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EXHIBIT A: RESTORE AGREEMENT

(Per footnote 10 of the Joint Application, Appendix B of the RESTORE Agreement has been omitted from this exhibit.)

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Exhibit A

AGREEMENT FOR REGIONAL EQUIPMENT SHARING FOR TRANSMISSION OUTAGE RESTORATION (RESTORE)

This Agreement for Regional Equipment Sharing for Transmission Outage Restoration (**"Agreement"**), effective as of the date set forth in the Signature Block below, is entered into by and among each entity that executes and delivers this Agreement (each, a **"Party"** and collectively, the **"Parties"**) and each entity that subsequently executes and delivers a joinder agreement substantially in the form of **Appendix A** attached hereto and is admitted as a Party to this Agreement in accordance with the terms and conditions of this Agreement.

RECITAL

In recognition of the potential threats and risk of significant damage to the country's energy resources, especially the electrical power grid, the Parties wish to establish this voluntary initiative to share spare transformers and other equipment, subject to the terms and conditions provided for in this Agreement. Accordingly, in consideration of the premises, promises, representations, warranties, covenants, and agreements contained herein, each Party, intending to be legally bound, hereby agrees as follows:

SECTION I. DEFINITIONS

A. "Affiliate" means, with respect to any Participant, any company or other entity, which directly or indirectly controls, is controlled by or is under joint control with that Participant. For this purpose, a person is deemed to control a company or entity if it (i) owns, directly or indirectly, at least 50 percent of the capital of the other company, or (ii) in the absence of such ownership interest, substantially has the power to direct or cause the direction of the management and set the policies of such company or entity.

B. "Applicable Law" means (i) all existing and future laws (including common law and environmental laws), rules, regulations, statutes, treaties, codes and ordinances of any Governmental Authority and (ii) all judgments, decrees, injunctions, writs, orders or like actions of any court, arbitration board, or administrative, judicial or quasi-judicial tribunal or agency of competent jurisdiction, in each case, applicable to one or more of the Parties, the Program or this Agreement and the rights and obligations specified herein.

C. "Buyer" has the meaning provided in Section IV.B.3.

D. "Call Rights" means the rights of a Participant, if any, to purchase Equipment from another Participant upon the occurrence of a Triggering Event in accordance with the terms and conditions of this Agreement.

E. "Committees" mean one or more of the Operating Committee, the Technical Committee and/or any subcommittees established by either of the Operating Committee or the Technical Committee in accordance with the terms and conditions of this Agreement.

F. "Committee Approval" means: (i) in respect of the Operating Committee, the approval of the Operating Committee by simple majority or two-thirds majority vote of its members, as may be applicable, in accordance with the terms and conditions of Section V.B; and (ii) in respect of the Technical Committee, the approval of the Technical Committee by simple majority vote of its members in accordance with the terms and conditions of Section V.C.

G. "Confidential Information" has the meaning provided in Section VII.A.

H. "Day" or **"Days"** means calendar days unless otherwise specified.

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I. "Default" means, with respect to a Party: (i) the Party experiences an Insolvency Event; (ii) the material breach of any representation or warranty made herein by the Party, which breach is not cured within thirty (30) Days after notice thereof by the Operating Committee or any Party; (iii) the Party fails to materially perform any obligation under this Agreement, which failure is not cured within thirty (30) Days after notice thereof by the Operating Committee or any Party; or (iv) the Party assigns, conveys or transfers this Agreement in whole or in part, or any interest, right or obligation herein, without the prior written consent of the Operating Committee, except as otherwise permitted by this Agreement.

J. "Effective Date" means: (i) in respect of a Party, the date that the Party executes: (a) this Agreement, *provided* that if the Party is the first to execute this Agreement, then the date that the next Party executes this Agreement: or (b) a joinder agreement substantially in the form of **Appendix A** and is admitted as a Party in accordance with the terms and conditions thereof and this Agreement; and (ii) in respect of a Participant, the date that the Party joins at least one other Party to become a member of an Equipment Class (for a total of at least two (2) Participants in the Equipment Class) in accordance with Section II.A.2.

K. "Equipment" means transformers and other equipment designated by a Participant for inclusion in an Equipment Class in accordance with Section III.A.1.b.

L. "Equipment Class" means the classes of Equipment established by the Technical Committee in accordance with Section III.A.

M. "External Need" has the meaning provided in Section III.A.1.a.

N. "Force Majeure" means any condition, event, or circumstance to the extent such condition, event, or circumstance is not within the reasonable control of the Party affected, including war, rebellion, civil strife, insurrection, public disorder, flood, fire, earthquake, extreme weather event, quarantine, act of terrorism, strike, lockout, or labor dispute.

O. "Governmental Authority" means any federal, state, county, regional, city, parish or local government body, agency, authority, branch, department, arbitrator, court or any subdivision, instrumentality, or agency thereof, having, or claiming, a regulatory interest in, or jurisdiction over, one or more of the Parties, the Program, or this Agreement and the rights and obligations specified herein.

P. "Governmental Approval" means any consent, authorization, permit, waiver, approval, or order of any Governmental Authority.

Q. "Insolvency Event" means, with respect to a Party: (i) the Party's (a) failure to generally pay its debts as they become due; (b) admission in writing of its inability to pay its debts as they become due; or (c) making a general assignment for the benefit of creditors; (ii) any proceeding being instituted by or against the Party seeking: (a) to adjudicate it as bankrupt or insolvent; (b) liquidation, winding up, reorganization, arrangement, adjustment, protection, relief or composition of it or its debts under any Applicable Law relating to bankruptcy, insolvency, reorganization or relief of debtors; or (c) the entry of an order for relief or the appointment of a receiver, trustee, custodian or other similar official for it or for any substantial part of its property and, in the case of any such proceeding instituted against the Party, either such proceeding remains undismissed for a period of sixty (60) Days or any of the actions sought in such proceeding occur; or (iii) the Party taking any action to authorize any of the actions set forth above in this definition.

R. "Month" or **"Months"** means calendar months unless otherwise specified.

S. "MVA" or **"Megavolt Amperes"** means the maximum power rating of a transformer at its maximum nameplate temperature rise. By way of example only, a unit with nameplate rating of 100/200/300 MVA at 65 degrees Celsius will be counted as a 300 MVA bank.

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T. **"N-0"** has the meaning provided in Section IV.B.2.

U. **"Notice"** or **"Notices"** have the meaning provided in Section X.G.

V. **"Participant"** means each Party that, consistent with Section II.A.2, has joined an Equipment Class and has designated Equipment for inclusion in that Equipment Class.

W. **"Party"** or **"Parties"** have the meaning provided in the preamble to this Agreement.

X. **"Person"** means any individual, sole proprietorship, corporation, trust, company, voluntary association, partnership, joint venture, limited liability company, unincorporated organization, institution, Governmental Authority, or any other legal entity.

Y. **"Pool"** means, for each Equipment Class, all designated Spare Equipment from all Participants in the Equipment Class for inclusion in the Equipment Class. As provided herein, there will be no separate or independent storage facility for any Pool, and each Participant will be responsible for acquiring, storing, and maintaining its own designated Spare Equipment in accordance with the terms and conditions of this Agreement.

Z. **"Program"** means the equipment sparing and sharing commitment among all Participants on the terms and conditions set forth in this Agreement. The Program is known as RESTORE (Regional Equipment Sharing for Transmission Outage Restoration).

AA. **"Prudent Utility Practice"** means the practices, methods, materials, supplies, equipment, and standards of safety, performance, and service that are commonly applied in the electric utility industry in the United States to operate and maintain transmission facilities, including the use of, and adherence to, equipment, practices and methods, applicable industry codes, standards, and regulations that in the exercise of reasonable judgment and in light of the facts and circumstances known at the time the decision was made would reasonably be expected to be consistent with safe and reliable grid operation. Prudent Utility Practices are not intended to be limited to the optimum practice or method to the exclusion of all others, but rather to be a spectrum of possible, but reasonable practices and methods.

BB. **"Purchase and Sale Agreement"** has the meaning provided in Section IV.B.3.

CC. **"Qualifying Equipment"** means, in respect of an Equipment Class, Equipment that meets the minimum criteria for acquisition and replacement in the Equipment Class, as determined by the Technical Committee.

DD. **"Recovery Need"** has the meaning provided in Section III.A.1.a.

EE. **"Replacement Period"** has the meaning provided in Section III.C.4.

FF. **"Seller"** has the meaning provided in Section IV.B.3.

GG. **"Signature Block"** means the information provided by a Party on the execution page of this Agreement or on the execution page of any joinder agreement executed in accordance with the terms and conditions of this Agreement.

HH. **"Spare Equipment"** means a Qualifying Equipment, including transformers and other items as may be specified by the Committees, (i) that is owned by a Participant, or that such Participant otherwise has rights to own or access, (ii) if subject to a properly-exercised Call Right, the Participant has the right and ability to sell, or cause to be sold, such Qualifying Equipment in accordance with this Agreement, and (iii) the Participant has obtained any and all Governmental Approval that are required for it to sell, or cause to be sold, such Qualifying Equipment in accordance with this Agreement.

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II. "Spare Transformer" means a transformer that is a Spare Equipment. A Spare transformer may include a transformer then in service on the Participant's system, *provided* the Participant operates and maintains the Spare transformer in accordance with Prudent Utility Practices.

JJ. "Triggering Event" means a catastrophic event creating an urgent grid need in which, for an extended period of time, a Participant loses its ability to serve significant load, is at imminent risk for losing significant load, or cannot maintain grid stability.

KK. "Voltage Class" has the meaning provided in Section III.A.1.

LL. "Year" or **"Years"** means calendar years unless otherwise specified.

SECTION II. PARTIES AND PARTICIPANTS

A. Qualifications. Parties must be transmission owners that provide a regional benefit to existing Parties and who are willing and able to contribute Equipment to Pools in Equipment Classes in accordance with the terms and conditions of this Agreement.

1. **New Parties.** The Operating Committee may invite, by Committee Approval, new parties to join the Program at any time. Current Parties may discuss the Program and potential membership with Persons who are not Parties, but no Party may extend an offer to such Persons without Committee Approval of the Operating Committee. Any such new parties must sign a joinder agreement substantially in the form of **Appendix A.**

2. **Participants.** Parties may become Participants only by joining an Equipment Class. A Party may join an Equipment Class only upon satisfaction of the requirements of Section II.B and (i) approval by a majority of existing Participants in that Equipment Class, (ii) mutual agreement with one or more Parties to begin participation in an established Equipment Class that has no existing Participants, or (iii) mutual agreement with one or more Parties to establish a new Equipment Class with a two-thirds majority of all Operating Committee members as provided in Section V.B.4(b). Subject to approval by other Participants in each applicable Equipment Class as provided above, Participants may participate in one or more Equipment Classes.

3. **Designation of Equipment.** All Equipment designated by each Participant in each Equipment Class shall be listed in **Appendix B**. The Technical Committee will be responsible for (i) determining what information must be included in Appendix B, (ii) for updating Appendix B, and (iii) for periodically verifying Appendix B as provided in this Agreement. Appendix B may be amended from time to time in accordance with this paragraph and Section V without requirement of any further amendment of this Agreement pursuant to Section X.Q.

4. **Procedure.** At least annually, the Committees will evaluate the level of Participant designation obligations. In connection with this annual review, the Committees will make commercially reasonable efforts to evaluate potential new Parties and Participants who have expressed interest for inclusion in the Program. The Committees will develop and publish to all Parties any specific requirements and procedures for the consideration and evaluation of potential new Parties and Participants in any applicable Equipment Classes.

B. Regulatory Approvals. As a condition precedent to becoming a Participant, each prospective Participant must certify to the Operating Committee, in form and substance reasonably satisfactory to the Operating Committee, either that: (i) no Governmental Approvals are required by Applicable Law for it to enter into this Agreement and/or make any transactions under this Agreement in the Program in accordance with the terms and conditions of this Agreement; or (ii) one or more Governmental Approvals are required by Applicable Law or otherwise deemed necessary or appropriate by it to enter into this Agreement and/or make any transactions under this Agreement in the Program in accordance

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with the terms and conditions of this Agreement and that: (a) it has obtained such Governmental Approvals; or (b) intends to obtains such Governmental Approvals within eighteen (18) months of the date of such certification. In the case of Section II.B(ii)(b), if a prospective Participant fails to provide evidence to the Operating Committee that it has obtained any Governmental Approvals identified in its certification to the Operation Committee by the end of the eighteen (18)-month period, then: (x) it may certify to the Operating Committee, in form and substance reasonably satisfactory to the Operating Committee, that any Governmental Approvals not obtained are no longer required by Applicable Law or deemed necessary or appropriate by it to participate in the Program in accordance with the terms and conditions of this Agreement; (y) it may elect to withdraw immediately from this Agreement, notwithstanding any time limitations in Section VIII.C; or (z) the Operating Committee may elect, by two-thirds majority vote of its members, to withdraw such prospective Participant from the applicable Equipment Class or this Agreement.

C. Participant Storage. Each Participant will be responsible for purchasing or otherwise acquiring, storing, maintaining, and replacing its own Spare Equipment in accordance with Prudent Utility Practices. Spare Equipment may still be designated, committed, or otherwise used for internal sparing needs of the designating Participant or its Affiliates, subject to the maintenance and replacement obligations provided in Section III.C. Each Participant need not segregate its Spare Equipment from its other spare equipment for storage or maintenance purposes.

D. Multiple Equipment Sharing Commitments. The Spare Equipment included in this Program also may be designated, committed, or otherwise used under another equipment sparing, sharing, or reserve program without any penalty or need for further contribution, subject to compliance by the applicable Participants with the maintenance and replacement obligations provided in Section III.C. Notwithstanding the foregoing, each Participant must have appropriate rights and authority to sell its Spare Equipment in the event of a Triggering Event, subject to and in accordance with the terms of this Agreement.

SECTION III. SPARING REQUIREMENTS

A. Equipment Classes. The Technical Committee will be responsible for establishing, and modifying as appropriate, new or different Equipment Classes for inclusion in the Program, subject to approval by the Operating Committee. In establishing the Equipment Classes, the Technical Committee will also establish the criteria for Qualifying Equipment to be included within each such Equipment Class. Participants will be obligated to provide the Technical Committee with information sufficient to allow the Technical Committee to perform the calculations below and to evaluate whether Equipment constitutes Qualifying Equipment.

1. **Transformers.** Each Equipment Class for transformers will be identified by voltage classification ranges and other technical criteria as established by the Technical Committee. For transformers, each Equipment Class may be referred to as a **"Voltage Class."** The Pool size and individual commitment obligations for transformer Equipment Classes will be stated in terms of MVA.

   a. **Pool Size.** The Pool size for each Equipment Class will be determined by first calculating for each Participant in that Equipment Class the difference between (i) the MVA needed to recover from a simultaneous loss of such Participant's five (5) most critical substations, or all substations in the case of a Participant with less than five (5) substations, as determined by the Technical Committee (**"Recovery Need"**) and (ii) the MVA from Spare Transformers within that Equipment Class available to that Participant internally to recover from such loss. Such difference is the **"External Need"** for each Participant. The Pool size for the Equipment

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Class will be the greatest amount of External Need of any Participant in that Equipment Class, plus 20% of such External Need.

i The Recovery Need will equal the total MVA from all transformers within that Equipment Class needed to restore the grid to a stable condition that can serve all expected load allowing for N minus zero (N-0) contingencies to exist;

ii To enable determination of the External Need, each Participant will provide the Technical Committee with at least the following information:

(A) The total connected MVA within the applicable Equipment Class;

(B) The total MVA required to restore the Participant's five most critical substations to a minimal level (or all substations if it has fewer than 5);

(C) The total MVA the Participant has on hand that can be used to restore the five most critical substations to a minimal level (or all substations if it has fewer than 5).

b. Participant Designations. Each Participant in an Equipment Class will designate specific Spare Transformers of that Equipment Class to be included on Appendix B with an aggregate MVA equal to or greater than its required designation under the following formula, which is the sum of:

i One-half of the Pool size for that Equipment Class multiplied by the fraction with a numerator equal to the sum total of MVA of all of that Participant's in-service transformers of that Equipment Class and the denominator is the sum total of MVA of all of the Participants' in-service transformers of that Equipment Class; plus

ii One-half of the Pool size for that Equipment Class multiplied by the fraction with a numerator equal to that Participant's External Need for that Equipment Class and the denominator is the sum total of the External Needs of all of the Participants in that Equipment Class.

For example only, a hypothetical calculation of Pool Size and Participant designation requirements is attached hereto as **Appendix C**.

c. Timing of Calculations. The Technical Committee will be responsible for calculating the Pool size at least annually, and upon notice of the addition or withdrawal of any Participants. Participants may request that the Technical Committee recommend, or the Technical Committee may recommend on its own accord, in each case, by variances to the Pool size and individual Participant required designations to account for unique or extenuating circumstances, subject to approval of the Operating Committee.

2. Other Equipment. The Technical Committee may identify other items of equipment not specifically tied to the MVA calculation that may be considered for inclusion in the Program. The Technical Committee may either devise appropriate Equipment Classes and appropriate formulas for calculating a Pool size and Participant designation requirements in each such Equipment Class or only share inventory and technical information to facilitate sale and use following a Triggering Event. The establishment of any such Equipment Classes must be approved by the Operating Committee before any Parties may become Participants in such Equipment Classes.

B. Binding Obligation on Participants. By electing to participate in any Equipment Class and designating Spare Equipment for inclusion in that Equipment Class, a Participant agrees to sell, subject to the terms and conditions specified in this Agreement, the Spare Equipment to another Participant exercising its Call Rights after a Triggering Event. Participants must be in compliance with their designation, maintenance, and replacement obligations as set forth herein in order to exercise their Call

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Rights to purchase Spare Equipment under this Agreement. If a Participant has been determined to be in Default or is otherwise removed from participation in any Equipment Class and has not been reinstated by the Operating Committee prior to a Triggering Event, such Participant shall not be entitled to exercise its Call Rights to purchase Spare Equipment from the applicable Equipment Class. A Participant's failure to comply with any Governmental Approval requirements pursuant to Section II.B, shall not constitute a valid justification for breach of its obligation to sell Equipment pursuant to this Section III.B. Notwithstanding the foregoing, during the period in which a Participant may be seeking any Governmental Approval as described in Section II.B above, such Participant will not be obligated to sell Equipment.

C. Acquisition, Maintenance, and Replacement Obligations.

1. Acquisition Obligations. Upon the determination, calculation, or other establishment of the designation requirements for any Equipment Class, all Participants in that Equipment Class will designate Qualifying Equipment to be listed in Appendix B. In the event any Participant does not currently own or have sufficient ownership rights to designate the total required amount of Qualifying Equipment in the relevant Equipment Class, that Participant will use commercially reasonable efforts to acquire, as soon as practicable but not more than eighteen (18) months from the date the required amount was established, Qualifying Equipment sufficient to meet the calculated obligation, or any revised obligation of the Participant as calculated by the Technical Committee during the eighteen (18) month period as part of its periodic review for the affected Equipment Class.

2. Storage and Maintenance Obligations. Each Participant is responsible for its own storage and maintenance, and where necessary, replacement, of designated Equipment in accordance with Prudent Utility Practice. Such storage and maintenance standards for designated Equipment will be no less than the designating Participant's practices for storage and maintenance of other spare equipment of like kind not designated for inclusion in the Program, and in any event in such a manner that the Spare Equipment is capable of being operated or used in the designating Participant's system.

3. Disposition of Spare Equipment. Any Participant may sell, retire, or otherwise dispose of Spare Equipment at any time subject only to the replacement obligations set forth in the next paragraph, with any such disposition on any terms or conditions in that Participant's sole discretion, except in the immediate aftermath of a Triggering Event in which case any such disposition must be made in accordance with this Agreement. For avoidance of doubt, nothing in this Agreement prohibits a Participant from using designated Spare Equipment for its (or its Affiliate's) own internal needs, committing Spare Equipment to any other voluntary sparing or sharing programs, or selling or otherwise disposing of such Spare Equipment outside of this Agreement (other than in the immediate aftermath of a Triggering Event in which case any such disposition must be made in accordance with this Agreement), *provided* that the Participant complies with the replacement obligation within the Replacement Period defined in the paragraph below.

4. Replacement Obligations. If a Participant places into active use, sells, retires, or otherwise disposes of any Spare Equipment that would cause that Participant's remaining Spare Equipment in the same Equipment Class to be less than the Participant's designation obligation for that Equipment Class, then the Participant will either immediately designate different Qualifying Equipment already in Participant's possession, or if Participant does not have any available Qualifying Equipment, use commercially reasonable efforts to replace, as soon as practicable but not more than eighteen (18) months after the date of such disposition (the **"Replacement Period"**), the disposed Spare Equipment with Qualifying Equipment sufficient to satisfy at least the greater of (a) the Participant's designation obligation for each affected Equipment Class as calculated at

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the time of the Participant's disposition of the originally-designated Spare Equipment, or (b) any revised obligation of the Participant as calculated by the Technical Committee as part of a periodic review for the affected Equipment Class. A Participant will not be deemed to be out of compliance with its obligations under this Section III.C. for the affected Equipment Class during such Replacement Period.

5. **Reporting Obligations.** All Participants will provide prompt notice to the Technical Committee of any material changes to Spare Equipment, including any disposition of Spare Equipment, material change to the condition of the Spare Equipment, or any replacement or other substitution of the Spare Equipment. Upon completion of any purchase and sale transaction between Participants in conjunction with a Triggering Event under this Agreement, the Participants involved in the purchase and sale transaction will, with reasonable promptness under the circumstances, report the transaction to the Technical Committee, including information sufficient from each Participant to evaluate the impact of the transaction and/or the Triggering Event on the submitting Participant's Spare Equipment.

SECTION IV. EXERCISING RIGHTS OF PURCHASE

A. Determination of a Triggering Event. Any Participant who believes it has been affected by a Triggering Event and wishes to purchase Spare Equipment under the Program must provide prompt notice thereof to the Operating Committee. No later than five (5) Days after receipt of such notice, the Operating Committee will determine if the event is a Triggering Event, notice of which determination the Operating Committee shall deliver to the affected Participant and the Technical Committee. The decision of the Operating Committee as to whether a Triggering Event has occurred will be final and not subject to further review by the Operating Committee.

B. Procedure to Exercise Call Rights.

1. **Participant Request.** Any Participant may exercise its Call Rights if, by providing Spare Equipment under this Agreement as a result of a Triggering Event, that Participant then faces an urgent grid need in which, for an extended period of time, the Participant loses its ability to serve significant load, is at imminent risk for losing significant load, or cannot maintain grid stability, subject to the Operating Committee and Technical Committee procedures in Section IV.A and Section IV.B.

2. **Request for Purchase.** If the Operating Committee determines that a Triggering Event has occurred, then each affected Participant may exercise its Call Rights by submitting a request to purchase Spare Equipment to the Technical Committee. Each affected Participant will be entitled to purchase only enough Spare Equipment needed to restore the grid to a stable condition that can serve all load allowing for N minus zero (**"N-0"**) contingencies to exist. The Technical Committee will evaluate the request of each affected Participant and make a recommendation to the Operating Committee of which Spare Equipment, if any, from the Pool in the applicable Equipment Class should be purchased by each affected Participant. Based on the Technical Committee's recommendation, the Operating Committee will determine which Spare Equipment, if any, from the Pool in the applicable Equipment Class should be purchased by each affected Participant, notice of which Spare Equipment (together with the Participant(s) that contributed the Spare Equipment) the Operating Committee will provide to each affected Participant and all other Participants in the applicable Equipment Class. The decision of the Operating Committee with respect to Spare Equipment, if any, which should be purchased by each affected Participant will be final and not subject to further review by the Operating Committee.

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3. **Private Transaction.** If an affected Participant elects to exercise its Call Rights (**"Buyer"**), then it shall provide notice thereof to the contributing Participant(s) designated by the Operating Committee pursuant to Section IV.B.2 (**"Seller(s)"**) and all other Participants in the applicable Equipment Class. Effective upon receipt of Buyer's election notice, Seller(s) shall be obligated to sell to Buyer the Equipment identified by the Operating Committee pursuant to Section IV.B.2, subject to the terms and conditions of a purchase and sale agreement to be executed by Buyer and Seller(s) substantially and in all material respects in the form of **Appendix D** attached hereto (as the same may be amended by mutual agreement of Buyer and Seller(s), the **"Purchase and Sale Agreement"**). Notwithstanding anything to the contrary contained in this Agreement, the purchase and sale of Spare Equipment pursuant to this Section IV.B.3 shall occur directly between Buyer and Seller(s) and without the involvement of the Committees or any other Parties or Participants.

C. Priority of Rights.

1. The Technical Committee will establish and publish considerations, factors, or other procedures for the determination of which specific Equipment should be purchased upon the occurrence of a Triggering Event and the exercise of Call Rights by one or more affected Participants, including procedures for evaluating and determining the respective rights of affected Participants when multiple affected Participants make requests to purchase Spare Equipment pursuant to this Section IV.

2. Notwithstanding each Participant's obligation to sell Spare Equipment to affected Participants following a Triggering Event, any Participant who is affected, or has one or more Affiliates who are affected, by the same Triggering Event will be permitted to use its own Spare Equipment for that Participant's (or its Affiliate's) own bona fide internal needs arising from the Triggering Event (and the terms of the Purchase and Sale Agreement shall not apply to such use), but will be obligated to sell all remaining Spare Equipment to other affected Participants who exercise Call Rights in accordance with the terms and conditions of this Agreement.

3. In the event of multiple, over-lapping Triggering Events, the Operating Committee, with the assistance of the Technical Committee and taking into account any established protocols as necessary and appropriate, will determine the priority of rights and assistance to be provided to affected Participants. The decision of the Operating Committee will be final and not subject to further review by the Operating Committee.

4. In the event that a Buyer rejects any defective or otherwise non-working Equipment from a Seller following the initial allocation in accordance with this section, that Buyer may re-initiate its exercise of Call Rights, and the Operating Committee and Technical Committee may consider the totality of the circumstances in determining the priority of rights among that Buyer and any other affected Participants.

SECTION V. GOVERNANCE

A. General Structure. The Program shall have two permanent, standing committees: an Operating Committee and a Technical Committee, each with the authority and responsibility to establish subcommittees within the scope of that particular Committee's responsibilities and authority.

B. Operating Committee.

1. **Responsibilities.** The Operating Committee shall meet, from time to time, but at least once annually, to consider and act upon the following matters: (a) to elect its chairperson; (b) to provide executive oversight and management to the Program; (c) to recommend, prepare, review and vote upon any amendments or modifications to this Agreement, if and as may be necessary or

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appropriate; (d) to make any and all determinations of whether a particular catastrophic event constitutes a Triggering Event; (e) to work to resolve any conflicts or disputes among Parties, *provided* that the Parties shall retain all rights or remedies at law or in equity; (f) to take action on all recommendations from the Technical Committee and/or its respective subcommittees, including (i) variance of Pool size for each type of Equipment for each Voltage Class; (ii) variance in participation requirements for individual Participants in any Equipment Class, including any conditions for such variance; (iii) allocation of Spare Equipment following a Triggering Event, including resolution of potential conflicts in the event of multiple overlapping Triggering Events and/or multiple affected Participants; and (iv) adding, modifying or deleting Equipment Classes in the Program; (g) to establish subcommittees of the Operating Committee or the Technical Committee and to oversee any guidelines, policies or procedures for the operation of the Program and provide for guidance and direction of the same; (h) to vote upon the inclusion of new Parties, receive notices of the withdrawal of existing Parties or Participants, and vote upon termination of Parties or Participants in accordance with the terms and conditions of this Agreement; (i) to prepare and/or coordinate any external communications, including press releases and related communications, as well as communications with Governmental Authorities or their personnel, with respect to the Program and this Agreement; (j) to determine whether to incur expenses from time to time up to $100,000 related to the Program (e.g., legal expenses) that shall be shared equally among the Parties unless agreed upon consistent with the requirements of Section V.B.4; and (k) to take such other actions as may be contemplated by this Agreement as necessary or appropriate to be taken by the Operating Committee.

2. Participation and Vacancies. The Operating Committee shall have one member from each Party in the Program, with each such Party's member rotating to serve as chairperson of the Operating Committee so that the designated member of each Party shall serve one (1) term of twelve (12) months as chairperson of the Operating Committee before any Party's member repeats service as chairperson of the Operating Committee. In addition, each Party may appoint an alternate member to serve on the Operating Committee in the place of and with the rights and authority of the designated member appointed by such Party in the event that at any time the designated member is unable to perform its responsibilities as a member of the Operating Committee. Each Party that is entitled to appoint a member or an alternate member to the Operating Committee will be entitled to remove and replace the member or alternate member it so appointed at any time. Any Party wishing to replace its member or alternate member on the Operating Committee will provide reasonable advance notice to the other Parties of the replacement member or alternate member.

3. Meetings. The Operating Committee may meet in person, by telephone conference call or web conference, so long as each member of the Operating Committee is able to hear and speak to all other members in attendance at such meeting, and any such meeting of the Operating Committee shall make adequate provisions for any and all members to participate by telephone conference call or web conference. Any meeting notice will be delivered to all Parties sufficiently in advance of the meeting time to give all members a reasonable opportunity to participate under the circumstance, including any instructions for meaningful participation and/or voting by means other than personal attendance by the member. The Operating Committee may also act by unanimous written consent of all Parties without a meeting.

4. Voting. A majority of the members of the Operating Committee shall constitute a quorum for the conduct of business at any meeting of the Operating Committee. A decision by a simple majority of the votes cast by the members of the Operating Committee shall be required for approval of all items at which a quorum is present and shall constitute the action of the Operating Committee, except that a two-thirds majority vote of all Operating Committee members will be required for any action to be taken by the Operating Committee: (a) to terminate or amend this Agreement or

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waive any provision of this Agreement; (b) to establish, modify or eliminate Equipment Classes, including their respective formulas for calculation of Pool size or individual Participant designations; (c) allocate costs in a manner other than equally among all Parties; (d) incur expenses from time to time in excess of $100,000; or (e) take any other action specifically designated in this Agreement as requiring a two-thirds majority vote of all Operating Committee members. A Committee Approval of the Operating Committee shall be required for the consent or approval of, the determination or exercise of rights by, or the taking of any other action by the Operating Committee pursuant to this Agreement. In acting upon any matter brought before the Operating Committee, each member shall be entitled to east one (1) vote upon such matter. Each member may cast its vote in person or by telephone participation during a meeting of the Operating Committee, or in a writing (whether physical or electronic) delivered to the chairperson reasonably contemporaneously to the time of the meeting in accordance with instructions given in advance of the meeting. Notwithstanding the foregoing, the Party that has exercised its Call Right shall not be entitled to cast a vote upon such matter, and the member of such Party shall recuse himself or herself from the Operating Committee's deliberations. If multiple Parties to this Agreement share a single parent corporation, those Parties shall be entitled to a single vote.

C. Technical Committee.

1. Responsibilities. The Technical Committee shall meet, from time to time but at least once annually, to consider and act upon the following matters: (a) to select a chairperson; (b) to provide technical coordination, review, and confirmation of Program requirements as directed by this Agreement or the Operating Committee, including Participant compliance with Equipment contribution requirements; (c) to prepare recommendations to the Operating Committee for at least the following items: (i) creation of and update to, as necessary or appropriate, Equipment Classes for specified equipment types, including annual updates to the Pool size and individual Participant designation requirements; (ii) any variances of Pool size for each Equipment Class, (iii) any variances in participation requirements for any individual Participant in each Equipment Class, including any conditions for such variance; (iv) allocations of Spare Equipment in response to any exercise of Call Rights following a Triggering Event, including resolution of potential conflicts among multiple affected Participants, or which Spare Equipment should be used if all available Spare Equipment is not needed; and (v) the addition to or deletion of specified Equipment Classes in the Program; and (d) to take such other actions as may be contemplated by this Agreement as necessary or appropriate to be taken by the Technical Committee.

2. Participation and Vacancies. The Technical Committee shall have one member from each Party in the Program, with each such Party's member rotating to serve as chairperson of the Technical Committee so that the designated member of each Party shall serve one (1) term of twelve (12) months as chairperson of the Technical Committee before any Party's member repeats service as chairperson of the Technical Committee. In addition, each Party may appoint an alternate member to serve on the Technical Committee in the place of and with the rights and authority of the designated member appointed by such Party in the event that at any time the designated member is unable to perform its responsibilities as a member of the Technical Committee. Each Party that is entitled to appoint a member or an alternate member of the Technical Committee will be entitled to remove and replace the member or alternate member it so appointed at any time. Any Party wishing to replace its member or alternate member on the Technical Committee will provide reasonable advance notice to the other Parties of the replacement member or alternate member.

3. Meetings. The Technical Committee may meet in person, by telephone conference call or web conference, so long as each member of the Technical Committee is able to hear and speak to all other members in attendance at such meeting, and any such meeting of the Technical Committee

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shall make adequate provisions for any and all members to participate by telephone conference call or web conference. Any meeting notice will be delivered to all Parties sufficiently in advance of the meeting time to give all members a reasonable opportunity to participate under the circumstance, including any instructions for meaningful participation and/or voting by means other than personal attendance by the member. The Technical Committee may also act by unanimous written consent of all Parties without a meeting.

4. Voting. A majority of the members of the Technical Committee shall constitute a quorum for the conduct of business at any meeting of the Technical Committee. A decision by a simple majority of the votes cast by the members of the Technical Committee shall be required for approval of all items at which a quorum is present and shall constitute the action of the Technical Committee. A Committee Approval of the Technical Committee shall be required for the consent or approval of, the determination or exercise of rights by, or the taking of any other action by the Technical Committee pursuant to this Agreement. In acting upon any matter brought before the Technical Committee, each member shall be entitled to cast one (1) vote upon such matter. Each member may cast its vote in person or by telephone participation during a meeting of the Technical Committee, or in a writing (whether physical or electronic) delivered to the chairperson reasonably contemporaneously to the time of the meeting in accordance with instructions given in advance of the meeting. Notwithstanding the foregoing, the Party that has exercised its Call Right shall not be entitled to cast a vote upon such matter, and the member of such Party shall recuse himself or herself from the Technical Committee's deliberations. If multiple Parties to this Agreement share a single parent corporation, those Parties shall be entitled to a single vote.

D. Subcommittees. Each Committee may, by Committee Approval, establish one or more subcommittees to address specific issues which fall within the scope of such Committee, including subcommittees responsible for activities with respect to specific Equipment Classes and other requirements established under the Program. Where a subcommittee corresponds to one or more particular Equipment Classes, the subcommittee shall have one member for each Participant participating in the Equipment Class or Equipment Classes. The Committee Approval establishing any subcommittee shall provide for: (i) the responsibilities of the subcommittee; (ii) the Participants who shall appoint and replace the members of the subcommittee; (iii) the requirements for meetings of the members of the subcommittee; and (iv) the voting requirements of the members of the subcommittee.

1. Participant Approval. Notwithstanding any other provisions in this Section V to the contrary, no action may be taken by the Operating Committee or the Technical Committee to expand or contract an Equipment Class, modify the Pool Size of an Equipment Class, modify the formula for calculating individual Participant designations in an Equipment Class, or grant a variance to a Participant in an Equipment Class without the approval of a majority of the members on the Operating Committee or Technical Committee, as the case may be, appointed by the then-existing Participants in the affected Equipment Class.

SECTION VI. REPRESENTATIONS AND WARRANTIES

Each Party hereby represents and warrants the following, on and as of the respective Effective Date of this Agreement, for each Party, which representations and warranties shall survive the execution and delivery of this Agreement and any termination of this Agreement:

A. It is duly organized, validly existing and in good standing under the laws of the state or jurisdiction of formation;

B. The execution, delivery and performance of this Agreement by it: (i) do not, and its performance of the terms and conditions hereof will not, conflict with or violate its organizational documents or any

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resolution of its board of directors; (ii) do not require any consent or approval from any other Person or any Governmental Approval from any Governmental Authority (other than as contemplated in Section II.B); and (iii) do not violate any provision of Applicable Law or any agreement, judgment, injunction, order, decree or other instrument binding upon it, or subject its property and assets to any Lien (other than Liens created hereunder);

C. No litigation, investigation or proceeding of or before any arbitrator or Governmental Authority is pending against or, to its knowledge, threatened against or affecting it or any of its properties, rights, revenues, or assets which could reasonably be expected to have a material adverse effect on its ability to perform its obligations under this Agreement; and

D. This Agreement has been duly authorized, executed, and delivered by it and constitutes its legal, valid, and binding agreement, enforceable against it in accordance with its terms, subject to the laws of bankruptcy (and similar laws and regulations) and general principles of equity as may be applicable under the circumstances.

SECTION VII. CONFIDENTIAL INFORMATION

A. Confidential Information. Each Party has a proprietary interest in certain information that will be disclosed (either directly or through others on its behalf) pursuant to this Agreement. Each Party shall keep in confidence any such information it receives that in good faith the disclosing Party believes is proprietary and which: (i) is specifically designated in writing as being "confidential" or (ii) is disclosed orally, visually or by way of consigned items, and is orally identified as "confidential" at the time of disclosure, which oral identification is confirmed in writing within ten (10) Business Days (**"Confidential Information"**). Such Confidential Information may include, but will not be limited to, financial information disclosed by a Party; the identification and location of specific equipment a Party may consider for designation under this Agreement; all information pertaining to Equipment, or potential Equipment, shared by a Participant or prospective Participant in accordance with this Agreement; information prepared or generated by the Technical Committee with respect to Equipment, including **Appendix** B; and any information deemed to be Critical Electric Infrastructure Information or other critical infrastructure information protected or potentially protected by Applicable Law.

B. Use of Confidential Information. Each Party agrees not to disclose any other Party's Confidential Information without the prior written consent of the other Party or use any such information other than in connection with the exercise of its rights or the performance of its obligations under this Agreement (including in connection with any legal proceeding or dispute under this Agreement). Subject to all applicable state and federal regulatory requirements, each Party agrees that the other Party may disclose any Confidential Information to its (and its Affiliates') officers, directors, employees, counsel, engineers, consultants, representatives and to such other persons or entities as may be necessary to exercise its rights or perform its obligations under this Agreement (including in connection with any legal proceeding or dispute under this Agreement); *provided*, that it is responsible for requiring all such Persons to comply with the terms of this Section VII and shall be liable for any breach thereof by such Persons. Notwithstanding any provision to the contrary contained in this Section VII, a Party that receives Confidential Information from another Party may disclose such Confidential Information if it can substantiate that such Confidential Information:

1. was in the possession of the receiving Party at the time it was initially furnished, without a breach of this Section VII;

2. is or becomes part of the public domain without a breach of this Section VII by the receiving Party;

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3. is received from a third party who is, to the knowledge of the receiving Party, under no limitation or restriction regarding disclosure;

4. is independently developed by or for the receiving Party and not obtained or derived, in whole or in part, from Confidential Information received from the disclosing Party; or

5. is required to be disclosed pursuant to Applicable Law or at the request or direction of a Governmental Authority; *provided*, that the receiving Party provides prompt notice thereof to the disclosing Party, and takes reasonable steps to seek confidential treatment of the disclosing Party's Confidential Information subject to any available procedures for maintaining confidentiality;

provided, however, that Confidential Information shall not be deemed to be within one of the foregoing exceptions merely because it is embraced by more general information available on a non-confidential basis to the receiving Party.

C. Irreparable Harm for Violation. The Parties acknowledge that a violation of provisions of this Section VII by a Party would cause irreparable harm to the disclosing Party for which no adequate remedy at law exists. Each Party therefore agrees that, in addition to any other remedies available, the disclosing Party shall be entitled to seek injunctive relief to enforce the terms of this Section VII, including to prevent a breach or contemplated breach hereof, without, in any case, proof of actual damages or the posting of any bond or security, which posting is hereby waived to the fullest extent permitted by Applicable Law.

SECTION VIII. TERM; ADDITIONAL PARTIES; WITHDRAWAL

A. Term. The term of this Agreement shall commence as of the Effective Date and shall thereafter continue so long as there is more than one (1) Party.

B. Additional Parties. A party that is not a Party to this Agreement may become a Party upon (i) receiving the requisite invitation and approval of the Operating Committee as set forth in Section II.A.1 and Section V and (ii) executing and delivering to the Operating Committee a joinder agreement substantially in the form of **Appendix A** agreeing to be bound by the terms and conditions of this Agreement. Effective upon satisfaction of the conditions in Section VIII.B(i) and (ii), the chairperson of the Operating Committee is hereby authorized to execute the joinder agreement on behalf of the Parties, and the Person shall be a new Party under this Agreement for all purposes and all existing Parties shall be obligated to the new Party under the terms and conditions of this Agreement.

C. Withdrawal of Parties and Participants.

1. Voluntary Withdrawal from Agreement. At any time more than two (2) years after a Party's Effective Date of this Agreement, or more than two (2) years after a Party's Effective Date as a Participant in its most recent Equipment Class, whichever is later, the Party may withdraw from this Agreement upon giving written notice thereof to the other Parties stating the effective date of withdrawal, which may be no earlier than one (1) year after the date the notice is delivered. Such withdrawal from this Agreement shall constitute withdrawal from every Equipment Class effective as of the same date of withdrawal from this Agreement unless different dates are specified for individual Equipment Classes consistent with the requirements of this Section VIII.C.1.

2. Voluntary Withdrawal from Equipment Class. At any time more than two (2) years after a Participant's Effective Date for an Equipment Class, the Participant may withdraw from such Equipment Class, or multiple Equipment Classes, so long as the Participant has been a member of each such Equipment Class for at least two (2) years, without withdrawing as a Party to this Agreement, by providing written notice thereof to the other Parties stating the effective date of withdrawal from each affected Equipment Class, each of which may be no earlier than one (1) year

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after the date the notice is delivered. In the event of a notice that any Participant will be withdrawing from one or more Equipment Classes, other Participants in the affected Equipment Classes also may give notice of withdrawal from those affected Equipment Classes (but not other Equipment Classes) to be effective as of the same date as the initial withdrawing Participant, *provided* that such other Participants give notice of withdrawal within sixty (60) Days of the initial notice of withdrawal pursuant to this Section VIII.C.2.

3. **Involuntary Withdrawal.** If the Operating Committee determines by Committee Approval that a Party is in Default and should be withdrawn (a) as a Participant from any Equipment Class(es) or (b) as a Party from this Agreement, then in either case the Defaulting Party shall be withdrawn effective on the date determined by the Operating Committee by Committee Approval, which date shall be no earlier than sixty (60) Days following notice to the Defaulting Party of the Operating Committee's determination.

4. **Effect of Withdrawal.** Upon the effectiveness of a Party's or Participant's withdrawal under this Section VIII, the Party or Participant shall no longer be a Party or Participant (solely with respect to the Equipment Classes such Participant has withdrawn from) under this Agreement, as the case may be; *provided*, that such Party or Participant shall continue to be liable under this Agreement with respect to all of its acts and omissions occurring prior to the effective date of withdrawal, including but not limited to any obligations to complete any pending sales transactions with another Participant exercising Call Rights under this Agreement.

SECTION IX. REMEDIES

A. Specific Performance. Each Participant acknowledges and agrees that: (i) all other Participants in any given Equipment Class are relying on such Participant to consummate, or cause to be consummated, the sale of any Spare Equipment upon the exercise of Call Rights in accordance with Section IV; (ii) each designated item of Equipment is unique; (iii) it would be impracticable or impossible to timely obtain a fully adequate substitute for any Spare Equipment in the event such Participant fails to consummate, or cause to be consummated, the sale of Equipment upon the exercise of Call Rights in accordance with Section IV; and (iv) that the award of damages at law will not be an adequate remedy. Accordingly, each Participant agrees that irreparable damage may occur in the event that any Participant fails to consummate, or cause to be consummated, the sale of any Spare Equipment upon the exercise of Call Rights in accordance with Section IV, and that the Participants will be entitled to specific performance of the terms thereof in addition to any other remedy available at law or in equity without the obligation to post bond or other security.

B. Rights Cumulative. Except as otherwise expressly provided or limited in this Agreement: (i) rights and remedies available to a Party as set forth in this Agreement are cumulative with and in addition to, and not in limitation of, any other rights or remedies available to such Party at law or in equity; and (ii) any specific right or remedy conferred upon or reserved to a Party in any provision of this Agreement will not preclude the concurrent or consecutive exercise of a right or remedy provided for in any other provision hereof. For the avoidance of doubt, the remedy set forth in Section IX.A. is not exclusive and is not intended to preclude any Party from pursuing any other right or remedy that may be available to such Party at law or in equity, including any such right to recover direct damages or pursue such other legal or equitable relief as may be available under applicable law or equitable principles, subject to any restrictions or limitations expressly set forth in this Agreement.

C. Consequential Damages. Notwithstanding any other provision in this Agreement to the contrary, no Party will be liable to any other Party or its Affiliates or their respective owners, officers, employees, agents and representatives whether in contract, warranty, tort (including negligence), strict liability or otherwise for any consequential, special, incidental, or indirect loss or damage, including loss of profits

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or revenues, loss of use or production, loss of contracts, business opportunities or savings, or cost of capital.

D. Limitation on Damages. Each Party to this Agreement acknowledges and agrees that individuals named by a Party to serve as members or alternate members on a Committee in accordance with Section V will have no individual liability, and will not be subject to any awards of damages, costs, fees, or other monetary amounts. Rather, each Party will bear, and hereby expressly assumes, responsibility for the acts and omissions of its members and alternate members on the Committees. EACH PARTY HEREBY WAIVES ALL RIGHTS TO PURSUE THE COMMITTEE MEMBERS OR ALTERNATE MEMBERS OF EACH OTHER PARTY, IN THEIR INDIVIDUAL CAPACITY, FOR MONETARY REMEDIES.

SECTION X. MISCELLANEOUS PROVISIONS

A. Governing Law. The validity, interpretation, and enforceability of this Agreement shall be governed by the laws of the State of New York, but not its choice of law provisions or principles thereof regarding resolution of conflicts of law. Notwithstanding the foregoing, with respect to the rights and obligations of a Party that is a Governmental Authority, this Agreement shall be governed by and construed in accordance with federal law.

B. Waiver of Jury Trial. EACH OF THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREUNDER, INCLUDING ANY AGREEMENTS OR OTHER DOCUMENTS ENTERED INTO IN CONNECTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, OR STATEMENTS (WHETHER VERBAL OR WRITTEN) OF THE PARTIES THERETO.

C. Public Relations. Each Party may issue or make any press releases or similar public announcements or communications (to include traditional media or issuances of social media by each Party) concerning this Agreement or the transactions contemplated pursuant to this Agreement; *provided, however,* that it shall inform the other Parties of any such planned press releases, public announcements and communications and shall to the extent feasible provide the other Parties with advance copies of such planned public releases, announcements and communications at least forty-eight (48) hours prior to the public release or announcement. To the extent that a majority of the Parties vote to disapprove or otherwise reject any such public release, announcement or communications, the proposing Party may not proceed with the public release, announcement, or communication, unless such public release, announcement or communication is required by Applicable Law or the applicable rules of any stock exchange. Notwithstanding the foregoing, the Parties will use good-faith efforts to reach agreement on terms to such a public release, announcement, or communication acceptable to the majority of the Parties. If a Party votes against the issuance of any particular public release, announcement or communication otherwise approved by a majority of Parties, then the final public release, announcement or communication will not name or identify such Party unless required by Applicable Law or the applicable rules of any stock exchange. For the avoidance of doubt, (i) this provision shall not apply to communications or filings between a Party and any Governmental Authorities or quasi-Governmental Authorities, and (ii) this provision shall not apply to communications that do not reference the Program or this Agreement.

D. Entire Agreement. This Agreement (together with the Appendices attached hereto) represents the entire agreement among the Parties with respect to the subject matter hereof, and shall supersede all prior

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negotiations, binding documents, representations, or other agreements, whether written or oral, between or among the Parties with respect to the subject matter hereof.

E. Successors and Assigns. A Party may not assign, convey, or transfer this Agreement, or any interest or right herein, without the prior Committee Approval of the Operating Committee, except pursuant to reorganization, merger, consolidation, or sale of all or substantially all of the assets of such Party. This Agreement is binding upon, and inures to the benefit of, the successors and permitted assigns of the Parties.

F. Contractual Relationship. Nothing contained in this Agreement may be construed as creating a contractual relationship of any kind between or among any Persons other than the Parties to this Agreement. The Parties disclaim any intention to create a partnership or joint venture. No Party may act for or have any power or authority to assume any obligation or responsibility on behalf of any other Party.

G. Notices. All notices pertaining to this Agreement (**"Notices"**) must be in writing, signed by a duly authorized representative of the Party (or the Operating Committee or Technical Committee) giving such notice and will be deemed given when received by personal delivery, recognized express courier, or electronic mail (immediately followed by recognized express courier) to the other Party at the address designated in that Party's Signature Block, *provided* that for purposes of giving Notice to a Committee, Notice must be delivered to each of the Parties who appoint a member to such Committee.

Addresses for a Party may be changed by that Party effective upon receipt of Notice of such address change to each of the other Parties.

H. Incorporation by Reference. The recitals set forth on the first page of this Agreement are hereby incorporated into this Agreement by this reference and expressly made a part of this Agreement.

I. No Waiver. No course of dealing or failure of a Party or the Operating Committee to enforce strictly any term, right or condition of this Agreement may be construed as a waiver of such term, right or condition. No express waiver of any term, right or condition of this Agreement will operate as a waiver of any other term, right or condition.

J. Audit. Each Participant shall maintain, in accordance with generally accepted accounting principles and practices, such books and records as may be necessary to reflect the accuracy of the purchase and sale transactions provided for in this Agreement, including but not limited to the audit requirement in **Appendix D**.

K. Survival. Sections X.A., X.B and X.L and Sections Section VI, Section VII, and Section IX will survive the termination, cancellation or expiration of this Agreement and any withdrawal by a Party from this Agreement.

L. No Third Party Beneficiaries. The provisions of this Agreement are intended for the sole benefit of the Parties and their successors and permitted assigns, and shall not inure to the benefit of any other Person whomsoever or whatsoever, it being the intention of the Parties that no third Person shall be deemed a third-party beneficiary of this Agreement.

M. Severability. If any provision of this Agreement, or the application thereof to any Person or circumstance, is to any extent held invalid or unenforceable by a court of competent jurisdiction, then the remainder of this Agreement, and the application of such provision to Persons or circumstances other than those as to which it is specifically held invalid or unenforceable, will not be affected thereby, and each and every remaining provision of this Agreement will be valid and binding to the fullest extent permitted by Applicable Law; *provided, however,* the Parties agree to negotiate in good faith to amend

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this Agreement to the fullest extent permitted by Applicable Law to as closely as possible resemble the original intent and allocation of risks and benefits.

N. Joint Effort. Preparation of this Agreement has been a joint effort of the Parties and the resulting document (or any portion thereof) is not to be construed more severely against any one or more of the Parties.

O. Counterparts. This Agreement may be executed in two (2) or more counterparts, and by manual, facsimile or .pdf signature, each of which is deemed to be an original, but all of which together shall constitute one and the same instrument.

P. Force Majeure. The purpose of this Agreement is to create a pool of equipment that may be available to Participants on the occurrence of a Triggering Event, some of which would constitute Force Majeure. Section IV of this Agreement provides for the treatment of Triggering Events. With respect to Force Majeure events that are not Triggering Events, no Party shall be liable for delays caused by such Force Majeure events to the extent that (a) such Force Majeure, despite the exercise of reasonable diligence by the affected Party, could not be prevented, avoided or removed; (b) the affected Party has taken all reasonable precautions, due care, and reasonable alternative measures in order to avoid the impact and to mitigate the consequences of such Force Majeure on the affected Party's ability to fulfill its obligations under this Agreement; (c) such Force Majeure is not the result of the negligence, gross negligence or willful misconduct of the affected Party or the failure of the affected Party to perform any of its obligations in accordance with the terms and conditions of this Agreement; and (d) the affected Party gives prompt notice to all other Parties of the Force Majeure and its impact on the affected Party's ability to perform its obligations under this Agreement.

Q. Amendment. This Agreement may only be amended by a written instrument executed by each of the Parties or as provided for in Section V.B.4.

R. The provisions in Appendix E apply to Duke Energy Carolinas, LLC and Duke Energy Progress, LLC only.

[SIGNATURE PAGES FOLLOW ON THE NEXT PAGES]

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IN WITNESS WHEREOF, the Parties set forth below have caused this Agreement to be executed and delivered on its behalf by a duly authorized representative.

ASSOCIATED ELECTRIC COOPERATIVE. INC.

By: _____
Name: Roger Clark
Title: Vice President, Engineering & Operations
Date: _____

Notice Address:
2814 S. Golden
Springfield, MO 65801

DUQUESNE LIGHT COMPANY

By: _____
Name: F. Michael Doran
Title: Vice President, Operations
Date: _____

Notice Address:
2841 New Beaver Avenue
Pittsburgh, PA 15233

AMEREN SERVICES COMPANY, as agent for
Union Electric Company dba Ameren Missouri,
Ameren Illinois Company, and
Ameren Transmission Company of Illinois

By: _____
Name: Eric V. Seidler
Title: Vice President, Asset Management, Engineering & Maintenance
Date: _____

Notice Address:
1901 Chouteau Avenue
St. Louis, Missouri 63103

EAST KENTUCKY POWER COOPERATIVE

By: _____
Name: Denver J. York
Title: SVP, Power Delivery & Systems Ops
Date: _____

Notice Address:
4775 Lexington Road
P.O. Box 707
Winchester, KY 40392-0707

AMERICAN TRANSMISSION COMPANY LLC

By: _____
Name: James J. Vespalec
Title: Director of Asset Planning & Engineering
Date: _____

Notice Address:
P.O. Box 47
Waukesha, WI 53187-0047

ENTERGY SERVICES, INC.

By: _____
Name: Michael A. Vaughan
Title: VP of Asset Management
Date: _____

Notice Address:
6540 Watkins Drive
Jackson, MS 39213

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DUKE ENERGY CAROLINAS, LLC

By: Richard W. Bagley
Name: Richard W. Bagley, PE
Title: Vice President, Transmission Engineering and Asset Management
Date: 4/23/18
Notice Address:
526 South Church Street ECI-1006
Charlotte. NC. 28202

DUKE ENERGY KENTUCKY, INC.

By: Richard W. Bagley
Name: Richard W. Bagley, PE
Title: Vice President, Transmission Engineering and Asset Management
Date: 9/6/17
Notice Address:
526 South Church Street ECI-1006
Charlotte. NC. 28202

DUKE ENERGY FLORIDA, LLC

By: Richard W. Bagley
Name: Richard W. Bagley, PE
Title: Vice President, Transmission Engineering and Asset Management
Date: 9/6/17
Notice Address:
526 South Church Street ECI-1006
Charlotte. NC. 28202

DUKE ENERGY OHIO, INC.

By: Richard W. Bagley
Name: Richard W. Bagley, PE
Title: Vice President, Transmission Engineering and Asset Management
Date: 9/6/17
Notice Address:
526 South Church Street ECI-1006
Charlotte. NC. 28202

DUKE ENERGY INDIANA, LLC

By: Richard W. Bagley
Name: Richard W. Bagley, PE
Title: Vice President, Transmission Engineering and Asset Management
Date: 10/24/17
Notice Address:
526 South Church Street ECI-1006
Charlotte. NC. 28202

DUKE ENERGY PROGRESS, LLC

By: Richard W. Bagley
Name: Richard W. Bagley, PE
Title: Vice President, Transmission Engineering and Asset Management
Date: 4/23/18
Notice Address:
526 South Church Street ECI-1006
Charlotte. NC. 28202

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FLORIDA POWER & LIGHT COMPANY

By: _____
Name: Jow H. Ortiz
Title: Transformer Fleet Team Manager
Date: _____

Notice Address:
15430 Endeavor Drive – TX/3-JW
Jupiter, FL 33478

INTERNATIONAL TRANSMISSION COMPANY,
d/b/a ITC Transmission
By: ITC Holdings Corp., its sole owner

_____
Name: Joseph Bennett
Title: Vice President, Engineering
Date: _____

Notice Address:
27175 Energy Way
Novi, MI 48377

LG&E AND KU ENERGY, LLC

By: _____
Name: Thomas Jessee
Title: Vice President, Transmission
Date: _____

Notice Address:
220 West Main Street
Louisville, KY 40202

With a copy to:
Jennifer Keisling, Senior Counsel

ITC MIDWEST LLC,
a Michigan limited liability company
By: ITC Holdings Corp., its sole owner

_____
Name: Joseph Bennett
Title: Vice President, Engineering
Date: _____

Notice Address:
27175 Energy Way
Novi, MI 48377

POWERSOUTH ENERGY COOPERATIVE

By: _____
Name: Gary Smith
Title: President and Chief Executive Officer
Date: _____

Notice Address:
2027 East Three Notch Street
Andalusia, AL 36421

MICHIGAN ELECTRIC TRANSMISSION COMPANY, LLC,
By: ITC Holdings Corp., its sole owner

_____
Name: Joseph Bennett
Title: Vice President, Engineering
Date: _____

Notice Address:
27175 Energy Way
Novi, MI 48377

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PPL ELECTRIC UTILITIES CORPORATION

By: _____
Name: David L. Gladey
Title: Director Transmission Asset Management

Date: _____

Notice Address:
2 N. Ninth Street
Allentown, PA 18101

SOUTHERN COMPANY SERVICES, INC.,
as agent for
Alabama Power Company, Georgia Power Company,
Gulf Power Company, Mississippi Power Company

By: _____
Name: William O. Ball
Title: Executive Vice President and
Chief Transmission Officer

Date: _____

Notice Address:
Attn: Transmission Policy & Services
BIN 13N-8812
600 18th Street North
Birmingham, AL 35203-2206

SOUTH CAROLINA PUBLIC SERVICE AUTHORITY
SANTEE COOPER

By: _____
Name: Arnold R. Singleton, P.E.
Title: Senior Vice President, Power Delivery

Date: _____

Notice Address:
1 Riverwood Drive
Moncks Corner, SC 29461

TENNESSEE VALLEY AUTHORITY

By: _____
Name: James R. Dalrymple
Title: Senior Vice President, Transmission &
Power Supply

Date: _____

Notice Address:
1101 Market Street, MR 3H-C
Chattanooga, TN 37402

SOUTH CAROLINA ELECTRIC & GAS COMPANY

By: _____
Name: Pandelis (Lee) Xanthakos
Title: Vice President Electric Transmission

Date: _____

Notice Address:
220 Operations Way
Mail Code J36
Cayce, SC 29033

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APPENDIX A – FORM OF JOINDER AGREEMENT

JOINDER AGREEMENT

THIS JOINDER AGREEMENT (**"Joinder"**) is executed as of [Date] (**"Joinder Effective Date"**) by **[Formal Company Name]**, [State of Formation, Entity type] (**"Additional Party"**).

RECITALS

Multiple Parties "(**"Original Parties"**) have entered into that certain Agreement for Regional Equipment Sharing for Transmission Outage Restoration dated as of [_____], 2017 (**"RESTORE Agreement")"**, which provides for additional parties becoming Parties to the RESTORE Program through joinder agreements.

NOW, THEREFORE, Additional Party hereby agrees as follows:

1. Defined Terms. Capitalized terms used and not defined in this Joinder have the meanings set forth in the RESTORE Agreement.

2. Joinder. Additional Party hereby agrees that upon the execution of this Joinder, it shall become a Party to the RESTORE Agreement and shall be fully bound by, and subject to, all of the terms and conditions of the RESTORE Agreement as though an original Party thereto.

3. Consents to Disclosure. Notwithstanding anything in the RESTORE Agreement to the contrary, Additional Party hereby consents to disclosure by the Original Parties of this Joinder and Additional Party's participation in the RESTORE Program.

4. Governing Law. This Joinder is made subject to and shall be construed under the laws of the State of New York, without giving effect to its principles or rules regarding conflicts of laws.

Executed to be effective as of the Joinder Effective Date:

[FORMAL COMPANY NAME]

By: _____
Name:
Title:

Date: _____

Notice Address:

As evidenced by the signature of the chairperson of the Operating Committee to this Joinder, Additional Party has been approved and invited to join the RESTORE Program in accordance with the terms of the RESTORE Agreement.

By: _____
Name:
Title: Operating Committee Chairperson

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APPENDIX B – EQUIPMENT LIST

(OMITTED PURSUANT TO FOOTNOTE 10 OF JOINT APPLICATION)

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Exhibit A

APPENDIX C – SAMPLE POOL SIZE CALCULATION

345/138KV Voltage Class

Annual Analysis of 5 Most Critical Substations in Each Voltage Class

Utility	In Service MVA	% of In Service	MVA Needed to Recover	MVA Available in-house to recover	Shortfall/Surplus	% Internally Spared	% Shortfall/Surplus	% Contribution to Shortfall
Ameren	29546	34.1%	4060	1820	2240	44.8%	55.2%	22.5%
ATC	17232	19.9%	4336	1836	2500	42.3%	57.7%	25.1%
Duke	10654	12.3%	2400	850	1550	35.4%	64.6%	15.6%
Duquesne	4300	5.0%	1400	700	700	50.0%	50.0%	7.0%
Entergy	1050	1.2%	525	0	525	0.0%	100.0%	5.3%
ITC	16358	18.9%	2435	1000	1435	41.1%	58.9%	14.4%
LG&E KU	7400	8.6%	1682	674	1008	40.1%	59.9%	10.1%
	86540	100.0%	16838	6880	9958			100.0%

Greatest need = 2500 x 1.2 = 3000 MVA

Minimum MVA in pool = 3000 MVA

Individual contribution = (3000/2)(% in Service) + (3000/2) (% Contribution to Shortfall)

Utility	% of In service	Shortfall/Surplus Minimum = 0	% Internally Spared Maximum = 100%	% Shortfall/Surplus Minimum - 0%	% Contribution to Shortfall Minimum = 0%	Term 1	Term 2	Utility Required Contribution to Pool
Ameren	34.1%	2240	44.8%	55.2%	22.5%	512	337	850
ATC	19.9%	2500	42.3%	57.7%	25.1%	299	377	675
Duke	12.3%	1550	35.4%	64.6%	15.6%	185	233	418
Duquesne	5.0%	700	50.0%	50.0%	7.0%	75	105	180
Entergy	1.2%	525	0.0%	100.0%	5.3%	18	79	97
ITC	18.9%	1435	41.1%	58.9%	14.4%	284	216	500
LG&E KU	8.6%	1008	40.1%	59.9%	10.1%	128	152	280
		9958			100.0%	1500	1500	3000

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APPENDIX D – FORM OF PURCHASE AND SALE AGREEMENT

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this **"Agreement"**) is made and entered into as of [_____, _____] (the **"Execution Date"**), by and between [_____, a _____] (**"Buyer"**), and [_____, a _____] (**"Seller"**). Buyer and Seller are sometimes hereinafter referred to individually as a **"Party"** and collectively as the **"Parties."**

RECITALS

WHEREAS, Buyer and Seller are parties to that certain Agreement for Regional Equipment Sharing for Transmission Outage Restoration dated as of [_____], 2017 (the **"RESTORE Agreement"**);

WHEREAS, pursuant to the RESTORE Agreement, Buyer has elected to exercise its Call Rights with respect to [insert brief description of Spare Equipment] (as further described in **Exhibit A,** the **"Purchased Spare Equipment"**);

WHEREAS, pursuant to Section IV.B.3 of the RESTORE Agreement, Seller is obligated to sell to Buyer the Purchased Spare Equipment subject to the terms and conditions of a purchase and sale agreement to be executed by Buyer and Seller substantially and in all material respects in the form of Appendix D to the RESTORE Agreement; and

WHEREAS, Buyer and Seller are executing this Agreement in accordance with Section IV.B.3 of the RESTORE Agreement to memorialize the terms and conditions by which Seller will sell, assign and transfer to Buyer and Buyer will purchase, accept, and acquire from Seller all of Seller's right, title, and interest in and to the Purchased Spare Equipment.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises, representations, warranties, and covenants hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

ARTICLE 1
DEFINITIONS AND CONSTRUCTION

1.1 Specific Definitions. Capitalized terms used but not defined in this Agreement shall have the meanings assigned to them in the RESTORE Agreement. As used in this Agreement, the following terms shall have the meanings ascribed to them below:

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

"Assigned Agreements" has the meaning set forth in Section 5.1.1.

"Buyer" has the meaning set forth in the preamble to this Agreement.

"Closing" has the meaning set forth in Section 2.7.

"Closing Date" has the meaning set forth in Section 2.7.

"Dispute" has the meaning set forth in Section 8.2.

"Execution Date" has the meaning set forth in the preamble to this Agreement.

"Indemnified Parties" has the meaning set forth in Section 6.1.

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"Lien" means any mortgage, deed of trust, lien (choate or inchoate), pledge, charge, security interest, assessment, reservation, absolute assignment, collateral assignment, hypothecation, option, purchase right, defect in title, or other encumbrance of any kind, whether arising by contract or under any Applicable Law and whether or not filed, recorded or otherwise perfected or effective under any Applicable Law, or any preference, priority or preferential arrangement of any kind or nature whatsoever including the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement.

"Notice" has the meaning set forth in Article 7.

"Order" means any order, writ, injunction, judgment, decree, ruling, assessment, settlement, determination, or arbitration award of any Governmental Authority or arbitrator.

"Party" or **"Parties"** has the meaning set forth in the preamble to this Agreement.

"Person" means any individual, sole proprietorship, corporation, trust, company, voluntary association, partnership, joint venture, limited liability company, unincorporated organization, institution, Governmental Authority, or any other legal entity.

"Purchase and Sale" has the meaning set forth in Section 2.1.

"Purchased Spare Equipment" has the meaning set forth in the recitals to this Agreement.

"Purchase Price" means all reasonable costs or expenses reasonably incurred, or that would be reasonably incurred, by Seller to replace the Purchased Spare Equipment with another piece of Qualifying Equipment of like type and specifications under ordinary and customary business conditions, including those costs and expenses that are appropriate and not excessive under the circumstances prevailing at the time such costs or expenses are paid or incurred, including: (i) the purchase price for the replacement equipment; (ii) any and all transportation costs associated with the delivery of such replacement Equipment; and (iii) other direct acquisition costs and out-of-pocket costs reasonably incurred by Seller or, if applicable, the other owner(s) of such Equipment, to effect the transfer of the replacement Equipment to Seller (and/or Seller's affiliates).

"Reimbursable Costs" means all reasonable costs and expenses of Seller, if any, to move, prepare or otherwise ready the Purchased Spare Equipment for transport to Buyer, including: (i) other direct acquisition costs and out-of-pocket costs and expenses reasonably incurred by Seller or, if applicable, the other owner(s) of the Purchased Spare Equipment, to effect the transfer of the Purchased Spare Equipment to Buyer; (ii) the cost and expense to assign any warranties applicable to the Purchased Spare Equipment in accordance with this Agreement; and (iii) Seller's tax liability, if any, attributable to the sale of the Purchased Spare Equipment at the Purchase Price.

"RESTORE Agreement" has the meaning set forth in the recitals to this Agreement.

"Seller" has the meaning set forth in the preamble to this Agreement.

1.2 Construction. A reference in this Agreement to an exhibit, article, section or other provision shall be, unless otherwise specified, to exhibits, articles, sections or other provisions of this Agreement which are incorporated herein by reference; any reference in this Agreement to another agreement, document or Applicable Law shall be construed as a reference to that other agreement, document or Applicable Law as the same may have been, or may from time to time be, varied, amended, supplemented, substituted or assigned, as the case may be, from time to time; any reference in this Agreement to "this Agreement," "herein," "hereof" or "hereunder" shall be deemed to be a reference to this Agreement as a whole and not limited to the particular article, section, exhibit or provision in which the relevant reference appears and this Agreement as varied, amended, supplemented or assigned from time to time; references to any Party shall, where appropriate, include any successors and permitted assigns of such

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Party; references to the term "includes" or "including" shall be deemed to mean "includes, without limitation" or "including, without limitation"; references to "or" shall be deemed to be disjunctive but not necessarily exclusive (i.e., unless the context dictates otherwise, "or" shall be interpreted to mean "and/or" rather than "either/or"); and terms defined in this Article 1 shall include the singular as well as the plural.

ARTICLE 2
PURCHASE AND SALE

2.1 Purchase and Sale. Subject to and upon the terms and conditions of this Agreement, Seller shall irrevocably and unconditionally sell, assign, transfer and deliver to Buyer, and Buyer shall irrevocably and unconditionally purchase, acquire and accept from Seller, all of the right, title and interest of Seller in and to the Purchased Spare Equipment, so that at least by Closing, Buyer shall own, directly, all of the Purchased Spare Equipment free and clear of all Liens (or subject to a commitment by the Seller to satisfy any Liens) (the **"Purchase and Sale"**).

2.2 Purchase Price. As consideration for the Purchase and Sale, at Closing, Buyer shall pay to Seller the estimated Purchase Price and Reimbursable Costs based on information reasonably available to Seller at the time of the Closing. For the avoidance of doubt, routine maintenance, storage, and other costs incurred in complying with Seller's obligation under the RESTORE Agreement will not be included in the Purchase Price or Reimbursable Costs or otherwise deemed a reimbursable cost or expense under this Agreement. As soon as practicable, but not later than five (5) business days prior to the Closing, Seller shall deliver to Buyer a notice prepared in good faith setting forth Seller's estimated calculation of the Purchase Price and Reimbursable Costs, together with written documentation of Seller's actual and estimated costs and expenses included in the Purchase Price and Reimbursable Costs.

2.3 True-up. As soon as practicable, but not later than eighteen (18) months following the Closing, Seller shall deliver to Buyer a notice prepared in good faith setting forth Seller's final "trued-up" calculation of the Purchase Price and Reimbursable Costs, together with written documentation of Seller's actual costs and expenses included in the Purchase Price and Reimbursable Costs. Following Buyer's receipt of the notice from Seller, Buyer may elect to audit Seller's books and records pertaining to the Purchase Price and Reimbursable Costs in accordance with its audit rights in Section 2.4. If Buyer does not deliver to Seller, within sixty (60) days after the end of such eighteen (18)-month period, any written objections of Seller's determination of the Purchase Price or the Reimbursable Costs, then the Purchase Price and Reimbursable Costs shall be deemed final, and either Buyer shall pay or Seller shall reimburse Buyer based on the final Purchase Price and Reimbursable Costs.

2.4 Audit Rights.

2.4.1 Seller shall maintain books and records pertaining to the Purchase Price and Reimbursable Costs, which books and records must contain sufficient detail to determine the actual Purchase Price and Reimbursable Costs, including, without limitation, information to identify the costs and expenses associated with the replacement Qualifying Equipment of like type and specifications.

2.4.2 At any time within sixty (60) days after Seller provides to Buyer notice of Seller's calculation of the final Purchase Price and Reimbursable Costs, and upon reasonable notice and during normal business hours, Seller shall permit an independent auditor appointed by Buyer, at Buyer's expense, to examine Seller's books and records to verify the final Purchase Price and Reimbursable Costs.

2.5 No Obligation to Provide Transportation Services. Though Seller may offer preparation and transportation services, Seller shall not be obligated to do so and shall only be obligated to provide Buyer or Buyer's designated representatives with access to the Purchased Spare Equipment. Buyer shall be

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solely responsible for the cost and expense and risk of loss of removing, shipping, transporting and delivering the Purchased Spare Equipment from Seller to Buyer.

2.6 Testing, Title, and Risk of Loss. As soon as reasonably practicable prior to the Closing, Buyer may elect to conduct the following electrical tests on the Purchased Spare Equipment while still in Seller's possession prior to taking title: (i) ratio, (ii) power factor, (iii) excitation, (iv) leakage reactance, (v) SFRA, and (vi) winding resistance. Buyer also may elect to perform oil quality tests, subject to approval by Seller, which shall not be unreasonably withheld. Any costs or expenses incurred by Seller to facilitate or enable such testing shall be included in Reimbursable Costs. If Buyer reasonably determines the test data indicates that any mechanical or electrical integrity of the Purchased Spare Equipment, Buyer may immediately terminate this Agreement and request to re-exercise its Call Rights in accordance with the RESTORE Agreement. Title and risk of loss to the Purchased Spare Equipment will pass to Buyer upon completion of the testing and assessment of the data unless Buyer terminates this Agreement immediately following such assessment.

2.7 Closing. The consummation of the Purchase and Sale (the **"Closing"**) shall occur on the date (the **"Closing Date"**) on which all of the following have been satisfied: (a) the payment by Buyer to Seller of the initial Purchase Price and Reimbursable Costs is made; (b) Seller has provided Buyer access to the Purchased Spare Equipment; (c) Seller has executed and delivered to Buyer a bill of sale and assignment, which shall be in a form mutually agreed upon by the Parties (the **"Bill of Sale and Assignment"**); and (d) the following conditions precedent to the Closing have been satisfied or waived: (i) all of the representations and warranties of each Party in this Agreement shall have been true and correct in all respects (considered collectively and individually) as of the Execution Date and the Closing Date; (ii) each Party shall have performed and complied in all material respects with all agreements and covenants required by this Agreement to be performed or complied with by each Party prior to or on the Closing Date (other than to the extent that the agreements and covenants are to be complied with in all material respects or which are otherwise qualified by materiality, in which case they shall be complied with in all such respects); (iii) each Party has delivered to the other Party a duly executed certificate of an appropriate officer of the delivering Party, dated as of the Closing Date, in form and substance reasonably acceptable to the other Party, certifying as to its satisfaction of the conditions precedent in Section 2.7(d)(i) and Section 2.7(d)(ii); and (iv) each Party has executed any other documents or instruments reasonably required of that Party to consummate the transactions completed hereunder.

ARTICLE 3
REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties of Seller. As of the Execution Date and the Closing Date, each Party represents and warrants to the other Party as follows:[1]

3.1.1 It (a) has been duly formed, is validly existing and is in good standing under its jurisdiction of formation and (b) is duly qualified to do business and is in good standing in all other jurisdictions in which its properties (or the character of its business) require such qualification.

3.1.2 It has the requisite power and authority to execute and deliver this Agreement, and to perform fully its obligations hereunder.

3.1.3 This Agreement has been duly executed and delivered by it and constitutes a legal, valid, and binding obligation, enforceable against it in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws affecting

[1] NTD: The representations and warranties may need to be modified in the case of Parties which are Governmental Authorities.

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the enforcement of creditors' rights generally or by general principles of equity relating to enforceability (regardless of whether considered in a proceeding at law or in equity).

3.1.4 The execution and delivery of this Agreement, together with the consummation and performance of its obligation hereunder, do not: (a) conflict with or violate its organizational documents; (b) conflict with or violate or constitute a default or trigger any "change of control" rights, remedies under, or impose or create any Lien, acceleration of remedies, any buyout right of any rights of first offer or refusal or of termination under any material agreement to which it is a party or by which it or its properties or assets may be bound; (c) conflict with or violate any Applicable Law or Order applicable to it or any of its properties or assets, including the Purchased Spare Equipment; or (d) require the consent or approval of any Person which has not already been obtained and which remains in full force and effect.

3.1.5 Either that: (i) no Governmental Approvals are required by Applicable Law for it to enter into this Agreement; or (ii) one or more Governmental Approvals are required by Applicable Law or otherwise deemed necessary or appropriate by it to enter into this Agreement and that: (a) it has obtained such Governmental Approvals; or (b) intends to obtain such Governmental Approvals within eighteen (18) months of the date of providing the required certification regarding Government Approvals under Section II B. of the RESTORE Agreement.

3.1.6 Neither it nor any of its Affiliates has received written notice of any proceeding, and there is no pending or, to its knowledge, threatened proceeding against it that relates to the Purchased Spare Equipment.

3.2 Additional Representations and Warranties of Seller. As of the Execution Date and the Closing Date, Seller represents and warrants to Buyer as follows:

3.2.1 Seller has good, marketable, and indefeasible title to the Purchased Spare Equipment free and clear of all Liens (or Seller has committed to obtain releases for any Liens).

3.2.2 All taxes that are required to have been paid by Seller or its Affiliates with respect to the Purchased Spare Equipment have been timely paid.

3.2.3 The Purchased Spare Equipment is in good working order, ordinary wear and tear excepted. Seller has stored, maintained, and, if applicable, operated, the Purchased Spare Equipment in accordance with Prudent Utility Practice.

ARTICLE 4
TERMINATION

4.1 Termination. Either Party may terminate this Agreement by notice to the other Party if the Closing has not occurred within [thirty (30) days] after the Execution Date (such date, as may be extended by mutual agreement of the Parties, the **"Target Closing Date"**); unless the terminating Party, on the date of termination, is in breach of any material provision of this Agreement or transfer of title and risk of loss as described in Section 2.6 has occurred. If this Agreement is terminated pursuant to this Section 4.1, all rights and obligations of the Parties hereunder shall terminate and no Party shall have any liability to the other Party, except for the rights and obligations of the Parties in this Section 4.1, Article 6 (*Indemnification*), Article 7 (*Notices*), Section 8.2 (*Disputes*), Section 8.3 (*Specific Performance*), and Section 8.4 (*No Consequential Damages*) all of which shall survive the termination of this Agreement. Notwithstanding anything to the contrary contained herein, termination of this Agreement pursuant to this Section 4.1 shall not release any Party from any liability for any breach by such Party of the provisions of this Agreement prior to such termination.

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ARTICLE 5
EQUIPMENT WARRANTIES

5.1 Equipment Warranties.

5.1.1 Effective as of the Closing Date, Seller shall (a) use commercially reasonable efforts to assign at Closing to Buyer, at Buyer's option and expense, any remaining manufacturer or other warranties applicable to the Purchased Spare Equipment and eligible to be assigned; and (b) use commercially reasonable efforts to assign, transfer and convey at Closing to Buyer all of its right, title and interest in, to and under the agreements set forth on **Exhibit B** which relate to the purchase, operation and/or maintenance of the Purchased Spare Equipment (the **"Assigned Agreements"**), and delegate to Buyer all of its duties and obligations under the Assigned Agreements, to the extent allocable to any period on or after the Closing Date; *provided* that Seller shall not be obligated to assign, transfer and convey its right, title and interest in, to and under any agreements which by their terms do not permit such assignment, transfer and conveyance, or which by their terms do not permit such assignment, transfer and conveyance as of the Closing. EXCEPT FOR THE FOREGOING, AND SUBJECT TO ANY OTHER EXPRESS REPRESENTATION AND WARRANTIES IN THIS AGREEMENT, THE PURCHASED SPARE EQUIPMENT WILL BE TRANSFERRED "AS IS, WHERE IS," AND ALL OTHER REPRESENTATIONS OR WARRANTIES OF ANY KIND OR NATURE, EXPRESS OR IMPLIED, AS TO THE CONDITION, VALUE, OR QUALITY OF PURCHASED SPARE EQUIPMENT, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY WAIVED.

5.1.2 Buyer shall accept Seller's assignment, transfer and conveyance of the Assigned Agreements and expressly assumes, confirms, and agrees to perform and observe all of the covenants, agreements, terms, conditions, obligations, duties, and liabilities of Seller under the Assigned Agreements, to the extent allocable to any period on or after the Closing Date. From and after the Closing Date, Buyer is and shall be bound by, and shall enjoy the benefits of, the Assigned Agreements as if Buyer had been a party thereto from the original execution and delivery thereof, pursuant to the terms and conditions of the Assigned Agreements.

ARTICLE 6
INDEMNIFICATION

6.1 Indemnification. At the earlier of Closing or when title and risk of loss passes to Buyer, each Party shall indemnify and hold harmless the other Party and its Affiliates and their respective officers, members, directors, shareholders and employees (the **"Indemnified Parties"**) from and against any and all losses, liabilities, claims and expenses, including reasonable attorneys' fees, of or to any Indemnified Party arising out or resulting from any breach of any representation or warranty made by the indemnifying Party in this Agreement; any breach of any covenant, agreement or obligation (and, for the avoidance of doubt, not including any of the representations or warranties) of the indemnifying Party contained in this Agreement; and any fraud, intentional misrepresentation or willful misconduct by the indemnifying Party in connection with this Agreement or the Purchase and Sale.

ARTICLE 7
NOTICES

7.1 All notices pertaining to this Agreement (**"Notices"**) must be in writing, signed by a duly authorized representative of the Party giving such notice and will be deemed given when received by personal delivery, recognized express courier, or electronic mail (immediately followed by recognized

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express courier) to the other Party at the address designated below (which address may be changed by a Party effective upon receipt by the other Party of Notice of such change):

If to Buyer:

If to Seller:

ARTICLE 8
MISCELLANEOUS

8.1 Governing Law. The validity, interpretation, and enforceability of this Agreement shall be governed by the laws of the State of New York, but not its choice of law provisions or principles thereof regarding resolution of conflicts of law. [Notwithstanding the foregoing, with respect to the rights and obligations of a Party that is a Governmental Authority, this Agreement shall be governed by and construed in accordance with federal law.]

8.2 Disputes; Waiver of Jury Trial.

8.2.1 The Parties shall attempt to resolve all disputes arising out of or in connection with the interpretation or application of any of the provisions of this Agreement or in connection with the determination of any other matters arising under this Agreement (each, a **"Dispute"**) by mutual agreement in accordance with this Section 8.2. If any Dispute arises between the Parties, then the disputing Party shall promptly notify the non-disputing Party of the Dispute and each Party shall cause a senior officer of its management with decision-making authority to meet, within five (5) days of the non-disputing Party's receipt of notice of the Dispute, at the offices of the non-disputing Party, or at any other mutually agreed location, and to negotiate and attempt to resolve the Dispute on an amicable basis. If the Parties fail to resolve the Dispute for any reason within ten (10) days after such notice, then each Party shall be free to pursue any right or remedy available at law or in equity, subject to and in accordance with this Agreement.

8.2.2 EACH OF THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREUNDER, INCLUDING ANY AGREEMENTS OR OTHER DOCUMENTS ENTERED INTO IN CONNECTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, OR STATEMENTS (WHETHER VERBAL OR WRITTEN) OF THE PARTIES THERETO.

8.3 Specific Performance. Seller and Buyer acknowledge that the rights of each Party to consummate the transactions contemplated hereby are unique and recognize and affirm that in the event of a breach of this Agreement by either Party, money damages may be inadequate and the non-breaching Party may have no adequate remedy at law. Accordingly, the Parties agree that such non-breaching Party shall have the right, in addition to any other rights and remedies existing in its favor at law or in equity, to enforce their rights and the other Party's obligations hereunder not only by an action or actions for damages but also by an action or actions for specific performance, injunctive and/or other equitable relief (without posting of bond or other security).

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8.4 No Consequential Damages. Notwithstanding any other provision in this Agreement to the contrary, no Party will be liable to any other Party or its Affiliates or their respective owners, officers, employees, agents and representatives whether in contract, warranty, tort (including negligence), strict liability or otherwise for any consequential, special, incidental, or indirect loss or damage, including loss of profits or revenues, loss of use or production, loss of contracts, business opportunities or savings, or cost of capital; provided, however, that this Section 8.4 is not intended to prevent recovery pursuant to Article 6 for any loss or damage that might be sought by a third party against the indemnified party.

8.5 Assignment. A Party may not assign, convey, or transfer this Agreement, or any interest or right herein, without the prior written consent of the other Party, except pursuant to a merger, consolidation, or sale of all or substantially all of the assets of such Party. This Agreement is binding upon, and inures to the benefit of, the successors and permitted assigns of the Parties.

8.6 Severability. Any provision of this Agreement which is invalid, illegal, or unenforceable shall be ineffective to the extent of such invalidity, illegality, or unenforceability, without affecting in any way the remaining provisions hereof or rendering that or any other provision of this Agreement invalid, illegal, or unenforceable. Upon such determination that any provision is invalid, illegal, or unenforceable, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the fullest extent possible.

8.7 Section Headings. The section headings are for the convenience of the Parties only and in no way alter, modify, amend, limit or restrict the contractual obligations of the Parties.

8.8 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original copy of this Agreement and all of which, when taken together, shall be deemed to constitute one and the same agreement.

8.9 Cooperation. Each of the Parties agrees to perform all such acts (including executing and delivering such instruments and documents) as shall be reasonably requested by the other Party to fully effectuate each and all of the purposes and intent of this Agreement.

8.10 Contractual Relationship. Nothing contained in this Agreement may be construed as creating a contractual relationship of any kind between or among any Persons other than the Parties to this Agreement. The Parties disclaim any intention to create a partnership or joint venture. Neither Party may act for or have any power or authority to assume any obligation or responsibility on behalf of the other Party.

8.11 No Third-Party Beneficiaries. This Agreement is entered into for the sole benefit of the Parties, and except as specifically provided in this Agreement (including with respect to Indemnified Parties), no other Person shall be a direct or indirect beneficiary of, or shall have any direct or indirect cause of action or claim in connection with, this Agreement.

8.12 [Sovereign Immunity.][2]

[SIGNATURE PAGE TO FOLLOW]

[2] NTD: To be included if one of the Parties is a Governmental Authority or quasi-Governmental Authority which may assert sovereign immunity.

IN WITNESS WHEREOF, this Agreement has been duly executed by the authorized representatives of each of Seller and Buyer as of the date first written above.

BUYER

By: _____
Name:
Title:

SELLER

By: _____
Name:
Title:

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EXHIBIT A – PURCHASE AND SALE AGREEMENT

Description of Purchased Spare Equipment

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EXHIBIT B - PURCHASE AND SALE AGREEMENT

List of Assigned Agreements

APPENDIX E – DUKE ENERGY CAROLINA AND DUKE ENERGY PROGRESS

The following provisions apply to Duke Energy Carolinas, LLC ("DEC") and Duke Energy Progress, LLC ("DEP"):

a. DEC's or DEP's participation in this Agreement is voluntary, DEC or DEP is not obligated to take or provide services or make any purchases or sales pursuant to this Agreement except as expressly provided, and DEC or DEP may elect to discontinue its participation in this Agreement at its election after giving any required notice;

b. DEC or DEP may not make or incur a charge under this Agreement except in accordance with North Carolina law and the rules, regulations and orders of the North Carolina Utilities Commission promulgated thereunder;

c. DEC or DEP may not seek to reflect in rates any (i) costs incurred under this Agreement exceeding the amount allowed by the Commission or (ii) revenue level earned under this Agreement less than the amount imputed by the Commission; and

d. Neither DEC nor DEP shall assert in any forum – whether judicial, administrative, federal, state, local or otherwise – either on its own initiative or in support of another entity's assertions, that the Commission's authority to assign, allocate, impute, make pro forma adjustments to, or disallow revenues and costs for retail ratemaking and regulatory accounting and reporting purposes is, in whole or in part, (i) preempted by Federal Law or (ii) not within the Commission's power, authority or jurisdiction; DEC and DEP will bear the full risk of any preemptive effects of Federal Law with respect to this Agreement.

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