Party receiving the benefit of the offset) as follows: (i) to Seller, if attributable to Taxes with respect to any Tax year or portion thereof ending on or before the Closing Date (or for any Tax year beginning before and ending after the Closing Date to the extent allocable to the portion of such period beginning before and ending on the Closing Date); and (ii) to Purchaser, if attributable to Taxes with respect to any Tax year or portion thereof beginning after the Closing Date (or for any Tax year beginning before and ending after the Closing Date to the extent allocable to the portion of such period ending after the Closing Date).

(e) From and after the Closing, the Parties shall (and shall cause their respective Affiliates to) cooperate fully with each other and make available or cause to be made available to each other in a timely fashion for consultation, inspection and copying, as applicable, such personnel, Tax data, Tax Returns and filings (or portions thereof), files, books, records, documents, financial, technical and operating data, computer records and other information as may be reasonably required, as may reasonably be requested by the other Party in connection with (i) the preparation or filing by such other Party or any Affiliate thereof of any Tax Return, (ii) any audit or other examination by any Tax authority of or affecting a Party (or an Affiliate thereof) to the extent such audit or examination relates to or arises from the Transactions, the Purchased Assets, or the Business, (iii) any judicial, regulatory or administrative Action relating to liability for Taxes, or (iv) any claim for refund of Taxes (if not inconsistent with this Agreement); provided, however, that a Party shall have no obligation to provide access to (A) any information protected by legal privilege or that it is contractually prohibited from providing to the other, it being agreed that such Party shall use Commercially Reasonable Efforts to remove or obtain a waiver of such contractual prohibitions, or (B) any information related to income taxes. Each Party shall retain and provide the requesting Party with any and all material information relevant to such Tax Return, audit or examination, Action, or claim, and shall make employees of its Affiliates available on a mutually convenient basis to provide additional information about and explanations of any information provided hereunder.

(f) Subject to any shorter period for payment provided elsewhere in this Agreement, a Party shall be entitled to full reimbursement, within thirty (30) days of written request to the other Party, for any Tax borne by such requesting Party that is the responsibility of the other Party pursuant to this Agreement.

(g) The Parties shall attempt in good faith to resolve any dispute between them as to the amount of Taxes payable by a Party hereunder.

Section 6.11. Employee Matters.

(a) Neither Purchaser nor any of its Affiliates shall have any obligation under this Agreement or otherwise to (i) employ, offer employment to, or engage any Employee, independent contractor or any other Person providing services to the Project or for the operation of the Purchased Assets or (ii) assume any employment Contract, Employee Plan, Collective Bargaining Agreement or other Contract related thereto, and shall have no obligations or liability thereunder or in connection therewith. Seller shall not enter into, make or provide, and shall cause its Affiliates not to enter into, make, or provide, directly or indirectly, any written or verbal agreement, commitment, representation or other communication to current or former Employees or any other Persons that is inconsistent with the provisions of this Section 6.11(a).

(b) (i) Purchaser or any of its Affiliates may, in Purchaser's or such Affiliate's sole and absolute discretion, but upon Seller's approval, which shall not be unreasonably withheld, conditioned or delayed, and subject to the consent of Operator (which Seller shall, upon the request of Purchaser, use Commercially Reasonable Efforts to obtain), communicate with and interview any then-current or former Employee of Operator or any of its Affiliates, who are engaged primarily in the performance of services, including operation, management, administrative or similar services, for the Project, the operation of the Purchased Assets or the conduct of the Business, about the possibility of employment with Purchaser or any of its Affiliates and, in Purchaser's or its Affiliate's sole and absolute discretion, elect to offer employment to any such Employee that would be contingent upon, and would not commence earlier than, the Closing and only on such terms and conditions as Purchaser or its Affiliate shall determine. Nothing in this Agreement shall obligate Purchaser or any of its Affiliates to offer employment to any Employee of Operator or any of its Affiliates after the Closing, or to offer employment after the Closing on the same terms or conditions or with the same benefits offered by Operator or any of its Affiliates, as applicable.

(ii) In the event Purchaser or any of its Affiliates decides to hire any such Employee, Purchaser shall notify Seller of such decision, and Seller shall use Commercially Reasonable Efforts to the extent permitted under the O&M Agreement to cause Operator, subject to Operator's consent, to release such Employee from any confidentiality agreement or other agreement with respect to matters relating to the Project, any of the Purchased Assets or the Transactions that may interfere with such Employee's prospective employment with Purchaser or such Affiliate.

(iii) Seller shall, to the extent provided under any Project Contract or Law, remain liable to Operator, GEII and their respective Affiliates for all costs, expenses, liabilities, claims, wages, benefits, severance, separation, taxes, unemployment, and all other obligations and liabilities of any nature whatsoever relating to the period prior to the Closing with respect to Employees of Operator or GEII and their respective Affiliates who are engaged in the performance of services for the Project or for the operation of the Purchased Assets and relating in any way to their employment, and, for the avoidance of doubt, all such liabilities and obligations shall be Excluded Liabilities.

Nothing in this Agreement shall create any claim or right on the part of any Employee, and no such Employee shall be entitled to assert any claim or right hereunder or under any Ancillary Agreement.

(c) With respect to any "mass layoff" or "plant closing" as defined by the WARN Act or similar applicable state or local Law affecting any of the Employees or other individuals performing work or services related to or for the Project, Seller shall use Commercially Reasonable Efforts to the extent permitted under the O&M Agreement and the LTSA, as applicable, to cause Operator, GEII and their respective Affiliates (as applicable) to: (i) comply fully with the WARN Act and any and all similar applicable state and local Laws and (ii) perform and discharge the obligation, if any, to serve in a timely manner and fashion all notices required by the WARN Act or similar applicable state or local Law to Employees or other individuals performing work or services related to or for the Project.

(d) Seller shall use Commercially Reasonable Efforts to the extent permitted under the O&M Agreement to cause Operator to provide (i) all COBRA notices to all Employees of Operator or any of its Affiliates performing work or services related to or for the Project, the Purchased Assets, or the Business, and to such Employees' qualified beneficiaries and dependents, required as a result of the completion of the Transactions or a COBRA qualifying event occurring prior thereto or simultaneously therewith and (ii) COBRA continuation coverage to all Employees of Operator or any of its Affiliates performing work or services related to or for the Project, the Purchased Assets, or the Business, and to such Employees' qualified beneficiaries and dependents, who become entitled to COBRA continuation coverage as a result of the completion of the Transactions or a COBRA qualifying event occurring prior thereto or simultaneously therewith.

(e) From the Effective Date until the first anniversary of the Closing or the earlier termination of this Agreement in accordance with its terms, Purchaser shall not, directly or indirectly through its present or future Affiliates or other Persons, without Seller's prior written consent, (i) subject to Section 6.14(a) and Section 6.14(b), initiate contact, or maintain any contact already initiated, with any customer or supplier of Seller or any of its Affiliates regarding the Project (and known by Purchaser to be such a customer or supplier), except in connection with the preparation by Purchaser or any of its Affiliates for the transfer to Purchaser or ownership, use, operation, maintenance, repair, or modification of (or the integration of the operations, systems, processes, and other key business activities and systems relating to) the Purchased Assets, in whole or in part, upon or after the Closing, or (ii) subject to Section 6.11(a) and Section 6.11(b), solicit for employment any individual who is, at the applicable time, an officer or Employee of Seller, any of its Affiliates, or Operator (each a "*Restricted Employee*"); provided, however, that the foregoing clause (ii) shall not prohibit (A) any general solicitation for employment not specifically directed to a Restricted Employee (*e.g.*, an advertisement or posting in the print, radio or electronic media or a solicitation conducted by a personal placement agent, professional search firm, or employment agency) or the hiring by Purchaser or any of its Affiliates of any Restricted Employee who responds to any such general solicitation, (B) the hiring of a Restricted Employee who directly or indirectly contacts Purchaser or any of its Affiliates of his or her own initiative without any direct or indirect solicitation by Purchaser or any of its Affiliates, (C) from and after the Closing, the solicitation or hiring by Purchaser or any of its Affiliates of any Restricted Employee who is an Employee of Operator or any of its

Affiliates and, prior to the Closing, was employed primarily at the Project or primarily provided services for the Project or the Business, or (D) the solicitation or hiring by Purchaser or any of its Affiliates of any Restricted Employee according to the terms of this Agreement or the Hot Spring Purchase Agreement. Seller shall cooperate, and cause its Affiliates to cooperate, with Purchaser, its Affiliates, and their respective Representatives in connection with any reasonable request by or for Purchaser to obtain permission from the providers of operation and maintenance, plant management, administrative and similar services to the Project or the Business to allow Purchaser, its Affiliates, and their respective Representatives to contact, interview, and possibly hire, retain, or Contract with the employees or personnel providing such services.

Section 6.12. No Solicitation.

(a) *General Rule*. Except as set forth in this Section 6.12, none of KGen, Seller or any of their respective Affiliates shall, and KGen and Seller shall each use Commercially Reasonable Efforts to cause its respective Representatives to not, at any time prior to the Closing:

(i) solicit, initiate, seek or knowingly encourage (including through the providing of information), or take any other action to in any way knowingly facilitate, any inquiries, proposals or offers from a Third Party with respect to, or the making of any proposal that constitutes or could reasonably be expected to lead to, a Takeover Proposal (provided, however, that in connection with a request to terminate, waive, amend or modify any provision of, or grant permission under, any standstill provision, which request is made by a Third Party without any solicitation, initiation, knowing encouragement or knowing facilitation by KGen, Seller or any of their respective Affiliates, this clause (i) shall not prohibit the KGen Board from terminating, waiving, amending or modifying any provision of, or granting permission under, any standstill provision if the KGen Board determines in good faith, after consulting with KGen's outside legal advisors, that the failure to do so would be inconsistent with its fiduciary duties under applicable Law);

(ii) furnish any non-public information regarding the Purchased Assets, Seller or KGen to any Person (other than Purchaser or its Representatives) in connection with or in response to a Takeover Proposal or any inquiry, proposal or offer that reasonably could be expected to lead to a Takeover Proposal;

(iii) engage in discussions or negotiations with any Person with respect to any Takeover Proposal or any inquiry, proposal or offer that reasonably could be expected to lead to a Takeover Proposal;

(iv) withdraw or modify, or propose publicly to withdraw or modify the KGen Recommendation, except as permitted by Section 6.6(b) or this Section 6.12;

(v) endorse, approve or recommend, or propose publicly to endorse, approve or recommend, any Takeover Proposal; or

(vi) negotiate or enter into any confidentiality agreement, term sheet, letter of intent, memorandum of understanding, agreement in principle, acquisition agreement or other similar agreement or document (whether binding or not) for any Takeover Proposal.

Each of KGen and Seller (x) shall, as promptly as practicable following the Effective Date, but in any event within two (2) Business Days of the Effective Date, advise their respective Representatives of the restrictions set forth herein and shall cause its Affiliates to, and shall use its reasonable best efforts to cause its Representatives to, abide by such restrictions, (y) shall, and shall cause its Affiliates to, and shall use its reasonable best efforts to cause its and its Affiliates' Representatives to, immediately cease and cause to be terminated any existing activities, discussions or negotiations with any Persons conducted heretofore with respect to any Takeover Proposal, and (z) request the prompt return or destruction of all confidential information concerning the Purchased Assets, Seller and its Affiliates previously furnished by KGen, Seller, or their respective subsidiaries, Affiliates or Representatives to any Third Party (other than Purchaser) but only to the extent that KGen or Seller has not made such request prior to the Effective Date. KGen and Seller acknowledge and agree that any action taken by any Affiliate or Representative of KGen or Seller (whether or not such Person is purporting to act on behalf of KGen or Seller) that would, had such action been taken directly by KGen or Seller, constitute a breach of the restrictions set forth in this Section 6.12 shall be deemed to constitute a breach of this Section 6.12 by each of KGen and Seller.

Notwithstanding anything to the contrary contained in this Section 6.12, after the Stockholder Approval has been obtained, KGen, Seller or any of their respective Affiliates may take any of the actions described in Section 6.12(a)(i) or (iii) with respect to any potential transaction that reasonably could be expected to lead to a Permitted Transaction; provided, however, that, in advance of such a transaction being deemed a Permitted Transaction by the acknowledgement of Purchaser that such Third Party is reasonably acceptable to Purchaser for the purposes of such definition, neither KGen, Seller nor any of their respective Affiliates will discuss any letter of intent or understanding or any term sheet or provide any non-public information regarding the Purchased Assets, the Transactions, Seller or KGen to such Third Party.

(b) *Takeover Proposal*. Notwithstanding anything in this Agreement to the contrary, including Section 6.12(a), at any time prior to obtaining the Stockholder Approval, if KGen or any of its Representatives receives a written Takeover Proposal that did not result from a breach of Section 6.12(a) (including any action taken by any Affiliate or Representative deemed to be a breach of Section 6.12(a) by KGen and Seller), KGen, Seller or any of their respective Representatives may contact the Person or Persons making such Takeover Proposal to clarify (but not negotiate) any terms or conditions thereof that the KGen Board may reasonably require to make a good faith determination (after consultation with KGen's outside legal and financial advisors) as to whether such Takeover Proposal is, or could reasonably be expected to lead to, a Superior Offer, and may also:

(i) furnish non-public information regarding KGen, Seller or any of their respective subsidiaries in response to a request by the Third Party who made such Takeover Proposal so long as such Third Party executes (or is otherwise bound by) a

confidentiality agreement at least as restrictive as the Confidentiality Agreement (a true and complete copy of which shall be provided to Purchaser promptly upon receipt of such Takeover Proposal (with respect to a Third Party already subject to a confidentiality agreement satisfying the provisions of this Section 6.12(b)) or immediately following the execution of same (including any amendment to an existing confidentiality agreement to conform to the provisions of this Section 6.12(b)); provided that (x) in the case of an existing, amended or new confidentiality agreement, as applicable, such confidentiality agreement may not prohibit KGen or Seller from providing information to Purchaser, including information concerning the actual or contemplated Takeover Proposal, to the extent required to permit Seller to satisfy its obligations under Section 6.12(d)(ii) and (y) no such amended or new confidentiality agreement need prohibit the making or amendment of a Takeover Proposal; and/or

(ii) engage in discussions or negotiations with the Third Party who made such Takeover Proposal,

if, prior to taking any of the actions described in clause (i) or (ii), the KGen Board determines in good faith (x) after consultation with KGen's outside legal and financial advisors that such Takeover Proposal is, or could reasonably be expected to lead to, a Superior Offer and (y) after consultation with KGen's outside legal advisors, that the failure to take such action would be inconsistent with its fiduciary duties under applicable Law. KGen shall make available, or cause to be made available, to Purchaser (in each case prior to or substantially concurrently with the time it is provided to such Third Party) any non-public information regarding Seller, KGen or any of its subsidiaries provided by KGen or Seller to any Person or Persons who made a Takeover Proposal, to the extent that such information was not previously made available to Purchaser.

(c) *Notice of Inquiries*. KGen shall (i) notify Purchaser as promptly as practicable (and in any event within twenty-four (24) hours) after the receipt by Seller, KGen or any of their respective Representatives, of any bona fide inquiries, proposals or offers, requests for information or requests for discussions or negotiations regarding any Takeover Proposal, or that could reasonably be expected to result in a Takeover Proposal, specifying the terms and conditions thereof and the identity of the Person making such inquiry, proposal, offer or request (a "*Notice of Inquiry*") and (ii) keep Purchaser informed on a reasonably current basis of the status of any discussions or negotiations and of any modifications to any such Takeover Proposal or any such inquiries, proposals, offers or requests for information.

(d) *Superior Offer*.

(i) *Actions Following Superior Offer*. Notwithstanding anything in this Agreement to the contrary, including Section 6.12(a), at any time prior to obtaining Stockholder Approval (1) the KGen Board may make a KGen Recommendation Change in connection with a Takeover Proposal or (2) KGen and Seller may terminate this Agreement (by delivery of a written notice of termination to Purchaser) so that KGen or Seller may enter into an agreement in respect of a Superior Offer (the "*Superior Offer Documentation*"), but only if, in the case of either or both of clause (1) or (2) above: (x) Seller or KGen shall have received a Takeover Proposal that did not result from a

material breach of Section 6.12(a), (y) the KGen Board determines in good faith, after consultation with KGen's outside advisors, that such proposal constitutes a Superior Offer, and, after consultation with KGen's outside legal advisors, that the failure of the KGen Board to make a KGen Recommendation Change and/or the failure of Seller to terminate this Agreement, as applicable, would be inconsistent with the fiduciary duties of the KGen Board under applicable Law, and (z) prior to or contemporaneously with termination of this Agreement pursuant to this Section 6.12(d), KGen shall have paid to Purchaser the termination fee in accordance with Section 10.3(a)(iv).

(ii) *Notice and Purchaser Match Rights.* Notwithstanding the foregoing, the KGen Board shall not be permitted to make a KGen Recommendation Change and KGen and Seller shall not be permitted to terminate this Agreement pursuant to this Section 6.12(d), in each case in connection with a Superior Offer, unless (x) at least fifteen (15) days has passed since the delivery by Seller to Purchaser of the Notice of Inquiry associated with a Takeover Proposal from the Third Party making such Superior Offer and (y) five (5) Business Days prior to the taking of such action, KGen shall have provided written notice to Purchaser (a "*Notice of Superior Offer*") (A) specifying the material terms and conditions of the Superior Offer and the identity of the Third Party making the Superior Offer, and (B) stating that the KGen Board intends to make a KGen Recommendation Change or that KGen and Seller intend to terminate this Agreement so that KGen or Seller may enter into the Superior Offer Documentation (in which case such notice shall be accompanied by a copy of the then most recent drafts of the Superior Offer Documentation), as applicable. KGen agrees that after delivering a Notice of Superior Offer, Purchaser will be permitted to propose to KGen revisions to the terms of the Transactions such that the relevant Takeover Proposal shall no longer be deemed a Superior Offer, and that KGen and its Representatives will consider in good faith any such revisions to the terms of the Transactions proposed by Purchaser. KGen Board shall not be permitted to make a KGen Recommendation Change and KGen and Seller shall not be permitted to terminate this Agreement pursuant to this Section 6.12(d), as applicable, if during the five (5) Business Day period after delivery of the Notice of Superior Offer (the "*Purchaser Match Period*"), Purchaser shall have made to KGen a binding offer to revise the terms of this Agreement and, after consideration of the terms of this Agreement as proposed by Purchaser to be revised by the KGen Board in good faith and after consulting with KGen's outside advisors, the KGen Board concludes that the Takeover Proposal referenced in the Notice of Superior Offer no longer constitutes a Superior Offer. In the event of any amendment to the consideration or any other material revisions to the Superior Offer, KGen shall be required to deliver a new Notice of Superior Offer to Purchaser and to comply with the requirements of this Section 6.12(d) with respect to such new Notice of Superior Offer, including a new Purchaser Match Period except that the new Purchaser Match Period shall be four (4) Business Days.

(e) *Tender Offer*. Nothing contained in this Agreement shall prohibit KGen or the KGen Board from taking and disclosing to KGen's stockholders a position with respect to a tender offer by a Third Party pursuant to Rule 14e-2 promulgated under the Exchange Act, or from making such disclosure to KGen's stockholders which, in the judgment of the KGen Board, after consulting with outside legal counsel, is reasonably likely to be required under applicable Law; provided, however, that any disclosure made pursuant to this Section 6.12(e) (other than a

"stop, look and listen" letter or similar communication of the type contemplated by Rule 14d-9(f) under the Exchange Act) shall be deemed to be a KGen Recommendation Change unless the KGen Board expressly states in such disclosure that the KGen Recommendation has not changed.

(f) *Permitted Transaction*. Purchaser shall respond in writing within ten (10) Business Days from the date of receipt of any written request from KGen for a decision as to whether a Third Party is reasonably acceptable to Purchaser for the purposes of complying with the applicable portion of the definition of Permitted Transaction. KGen shall keep Purchaser reasonably apprised of any negotiations concerning a Permitted Transaction described in clause (a)(ii) of the definition of that term, and shall, at least five (5) Business Days prior to executing documentation providing for such Permitted Transaction, provide Purchaser with a copy of such documentation in order to permit Purchaser to confirm that the relevant transaction complies with the definition of Permitted Transaction.

Section 6.13. Notice of Certain Events; Reporting Obligations.

(a) Promptly after obtaining Knowledge thereof, Seller shall notify Purchaser in writing of, describing in reasonable detail, (i) if and to the extent Purchaser is not copied on such notice or has not participated in or received such communication, any written notice or other written communication from any Governmental Authority in connection with or relating to the Transactions; (ii) any unanticipated maintenance or repair of the Project, or any emergency condition affecting, or unscheduled interruption of, the Business or the operations of Seller, except when the expenditure of Seller and/or its Affiliates or Operator as a result of such maintenance or repair, emergency condition, or interruption would not reasonably be expected to (A) exceed, and does not exceed, $500,000 for any event or condition or group of related events or conditions or (B) result in, and does not result in, a material threat to health or safety or of damage to property of third parties; (iii) any fact, event, circumstance or condition (or set of facts, events, circumstances or conditions) that makes, or would reasonably be expected to make, impossible or unlikely, or otherwise materially threatens, the satisfaction of the conditions in Article VIII or in Section 7.1 or Section 7.5; (iv) any receipt of a written notice of a violation, or written inquiry or investigation into a possible violation, of any Law or Permit relating to the Project or the Business; (v) any additional Permit, or any supplement, amendment or modification of an existing Permit, required or proposed to be sought by Seller or Operator in connection with the Project or the Project Site; or (vi) any organizational effort by a trade union, labor organization, a collective bargaining representative or employee representative on the Project Site or otherwise with respect to the Project; provided that any notification given under any other provision of this Agreement which encompasses the matters required to be disclosed under this Section 6.13 shall be deemed to have been delivered under this Section 6.13 and in compliance therewith. Subject to Section 11.2, no notification made pursuant to this Section 6.13(a) shall be deemed to cure any inaccuracy of any representation or warranty of Seller or to prevent, limit or restrict Purchaser's exercise of its rights under this Agreement prior to Closing.

(b) Promptly after obtaining Knowledge thereof, Purchaser shall notify Seller in writing of, describing in reasonable detail, any fact, event, circumstance or condition (or set of facts, events, circumstances or conditions) that makes impossible or unlikely, or would reasonably be expected to make impossible or unlikely, or otherwise materially threatens, the

satisfaction of the conditions in Article VII or in Section 8.1 or 8.5. Subject to Section 11.2, no notification made pursuant to this Section 6.13(b) shall be deemed to cure any inaccuracy of any representation or warranty of Purchaser or to prevent, limit or restrict Seller's exercise of its rights under this Agreement prior to Closing.

(c) From and after the Effective Date, Seller shall prepare, or cause to be prepared, a Monthly Operating Report and a Monthly Inventory Report as of the last date of each calendar month, consistent with Seller's practice as of the Effective Date, and shall deliver, or cause to be delivered, the Monthly Operating Report and the Monthly Inventory Report for each such calendar month to Purchaser as soon as practicable but in any event within thirty (30) days of the end of each such calendar month. Unless the Parties otherwise agree, the final Monthly Operating Report and Monthly Inventory Report shall be due within thirty (30) days of the month following the month in which the Closing occurs. In addition, Seller shall provide to Purchaser promptly after the receipt or production thereof by or to Seller or any Affiliate thereof any (i) other material recurring periodic report or other material report by or on behalf of Operator, GEII, or other third party contractor performing work for Seller or any of its Affiliates relating to the Project or the conduct of the Business, including Operator's operating reports pursuant to the O&M Agreement, GEII's monthly "Flash" reports pursuant to the LTSA, and any material budget, budget reconciliation, tracking or monitoring report, request for unbudgeted capital expenditures or material unbudgeted operating expenditures, material test report, or material report relating to any material maintenance on, any material repair, replacement, outage or inspection of, the Project (in whole or in part) or any material report that details or describes any event or activity that has a material adverse affect, or would reasonably be expected to have a material adverse affect, on the Project's capacity, heat rate, or emission rates, (ii) material and non-privileged report relating to the Repair of any Damaged Portion or the Remediation of any Environmental Condition, and (iii) non-privileged report of any material accident or safety incident (to the extent permitted by Law). For purposes of this Section 6.13(c), the term "reports" shall be construed to include memoranda, letters, studies, bulletins, filings, and other comparable written or electronic materials; provided, that in no event shall Seller have any obligation hereunder to disclose to Purchaser any information relating to the price at which, or the Persons from whom or to whom, it purchases or sells natural gas, energy, capacity or other electric services and products.

(d) In addition to the disclosures required under Sections 6.13(a) and 6.13(b), each Party shall apprise the other upon request of its progress with respect to the satisfaction of the conditions of such Party in Article VII or Article VIII, as applicable. Copies of all information provided to a Party under this Section 6.13 shall be materially accurate and complete copies.

Section 6.14. Information and Records.

(a) Prior to the Closing, Seller shall, at Purchaser's sole cost and expense (which shall be limited to the reasonable out-of-pocket expenses of Seller), provide or cause to be provided (to the extent of its ability with respect to unaffiliated third parties) to Purchaser, ESI, and their respective Representatives, upon reasonable prior notice, reasonable access during ordinary business hours, in a manner that does not unreasonably interfere with normal business operations, to (i) working papers, books, data, records, programs, and other material systems or

information reasonably relating to the Project, the Purchased Assets or the Business, including drawings in AutoCAD or similar programs, OEM manuals, and other information and data, in electronic form where applicable, necessary to enable parallel migration to Purchaser's information systems, and (ii) the Project, the Project Real Property, Operator, GEII, the Project's plant and operations managers, and Representatives of Seller or its Affiliates that are involved with the Business, for a reasonable business purpose in connection with the Transactions. The Parties shall use Commercially Reasonable Efforts to cooperate with each other in connection with the foregoing.

(b) (i) Without limiting the generality of, and subject to, Section 6.14(a), Seller agrees that Purchaser and its Representatives shall be provided access under Section 6.14(a) for the purpose of (A) performing or witnessing soil tests and other engineering studies as well as boundary and other surveys of the Project Real Property (or any portion thereof) or other work reasonably related to the procurement of title insurance for the Project, (B) subject to reasonable advance notice to Seller, monitoring the operation and maintenance of the Project, (C) planning and facilitating an orderly transition of the ownership, management and operation of the Project, or integration of the operations, systems, processes, and other key business activities and systems relating to the Project, on the Closing Date, (D) assessing Seller's compliance with and the accuracy of its representations and warranties under this Agreement and any applicable Ancillary Agreement, (E) determining the NERC requirements applicable to the Project and/or understanding or assessing Seller's and Operator's division of responsibility for and compliance with such requirements, (F) observing, monitoring and assessing performance of any material repair, restoration, replacement, testing, cure or Remediation in respect of the Project, in whole or in part, as contemplated by Sections 6.7 and 6.8, and (G) exercising its rights and discharging its obligations under this Agreement.

(ii) With respect to Environmental matters, the right of access under Section 6.14(a) shall include reasonable access in order to (A) allow the performance of and witness the Environmental Assessment, (B) investigate and/or assess the presence, scope and extent of any potential Environmental Condition at the Project Real Property identified by or made known to Purchaser after the Effective Date, including Environmental Liabilities, and (C) observe, monitor and/or assess the status and performance of any Remediation in respect of the Project Real Property, in whole or in part; provided, however, that Purchaser shall not conduct any invasive or destructive environmental or subsurface investigation or any sampling or testing of environmental media, or any "Phase II" Environmental site assessment work on the Project Real Property.

(c) Without limitation of the other applicable terms of this Agreement, after the Closing, each Party shall use Commercially Reasonable Efforts to provide, or cause to be provided, to the other Party (and in addition, in the case of Purchaser, ESI) and its or their respective Representatives, upon reasonable notice and at the requesting Party's cost and expense (which shall be limited to the reasonable out-of-pocket expenses of the non-requesting Party), reasonable access to, in a manner that does not unreasonably interfere with normal business operations, the data, books, records and other material information reasonably relating to, and available Representatives reasonably involved in, the Project or the Business as such Party may reasonably request in connection with any Action, audit, issue, or dispute involving the Project,

the Business, Seller, any Affiliate of Seller, Purchaser, any Affiliate of Purchaser, Operator or GEII (excluding any dispute or litigation between or among the Parties or their Affiliates) and based upon or arising out of Contracts, Permits, events, facts, circumstances, conditions, acts, or conduct of Seller, any Affiliate of Seller, Purchaser, any Affiliate of Purchaser, Operator, GEII, or any Representatives of any of the foregoing, occurring or in existence on or prior to the Closing and related to the Project or the Business. The Parties shall use Commercially Reasonable Efforts to cooperate with each other in connection with the foregoing.

(d) A Party shall have no obligation to provide access to any document or information under this Section 6.14 that is privileged under Law from third party disclosure or that a Party is prohibited by Contract from providing; provided, however, that (i) the Party subject to such prohibition shall use, upon request by the other Party, Commercially Reasonable Efforts to cause such contractual prohibitions to be removed or waived and (ii) nothing in this Section 6.14(d) shall preclude a Party from contesting by appropriate legal proceedings any claim of privilege asserted by the other Party where the subject information, work product or communication would, but for the application of privilege, be required to be disclosed under this Agreement.

Section 6.15. Confidentiality; Public Announcements.

(a) All information provided or obtained by a Party, directly or indirectly, from or on behalf of the other Party under this Agreement prior to the Closing shall be subject to the Confidentiality Agreement. Seller and Purchaser hereby adopt and agree to be bound, effective as of the Effective Date, by the Confidentiality Agreement as though they were signatories thereto. The Confidentiality Agreement shall terminate upon the Closing.

(b) All information provided or obtained by a Party, directly or indirectly, from or on behalf of the other Party under this Agreement after the Closing shall be subject to the Post-Closing Confidentiality Agreement.

(c) (i) Without limiting the generality of the Confidentiality Agreement, except to the extent required by Law or applicable rules or regulations of a stock or commodities exchange of which it is a member, neither KGen nor Seller, on the one hand, nor Purchaser on the other, nor any of their respective Affiliates shall issue a press release or make any other public announcement concerning the Transactions or the contents of this Agreement without the prior written consent of Seller, in the case of the Purchaser, and Purchaser, in the case of KGen and Seller. If any such announcement or other disclosure is required by any Law or applicable rule or regulation of such stock or commodities exchange, the Person required to make the disclosure shall give the Purchaser, in the case of KGen or Seller, or, the Seller in the case of the Purchaser, to the extent legally permissible, prompt written notice of, and a reasonable opportunity to comment promptly on, the proposed disclosure, and shall limit such disclosure to such information as is reasonably required to comply with such Laws or rules or regulations.

(ii) Notwithstanding anything to the contrary in the foregoing, (a) after the Effective Date, Seller and any Affiliate of Seller may issue or make one or more press releases or other public announcements concerning the Transactions or the contents of this Agreement (including disclosure of the purchase price or any material term of this

Agreement) without the prior written consent of Purchaser if such press release or public announcement is issued or made for the primary purpose of public disclosure to KGen's shareholders and the information disclosed therein is consistent with the information that KGen would be required to disclose if it were regulated as a public company by the SEC and subject to the reporting requirements of the Exchange Act or in connection with seeking the Stockholder Approval; provided, however, that the issuance or making of any such press release or public announcement shall be subject to Seller's providing as much prior written notice to Purchaser as is practicable under the circumstances and Seller's reasonable consultation with Purchaser and (b) Seller may disclose the contents of this Agreement and any Ancillary Agreement in connection with a Permitted Transaction or a Takeover Proposal to the extent permitted under Section 6.12.

(d) The Parties agree that nothing hereunder shall obligate either Party to share with the other Party any information, work product or communications of any type or nature whatsoever which a Party determines (in good faith) are subject to privilege, including the attorney-client and/or work product privileges; provided, that nothing in this Section 6.15(d) shall preclude a Party from contesting by appropriate legal proceedings any claim of privilege asserted by the other Party where the subject information, work product or communication would, but for application of privilege, be required to be disclosed under this Agreement.

Section 6.16. Removal of Excluded Assets. From time to time, for a period of up to ninety (90) days following the Closing, Seller may remove, at its sole cost and expense, and without unreasonable interference with the normal business operations or activities of Purchaser at the Project Real Property, any tangible Excluded Asset remaining at, on, in or under the Project Real Property as of the Closing. The dates and times of any such removal shall be coordinated reasonably in advance with Purchaser. If Seller fails to remove all of the tangible Excluded Assets located at, on, in or under the Project Real Property within such ninety (90)-day period, then each such remaining tangible Excluded Asset shall be deemed to have been abandoned by Seller, and Purchaser may appropriate, sell, store, destroy or otherwise dispose of all or any portion of such tangible Excluded Assets without notice to Seller and without any obligation to account for such tangible Excluded Assets. To the extent the reasonable out-of-pocket costs and expenses incurred by Purchaser in connection with appropriating, selling, storing, destroying or otherwise disposing of such tangible Excluded Assets exceed the revenues received by Purchaser in connection therewith, Seller shall reimburse Purchaser for all such reasonable out-of-pocket excess costs and expenses within ten (10) days of Purchaser's delivery to Seller of a written request therefor. Notwithstanding anything to the contrary contained herein, the terms and conditions of this Section 6.16 shall survive the Closing.

Section 6.17. Trade Names. With respect to any name of Seller or any Affiliate or related or similar trade name, trademark, service mark, corporate name, logo or any similar Intellectual Property that may appear on any of the physical plant constituting the Purchased Assets, Purchaser is hereby granted, fully-paid-up, royalty-free, a limited right and license solely to allow Purchaser to display or retain such Intellectual Property on such Purchased Assets, in the places and in the forms in which they appear on the Project at Closing, for one year following the Closing. Purchaser shall take Commercially Reasonable Efforts to remove all such Intellectual Property from such Purchased Assets within one year after Closing.

Section 6.18. Condemnation.

(a) If Seller or any of its Affiliates receives written notice prior to the Closing Date from or on behalf of any Person that such Person desires or may seek to acquire any Purchased Asset by condemnation after the Effective Date, Seller shall notify Purchaser promptly in writing (but no later than five (5) Business Days after such notice) of such notice, the facts and circumstances surrounding the potential condemnation and a preliminary assessment of the impact of the condemnation on the Project, including Seller's good faith estimate of the value of the condemnation (which shall include any loss of revenue or increase of costs to Seller under any Contract as a result of such condemnation) (the "*Condemnation Value*"). Seller shall keep Purchaser reasonably apprised of developments with respect to such proposed condemnation, including modifications to its impact assessments and its good faith estimate of the Condemnation Value and the occurrence of the condemnation, and shall use Commercially Reasonable Efforts to cooperate with Purchaser in connection therewith.

(b) If, upon the occurrence of a condemnation completed prior to the Closing, the Condemnation Value (as determined by a qualified firm reasonably acceptable to Purchaser and Seller) is $13,500,000 or less, the Purchase Price shall be reduced by the amount of such Condemnation Value less the amount of any condemnation award related thereto that is paid or irrevocably assigned to Purchaser.

(c) If, upon the occurrence of a condemnation completed prior to the Closing, the Condemnation Value (as determined by a qualified firm reasonably acceptable to Purchaser and Seller) is greater than $13,500,000 or the occurrence of a condemnation is materially adverse to the operations or physical condition of the Purchased Assets taken as a whole, Purchaser may, at its sole discretion, elect to (i) reduce the Purchase Price by the amount of such Condemnation Value less the amount of any condemnation award related thereto that is paid or irrevocably assigned to Purchaser or (ii) terminate this Agreement by written notice to Seller within thirty (30) days after the later to occur of (A) Seller's delivery of the notice contemplated in Section 6.18(a) or (B) the determination of the Condemnation Value by a qualified firm reasonably acceptable to Purchaser and Seller.

(d) In the event of the occurrence of a condemnation completed prior to Closing, then, provided Seller complies with this Section 6.18 with respect to such condemnation Seller shall not be deemed to be in breach of any representation, warranty or covenant in this Agreement nor shall such completed condemnation constitute a Material Adverse Effect, and, without limiting the foregoing, Purchaser shall not be entitled to any indemnity pursuant to Article IX, to the extent Seller's breach or non-compliance with such representation, warranty or covenant is due solely to the occurrence of such completed condemnation.

Section 6.19. Post-Closing Assurances. After the Closing, each Party shall execute and deliver, upon the reasonable request of the other Party, any and all further instruments or documents, and exercise Commercially Reasonable Efforts to take such further actions as may reasonably be required, to fulfill and implement the terms of this Agreement or realize the benefits intended to be afforded hereby, including such actions as are necessary in connection with obtaining any third party Consent, Permit, or waiver or any regulatory filing as a Party may undertake in connection herewith.

Section 6.20. Existing Collateral.

(a) Purchaser shall use Commercially Reasonable Efforts to cause (i) all letters of credit listed on Schedule 6.20 to be replaced at or prior to the Closing with letters of credit, cash collateral or other security reasonably acceptable to Purchaser and the beneficiary thereof and (ii) all cash collateral posted by Seller or any of its Affiliates as credit support to contractual counterparties listed in Schedule 6.20, or resulting from a draw on a letter of credit in respect of which Seller or an Affiliate of Seller was the account party listed in Schedule 6.20, to be replaced at or prior to the Closing with letters of credit, cash collateral or other security reasonably acceptable to Purchaser and the beneficiary thereof and any related cash collateral or other security to be returned to Seller.

(b) Within five (5) Business Days of the Effective Date, Purchaser shall cause Entergy Services, Inc. to return to KGen the Hot Spring Letter of Credit (as such term is defined in the Letter of Intent).

Section 6.21. Purchaser LTSA. For so long as the Purchase Price is subject to adjustment pursuant to Section 3.5(b) and Section 3.8, Purchaser shall keep the Acceptable Purchaser LTSA valid and binding and shall not modify, amend or otherwise alter such agreement in any manner as would cause such agreement not to qualify as an Acceptable Purchaser LTSA under the terms of this Agreement.

Section 6.22. New Pipeline Completion. Seller shall use Commercially Reasonable Efforts to cause the pipeline (the "*New Pipeline*") contemplated by the Precedent Agreement between Seller and Texas Eastern Transmission Company ("*TETCO*"), dated April 1, 2010 (the "*Precedent Agreement*"), to be completed and in service in accordance with the terms of the Precedent Agreement on or before March 31, 2012.

Section 6.23. IDA Bond Property. Prior to the Closing, Seller shall use Commercially Reasonable Efforts to, and at the Closing shall, cause good and marketable fee simple absolute title of record to the IDA Bond Property to be transferred to Purchaser and, at the Closing, Purchaser shall accept the same from either, as Seller may determine in its sole and absolute discretion, Hot Spring County, Arkansas or Seller. To the extent the transfer of the IDA Bond Property is to be made from Hot Spring County, Arkansas rather than Seller, such transfer shall be (a) pursuant to documentation, terms and procedures to be agreed with Hot Spring County, Arkansas that are reasonably acceptable to Seller, (b) without the imposition of any condition or term that is adverse to Purchaser or less beneficial to Purchaser than had the transfer been made directly by Seller and (c) on terms acceptable to Purchaser in its reasonable discretion. The Parties acknowledge and agree that the unwind of the structure reflected in the IDA Bond Contracts contemplated by this Section 6.23 shall occur no later than simultaneously with the Closing (and may include the modification or waiver of any time periods required by the IDA Bond Contracts to the extent necessary to unwind the structure reflected in the IDA Bond Contracts contemplated by this Section 6.23); provided that Seller shall not be required to unwind the structure reflected in the IDA Bond Contracts contemplated by this Section 6.23 at any time prior to the Closing. Purchaser shall use Commercially Reasonable Efforts to assist Seller in causing good and marketable fee simple absolute title of record to the IDA Bond Property to be transferred to Purchaser at the Closing as provided herein, including, if applicable,

to execute and deliver such documents and instruments reasonably required to consummate such transfer from Hot Spring County, Arkansas directly to Purchaser as contemplated by this **IDA Bond Property.**.

Section 6.24. Capacity Release. In the event that a waiver as described in Section 6.4(e) is not obtained with respect to a Gas Transportation Agreement (other than where the Parties have agreed pursuant to the last sentence of Section 6.4(e) that such a waiver is not required): (a) within fourteen (14) days after the Closing, Seller shall provide Purchaser with a capacity release offer for a permanent release of such Gas Transportation Agreement, designating Purchaser as the pre-arranged replacement shipper and designating Purchaser's pre-arranged bid as the rate(s) applicable to such Gas Transportation Agreement; (b) no later than one business day after Purchaser's receipt of the capacity release offer from Seller, Purchaser will accept the offer; (c) to the extent required under the applicable pipeline's FERC Gas Tariff or the Capacity Release Rules, the offer will be posted for competitive bidding; and (d) if the release is not subject to competitive bidding, or if Purchaser matches or submits the highest bid in a competitive bidding process, Purchaser will undertake such other actions as necessary under the applicable pipeline's FERC Gas Tariff to become the replacement shipper under such Gas Transportation Agreement, including executing any reasonably required agreement with the pipeline on terms reasonably acceptable to Purchaser and providing the pipeline any credit support reasonably required by the pipeline and on terms reasonably acceptable to Purchaser.

Section 6.25. Warm-up Line Improvement Project Testing. Seller shall complete the Warm-up Line Improvement Project Testing as soon as practicable, but in any event no later than January 1, 2012, at Seller's sole cost and expense in accordance with Good Industry Practices. Seller shall allow Purchaser to participate in meetings and inspections and review material reports, or correspondence pertaining to such testing in order to enable Purchaser to evaluate the scope, quality and sufficiency thereof, and otherwise use Commercially Reasonable Efforts to keep Purchaser reasonably informed with respect to such testing.

ARTICLE VII.
PURCHASER'S CONDITIONS TO CLOSING

The obligations of Purchaser hereunder to purchase the Purchased Assets and assume, pay, perform and discharge the Assumed Liabilities shall be subject to satisfaction at or prior to the Closing of each of the following conditions, except to the extent Purchaser waives such satisfaction in writing:

Section 7.1. Agreement Compliance. Seller shall have performed or complied in all material respects with all covenants, obligations and agreements of Seller contained in this Agreement and the Ancillary Agreements to which Seller is a party that are required to be performed or complied with at or prior to the Closing.

Section 7.2. HSR Act. The applicable waiting period, and any and all applicable extensions thereof, for the Transactions under the HSR Act shall have expired or terminated.

Section 7.3. No Restraint. There shall be no (a) preliminary or permanent Order in effect on the Closing Date that (i) declares this Agreement or any Ancillary Agreement invalid or unenforceable in any material respect or (ii) restrains, enjoins or otherwise prohibits the consummation of the Transactions, including the transactions contemplated by the Ancillary Agreements, or (b) Action taken, or Law enacted, promulgated or deemed applicable to the Transactions, by a Governmental Authority that, directly or indirectly, prohibits the consummation of the Transactions, including the transactions contemplated by the Ancillary Agreements, as herein or therein provided.

Section 7.4. Regulatory Approvals and Consents.

(a) All of Purchaser's Regulatory Approvals shall have been obtained and shall not have been granted subject to or containing any term or condition not satisfactory to Purchaser, in its sole and absolute discretion, shall be in full force and effect and shall be final and not subject to appeal or otherwise subject to challenge or modification.

(b) All of Purchaser's Required Consents shall have been obtained, shall be in full force and effect and shall be on terms satisfactory to Purchaser in its sole and absolute discretion.

Section 7.5. Representations and Warranties. The representations and warranties of Seller set forth in Article IV that are qualified with respect to materiality (whether by reference to Material Adverse Effect or otherwise) shall be true and correct in all respects, and the representations and warranties of Seller set forth in this Agreement that are not so qualified shall be true and correct in all material respects, in each case on and as of the Closing Date, except to the extent that such representations and warranties by their terms speak as of a date earlier than the Closing Date, in which event they shall be true and correct as of such date.

Section 7.6. Officer's Certificate. Purchaser shall have received a certificate from Seller, executed on its behalf by a duly authorized officer, dated the Closing Date, to the effect that the conditions set forth in Section 7.1 and Section 7.5 have been satisfied.

Section 7.7. Receipt of Other Documents. Purchaser shall have received the following:

(a) a certificate of good standing with respect to Seller, as of a date reasonably near the Closing, issued by the Secretary of State of the State of Delaware;

(b) copies of the limited liability company agreement and the certificate of formation of Seller certified by the Secretary of State of the State of Delaware, together with a certificate of the Secretary or an Assistant Secretary (or similarly situated individual) of Seller that none of such documents have been amended;

(c) copies, certified by the Secretary or an Assistant Secretary (or similarly situated individual) of Seller, of resolutions of Seller's board of directors or similar governing body authorizing the execution and delivery by Seller of this Agreement and each of the Ancillary Agreements to which it is a party and authorizing the performance of its obligations hereunder and thereunder, as applicable, and authorizing or ratifying the execution and delivery

of, and performance of its obligations under, all of the other agreements and instruments, in each case, to be executed and delivered by Seller in connection herewith;

(d) a certificate of the Secretary or an Assistant Secretary (or similarly situated individual) of Seller identifying the name and title and bearing the signatures of the officers of Seller authorized to execute and deliver this Agreement and each Ancillary Agreement to which it is a party and the other agreements and instruments contemplated hereby;

(e) the Closing Inventory Report;

(f) the documents referenced in Section 3.2;

(g) evidence, to Purchaser's reasonable satisfaction, that all Encumbrances described in Part II of Schedule 1.1C have been released or removed;

(h) receipt of the Seller's Required Consents; and

(i) if Purchaser has elected to have an Environmental Assessment prepared, an Environmental Assessment with respect to the Project and the Project Real Property.

Section 7.8. Title Insurance. Title to the Insurable Real Property shall have been evidenced by the willingness of a title insurance company reasonably acceptable to Purchaser (the "*Title Insurer*") to issue an owner's policy of title insurance (i) on the ALTA 2006 form owner's policy of title insurance, (ii) insuring Purchaser's ownership of the Insurable Real Property, subject only to the Permitted Encumbrances, (iii) in the name of the Purchaser (all at Purchaser's sole cost and expense), (iv) in the amount specified by Purchaser, but not exceeding the Purchase Price, and (v) including the endorsements set forth in Schedule 7.8 (the "*Title Policy*"). The willingness of the Title Insurer to issue the Title Policy shall be evidenced either by the issuance thereof at the Closing or by the Title Insurer's delivery of written marked binding commitments or binders, dated as of the Closing Date (but insuring title as of the date title conveyance documents are recorded), to issue such Title Policy, subject to actual transfer of the real property in question. Seller shall execute and deliver to the Title Insurer the document set forth in Section 3.2(a).

Section 7.9. Network Transmission Service. Purchaser shall have received the final results of the facility study with respect to its request for network transmission service for the Project, and the aggregate cost reflected in such facility study for the supplemental upgrades required to provide such network transmission service shall not exceed $40,000,000 (exclusive of any costs included in the Independent Coordinator of Transmission's Base Plan).

Section 7.10. Material Adverse Effect. Since the Effective Date, no Material Adverse Effect with respect to Seller shall have occurred that has not been cured.

Section 7.11. O&M Agreement. Seller shall have terminated the O&M Agreement effective as of the Closing at no cost or expense to Purchaser.

Section 7.12. Plant Performance Tests. The Initial Plant Performance Test and, if elected by Seller or Purchaser, a Plant Performance Re-Test (or if more than one Plant

Performance Re-Test has been elected to be performed in accordance with Section 6.7, the Plant Performance Re-Test most recently elected to be performed) shall have been performed in accordance with Section 6.7 and the Final Plant Performance Test Results of the Initial Plant Performance Test or, if a Plant Performance Re-Test has been performed, the Plant Performance Re-Test most recently elected to be performed shall have been delivered to Purchaser and shall have established that the Project NO_x Emission Rate does not exceed the Contract NO_x Emission Rate and the Project CO Emission Rate does not exceed the Contract CO Emission Rate.

Section 7.13. Escrow Agreement. Seller and the Escrow Agent shall have executed and delivered the Escrow Agreement.

Section 7.14. New Pipeline Completion. The New Pipeline shall have been completed in accordance with the requirements of this Agreement.

Section 7.15. IDA Bond Property. Seller shall have caused good and marketable fee simple absolute title of record to the IDA Bond Property to be made available to be transferred to Purchaser at the Closing from either, as Seller may determine in its sole and absolute discretion, Hot Spring County, Arkansas or Seller.

ARTICLE VIII.
SELLER'S CONDITIONS TO CLOSING

The obligation of Seller hereunder to sell the Purchased Assets shall be subject to satisfaction at or prior to the Closing of the following conditions, except to the extent Seller waives such satisfaction in writing:

Section 8.1. Agreement Compliance. Purchaser shall have performed or complied in all material respects with all covenants, obligations and agreements of Purchaser contained in this Agreement and the Ancillary Agreements to which Purchaser is a party that are required to be performed or complied with at or prior to the Closing.

Section 8.2. HSR Act. The applicable waiting period, and any and all applicable extensions thereof, for the Transactions under the HSR Act shall have expired or terminated.

Section 8.3. No Restraint. There shall be no (a) preliminary or permanent Order in effect on the Closing Date that (i) declares this Agreement or any Ancillary Agreement invalid or unenforceable in any material respect or (ii) restrains, enjoins or otherwise prohibits the consummation of the Transactions, including the transactions contemplated by the Ancillary Agreements, or (b) Action taken, or Law enacted, promulgated or deemed applicable to the Transactions, by a Governmental Authority that, directly or indirectly, prohibits the consummation of the Transactions, including the transactions contemplated by the Ancillary Agreements, as herein or therein provided.

Section 8.4. Regulatory Approvals and Consents.

(a) All of Seller's Regulatory Approvals shall have been obtained on terms reasonably acceptable to Seller, shall be in full force and effect and shall be final and not subject to appeal or otherwise subject to challenge or modification.

(b) All of Seller's Required Consents shall have been obtained, shall be in full force and effect and shall be on terms reasonably acceptable to Seller.

Section 8.5. Representations and Warranties. The representations and warranties of Purchaser set forth in Article V that are qualified with respect to materiality (whether by reference to Material Adverse Effect or otherwise) shall be true and correct in all respects, and the representations and warranties of Purchaser set forth in Article V that are not so qualified shall be true and correct in all material respects, in each case on and as of the Closing Date, except to the extent that such representations and warranties by their terms speak as of a date earlier than the Closing Date, in which event they shall be true and correct as of such date.

Section 8.6. Officer's Certificate. Seller shall have received a certificate from Purchaser, executed on its behalf by an authorized officer, dated the Closing Date, to the effect that the conditions set forth in Section 8.1 and Section 8.5 have been satisfied.

Section 8.7. Receipt of Other Documents. Seller shall have received the following:

(a) a certificate of good standing with respect to Purchaser, as of a date reasonably near to the Closing, issued by the Secretary of State of the State of Arkansas;

(b) certified copies of the certificate of incorporation and the bylaws of Purchaser certified by the Secretary of State of the State of Arkansas, together with a certificate of the Secretary or an Assistant Secretary of Purchaser that none of such documents have been amended;

(c) copies, certified by the Secretary or an Assistant Secretary of Purchaser, of resolutions of the board of directors or similar governing body of Purchaser authorizing the execution and delivery by Purchaser of this Agreement, and each of the Ancillary Agreements to which it is a party and the performance of its obligations hereunder and thereunder, and authorizing the execution and delivery of, and performance of its obligations under, all of the other agreements and instruments, in each case, to be executed and delivered by Purchaser in connection herewith;

(d) a certificate of the Secretary or an Assistant Secretary of Purchaser, identifying the name and title and bearing the signatures of the officers of Purchaser authorized to execute and deliver this Agreement, and each Ancillary Agreement to which Purchaser is a party and the other agreements and instruments contemplated hereby; and

(e) the documents referenced in Section 3.3.

Section 8.8. LTSA. The LTSA shall have been terminated with no termination, cancellation, true-up or similar payment obligations being due from Seller (other than any such payments from Seller arising out of a breach or default by Seller thereunder).

Section 8.9. Escrow Agreement. Purchaser and the Escrow Agent shall have executed and delivered the Escrow Agreement.

Section 8.10. Existing Collateral.

(a) At the Closing (i) all letters of credit listed on Schedule 6.20 have been replaced with letters of credit (and the original replaced letters of credit shall have been returned to Seller), cash collateral or other security reasonably acceptable to Purchaser and the beneficiary thereof and (ii) all cash collateral posted by Seller or an Affiliate of Seller as credit support to contractual counterparties listed in Schedule 6.20, or resulting from a draw on a letter of credit in respect of which Seller or an Affiliate of Seller was the account party listed in Schedule 6.20, have been replaced at or prior to the Closing with letters of credit, cash collateral or other security reasonably acceptable to Purchaser the beneficiary thereof in its sole discretion in equal amounts to that replaced.

(b) The Hot Spring Letter of Credit (as such term is defined in the Letter of Intent) shall have been returned to KGen in accordance with Section 6.20(b).

ARTICLE IX.
INDEMNIFICATION

Section 9.1. Indemnification by Seller.

(a) Subject to the other provisions of this Article IX, from and after the Closing, Seller shall indemnify and hold harmless Purchaser, its Affiliates and each of their respective Representatives, successors and assigns (collectively, the "*Purchaser Group*") from and against any and all penalties, obligations, damages, losses, liabilities, payments, costs and expenses, including reasonable legal, accounting and other fees and expenses in connection therewith and reasonable costs and expenses incurred in connection with investigations and settlement proceedings (collectively, "*Losses*"), suffered, incurred or sustained by any of them or to which any of them become subject, that arise out of, result from or relate to the following (collectively, "*Purchaser Claims*"):

(i) any breach or violation of any covenant, obligation or agreement of Seller or KGen set forth in this Agreement or any Ancillary Agreement to which Seller or KGen is a party;

(ii) any breach or inaccuracy of any of the representations or warranties made by Seller in this Agreement or any Ancillary Agreement or in any certificate or instrument to be delivered by Seller pursuant hereto or thereto; or

(iii) any of the Excluded Liabilities.

(b) The Purchaser Group shall be entitled to indemnification pursuant to Section 9.1(a) with respect to any claim for indemnification pursuant to Section 9.1(a)(ii), other than in respect of claims for indemnification arising out of, in connection with or resulting from a breach of the representations and warranties made in Section 4.1 (Organization and Existence), Section 4.2 (Execution, Delivery and Enforceability), Section 4.3(a) (No Violation), Section 4.5 (Bankruptcy Matters), Section 4.9(c) (Tangible Personal Property and Inventory), Section 4.16 (Tax Matters), Section 4.17 (Employee Matters), and Section 4.21 (Brokers) (collectively, the "*Uncapped Seller Representations*," none of which shall be limited by this clause (b)), only if (i) the Losses from any individual claim or series of related claims equal or exceed Twenty Five Thousand Dollars ($25,000) and (ii) the aggregate Losses with respect to all such claims equal or exceed One Million Two Hundred Fifty Thousand Dollars ($1,250,000) (the "*Deductible*"), whereupon Seller shall be obligated to pay, subject to Section 9.1(c), all such amounts in excess of the Deductible.

(c) For indemnification pursuant to Section 9.1(a)(a)(ii), except for indemnification for breaches of the Uncapped Seller Representations (none of which shall be limited by this clause (c)), the maximum indemnification in the aggregate to which the Purchaser Group shall be entitled shall be Thirty Eight Million Dollars ($38,000,000).

(d) Notwithstanding anything contained in this Agreement to the contrary, the representations and warranties set forth in Section 4.16 (Tax Matters) may only be relied upon with respect to Taxes that relate to or arise from the Project or the Business as of or prior to the Closing, and are not a guarantee of any tax position taken or to be taken by Purchaser with respect to Taxes that relate to or arise from the Project or the Business following the Closing.

Section 9.2. Indemnification by Purchaser.

(a) Subject to the other provisions of this Article IX, from and after the Closing, Purchaser shall indemnify and hold harmless Seller, its Affiliates and each of their respective Representatives, and successors and assigns (collectively, the "*Seller Group*") from and against any and all Losses suffered, incurred or sustained by any of them or to which any of them become subject, that arise out of, result from or relate to the following (collectively, "*Seller Claims*"):

(i) any breach or violation of any covenant, obligation or agreement of Purchaser set forth in this Agreement or any Ancillary Agreement to which Purchaser is a party;

(ii) any breach or inaccuracy of any of the representations or warranties made by Purchaser in this Agreement or any Ancillary Agreement or in any certificate to be delivered by Purchaser pursuant hereto; or

(iii) any of the Assumed Liabilities.

(b) The Seller Group shall be entitled to indemnification pursuant to Section 9.2(a) with respect to any claim for indemnification pursuant to Section 9.2(a)(ii) other than in respect of claims for indemnification arising out of, in connection with or resulting from a breach of the representations and warranties made in Section 5.1 (Organization and Existence), Section

5.2 (Execution, Delivery and Enforceability), Section 5.3(a) (No Violation), and Section 5.5 (Brokers) (collectively, the "*Uncapped Purchaser Representations*," none of which shall be limited by this clause (b)), only if (i) the Losses from any individual claim or series of related claims equal or exceed Twenty Five Thousand Dollars ($25,000) and (ii) the aggregate Losses with respect to all such claims equal or exceed the Deductible, whereupon Purchaser shall be obligated to pay, subject to Section 9.2, all such amounts in excess of the Deductible.

(c) For indemnification pursuant to Section 9.2(a)(ii), except for indemnification for breaches of the Uncapped Purchaser Representations (none of which shall be limited by this clause (c)), the maximum indemnification in the aggregate to which the Seller Group shall be entitled shall be Thirty Eight Million Dollars ($38,000,000).

Section 9.3. Survival. The representations, warranties, covenants and agreements set forth in this Agreement, the Ancillary Agreements and any certificates delivered hereunder or thereunder shall survive as follows:

(a) the Uncapped Seller Representations and the Uncapped Purchaser Representations shall survive for the applicable statute of limitations plus thirty (30) days thereafter;

(b) the Expiring Covenants and other representations and warranties survive until eighteen (18) consecutive months have lapsed since the Closing Date; and

(c) the covenant contained in Section 11.12 shall survive until forty-two (42) consecutive months have lapsed since the Closing Date.

Any representation or warranty or covenant or agreement that survives the Closing as provided in the preceding sentence and in respect of which indemnity may be sought under this Agreement shall survive the time at which it would otherwise terminate pursuant to this Section 9.3 if a related Notice of Third Party Claim or Indemnity Notice (as applicable) shall have been timely given to the Indemnitor in good faith based on facts reasonably expected to establish a valid claim under Article IX on or prior to such termination date, until the related claim for indemnification has been satisfied or otherwise resolved as provided in this Article IX.

Section 9.4. Computation of Losses. For purposes of determining a Party's indemnity obligations and computing Losses under this Article IX, (a) any express qualification or limitation set forth in the applicable representation, warranty, covenant or agreement as to materiality or "Material Adverse Effect" (or words of similar effect) contained therein shall be disregarded and (b) there shall be deducted (i) any indemnification, contribution or other similar payment actually recovered by the Indemnitee (including any insurance proceeds (net of any applicable deductible amounts paid by such Party) and the value of any contractual right of set-off), or (ii) any other amounts that would otherwise result in a duplicative recovery, including due to an adjustment made to the Purchase Price pursuant to Section 3.4, Section 3.5, Section 3.6, Section 3.8, Section 6.2, Section 6.7(k), Section 6.8(d), Section 6.8(e), Section 6.8(f), Section 6.18(b) or Section 6.18(c).

Section 9.5. Effect of Knowledge. The right to indemnification, reimbursement or other remedy based upon the representations, warranties, covenants,

obligations and agreements herein or in the Ancillary Agreements shall not be affected by any information made available or furnished to, or any investigation or audit conducted (or that could have been conducted) by the other Party or any of its Representatives, or any Party's Knowledge acquired at any time, whether before, on or after the Effective Date or the Closing Date, with respect to the Transactions or the accuracy or inaccuracy of, or compliance or non-compliance with, any such representation, warranty, covenant, obligation or agreement. Each Party shall be entitled to rely upon the representations, warranties, covenants, obligations and agreements of the other Party (and KGen) set forth herein and in the Ancillary Agreements notwithstanding (i) any investigation or audit conducted (or that could have been conducted) or any information received before, on or after the Closing Date or (ii) the decision of any Party to complete the Closing.

Section 9.6. Method of Asserting Claims.

(a) Subject to the terms of this Agreement and upon receipt of an assertion of a claim or demand (whether written or oral) or notice of the commencement of any suit, action or proceeding that is a Third Party Claim against any member of the Purchaser Group or the Seller Group, of which such Person intends to seek indemnification under Section 9.1 or Section 9.2, respectively, the Person seeking indemnification hereunder (the "*Indemnitee*") shall promptly notify the Party against whom indemnification is sought (the "*Indemnitor*") in writing of any Loss which the Indemnitee has determined has given or could give rise to a claim under Section 9.1 or Section 9.2, as applicable. Such written notice is herein referred to as a "*Notice of Third Party Claim*." A Notice of Third Party Claim shall enclose a copy of all papers served, if any, and specify in reasonable detail, the nature of and basis for such Third Party Claim and for the Indemnitee's claim against the Indemnitor under Section 9.1 or Section 9.2, as applicable, together with the amount or, if not then reasonably determinable, the estimated amount, determined in good faith, of the Losses arising from such Third Party Claim. If the Indemnitee fails to provide (or to timely provide) a Notice of Third Party Claim, the Indemnitor shall not be obligated to indemnify the Indemnitee with respect to such Third Party Claim to the extent that the Indemnitor's ability to defend such Third Party Claim has been irreparably prejudiced by such failure of the Indemnitee.

(b) Within the Notice Period, the Indemnitor shall notify the Indemnitee whether or not it disputes its liability to the Indemnitee under Section 9.1 or Section 9.2, as applicable, and whether the Indemnitor has made the irrevocable election to defend and indemnify the Indemnitee against such Third Party Claim, subject to the other terms of this Article IV. The failure of the Indemnitor to provide such notice within the Notice Period shall be deemed a refusal to provide the requested indemnity and defense to such Third Party Claim.

(c) If the Indemnitor notifies the Indemnitee within the Notice Period of its irrevocable election to defend and indemnify the Indemnitee (subject to the other terms of this Article IV) with respect to the Third Party Claim, then, except as hereinafter provided, the Indemnitor shall have the right to contest and defend, at its sole cost and expense, with counsel of its choosing that is reasonably acceptable to the Indemnitee, any such Third Party Claim by all appropriate proceedings, which proceedings will be vigorously and diligently prosecuted by the Indemnitor to a final conclusion or will be settled at the discretion of Indemnitor (but only with the consent of the Indemnitee in the case of any settlement or compromise that (i) provides for

relief other than the payment of monetary damages as to which the Indemnitee will be indemnified in full, (ii) does not include, as an unconditional term thereof, the giving by the claimant or plaintiff to the Indemnitee of a release, in form and substance satisfactory to the Indemnitee, from all liability in respect of such Third Party Claim or (iii) contains an admission or acknowledgment of guilt or criminal wrongdoing or a violation of any Law by any member of the indemnified Seller Group or Purchaser Group, as applicable). Subject to the other terms of this Section 9.6, the Indemnitor will have full control of such defense and proceedings, including (except as provided in the immediately preceding sentence) any settlement thereof. If the Indemnitee desires to participate in, but not control, the defense or settlement of any Third Party Claim that the Indemnitor is defending under this Section 9.6, it may do so at its sole cost and expense with counsel of its choosing that is reasonably acceptable to the Indemnitor; provided, however, that the Indemnitor will pay the reasonable out-of pocket costs and expenses of such separate counsel only if (x) in the Indemnitee's good faith judgment, it is advisable, based on advice of counsel, for the Indemnitee to be represented by separate counsel because a conflict or potential conflict exists between the Indemnitor and the Indemnitee or (y) the named parties to such Third Party Claim include both the Indemnitor and the Indemnitee and the Indemnitee determines in good faith, based on advice of counsel, that defenses are available to it that are unavailable to the Indemnitor. Notwithstanding the foregoing, the Indemnitee may retain or take over the control of the defense or settlement of any Third Party Claim the defense of which the Indemnitor has elected to control if the Indemnitee irrevocably waives its right to indemnity under Section 9.1 or Section 9.2, as applicable, with respect to such Third Party Claim.

(d) The Party, and such Party's counsel and representatives, defending the Third Party Claim shall consult with the other Party, and such Party's counsel and representatives, throughout the pendency of the Third Party Claim regarding the investigation, defense, settlement, trial, appeal or other resolution of the Third Party Claim. The Parties shall cooperate in the defense of the Third Party Claim. The Party defending the Third Party Claim (the "*Defending Party*") in accordance with this Section 9.6 shall have reasonable access, during normal business hours and following reasonable notice, to Employees of the other Party (the "*Non-Defending Party*") who may have knowledge, material, documents or information relevant to the defense of any Third Party Claim. The Non-Defending Party shall make available to the Defending Party, at reasonable times and for reasonable periods, its Employees and representatives and such information, books, and records and other materials in the Non-Defending Party's possession or control and reasonably required by the Defending Party for use in contesting any Third Party Claim (subject to obtaining an agreement to maintain the confidentiality of confidential or proprietary materials in a form reasonably acceptable to both the Defending and Non-Defending Parties). If and to the extent reasonably requested by the Defending Party, the Non-Defending Party shall cooperate with the Defending Party and its counsel in contesting such Third Party Claim or, if appropriate, in making any counterclaim against the Person asserting the Third Party Claim, or any cross-complaint relating to such Third Party Claim against any other Person. The Defending Party shall reimburse the Non-Defending Party for any reasonable, documented out-of-pocket expenses incurred by the Non-Defending Party in cooperating with or acting at the request of the Defending Party.

(e) If with respect to any Third Party Claim (i) the Indemnitor fails to notify the Indemnitee within the Notice Period that the Indemnitor desires to defend such Third Party Claim pursuant to Section 9.2(a), (ii) the Indemnitor gives such notice but fails to defend

vigorously and diligently such Third Party Claim, (iii) such Third Party Claim (or the facts or allegations related to such Third Party Claim) involves criminal allegations or seeks equitable or injunctive relief or (iv) the Indemnitor does not have the resources to satisfy such Third Party Claim, then the Indemnitee will have the right to defend, at the sole cost and expense of the Indemnitor, the Third Party Claim by all appropriate proceedings, which proceedings will be prosecuted by the Indemnitee in good faith or will be settled at the discretion of the Indemnitee (with the consent of the Indemnitor, such consent not to be unreasonably withheld, conditioned or delayed). The Indemnitee will have full control of such defense and proceedings, including (except as provided in the immediately preceding sentence) any settlement thereof; provided, however, that if requested by the Indemnitee, the Indemnitor will, at the sole cost and expense of the Indemnitor, provide reasonable cooperation to the Indemnitee and its counsel in contesting any Third Party Claim which the Indemnitee is contesting. Notwithstanding the foregoing provisions of this clause (e), if the Indemnitor has notified the Indemnitee within the Notice Period that the Indemnitor disputes its liability hereunder to the Indemnitee with respect to such Third Party Claim and if such dispute is resolved in favor of the Indemnitor in the manner provided in clause (f) below, the Indemnitor will not be required to bear the costs and expenses of the Indemnitee's defense pursuant to this clause (e) or of the Indemnitor's participation therein at the Indemnitee's request, and the Indemnitee will reimburse the Indemnitor in full for all reasonable, document out-of-pocket costs and expenses incurred by the Indemnitee in connection with such litigation.

(f) If the Indemnitor notifies the Indemnitee that it does not dispute its liability to the Indemnitee with respect to the Third Party Claim under Section 9.1 or Section 9.2, as applicable, or fails to notify the Indemnitee within the Notice Period whether the Indemnitor disputes its liability to the Indemnitee with respect to such Third Party Claim, the Loss arising from such Third Party Claim will be conclusively deemed a liability of the Indemnitor under Section 9.1 or Section 9.2, as applicable, and, subject to the limitations set forth in this Article IX, the Indemnitor shall pay the amount of such Loss to the Indemnitee on demand following the final determination thereof. If the Indemnitor has timely disputed its liability with respect to such claim, the Indemnitor and the Indemnitee will proceed in good faith to negotiate a resolution of such dispute, and if not resolved through negotiations within the Resolution Period, such dispute shall be resolved by litigation in a court of competent jurisdiction in accordance with Section 11.6.

(g) In the event any Indemnitee should have a claim under Section 9.1 or Section 9.2, as applicable, against any Indemnitor that does not involve a Third Party Claim, the Indemnitee shall deliver an Indemnity Notice with reasonable promptness to the Indemnitor. The failure by any Indemnitee to give the Indemnity Notice shall not impair such party's rights hereunder except to the extent that an Indemnifying Party demonstrates that it has been irreparably prejudiced thereby. If the Indemnitor notifies the Indemnitee that it does not dispute the claim described in such Indemnity Notice or fails to notify the Indemnitee within the Notice Period whether the Indemnitor disputes the claim described in such Indemnity Notice, the Loss arising from the claim specified in such Indemnity Notice will be conclusively deemed a liability of the Indemnitor under Section 9.1 or Section 9.2, as applicable, and the Indemnitor shall pay the amount of such Loss, as determined under this Article IX, to the Indemnitee on demand following the final determination thereof. If the Indemnitor has timely disputed its liability with respect to such claim, the Indemnitor and the Indemnitee will proceed in good faith to negotiate a

resolution of such dispute, and if not resolved through negotiations within the Resolution Period, such dispute shall be resolved by litigation in a court of competent jurisdiction in accordance with Section 11.6.

Section 9.7. Purchase Price Adjustment; Payment Address. Any and all payments required to be made under this Article IX shall be deemed adjustments to the Purchase Price. Any indemnification payment hereunder shall be made by wire transfer of immediately available funds to such account(s) as the Indemnitee may designate to the Indemnitor in writing.

Section 9.8. Subrogation. Upon the payment in full of the amounts due to the Indemnitee in respect of any Third Party Claim as provided herein, the Indemnitor shall be subrogated in place of the Indemnitee with respect to any right of action that the Indemnitee may have with respect to the specific subject matter giving rise the claim of indemnification hereunder.

Section 9.9. Cooperation; Mitigation. Seller Group Indemnitees shall reasonably cooperate with Purchaser, and Purchaser Group Indemnitees shall reasonably cooperate with Seller, and each such Indemnitee shall use Commercially Reasonable Efforts to mitigate any and all Losses subject to indemnification hereunder, including, to use Commercially Reasonable Efforts to recover under any insurance policy (including, without limitation under the Title Policy) or under any contractual right of set-off or indemnity.

Section 9.10. Exclusive Remedy. Notwithstanding anything to the contrary in this Agreement, following the Closing, the indemnification provisions of this Agreement are the sole and exclusive remedies for any Losses arising from or relating to this Agreement and the Transactions. In furtherance of the foregoing, all other rights or remedies available at law or in equity, in tort, contract or otherwise are hereby waived, released and discharged by each Party.

Section 9.11. Specific Performance. Each Party acknowledges and agrees that the Transactions are unique and that the other Party will be irreparably injured should such Transactions not be consummated in a timely fashion and will not have an adequate remedy at law if Seller shall fail to sell, or Purchaser shall fail to purchase, as the case may be, the Purchased Assets when required to do so hereunder. In such event, such other Party shall have the right, in addition to any other remedy available in equity or law, to specific performance of such obligation by the non-performing Party, subject to such other Party's performance of its obligations hereunder.

Section 9.12. Waiver of Certain Damages. In no event shall any Party or any of its Affiliates be liable to the other Party or any of its Affiliates for punitive, incidental, indirect, or special damages arising out of or in connection with this Agreement or the Ancillary Agreements; provided, however, that this limitation shall not apply to (a) any Purchaser Claim or Seller Claim for indemnification pursuant to this Article IX from any punitive, incidental, indirect, or special damages owed to a third person under a Third Party Claim or (b) any action pursuant to Section 9.11 by Seller for the Purchase Price.

Section 9.13. Escrow Account. Any indemnification obligations of Seller for Losses incurred under Section 9.1(a) shall be satisfied first from amounts in the Escrow Account,

and thereafter, subject to the limitations on liability set forth in this Article IX, such indemnification obligations shall be satisfied by Seller.

ARTICLE X.
TERMINATION

Section 10.1. Rights to Terminate. Subject to Section 10.2, this Agreement may be terminated:

(a) by mutual written consent of the Parties;

(b) by one Party, upon written notice to the other Party, on or after the Expiration Date; provided, however, that a Party shall not have the right to terminate this Agreement pursuant to this Section 10.1(b) if such failure to consummate the Transactions on or prior to the Expiration Date shall have been caused by a breach of this Agreement or any Ancillary Agreement by the terminating Party;

(c) by one Party, upon written notice to the other Party, if, at any time prior to the Closing, (i) any Governmental Authority of competent jurisdiction shall have issued a permanent Order (A) declaring this Agreement or any Ancillary Agreement invalid or unenforceable in any material respect or (B) restraining, enjoining or otherwise prohibiting or making illegal the consummation of the Transactions, including the transactions contemplated by the Ancillary Agreements, and such Order shall have become final and non-appealable (a "*Termination Order*"); (ii) any Seller's Regulatory Approval or Purchaser's Regulatory Approval is denied in a final, non-appealable Order or other final, non-appealable action issued or taken by a Governmental Authority with jurisdiction; or (iii) any Action shall have been taken, or Law enacted, promulgated or deemed applicable to the Transactions, including the transactions contemplated by the Ancillary Agreements, by a Governmental Authority with competent jurisdiction that, directly or indirectly, prohibits the consummation of the Transactions, including the transactions contemplated by the Ancillary Agreements, as herein or therein provided; provided, however, that a Party shall not have the right to terminate this Agreement (x) pursuant to subclause (i) of this Section 10.1(c) if such Party or any of its Affiliates has sought the entry of, or has failed to use Commercially Reasonable Efforts to oppose the entry of, such Termination Order or (y) pursuant to subclause (ii) of this Section 10.1(c) if such Party has failed to use Commercially Reasonable Efforts to obtain such Seller's Regulatory Approval or Purchaser's Regulatory Approval, as applicable;

(d) by one Party, if there has been a material default or material breach of any representation, warranty, covenant or obligation contained in this Agreement by the other Party that is not cured by the earlier of the Closing Date or thirty (30) days after receipt by such other Party of written notice from the terminating Party specifying with particularity such breach or default;

(e) by Purchaser in accordance with Section 6.7;

(f) by Seller or Purchaser, as applicable, in accordance with Section 6.8(e) or Section 6.8(f);

(g) by Seller or Purchaser if:

(i) the Stockholder Approval is not obtained at the Special Meeting called pursuant to Section 6.6(b) (or any adjournment or postponement thereof) (A) at which a vote with respect to the Stockholder Approval was taken, and (B) prior to which a KGen Recommendation Change had not been made;

(ii) the Stockholder Approval is not obtained at the Special Meeting called pursuant to Section 6.6(b) (or any adjournment or postponement thereof) (A) at which a vote with respect to the Stockholder Approval was taken, and (B) prior to which a KGen Recommendation Change had been made.

(h) by Purchaser if KGen breaches its obligation under Section 6.6(b) to hold the Special Meeting for Stockholder Approval within the time period provided in Section 6.6(b)(i);

(i) by Seller in accordance with Section 6.12(d);

(j) by Purchaser in accordance with Section 6.18(c); or

(k) by Purchaser if Purchaser shall have received the final results of the facility study with respect to its request for network transmission service for the Project, and the aggregate cost reflected in such facility study for the supplemental upgrades required to provide such network transmission service exceeds $40,000,000.

Section 10.2. Effect of Termination. If this Agreement is validly terminated pursuant to Section 10.1, the written notice thereof given to the other Party shall specify the provision hereof pursuant to which such termination is made, and upon such termination this Agreement will forthwith become null and void, and there will be no liability or obligations of the Parties hereunder; provided, however, that (i) the provisions with respect to expenses in Section 6.2, confidentiality in Section 6.15(a), termination fees in Section 10.3 and the general provisions in Article XI will continue to apply following any such termination and (ii) nothing in this Section 10.2 shall relieve a Party from liability in the event termination hereunder is due to such Party's willful or intentional breach of any obligation, covenant, agreement or condition in this Agreement or any Ancillary Agreement or fraud in the performance of this Agreement or any Ancillary Agreement.

Section 10.3. Termination Fees.

(a) Seller and Purchaser agree that if this Agreement is terminated:

(i) by Seller or Purchaser pursuant to Section 10.1(g)(i), then KGen shall pay or cause to be paid to Purchaser, within two (2) Business Days of such termination, an amount equal to $1,900,000;

(ii) by Seller or Purchaser pursuant to Section 10.1(g)(ii), then KGen shall pay or cause to be paid to Purchaser, within two (2) Business Days of such termination, an amount equal to $9,500,000;

(iii) by Purchaser pursuant to Section 10.1(h), then KGen shall pay or cause to be paid to Purchaser, within two (2) Business Days of such termination, an amount equal to $9,500,000;

(iv) by Seller pursuant to Section 10.1(i), then KGen shall pay or cause to be paid to Purchaser, within two (2) Business Days of such termination, an amount equal to $9,500,000; or

(v) by Purchaser or Seller pursuant to Section 10.1(g)(i) and if (A) after the Effective Date and prior to the Special Meeting at which a vote with respect to the Stockholder Approval was taken, a Third Party has publicly announced a Takeover Proposal or otherwise communicates in any material respect with any material stockholders or group of stockholders of KGen a Takeover Proposal and (B) KGen or any of its subsidiaries enters into a definitive agreement with regard to a Takeover Proposal (replacing the references to "20% or more" with "50% or more") with such Third Party or any of its Affiliates, within nine (9) months of the date of termination of this Agreement, or (y) with any other Third Party, within six (6) months of the date of termination of this Agreement (a transaction described in (x) or (y) of this Section 10.3(a)(v)(B), a "*Subsequent Transaction*"), then KGen shall pay or cause to be paid to Purchaser upon consummation of the transaction contemplated by such definitive agreement an amount equal to $7,600,000. To the extent permitted by Law and enforceable, if a fee is payable pursuant to this Section 10.3(a)(v) in connection with the consummation of a Subsequent Transaction and such fee is not paid when due the applicable Subsequent Transaction shall be void.

(b) In the event that Purchaser receives full payment of all amounts due to Purchaser pursuant to Section 10.3(a), the full receipt of such amounts shall be deemed to be liquidated damages and the sole and exclusive remedy for any and all Losses suffered or incurred by Purchaser in connection with this Agreement (and the termination hereof), the Transactions (and the abandonment thereof) or any matter forming the basis for such termination, and Purchaser shall not bring or maintain any other claim against Seller, KGen or their respective Affiliates or any other Person arising out of this Agreement, any of the Transactions or any matters forming the basis for such termination. The Parties and KGen acknowledge that the Losses incurred by Purchaser would be difficult to determine and that the foregoing liquidated damages amount represents a reasonable estimate of such Losses. Notwithstanding the foregoing, nothing in this Section 10.3(b) shall limit any remedy available to Purchaser under any PPA as a result of a termination of this Agreement.

(c) KGen, Seller and Purchaser acknowledge that the agreements contained in this Section 10.3 are an integral part of this Agreement. In the event KGen shall fail to pay an amount under this Section 10.3, when due, KGen shall reimburse Purchaser for all reasonable costs and expenses actually incurred (including reasonable accrued costs and expenses that become payable) by Purchaser (including reasonable fees and expenses of counsel) in connection with any action (including the filing of any lawsuit) taken to collect payment of such amounts, together with interest on such unpaid amounts at the prime lending rate prevailing during such period as published in The Wall Street Journal, calculated on a daily basis from the date such amounts were required to be paid to the date of actual payment.

ARTICLE XI.
GENERAL PROVISIONS

Section 11.1. Entire Document; Amendments. This Agreement, the Ancillary Agreements, the Site Indemnity Agreement, and the Confidentiality Agreement contain the entire agreement between the Parties with respect to the Transactions, and such agreements supersede all negotiations, representations, warranties, commitments, offers, contracts and writings prior to the Effective Date, written or oral (including the letter of intent, dated November 16, 2010, between KGen and Entergy Services, Inc., as agent for Purchaser, and any agreement, promise, understanding or commitment based upon or made in any term sheet, contract or principal terms summary, bid package or other document prepared or made available by or on behalf of Purchaser or any communication or correspondence of any kind in connection with the Entergy System's Summer 2009 RFP for Long-Term Supply-Side Resources); provided, however, for the avoidance of doubt, the Parties hereby agree that the Site Indemnity Agreement, Confidentiality Agreement and, to the extent executed prior to the Effective Date, any Ancillary Agreements, shall remain in full force and effect in accordance with their terms on and after the Effective Date and the Site Indemnity Agreement and Ancillary Agreements shall remain in full force and effect in accordance with their terms on and after the Closing Date. No modification or amendment of any provision of this Agreement shall be effective unless made in writing referring specifically to this Agreement and duly signed by or on behalf of each of the Parties.

Section 11.2. Schedules.

(a) Each Party may, from time to time prior to the Closing, notify the other of any change or addition to any of the Schedules to this Agreement with respect to any matter arising or discovered after the Effective Date by the delivery to the other of any amendment or supplement thereto, as of a reasonably current date prior to the Closing, but each Party shall in any event at least once, not earlier than ten (10) Business Days and not later than three (3) Business Days prior to the Closing, so notify the other of all such changes of such Party; provided, however, that notwithstanding anything to the contrary contained herein, (i) Seller shall have no right to change, or add to, Schedule 2.1(f) without the prior written consent of Purchaser in its sole and absolute discretion, other than with respect to the addition of a Project Contract in accordance with Section 2.1(f) and (ii) Purchaser shall have no right to change or add to Schedule 2.2(c) or change or delete from Schedule 2.1(f) without the prior written consent of Seller in its sole and absolute discretion, other than with respect to the addition of a Project Contract entered into by Seller after the Effective Date in accordance with Section 2.1(f). Each such notification, change, addition, amendment or supplement pursuant to this Section 11.2 (i) by Seller shall have no effect for purposes of determining whether Purchaser's conditions to Closing set forth in Article VII have been fulfilled and (ii) by Purchaser shall have no effect for purposes of determining whether Seller's conditions to Closing set forth in Article VIII have been fulfilled; provided, however, that any such notification, change, addition, amendment or supplement by Seller to reflect any change in Law or to Schedule 2.1(d) (Tangible Personal Property), Schedule 2.1(e) (Purchased Inventory), Schedule 2.1(f) (Project Contracts), but only to the extent permitted by Section 2.1(f), Part I or Part II of Schedule 4.11 (Permits), Part I or Part II of Schedule 4.13 (Intellectual Property), or Part A or Part B of Schedule 4.15 (Environmental Matters) shall be deemed to have cured any breach or inaccuracy of such representations and warranties for purposes of determining whether such conditions to Closing

have been fulfilled. If the Closing occurs, all matters disclosed by either Party pursuant to any such notification, change, addition, amendment or supplement made prior to the Closing shall be deemed to be included in the Schedules as of the Effective Date or applicable later date and to cure any breach or inaccuracy of such representations and warranties for purposes of determining whether any of the Purchaser Group or the Seller Group, as applicable, is entitled to indemnification under Article IX.

(b) The Parties agree that whether particular property subject to the IDA Lease Agreement is classified as real, mixed or personal property under applicable Law, so long as (i) such property is described in a Schedule and (ii) good and marketable fee simple absolute title of record to such property is conveyed to Purchaser at the Closing from either, as Seller may determine in its sole and absolute discretion, Hot Spring County, Arkansas or Seller, then notwithstanding anything to the contrary contained in this Agreement, there shall be no breach of any representation or warranty associated with something being misclassified as real or personal property under this Agreement.

Section 11.3. Counterparts, Signatures, and Originals. This Agreement may be executed in one or more counterparts, each of which is an original, but all of which together constitute one and the same instrument. The Parties agree that this Agreement, the Ancillary Agreements and any other document issued pursuant to this Agreement, or document referenced by the foregoing, will be considered signed when the signature of a party is delivered by facsimile transmission. Such facsimile signature shall be treated in all respects as having the same effect as an original signature. Any original of this Agreement, any Ancillary Agreement or any other document issued pursuant to this Agreement or document referenced by the foregoing may be photocopied and stored on computer tapes and disks (the "*Imaged Document*"). The Imaged Document, if introduced in printed format in its original form in any judicial, arbitral, mediation, regulatory, or administrative proceeding will be admissible as between the Parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither Party shall object to the admissibility of the Imaged Document (or photocopies of the Imaged Document) on the basis that such were not originated or maintained in documentary form, under a hearsay rule, a best evidence rule or other evidentiary rule.

Section 11.4. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be valid, binding and enforceable under Law, but if any provision of this Agreement is held to be invalid, void (or voidable) or unenforceable under Law, such provision shall be ineffective only to the extent held to be invalid, void (or voidable) or unenforceable, without affecting the remainder of such provision or the remaining provisions of this Agreement. To the extent permitted by Law, the Parties waive any provision of Law that renders any provision hereof prohibited or unenforceable in any respect.

Section 11.5. Assignment. The rights under this Agreement shall not be assignable or transferable, nor the duties delegable, by either Party without the prior written consent of the other Party, which consent may be granted or withheld in such other Party's sole discretion. Notwithstanding the foregoing, either Party may upon prior written notice to the other Party collaterally assign, mortgage, hypothecate, pledge, or otherwise encumber all or any

portion of its interest in and to this Agreement and any Ancillary Agreement to its and any of its Affiliates' lenders or other parties providing financing (including lease financing) to such Party or any of its Affiliates and grant to such lenders or financing parties the power to assign the same upon prior written notice to the other Party in connection with an exercise of such lenders' or financing parties' remedies; provided, however, that neither the grant of any such interest, nor the foreclosure of any such interest, shall, to the extent any Party has retained any portion of its interest in and to this Agreement or the Ancillary Agreements, in any way release, reduce or diminish the obligations of such Party to the other Party hereunder with respect to such portion of such Party's interest. Any assignment effected in accordance with this Section 11.5 shall not relieve the assigning Party of its obligations and liabilities under this Agreement and the Ancillary Agreements to which it is a party. Any purported assignment or delegation not effected in accordance with this Section 11.5 shall be deemed void and of no force and effect.

Section 11.6. Governing Law. The validity, interpretation and effect of this Agreement shall be governed by, and construed in accordance with, the Laws of the State of New York without regard to conflicts of law doctrines (other than Section 5-1401 of the New York General Obligations Law), except with respect to matters that (a) are preempted by federal law or are governed by the Law of the respective jurisdiction of incorporation or formation, as applicable, of the Parties, or (b) relate to real property and are governed by the Law of the State of Arkansas. Any action or proceeding arising under this Agreement shall be adjudicated by courts of the State of Texas and the courts of the United States located in the State of Texas, in each case located in Harris County, State of Texas, and appellate courts from any thereof, AND EACH PARTY CONSENTS AND AGREES THAT ANY SUCH ACTION OR PROCEEDING MAY BE BROUGHT IN AND ONLY IN SUCH COURTS AND WAIVES (TO THE MAXIMUM EXTENT PERMITTED BY LAW) ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE VENUE OF ANY SUCH ACTION OR PROCEEDING IN ANY SUCH COURT OR THAT SUCH ACTION OR PROCEEDING WAS BROUGHT IN AN INCONVENIENT FORUM OR ANY SIMILAR OBJECTION AND AGREES NOT TO PLEAD OR CLAIM THE SAME.

Section 11.7. Waiver of Jury Trial. EACH OF THE PARTIES EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY LITIGATION, ACTION OR PROCEEDING ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT.

Section 11.8. Notices. Unless this Agreement specifically requires otherwise, any notice, claim, demand or request provided for in this Agreement, or served, given or made in connection with it, shall be in writing and shall be deemed properly served, given or made if delivered in person or sent by facsimile or sent by registered or certified mail, postage prepaid, or by a nationally recognized overnight courier service that provides a receipt of delivery, in each case, to the Parties at the addresses specified below:

If to Seller to:

KGen Hot Spring LLC
c/o KGen Power Corporation
1330 Post Oak Blvd., Suite 1500
Houston, Texas 77056

Attention: Chief Executive Officer and General Counsel
Fax: (713) 979-1950

with a copy to:

KGen Power Corporation
1330 Post Oak Blvd., Suite 1500
Houston, Texas 77056
Attention: Chief Executive Officer and General Counsel
Fax: (713) 979-1950

and

if to Purchaser to:

Entergy Arkansas, Inc.
c/o Entergy Services, Inc.
10055 Grogans Mill Road
The Woodlands, TX 77380
Attention: Vice President, Commercial Operations
Fax: (281) 297-3929

with a copy to:

Entergy Services, Inc.
10055 Grogans Mill Road, Suite 300
The Woodlands, TX 77380
Attention: Assistant General Counsel
Fax: (281) 297-3947

Notice given by personal delivery, mail or overnight courier pursuant to this Section 11.8 shall be effective upon physical receipt.

Section 11.9. No Third Party Beneficiaries. Except as may be specifically set forth in this Agreement, nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any Person other than the Parties, their respective permitted successors and assigns, and any Person benefiting from the indemnities provided herein, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third Persons to any Party, nor give any third Persons any right of subrogation or action against any Party.

Section 11.10. No Joint Venture. Nothing contained in this Agreement creates or is intended to create an association, trust, partnership or joint venture or impose a trust or partnership duty, obligation or liability on or with regard to any Party.

Section 11.11. Waiver of Compliance. To the extent permitted by Law, any failure to comply with any obligation, covenant, agreement or condition set forth herein or in any Ancillary Agreement, or any breach of any representation or warranty set forth herein or in any Ancillary Agreement, may be waived by the Party entitled to the benefit of such obligation,

covenant, agreement, condition, representation or warranty only by a written instrument signed by or on behalf of such Party that expressly waives such failure or breach, but any such waiver shall not operate as a waiver of, or estoppel with respect to, any prior or subsequent failure to comply therewith or breach thereof. The waiver of any condition based on the accuracy of any representation or warranty, or on the performance of or compliance with any covenant or obligation, or the waiver of the fulfillment of any such condition, shall not affect the right to indemnification or other remedy based on such representation, warranty, covenant or obligation. The failure of a Party to this Agreement to assert any of its rights under this Agreement or otherwise shall not constitute a waiver of such rights. A waiver by a Party of the performance of any covenant, condition, representation or warranty of the other Party shall not invalidate this Agreement, nor shall such waiver be construed as a waiver of any other covenant, condition, representation or warranty. A waiver by a Party of the time for performing any act shall not constitute a waiver of the time for performing any other act or the time for performing an identical act required to be performed at a later time.

Section 11.12. Nature of KGen's Obligations. From and after the Closing, in all instances where an obligation is imposed upon Seller under this Agreement but no similar obligation is expressly imposed upon KGen, KGen shall nevertheless be responsible for any Losses arising from or related to Seller's breach of such obligation; provided, however, that this obligation shall only survive until forty-two (42) consecutive months have lapsed since the Closing Date. This Section 11.12 shall in no way limit Seller's obligations under this Agreement.

Section 11.13. Attorneys' Fees. In any litigation or other proceeding between the Parties relating to this Agreement, the prevailing party shall be entitled to recover from the other its reasonable out-of-pocket costs incurred in connection with such litigation or proceeding, including reasonable attorneys' fees and other legal expenses.

[SIGNATURE PAGE FOLLOWS]

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

KGEN HOT SPRING LLC
a Delaware limited liability company

By_____
Name:
Title:

ENTERGY ARKANSAS, INC.
an Arkansas corporation

By_____
Name:
Title:

KGEN POWER CORPORATION
a Delaware corporation,
solely with respect to Section 6.6, Section 6.12, Section 6.15(c), Section 10.3 and Section 11.12,

By_____
Name:
Title: