

RESOLUTION 19-R-30 approving sale of the operations and assets of the Murfreesboro Electric Department to Middle Tennessee Electric Membership Corporation.

WHEREAS, Section 4(13) of the City's Charter authorizes the City "to acquire by purchase, condemnation or in other lawful manner; construct, own, operate, maintain; or sell, lease, mortgage, pledge or otherwise dispose of ... electric generating plants, electric distribution systems, and street lighting systems, ... and other public utilities and services and any ... necessary, appropriate or useful parts, equipment, appurtenances and accessories therefor or in connection therewith ... "; and,

WHEREAS, Section 4(10) of the City's Charter authorizes the City "(t)o acquire or receive by purchase, gift, devise or otherwise, and to hold, maintain, improve, sell, lease, mortgage, pledge or otherwise dispose of property, real, personal and mixed, and any estate or interest therein, within or without the corporate limits, for any lawful corporate or public purpose, or for any purpose necessary or proper in effectuating any of the powers, purposes and objects of the corporation"; and,

WHEREAS, on May 12, 1939, the City, within the authority granted by its Charter, Chapter 429, Private Acts, 1935, purchased the existing electric system serving the City; created an electric department; and under that department (commonly known as the Murfreesboro Electric Department), began purchasing electricity from the Tennessee Valley Authority and operating the electric distribution for the City and the inhabitants, institutions, and businesses thereof (collectively, the "System"); and,

WHEREAS, all of the bonds issued by the City for capital investment in the System prior to 1988, including those issued to fund the initial purchase of the System, were issued pursuant to either the Revenue Bond Refinancing Act of 1937 or the Revenue Bond Act of 1935 and not pursuant to the Municipal Electric Plant Act of 1935 ("MEPA"); and,

WHEREAS, all of the bonds issued by the City for capital investment in the System after 1988 were issued pursuant to the Local Government Public Obligations Act of 1986 but were not preceded by an election authorizing the issuance of bonds as would have been required had the bonds been issued pursuant to MEPA; and,

WHEREAS, no referendum approving the disposition of the System's assets is legally required; and,

WHEREAS, Section 4 (16a) of the City's Charter authorizes the City to contract with any person, firm, association, company or corporation for public utilities and public utility services, including electricity, to be furnished to the City and its inhabitants, institutions, and businesses; and,

WHEREAS, Middle Tennessee Electric Membership Corporation ("MTEMC"), a nonprofit electric cooperative based in Murfreesboro and operating pursuant to the

provisions of T.C.A. 65-25-201, et seq., desires to purchase the System's assets from the City and to assume the role of providing retail electric utility and related services within the City's corporate limits pursuant to an electric services and license agreement with the City; and,

WHEREAS, MTEMC has agreed to pay the City \$245 million as full value of the comprehensive System's operations and assets; and,

WHEREAS, the Asset Purchase and Sale Agreement attached hereto as Exhibit A sets forth the terms and conditions of the proposed transaction in substantially final form; and,

WHEREAS, it is the opinion of City Council that the sale of the System will not compromise the delivery of electric utility services within the City and that combining the operations of the two distribution systems is likely to produce long-term efficiencies, to improve rate stability, and to encourage innovation; and,

WHEREAS, the proceeds from the sale will help the City fund infrastructure and other public projects that facilitate economic development and the welfare of the community in a fiscally responsible manner.

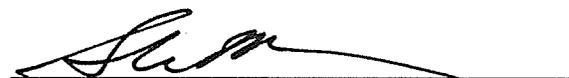
NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MURFREESBORO, TENNESSEE, AS FOLLOWS:

SECTION 1. The System be made available for purchase by MTEMC for the sum of \$245 million under terms and conditions in substantially similar form in all material respects as those set forth in Exhibit A.

SECTION 2. The Mayor, City Manager, and City Recorder are hereby authorized to execute all documents, upon final approval by the City Attorney, necessary or appropriate to complete the closing of the transaction, including, without limitation, the Asset Purchase and Sale Agreement, Lease Agreement, Promissory Note, Security Agreement Amendment, Electric Services and Right-of-Way License Agreement, and Escrow Agreement, and various assignment and assumption agreements.

SECTION 3. This Resolution shall be effective immediately, the public welfare and the welfare of the City requiring it.

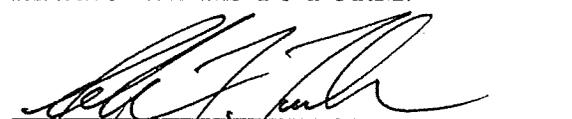
Passed: January 9, 2020


Shane McFarland, Mayor

ATTEST:

APPROVED AS TO FORM:


Melissa B. Wright
City Recorder


Adam F. Tucker
City Attorney



THE CITY OF MURFREESBORO ELECTRIC DEPARTMENT

ASSET PURCHASE AND SALE AGREEMENT

BY AND BETWEEN

**CITY OF MURFREESBORO, TENNESSEE
AS SELLER**

AND

**MIDDLE TENNESSEE ELECTRIC MEMBERSHIP CORPORATION,
AS BUYER**

Dated as of December __, 2019

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EXHIBITS

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ASSET PURCHASE AND SALE AGREEMENT¹

This ASSET PURCHASE AND SALE AGREEMENT (the “*Agreement*”), dated as of December __, 2019 (the “*Effective Date*”), is made and entered into by and between the CITY OF MURFREESBORO, TENNESSEE, a municipality organized under the laws of the State of Tennessee (“*Seller*”), and MIDDLE TENNESSEE ELECTRIC MEMBERSHIP CORPORATION, a non-profit electric membership cooperative organized under the laws of the State of Tennessee (“*Buyer*”). Seller and Buyer are referred to individually as a “*Party*,” and together as the “*Parties*.”

WITNESSETH:

WHEREAS, Seller owns and operates a retail electric transmission and distribution system in the City of Murfreesboro, Tennessee, and Seller wishes to exit the electric transmission and distribution business;

WHEREAS, Buyer desires to purchase and assume, and Seller desires to sell and assign, certain retail electric sub-transmission and distribution assets and related operational assets and certain associated liabilities, in each case related to the foregoing retail electric transmission and distribution system, upon the terms and conditions hereinafter set forth in this Agreement and the Ancillary Agreements (the “*Transaction*”); and

WHEREAS, Buyer and Seller desire for Buyer to provide retail electric service to Seller’s electric utility customers, commencing on the Closing Date, as defined below, upon the terms and conditions hereinafter set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, representations, warranties and agreements hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

ARTICLE 1.

DEFINITIONS

Section 1.1 Definitions.

As used in this Agreement, the following terms have the meanings specified in this Section 1.1.

- (1) “*Accrued PTO*” has the meaning set forth in Section 4.10(c).
- (2) “*Acquired Assets*” has the meaning set forth in Section 2.1.
- (3) “*Acquired Land In Fee*” means the fee simple interest in the real property described in Exhibit K, together with all right, title and interest in and to easements, covenants, rights, privileges, tenements, hereditaments and appurtenances thereunto now or hereafter

¹ Note to Draft: Draft remains subject in all respects to MTEMC’s receipt and review of all applicable Seller Schedules and disclosures.

belonging or appertaining thereto, and all right, title and interest in and to the buildings, structures, fixtures and other improvements, if any, located thereon.

(4) “**Action**” means any suit, claim, proceeding, litigation, arbitration, audit or investigation by or before any Governmental Authority.

(5) “**Additional Purchase Price**” has the meaning set forth in Section 3.4.

(6) “**Affiliate**” means, with respect to any Person, (i) each Person that directly or indirectly, controls or is controlled by or is under common control with such designated Person; (ii) any Person that beneficially owns or holds fifty percent (50%) or more of any class of voting securities of such designated Person or fifty percent (50%) or more of the equity interests in such designated Person; or (iii) any Person of which such designated Person beneficially owns or holds fifty percent (50%) or more of the equity interests. For the purposes of this definition, “**control**” (including, with correlative meanings, the terms “**controlled by**” and “**under common control with**”), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or by contract or otherwise.

(7) “**Aggregate Environmental Cap**” has the meaning set forth in Section 6.15(a)(ii).

(8) “**Agreement**” means this Asset Purchase and Sale Agreement together with the Exhibits and Schedules hereto, as the same may be amended from time to time in accordance herewith.

(9) “**Ancillary Agreements**” means Bill of Sale, Assignment and Assumption Agreement, Assignment and Assumption of Easements, License Agreement, Security Agreement Amendment, Lease Agreement, Pole Attachment Agreement, Funds Flow Statement, Escrow Agreement.

(10) “**Assignment and Assumption Agreement**” means the Assignment and Assumption Agreement between Seller and Buyer substantially in the form of Exhibit A attached hereto.

(11) “**Assignment and Assumption of Easements**” means an omnibus assignment of Easements and assumption of responsibilities associated therewith between Seller and Buyer in recordable form and a form reasonably acceptable to Buyer, said assignment to make (a) specific reference to the Easements for the benefit of Seller for those certain real properties commonly known as the Church Street Substation, identified for ad valorem tax purposes as 102-050.01, and the MTSU Substation, identified for ad valorem tax purposes as 090P-C-001.00, and (b) a general reference to all other Easements in favor of Seller, MED or any of their respective predecessors-in-interest.

(12) “**Assumed Contracts**” mean all Contracts entered into by MED or Seller in the ordinary course of, and primarily relating to, the Business of MED Electric Utility, including those Contracts set forth on Schedule 1.1(12) as of the Effective Date, the Real Property Instruments, Intellectual Property Licenses and any Contract entered into by Seller primarily

relating to the MED Electric Utility arising in the ordinary course consistent with MED's Past Practices during the Interim Period as approved by Buyer in accordance with Section 6.1(a) and which shall be disclosed on any Schedule Supplement to Schedule 1.1(12).

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

(14) "**Attachment Agreements**" means all pole attachment agreements, wireline agreements, streetlight attachment agreements, joint-use agreements, CATV (cable) agreements, fiber optic agreements, franchise agreements for the placement of telecommunication facilities, fiber-optic cable or cable facilities on any of the Acquired Assets, agreements for the placement of telecommunication, cable or other ground equipment and monopoles on any of the Acquired Assets, agreements for the attachment of facilities (including by Governmental Authorities) to towers, substations, buildings, transmission or distribution poles or other facilities comprising the Acquired Assets, banner agreements, holiday lights agreements and other similar agreements.

(15) "**Available Proceeds**" means the sum of (i) the total aggregate amount of insurance coverage under all of the MED Electric Utility insurance policies that are applicable to the Acquired Assets that were damaged or destroyed by the relevant Casualty during the Interim Period, plus (ii) the amount (or value, if provided in the form of property or repair assistance) of assistance that Seller has been provided (or that has been committed to be provided to Seller) in any form (including cash grant, property or repair assistance) by any Person (including the Federal Emergency Management Agency of the United States or any other Governmental Authority) that may be used by Seller to cure such Casualty, plus (iii) the amounts recovered or recoverable by Seller from Customers for storm restoration in accordance with MED's Past Practices in connection with similar Casualty events.

(16) "**Base Purchase Price**" has the meaning set forth in Section 3.2.

(17) "**Benefit Plans**" means each employee benefit plan as defined in Section 3(3) of ERISA, each governmental plan as defined in Section 3(32) of ERISA, and each other plan, contract, agreement, arrangement or policy, whether written or oral, qualified or non-qualified, providing for (i) compensation, severance benefits, bonuses, profit-sharing or other forms of incentive compensation; (ii) vacation, holiday, sickness or other time-off; (iii) health, medical, dental, disability, life, accidental death and dismemberment, employee assistance, educational assistance, relocation or fringe benefits or perquisites, including post-employment benefits; and (iv) deferred compensation, defined benefit or defined contribution, retirement or pension benefits.

(18) "**Bill of Sale**" means the Bill of Sale, substantially in the form of Exhibit B attached hereto.

(19) "**Bonds**" means, collectively, Seller's outstanding (i) Electric System Revenue and Tax Refunding Bonds, Series 2009, in the aggregate principal amount of up to \$15,605,000; and (ii) any obligations arising under the Tennessee Municipal Bond Fund.

(20) "**Business Books and Records**" has the meaning set forth in Section 2.1(j).

(21) “**Business Day**” means any day other than Saturday, Sunday and any day on which banking institutions in the State of Tennessee are authorized by law or other governmental action to close.

(22) “**Business of the MED Electric Utility**” means each of the following: (a) the ownership, operation and maintenance of the MED Electric Utility; (b) the sale and provision of electricity to the Customers; and (c) the ownership, operation and maintenance of the Streetlight Assets.

(23) “**Buyer**” has the meaning set forth in the preamble to this Agreement.

(24) “**Buyer Benefit Plans**” has the meaning set forth in Section 6.9(b).

(25) “**Buyer Closing Certificate**” has the meaning set forth in Section 7.2(d).

(26) “**Buyer’s Environmental Testing**” has the meaning set forth in Section 6.15(c).

(27) “**Buyer Fundamental Representations**” means the representations and warranties made in Section 5.1, Section 5.2, Section 5.3 and Section 5.6.

(28) “**Buyer Indemnitee**” has the meaning set forth in Section 8.1(b).

(29) “**Buyer Loan Documents**” means the Credit Agreement between Buyer and CoBank ACB, as lender, and all letters of credit, guaranties, collateral agreements or other securities instruments pursuant thereto, all as amended from time to time.

(30) “**Buyer’s Required Regulatory Approvals**” has the meaning set forth in Section 5.3(b).

(31) “**Cap**” has the meaning set forth in Section 8.1(c)(v).

(32) “**Cash on Hand**” means the aggregate amount of all cash and cash equivalents held by Seller for the benefit of MED deposited, held or contained in any deposit account of MED.

(33) “**Casualty**” means an event causing any portion of the Acquired Assets to be damaged or destroyed and requiring an amount in excess of one million dollars (\$1,000,000) for repair or replacement of such damaged or destroyed Acquired Assets; provided, however, that any intentional demolition or removal of any Acquired Assets in connection with repair or replacement of such Acquired Assets shall not be considered a Casualty.

(34) “**Casualty Notice**” has the meaning set forth in Section 6.10.

(35) “**Closing**” has the meaning set forth in Section 3.1.

(36) “**Closing Date**” has the meaning set forth in Section 3.1.

(37) “**COBRA**” means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, and the rules and regulations promulgated thereunder and any similar state or local applicable Laws.

(38) “**Code**” means the Internal Revenue Code of 1986, as amended.

(39) “**Commercially Reasonable Efforts**” means efforts which are designed to enable a Party, directly or indirectly, to expeditiously satisfy a condition to, or otherwise assist in the consummation of, the Transactions contemplated by this Agreement and which are consistent with such Party’s applicable industry standards and are customary and reasonable in nature in the context of the Transactions contemplated by this Agreement.

(40) “**Contract**” means any agreement, contract, purchase order, lease, license, right, commitment, evidence of Indebtedness, binding bid or other legally binding arrangement relating to the Business of the MED Electric Utility (written or oral).

(41) “**Council**” means the City Council of Seller in its entirety and excludes any individual member thereof.

(42) “**Cure Amount**” means the amount of costs that will be required to be paid in order to cure the damage to or destruction of the Acquired Assets resulting from a Casualty such that the MED Electric Utility will operate in accordance with MED’s Past Practice.

(43) “**Customer**” means any retail electric service customer of Seller prior to the Closing Date, and, assuming the Closing occurs, of Buyer on or after the Closing Date, within the Service Territory.

(44) “**Customer Deposit Obligations**” means the Liability for electric utility deposits collected by MED from its Customers that have not been returned to its Customers as of the Closing Date.

(45) “**Customer Service Assets**” means the customer service facilities, equipment and other tangible property and assets used in or for, the Business of the MED Electric Utility or located on the Real Property, including the facilities, equipment and other tangible property and assets that connect the Distribution Assets to each individual Customer’s Delivery Point, Customer/premise/account data, historical consumption information, meters, remote metering equipment, and equipment needed to access the meters (e.g., keys to locked meter rooms, any meter/special/barrel lock/anchor keys), and without limiting the generality of the foregoing, specifically includes the facilities and equipment described in Schedule 1.1(45). For the avoidance of doubt, Customer Service Assets do not include assets used by Seller primarily for its water and sewer utility business, and Seller shall be entitled to keep a copy of any data that is a Customer Service Asset as deemed appropriate by Seller.

(46) “**Deductible**” has the meaning set forth in Section 8.1(c)(iii).

(47) “**Deed**” means a special warranty deed with respect to the Acquired Land In Fee substantially in the form of Exhibit C attached hereto.

(48) “**Delivery Point**” means the point on the Customer’s premises where, (i) if delivery is being made through overhead wires, Seller’s wires connect to Customer’s wires at the Customer’s weatherhead, and (ii) if delivery is being made through underground wires, Seller’s wires connect to the Customer’s meter can.

(49) “**Direct Claim**” has the meaning set forth in Section 8.2(c).

(50) “**Distribution Assets**” means the electric distribution facilities, equipment and other tangible property and assets used in or for, the Business of the MED Electric Utility, including the facilities, equipment and other tangible property and assets that connect the Transmission Assets to the Customer Service Assets, distribution substation equipment, feeder circuits and associated hardware (including switches and switch gear, regulators, capacitor banks, reclosers, and protective equipment), primary circuits, transformers, secondaries and services, and associated physical assets (including poles, conductors, cables, insulators, metering, and outdoor lights).

(51) “**Easements**” means the electrical distribution easements, electrical transmission easements, access easements, aerial easements and other easements owned by Seller and used in (A) the Business of the MED Electric Utility or (B) the operation or maintenance of the Acquired Assets, including the easements identified in Schedule 1.1(51).

(52) “**Effective Date**” has the meaning set forth in the preamble to this Agreement.

(53) “**Effective Time**” has the meaning set forth in Section 3.1.

(54) “**Electric Utility Accounting Records**” means all financial statements, accounting books, related records and reports of Seller relating to the Business of the MED Electric Utility.

(55) “**Encumbrances**” means any liens, charges, pledges, options, mortgages, deeds of trust, security interests, equitable interests, claims, easements, rights-of-way, leases, mineral reservations, covenants, conditional and installment sales contracts, title retention arrangements, adverse claims or restrictions of any kind, including restriction on transfer or use, option, right of first refusal, license or other right of third parties, and other encumbrances affecting title or right to property, whether imposed by applicable Law, agreement, understanding or otherwise and whether or not of record.

(56) “**Environment**” means all soil, real property, air, water (including surface waters, streams, ponds, drainage basins and wetlands), groundwater, water body sediments, drinking water supply, stream sediments or land, including land surface or subsurface strata, including all fish, plant, wildlife, and other biota and any other environmental medium or natural resource.

(57) “**Environmental Claim**” means any and all communications, whether written or oral, alleging potential Liability, administrative or judicial actions, suits, orders, liens, notices alleging Liability, notices of violation, investigations, complaints, requests for information relating to the Release or threatened Release into the Environment of Hazardous Substances,

proceedings, or other communication, whether criminal or civil, pursuant to or relating to any applicable Environmental Law, by any Person (including any Governmental Authority) based upon, alleging, asserting, or claiming any actual or potential (i) violation of, or Liability under any Environmental Law, (ii) violation of any Environmental Permit, or (iii) Liability for investigatory costs, cleanup costs, removal costs, remedial costs, response costs, monitoring costs, natural resource damages, property damage, personal injury, fines, or penalties arising out of, based on, resulting from, or related to the presence, Release, or threatened Release into the Environment of any Hazardous Substances at any Real Property, or any off-site location to which Hazardous Substances, or materials containing Hazardous Substances, were sent.

(58) “*Environmental Clean-up Site*” means any location which is listed or formally proposed for listing on the National Priorities List, the Comprehensive Environmental Response, Compensation and Liability Information System, or on any similar federal, state or local list of sites requiring investigation or cleanup, or which is the subject of any action, suit, proceeding or investigation for any alleged violation of any Environmental Law, or at which there has been a Release, or a threatened or suspected Release, of a Hazardous Substance.

(59) “*Environmental Laws*” means all Laws regarding pollution or protection of the Environment, the conservation and management of land, natural resources and wildlife or human health and safety or the Occupational Safety and Health Act (only as it relates to Hazardous Substances), including Laws regarding Releases or threatened Releases of Hazardous Substances (including Releases to ambient air, surface water, groundwater, land, surface and subsurface strata) or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, Release, transport, disposal or handling of Hazardous Substances, including the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §§ 9601 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. §§ 1801 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. §§ 1251 et seq.), the Clean Air Act (42 U.S.C. §§ 7401 et seq.), the Toxic Substances Control Act (15 U.S.C. §§ 2601 et seq.), the Oil Pollution Act (33 U.S.C. §§ 2701 et seq.), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. §§ 11001 et seq.), and all other Laws analogous to any of the above.

(60) “*Environmental Liabilities*” has the meaning set forth in Section 6.15(a)(ii).

(61) “*Environmental Notice*” has the meaning set forth in Section 6.15(a)(ii).

(62) “*Environmental Permit*” means any Permit under or in connection with any Environmental Law, including any and all orders, consent orders or binding agreements issued or entered into by a Governmental Authority under any applicable Environmental Law, that is necessary for (i) the Business of the MED Electric Utility, or (ii) the ownership, use or operation of the Real Property or Acquired Assets, in each case under clause (i) or (ii), as conducted prior to the Effective Date and as conducted prior to the Closing Date.

(63) “*ERISA*” means the Employee Retirement Income Security Act of 1974, as amended, and the applicable rules and regulations promulgated thereunder.

(64) “*ERISA Affiliate*” means any trade or business under Section 414(b), (c), (m) or (o) of the Code.

(65) “*Escrow Agent*” means SunTrust Bank.

(66) “*Escrow Agreement*” has the meaning set forth in Section 3.6(t).

(67) “*Escrowed Purchase Price Amount*” means ten million dollars (\$10,000,000).

(68) “*Excluded Assets*” has the meaning set forth in Section 2.2.

(69) “*Excluded Contracts*” has the meaning set forth in Section 2.2(b).

(70) “*Excluded Liabilities*” has the meaning set forth in Section 2.4.

(71) “*Federal Communications Commission*” means the United States Federal Communications Commission or any successor agency thereto.

(72) “*Fiber Optic Network Assets*” has the meaning set forth in Section 2.1(t).

(73) “*Final Determination*” has the meaning set forth in Section 8.1(i).

(74) “*Financial Statements*” has the meaning set forth in Section 4.5(a).

(75) “*License Agreement*” has the meaning set forth in Section 3.6(p).

(76) “*Funds Flow Statement*” means the statement to be delivered by Seller to Buyer at the Closing in a form satisfactory to Buyer, which statement shall set forth the name, amount and wire transfer instructions for each Person to whom all or any portion of the Purchase Price, as adjusted in accordance with this Agreement, and any Transaction Expense is owed in connection with the Closing.

(77) “*GAAP*” means United States generally accepted accounting principles in effect in the United States from time to time.

(78) “*Governmental Authority*” means any federal, state, county, city, local or other governmental, regulatory or administrative agency, body, authority (including taxing authority), official, district (including water control district), commission, department, board or other governmental subdivision, court, tribunal or arbitrating body, and any national or regional electric reliability organizations, including NERC and TVA.

(79) “*Hazardous Substances*” means: (i) any petroleum, asbestos, asbestos-containing material, urea formaldehyde foam insulation, polychlorinated biphenyls, and transformers or other equipment that contains polychlorinated biphenyls; (ii) any chemicals, materials or substances defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “hazardous constituents,” “restricted hazardous materials,” “extremely hazardous substances,” “toxic substances,” “contaminants,” “pollutants,”

“toxic pollutants,” “hazardous air pollutants” or words of similar meaning and regulatory effect under any applicable Environmental Law; and (iii) any other chemical, material or substance regulated under, or exposure to which is prohibited, limited or regulated by any applicable Environmental Law.

(80) “**Indebtedness**” means, with respect to any Person, at any time without duplication, (i) all indebtedness for borrowed money, (ii) all obligations for the deferred purchase price of property or services, (iii) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments, (iv) all obligations of such Person created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person, (v) all obligations of such Person under acceptance, letter of credit or similar facilities, (vi) all obligations of such Person in respect of any exchange-traded or over-the-counter derivative transaction, including interest rate or currency hedging agreements, and (viii) all obligations of such Person to guarantee any Indebtedness, leases, dividends or other payment obligations of such Person or any other Person; provided, however, that the term “Indebtedness” shall not include any lease that is a capital lease.

(81) “**Indemnifying Party**” has the meaning set forth in Section 8.1(f).

(82) “**Indemnitee**” means either a Seller Indemnitee or a Buyer Indemnitee, as the case may be.

(83) “**Intellectual Property**” means all rights arising under domestic and foreign statutory and common law, including, as applicable: (i) copyrights, copyrightable, copyrighted works, whether published or unpublished, and all registrations, applications for registration and renewals of registrations thereof; (ii) trademarks, service marks, trade names, slogans, domain names, business names, logos, trade dress and similar indicia of source origin, including but not limited to those relating to social media, whether or not registered and all registrations and applications for registrations thereof and goodwill associated therewith; (iii) patents, as well as any reissued and reexamined patents and extensions corresponding to the patents, and any patent applications of any kind (whether provisional or non-provisional), as well as any related continuation, continuation in part and divisional applications and patents issuing therefrom; (iv) trade secret and other confidential and proprietary information, including ideas, designs, concepts, compilations of information, methods, technologies, techniques, procedures, proprietary processes, inventions, discoveries and other know-how, whether or not patentable; (v) IT Systems, software or computer programs, including any and all software implementations of algorithms, models and methodologies whether in source code or object code form, databases and compilations, including any and all electronic data and electronic collections of data, all documentation, including user manuals and training materials, related to any of the foregoing and the content and information contained on any Web site; and (vi) all moral and economic rights of authors and inventors however denominated.

(84) “**Intellectual Property Licenses**” means those agreements related to Licensed Intellectual Property.

(85) “**Interconnection Points**” mean the points at which Seller’s Transmission Assets connect as of the Effective Date to Seller’s substations.

(86) “*Interconnection Contracts*” means Contracts for access and use by Seller or MED of any third party Interconnection Points and related generating systems and equipment at such third party’s metered locations.

(87) “*Interim Board Representative*” has the meaning set forth in Section 6.17(a).

(88) “*Interim Period*” has the meaning set forth in Section 6.1(a).

(89) “*Invalidity Holding*” has the meaning set forth in Section 8.1(i).

(90) “*Inventory*” means materials, spare parts, supplies, chemicals and other items of inventory used in or for the Business of the MED Electric Utility including such other items of inventory located in Seller’s warehouses.

(91) “*IRS*” means the United States Internal Revenue Service or any successor agency thereto.

(92) “*IT Systems*” has the meaning set forth in Section 4.16(c).

(93) “*Lease Agreement*” means the Contract between Seller and Buyer governing Buyer’s use of the MED Office and Storage Yard after the Closing Date in the form of Exhibit D attached hereto.

(94) “*Knowledge*” means (i) with respect to Buyer, the actual awareness (after reasonable inquiry of appropriate employees of Buyer) of the chief corporate officers of Buyer who are charged with responsibility for the particular function relating to the matter of the inquiry and (ii) with respect to Seller, the actual awareness of the City Manager of Seller (after inquiry of the director and each other managing officer of MED Electric Utility who are charged with responsibility for the particular function relating to the matter of the inquiry and the City Attorney of Seller).

(95) “*Law*” means any foreign, federal, state or local law, constitutional provision, statute, charter, ordinance or other law, rule, regulation, code (including any zoning code, fire code or health and safety code), determination or interpretation of any Governmental Authority or any Order of or by any Governmental Authority, including all Environmental Laws and NERC standards, requirements and regulations, applicable to the Business of the MED Electric Utility or the Acquired Assets.

(96) “*Liability*” means any direct or indirect liability, commitment, Indebtedness or obligation (whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether accrued or un-accrued, whether liquidated or un-liquidated, and whether due or to become due) of any kind, character or nature, or any demand, Action asserted or brought against the relevant Person.

(97) “*Licensed Intellectual Property*” means the Intellectual Property owned by a third-party that is used or necessary for the operation of the Business of MED Electric Utility that is licensed or sublicensed to Seller or MED.

(98) “*Loss*” or “*Losses*” means any and all damages, fines, fees, penalties, deficiencies, losses, Liabilities, interest, awards, judgments, Taxes, amounts paid in settlement, demands, suits, actions, costs (including costs of investigation, defense and enforcement of this Agreement) and expenses (whether or not involving a Third Party Claim), including all Remediation costs, reasonable fees of attorneys, accountants and other experts, or other expenses of litigation or proceedings or of any claim, default or assessment relating to the foregoing.

(99) “*Material Adverse Effect*” means such changes, effects, conditions, facts, circumstances and events resulting in, or reasonably likely to result in, an adverse effect on (a) the Acquired Assets, Assumed Liabilities and the Business of the MED Electric Utility, or (b) the ability of Seller to perform its obligations under this Agreement or any of the Ancillary Agreements; provided, however, that no one or more of the following changes, effects, conditions, facts, circumstances or events shall be taken into account in determining whether a Material Adverse Effect has occurred: (i) general economic or political conditions; (ii) conditions generally affecting the industry in which the Business of the MED Electric Utility operates, including those affecting fuel prices (provided such condition does not affect the Business of the MED Electric Utility in a disproportionate manner); (iii) any changes in financial, banking or securities markets in general, including any disruption thereof and any decline in the price of any security or any market index or any changes in prevailing interest rates (provided such condition does not affect the Business of the MED Electric Utility in a disproportionate manner); (iv) acts of war (whether or not declared), terrorism or armed hostilities, or the escalation or worsening thereof; (v) any action (or omission of an action) required or permitted by this Agreement or any of the Ancillary Agreements or any action taken (or omitted to be taken) with the written consent of or at the request of Buyer; (vi) any changes in applicable Laws or accounting rules (including GAAP) or the enforcement, implementation or interpretation thereof other than Laws adopted by the Council; (vii) the announcement, pendency or completion of the Transactions contemplated by this Agreement, including losses or threatened losses of employees, customers, suppliers, distributors or others having relationships with Seller or the Business of the MED Electric Utility; or (viii) any failure by the Business of the MED Electric Utility to meet any internal or published projections, forecasts or revenue or earnings predictions provided, that the foregoing shall not prevent a determination that any change, event or effect underlying such failure to meet projections, forecasts or revenue or earnings predictions has resulted in a Material Adverse Effect (to the extent such change or effect is not otherwise excluded from this definition of Material Adverse Effect).

(100) “*Material Seller Contracts*” shall have the meaning set forth in Section 4.13(a).

(101) “*MED*” means the Murfreesboro Electric Department of Seller.

(102) “*MED Benefit Plans*” has the meaning set forth in Section 4.11(a).

(103) “*MED Defined Benefit Plan*” means the Murfreesboro Electric Department Employee Pension Plan.

(104) “*MED Electric Utility*” means the electric utility system of electricity transmission and distribution owned and operated by Seller prior to the Closing Date and, provided that the Closing occurs, owned and operated by Buyer on and after the Closing Date.

(105) “**MED Employee**” means an hourly-paid or salaried employee of Seller, who receives an IRS Form W-2 from Seller and whose work responsibilities involve principally the Business of the MED Electric Utility and which are listed on Schedule 4.10(c).

(106) “**MED Intellectual Property Assets**” means the Intellectual Property, including Licensed Intellectual Property, used in the operation of the Acquired Assets or for the Business of the MED Electric Utility, including the Intellectual Property listed on Schedule 4.16(a).

(107) “**MED Office and Storage Yard**” means the following real property, together with all improvements thereon, identified for ad valorem tax purposes as: (i) 091K-H-022.00-000; (ii) 091K-J-008.00-000; and (iii) 091K-J-010.00-000.

(108) “**MED’s Past Practices**” means the recent historical operation, maintenance and repair practices, methods and actions performed during the twelve (12) month period prior to the Effective Date by, or on behalf of, MED with respect to the Acquired Assets, in a manner complying with applicable Law.

(109) “**NERC**” means the North American Electric Reliability Corporation.

(110) “**Non-Environmental Permit**” means any Permit (other than an Environmental Permit) that is necessary for, (i) the Business of the MED Electric Utility, or (ii) the ownership, use or operation of the Acquired Assets, in each case under clause (i) or (ii), as conducted prior to the Effective Date and as conducted prior to the Closing Date.

(111) “**Observers**” has the meaning set forth in Section 6.1(b).

(112) “**Order**” means any judgment, decision, consent, determination, assessment, decree, injunction, stay, ruling, writ or order of or by any Governmental Authority.

(113) “**Party**” (and the corresponding term “**Parties**”) has the meaning set forth in the preamble to this Agreement.

(114) “**Pension Termination Costs**” has the meaning set forth in Section 6.19.

(115) “**Permits**” means all permits, licenses, radio licenses, approvals, immunities, entitlements, certificates (including certificates of need), authorizations, registrations, waivers, variances, exemptions, notices, application, and filings, from, to, with or issued by any Governmental Authority, that are material to the Business of the MED Electric Utility or the Acquired Assets, including certificates of occupancy, operating permits, sign permits, development rights and approvals, zoning, building and safety and health approvals.

(116) “**Permitted Encumbrances**” means, with the exception of the Encumbrances identified on attached Schedule 4.6(b), which shall be satisfied or removed from such Acquired Assets on or before the Closing Date: (i) as to each and every parcel of Acquired Land in Fee and any other Real Property for which Buyer obtains a Title Commitment, those exceptions to title listed in Annex B, referenced in any of the Title Commitments; (ii) as to each Acquired Asset constituting personal property, or any Real Property for which Buyer has not

obtained a Title Commitment, any Encumbrance of any type or description on or affecting such Acquired Assets, provided that such Encumbrance does not, individually or in the aggregate, materially interfere with the operation of the Acquired Assets in the ordinary course consistent with MED's Past Practices prior to the Effective Date. Without limiting the generality of the foregoing, "Permitted Encumbrances" include the following: (i) statutory liens for Taxes that are not yet due and payable as of the Closing Date or that are being contested in good faith by appropriate and timely proceedings and for which adequate reserves are made therefor on Seller's balance sheet; (ii) statutory liens (including construction, mechanics' and materialmen's liens and other like statutory liens and inchoate liens incurred in connection with workers' compensation, unemployment insurance, and social security laws) arising in the ordinary course of business securing payments not yet delinquent and for which adequate reserves are made therefor on Seller's balance sheet; (iii) existing zoning and entitlement restrictions imposed by a Governmental Authority and other land use and environmental restrictions and any existing conditions or obligations arising under any Permit so long as such restrictions, regulations, conditions and obligations do not, individually or in the aggregate, materially interfere with the Business of the MED Electric Utility in the ordinary course consistent with MED's Past Practices; (iv) the covenants and restrictions set forth in this Agreement or in any of the Ancillary Agreements; (v) Encumbrances with respect to the Acquired Assets created by or resulting from the acts or omissions of Buyer; (vi) the rights of any owner of real property where any of the personal property included in the Acquired Assets is located; (vii) other Encumbrances that arise or are incurred in the ordinary course of the Business of MED Electric Utility that are not otherwise material in amount and do not adversely affect the title of, materially and adversely detract from the value of, or materially interfere with any use consistent with MED's Past Practices of, the Acquired Assets that affected by such Encumbrance.

(117) "**Person**" means a natural person, a corporation, a partnership, a joint venture, a union, a limited liability company, a trust, an unincorporated organization, an association, a joint stock company, trustee, estate, real estate investment trust or any other entity or organization, including a Governmental Authority or any other separate legal entity recognized pursuant to applicable Law.

(118) "**Pole Attachment Agreement**" means a pole attachment license agreement to be entered into by and between Seller and Buyer effective as of the Closing, in form and substance consistent with the Buyer's standard form of license for pole attachments.

(119) "**PPACA**" has the meaning set forth in Section 2.4(e).

(120) "**Prepaid Expenses**" means all expenses incurred by Seller in the operation of the Acquired Assets in accordance with MED's Past Practices (excluding pre-payments for tangible assets such as inventory or real or personal property, plant and equipment except as provided in Section 3.6(a)(ii), but including prepaid maintenance expense) paid in cash before the Closing and before being incurred for GAAP purposes.

(121) "**Privacy Laws**" means any privacy law, including without limitation, the Health Insurance Portability and Accountability Act, the Gramm-Leach-Bliley Act and all U.S. state implementing laws, the CAN-SPAM Act, the Telephone Consumer Protection Act, and all current implementing Laws, rules, and regulations applicable to the personal information collected

by the Seller from a Customer, including Payment Card Industry Data Security Standard, to the extent applicable to MED, the Business of the MED Electric Utility, the Acquired Assets or the Assumed Liabilities.

(122) “**Promissory Note**” has the meaning set forth in Section 3.3(a).

(123) “**Purchase Price**” has the meaning set forth in Section 3.2.

(124) “**Real Property**” means the Acquired Land in Fee and such other real property rights, interests, and licenses to occupy real property that are owned by Seller and used by Seller to transmit and distribute electricity or to access or maintain the MED Electric Utility including the Easements, each as set forth on Schedule 4.6(a)(i).

(125) “**Real Property Instrument**” means any license, deed, lease, easement, agreement or other instrument creating an interest in the Real Property.

(126) “**Reimbursement Cap**” has the meaning set forth in Section 6.3.

(127) “**Release**” means any actual, threatened or alleged spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, migrating, dumping or disposing of a Hazardous Substance into the Environment or within any building, structure, facility or fixture.

(128) “**Remediation**” means any action of any kind to address the presence or Release of Hazardous Substances, including: (i) monitoring, investigation, assessment, treatment, cleanup containment, removal, mitigation, response or restoration work, as well as obtaining any Permits necessary to conduct any such activity; (ii) preparing and implementing any plans or studies for any such activity; and (iii) obtaining a written notice from a Governmental Authority with competent jurisdiction under Environmental Laws, that no additional work is required.

(129) “**Representatives**” of a Party means the Party and its Affiliates and their directors, officers, employees, agents and advisors (including accountants, counsel, environmental consultants, financial advisors and other authorized representatives). The Council shall be deemed to be a Representative of Seller for all purposes hereunder.

(130) “**Rogers Substation Property**” has the meaning set forth in Section 6.4(b)(ii).

(131) “**Schedules**” means the schedules attached to this Agreement.

(132) “**Schedule Supplement**” has the meaning set forth in Section 6.8.

(133) “**Selected Accounts Amount**” means the sum of (i) Cash on Hand, (ii) investments, (iii) accounts receivable, (iv) Prepaid Expenses, (v) rents receivable and (vi) accrued unbilled revenues, less (vii) Indebtedness, (viii) accounts payable, and (iv) Customer Deposit Obligations, in each case, to the extent such amounts constitute an Acquired Asset or an Assumed Liability.

(134) “**Seller**” has the meaning set forth in the preamble to this Agreement.

(135) “**Seller Closing Certificate**” has the meaning set forth in Section 7.1(e).

(136) “**Seller Disclosure Schedules**” means the disclosure schedules of Seller that pertain to Seller’s representations and warranties in Article 4 of this Agreement, delivered concurrently with the execution and delivery of this Agreement and forming a part of this Agreement and any updates to such disclosure schedules.

(137) “**Seller Fundamental Representations**” means the representations and warranties made in Section 4.1, Section 4.2, Section 4.3 and Section 4.18.

(138) “**Seller Indemnitee**” has the meaning set forth in Section 8.1(a).

(139) “**Seller-TVA Contract**” means the Power Contract between TVA and City of Murfreesboro, Tennessee made and entered into as of April 18, 1977, as subsequently amended.

(140) “**Service Territory**” means the area described as Seller’s service territory attached hereto as Annex A.

(141) “**Streetlight Assets**” means all assets of Seller used in or for Seller’s street lighting business including all Seller-owned poles, fixtures, test equipment, brackets, records, conductors, warranties, tools, photocells, relays, conduit, transformers, handholes/splice boxes, connectors/splices, scrap, salvage, ground rods, nuts, bolts, washers, ballasts, shields, poles and any inventory of the foregoing.

(142) “**Survey**” means an American Land Title Association (ALTA) survey for each parcel of real property identified as an insured parcel in any of the Title Commitments.

(143) “**Tail Policy**” has the meaning set forth in Section 6.23.

(144) “**Target Selected Accounts Amount**” means forty-three million seven hundred thousand dollars (\$43,700,000).

(145) “**Taxes**” means, all taxes, charges, fees, levies, penalties or other assessments imposed by any federal, state, local, provincial or foreign taxing authority, including income, gross receipts, excise, real or personal property, sales, transfer, customs, duties, franchise, payroll, withholding, social security, receipts, license, stamp, occupation, employment or other taxes, including any interest, penalties or additions attributable thereto, and any payments to any state, local, provincial or foreign taxing authorities in lieu of any such taxes, charges, fees, levies or assessments. The term “**Tax**” means any one of the foregoing Taxes.

(146) “**Tax Return**” means any return, report, form, information return, declaration, claim for refund or other document (including any schedule or related or supporting information) required to be supplied to any Governmental Authority with respect to Taxes including amendments thereto, including any information return filed by a tax-exempt organization.

- (147) “*Termination Date*” has the meaning set forth in Section 3.1.
- (148) “*Third Party Claim*” has the meaning set forth in Section 8.2(a).
- (149) “*Title Commitments*” means the title commitments described on Annex B issued by the Buyer’s title company covering the Acquired Land in Fee (as the same may have been updated prior to the Effective Time).
- (150) “*Total Compensation*” means base pay, authorized overtime, and benefits provided under all applicable Benefit Plans.
- (151) “*Transaction*” has the meaning set forth in the Recitals to this Agreement.
- (152) “*Transaction Expenses*” means out-of-pocket third party fees and expenses incurred by Seller in connection with the Transactions contemplated hereby, including, without limitation, fees and expenses of Seller’s legal counsel, accountants, consultants, advisers, brokers and investment bankers.
- (153) “*Transaction Documents*” has the meaning set forth in Section 6.5(a).
- (154) “*Transferable Permits*” means the Environmental Permits and the Non-Environmental Permits that are transferable at the Closing.
- (155) “*Transferred Employees*” means all MED Employees listed in Schedule 4.10(c) who are employed by Seller as of the date immediately preceding the Closing Date and who accept continued employment with Buyer as of the Closing Date.
- (156) “*Transferred Employee Records*” means the following records related to Transferred Employees, which shall include the following information, as long as disclosure is not prohibited under the Health Insurance Portability and Accountability Act (“*HIPAA*”), the Health Information Technology for Economic and Clinical Health Act (“*HITECH*”), or similar applicable Laws: (i) most current employee census data set forth on Schedule 4.10(c); (ii) all records and files maintained by Seller related to the DOT; (iii) proof of valid DOT medical card and valid CDL, as applicable; (iv) I-9 forms and W-4 forms.
- (157) “*Transfer Taxes*” means any sales, use, value added, excise, stamp, documentary, recording, registration, conveyance, stock transfer, intangible property transfer, personal property transfer, real property transfer, gross receipts, registration, duty, securities transactions or similar fees or Taxes or governmental charges (together with any interest or penalty, addition to Tax or additional amount imposed) as levied by any Governmental Authority in connection with the Transactions contemplated by this Agreement, including any payments made in lieu of any such Taxes or governmental charges which become payable in connection with the Transactions contemplated by this Agreement.
- (158) “*Transmission Assets*” means the electric transmission tangible personal property, excluding real property, used in or for the Business of the MED Electric Utility or located on the Real Property, including the facilities, equipment and other tangible property and assets that connect the Distribution Assets to the Interconnection Points (and other property and assets

associated with or ancillary thereto), transformers, breakers, capacitor banks, switches, arresters, instrument transformers, substation structures, substations, buswork, substation battery and chargers, relay protection panels, relay communications/carriers, remote telemetry and control equipment, metering, fault recorders, sequence of event recorders, annunciators, relay vaults, substation fencing, transmission lines, conductors, transmission line structures and poles, and control buildings.

(159) “*TVA*” means the Tennessee Valley Authority, a federal corporation organized under the Tennessee Valley Authority Act.

(160) “*Vehicles*” means the vehicles owned by Seller or MED in connection with and used in the operation of the Business of MED Electric Utility listed in Schedule 1.1(160).

(161) “*Warn Act*” means the federal Worker Adjustment and Retraining Notification Act of 1988, and similar state, local and foreign laws related to plant closings, relocations, mass layoffs and employment losses.

Section 1.2 Certain Interpretive Matters.

(a) Unless otherwise required by the context in which any term appears:

(i) Capitalized terms used in this Agreement shall have the meanings specified in this Article.

(ii) The singular shall include the plural, the plural shall include the singular, and the masculine shall include the feminine and neuter.

(iii) References to “Articles”, “Sections”, “Schedules” or “Exhibits” shall be to articles, sections, schedules or exhibits of or to this Agreement, and references to “paragraphs” or “clauses” shall be to separate paragraphs or clauses of the section or subsection in which the reference occurs.

(iv) The words “herein”, “hereof” and “hereunder” shall refer to this Agreement as a whole and not to any particular section or subsection of this Agreement; and the words “include”, “includes” or “including” shall mean “including, but not limited to.”

(v) The term “day” shall mean a calendar day, commencing at 12:00:01 a.m. (Central Time). The term “week” shall mean any seven consecutive day period commencing on a Sunday, and the term “month” shall mean a calendar month; provided, however, that when a period measured in months commences on a date other than the first day of a calendar month, the period shall run from and including the date on which it starts to and including the date immediately preceding the corresponding date in the next month and, as appropriate, to succeeding months thereafter. Whenever an event is to be performed or a payment is to be made by a particular date and the date in question falls on a day which is not a Business Day, the event shall be performed, or the payment shall be made, on the next succeeding Business Day; provided, however, that all calculations shall be made regardless of whether any given day is a Business Day and whether or not any given period ends on a Business Day.

(vi) The words “substantially in the form of” or words of similar effect when used with respect to the form of any Ancillary Agreement or other agreement or document that has been included as an Exhibit to this Agreement and that is to be executed and delivered by the Parties or any third party or third parties, or executed and delivered by one of the Parties or any third party or third parties, in either case after the Effective Date pursuant to, or in order to satisfy, any covenant, obligation or condition set forth in this Agreement shall refer to the applicable form that is attached to this Agreement with such changes as the Parties may otherwise agree are necessary or appropriate, with such agreement to be evidenced by the Parties’ execution thereof, including the insertion of mutually agreeable legal descriptions following preparation of a Survey for any applicable Real Property.

(b) The titles of the articles, sections, schedules and exhibits herein have been inserted as a matter of convenience of reference only, and shall not control or affect the meaning or construction of any of the terms or provisions hereof.

(c) The Parties acknowledge and agree that: (i) this Agreement (A) shall be construed and interpreted as an arms-length contract entered into by parties with equal bargaining power and (B) was negotiated and prepared by both Parties with advice of counsel to the extent deemed necessary by each Party; (ii) the Parties have agreed to the wording of this Agreement; and (iii) none of the provisions hereof shall be construed against either Party on the ground that such Party is the author of this Agreement or any part hereof.

(d) The Schedules and Exhibits hereto are incorporated in and are intended to be a part of this Agreement.

ARTICLE 2.

PURCHASE AND SALE

Section 2.1 *Acquired Assets.* Upon the terms and subject to the satisfaction of the conditions contained in this Agreement, at the Closing, Seller will sell, assign, convey, transfer and deliver to Buyer, and Buyer will purchase, assume, accept and acquire from Seller, free and clear of all Encumbrances (except for Permitted Encumbrances), all of Seller’s right, title and interest in or to the property, assets and rights (other than the Excluded Assets), of every kind, nature, character and description, whether real, personal or mixed, tangible or intangible, owned (or hereafter acquired), wherever located, that are primarily used by Seller in or necessary for, the Business of the MED Electric Utility (collectively, the “*Acquired Assets*”); provided, that the Acquired Assets shall specifically include all of Seller’s right, title and interest in or to the following property, assets and rights (other than the Excluded Assets):

- (a) the Transmission Assets;
- (b) the Distribution Assets;
- (c) the Customer Service Assets;
- (d) the Inventory;

- (e) the Vehicles;
- (f) all of the intangible rights and property of Seller of or related to the Business of the MED Electric Utility, including the MED Intellectual Property Assets, and all going concern value and goodwill of Seller or related to the Business of the MED Electric Utility;
- (g) all other machinery, mobile or otherwise, equipment (including computer hardware and communications equipment), tools, works in progress, fixtures, furniture and furnishings and other personal property;
- (h) all insurance benefits, including rights and proceeds, arising from or relating to the Acquired Assets or the Assumed Liabilities, except for any insurance benefit or portion thereof arising from or relating to Excluded Assets or Excluded Liabilities;
- (i) the benefit of and all rights to enforce any covenants, warranties, representations, indemnities, guarantees or similar rights benefiting the MED Electric Utility or the Acquired Assets (including, without limitation, covenants or warranties made by suppliers or other persons in connection with the Acquired Assets or services furnished to the Seller pertaining to the Business of the MED Electric Utility or affecting the Acquired Assets), except to the extent related to any Excluded Liability;
- (j) all books, operating records, licensing records, quality assurance records, purchasing records, manuals, standards, equipment repair, maintenance or service records, operating, safety and maintenance manuals, inspection reports, environmental assessments, engineering design plans, documents, blueprints and as built plans, specifications, drawings, procedures and other similar items of Seller, whether existing in hard copy or magnetic or electronic form, including the Transferred Employee Records (collectively, the "***Business Books and Records***");
- (k) the Acquired Land in Fee;
- (l) the Easements;
- (m) the Transferable Permits;
- (n) the Assumed Contracts, including any associated unexpired assignable warranties and guarantees from third parties;
- (o) (i) the investments, Cash on Hand and other similar assets, (ii) all Prepaid Expenses of Seller arising out of or relating to the conduct or operation of the Business of MED Electric Utility, (iii) all accounts receivable and similar rights of Seller to receive payments from third parties arising out of or relating to the conduct or operation of the Business of MED Electric Utility, and (iv) all outstanding refunds, rebates or credits for any period or period prior to the Closing Date;
- (p) the Streetlight Assets;

(q) any causes of action or Actions and defenses of Seller, rights of recovery and rights of set-off of any kind, against third parties (including indemnification and contribution) to the extent directly related to any other Acquired Asset or Assumed Liabilities, whether choate or inchoate, known or unknown, or contingent or non-contingent and whether or not liquidated, but excluding any defenses by virtue of sovereign immunity or defenses related thereto that may arise pursuant to applicable Law or otherwise;

(r) the Transferred Employee Records;

(s) the Electric Utility Accounting Records;

(t) the fiber optic cables installed within the Service Territory, whether located above- or underground, and the related transmission and attachment technology, including any work-in-process and fiber optic network under construction (collectively, the “*Fiber Optic Network Assets*”);

(u) all models and systems used for the forecasting, modeling, management and operation of the Acquired Assets; and

(v) all property, assets and rights associated with emergency or windstorm preparedness for the Acquired Assets.

Notwithstanding the foregoing, Seller may retain a copy of all Business Books and Records and Electric Utility Accounting Records as deemed appropriate by Seller.

Section 2.2 Excluded Assets. Notwithstanding anything to the contrary in this Agreement, nothing in this Agreement shall be construed as conferring on Buyer, and Buyer is not acquiring, any right, title or interest in or to any assets not used primarily in the Business of the MED Electric Utility (or otherwise identified as an Excluded Contract), including the following specific property, assets and rights (the “*Excluded Assets*”), which are hereby specifically excluded from the Transaction and the definition of Acquired Assets herein and which shall remain the property of Seller after the Closing:

(a) all MED Benefit Plans and any assets thereof;

(b) the excluded Contracts set forth on Schedule 2.2(b) (the “*Excluded Contracts*”);

(c) Seller’s insurance policies and proceeds thereof and all rights to applicable claims and proceeds thereunder, except as set forth in this Agreement, including Section 2.1(h);

(d) all rights to any causes of action or Actions and defenses against third parties (including indemnification and contribution) other than to the extent related to the Acquired Assets or Assumed Liabilities;

(e) all Real Property not listed in Section 2.1 hereof, including the MED Office and Storage Yard, except with respect to rights transferred to Buyer pursuant to the Lease Agreement; and

- (f) all rights of Seller under this Agreement and the Ancillary Agreements.

Section 2.3 Assumed Liabilities. At the Closing, Buyer shall deliver to Seller the Assignment and Assumption Agreement pursuant to which Buyer shall assume and agree to pay, perform and discharge when due, all of the Liabilities and obligations specifically listed below, other than the Excluded Liabilities (collectively, "**Assumed Liabilities**"):

(a) all Liabilities arising under (i) the Assumed Contracts and (ii) the Transferable Permits, except to the extent arising as a result of a breach thereof or default thereunder committed by Seller prior to Closing as set forth in Section 2.4(b);

(b) all Accrued PTO for all sick days, vacation days and personal days of each Transferred Employee that have accrued but remain unused by or unpaid to such Transferred Employee as of the date immediately preceding the Closing Date up to the accrual limits therefor under the applicable policies of MED;

(c) all Liabilities for Transfer Taxes for which Buyer is liable pursuant to Section 6.7(a) arising from the Transactions contemplated by this Agreement;

(d) the Customer Deposit Obligations;

(e) all Liabilities to the extent related to the Business of the MED Electric Utility and arising in the ordinary course of the Business of the MED Electric Utility consistent with the MED's Past Practices, unless it is an Excluded Liability; and

(f) all other Liabilities and obligations arising out of or relating to Buyer's ownership of the Acquired Assets or operation of the MED Electric Utility, including all Liabilities under the Assumed Contracts and the Transferable Permits arising out of any event, condition, circumstance, act or omission occurring on or after the Closing Date other than as a result of Seller's breach of or default under any Assumed Contract or Transferable Permit prior to the Closing.

Section 2.4 Excluded Liabilities. Notwithstanding anything to the contrary in this Agreement, nothing in this Agreement shall be construed to impose on Buyer, and Buyer shall not assume, pay, honor, discharge or otherwise be obligated to pay, perform or otherwise discharge, and Seller shall retain and remain responsible for paying, performing and discharging when due, all the following Liabilities (the "**Excluded Liabilities**"), with all of such Excluded Liabilities remaining the responsibility, and as obligations hereunder, of Seller except as provided in the last paragraph of this Section 2.4:

(a) any Liabilities in respect of any Excluded Assets;

(b) all Liabilities under the Assumed Contracts arising out of any breach (or event that would be a breach if not cured) that occurred prior to the Closing Date;

(c) any Liability under or relating to any Contract that is not an Assumed Contract;

(d) except for Liabilities specifically assumed by Buyer in Section 2.3(b) and except as otherwise set forth in Section 6.9 and the Schedules subject thereto, all Liabilities or obligations relating to any MED Benefit Plans, or any other plan, program, arrangement or policy of Seller, established or maintained in whole or in part by Seller or by any Person (whether or not incorporated) which is or ever has been under common control, or which is or ever has been treated as a single employer, with Seller or to which Seller contributes or contributed, including any such Liability of Seller (i) for the termination or discontinuance of, or Seller's withdrawal from, any such Benefit Plan (including any multiemployer plan as defined in Section 3(37) of ERISA), (ii) relating to benefits payable under any MED Benefit Plans, including any Liability with regard to any obligation of Seller or MED with respect to such post-employment benefits under any MED Benefit Plan (including any retiree welfare benefit plans or arrangements), (iii) with respect to noncompliance by Seller with the notice requirements of COBRA under ERISA or the Public Health Service Act, to the extent applicable, or the Patient Protection and Affordable Care Act of 2010 as amended, and/or the Health Care and Education Reconciliation Act of 2010, as amended (to the extent applicable) (collectively, the "*PPACA*"); (iv) with respect to any noncompliance by Seller with the Code or any other applicable Laws, and (v) with respect to any suit, proceeding or claim which is brought against Seller, any MED Benefit Plan or any fiduciary or former fiduciary of, any of the MED Benefit Plans;

(e) any Liabilities relating to the failure by Seller to hire, the employment or services or termination of employment or services by Seller of any individual, including wages, compensation, benefits, affirmative action, personal injury, discrimination, harassment, retaliation, wrongful discharge, unfair labor practices or constructive termination by Seller of any individual, or any similar or related claim or cause of action attributable to any actions or inactions by Seller prior to the Closing Date with respect to the Transferred Employees, independent contractors, applicants, and any other individuals who are determined by a court or by a Governmental Authority to have been applicants or employees of Seller;

(f) all Liabilities arising out of, relating to or in respect of the Bonds;

(g) all Liabilities arising from or in connection with any tax equivalent payment or any other similar obligation of MED to any Governmental Authority incurred with respect to any period prior to the Closing Date, whether payable prior to or after the Closing;

(h) all Liabilities arising out of, relating to or in respect of any inaccuracy in the Funds Flow Statement;

(i) any Transaction Expense in excess of Buyer's reimbursement obligation set forth in Section 6.3;

(j) all Liabilities of Seller under this Agreement and the Ancillary Agreements to which it is a party;

(k) all Liabilities resulting from or arising in connection with, Seller's failure to pay, perform and discharge any Excluded Liability when due; and

(l) any Liability or obligation of Seller with respect to any claim or cause of action, regardless of when made or asserted, which arises out of or in connection with the failure

of Seller or MED to comply with, or any act or omission of Seller or MED in violation of any applicable Law, including Liability arising as a result of any criminal activity, tort or violation of any common law or fiduciary obligation, occurring prior to the Effective Time.

For the avoidance of doubt, (i) the term “*Excluded Liability*” shall not mean any Environmental Liabilities that exceed the limitation on Seller’s responsibility or Liability for Environmental Liabilities under Section 6.15, except as otherwise set forth in Section 8.1(b) with respect to the MED Office and Storage Yard, and (ii) all of the Excluded Liabilities will remain the sole responsibility of, and will be retained, paid, performed and discharged solely by, Seller; provided, that, to the extent Buyer so elects as provided in Section 6.21, any amounts directly paid by Buyer in satisfaction of any Excluded Liabilities shall be subject to reimbursement from Seller or may otherwise be treated as a Loss for which Buyer may seek indemnification or reimbursement as set forth in this Agreement.

ARTICLE 3.

THE CLOSING

Section 3.1 Closing. Upon the terms and subject to the satisfaction of the conditions contained in this Agreement, the sale, assignment, conveyance, transfer and delivery of the Acquired Assets to Buyer and the assumption of the Assumed Liabilities by Buyer shall take place at a closing (the “*Closing*”), through the electronic transfer of documents or at such other time and place as shall be mutually agreed upon by the Parties, on the date that is the first day of the month following the day on which the last of the conditions precedent to Closing set forth in Article 7 of this Agreement has been either satisfied or waived by the Party for whose benefit such conditions precedent exist (except with respect to those conditions which by their terms are to be satisfied at Closing), but in no event will the Closing occur later than December 31, 2020, or such later date as the Parties may mutually agree to in writing or as extended pursuant to Section 6.10 hereof (the “*Termination Date*”). The date of Closing is hereinafter called the “*Closing Date*.” The Closing shall be effective for all purposes as of 12:00:01 a.m. Central Time, on the Closing Date (the “*Effective Time*”). Each Party may rely on each document sent electronically as an original, each Party agrees to provide signed originals of such documents to the other Parties hereto, as applicable, as soon as reasonably possible following the Closing.

Section 3.2 Purchase Price. Upon the terms and subject to the satisfaction of the conditions contained in this Agreement, in consideration of the aforesaid sale, assignment, conveyance, transfer and delivery of the Acquired Assets and entry into the Ancillary Agreements and in addition the assumption of the Assumed Liabilities, Buyer will pay to or for the benefit of Seller in accordance with Section 3.3 the aggregate amount of (i) two hundred forty-five million dollars (\$245,000,000) paid in the manner set forth in Section 3.3 below (the “*Base Purchase Price*”), *plus* (ii) the Additional Purchase Price, if any, payable pursuant to Section 3.4 (clauses (i) and (ii) together, the “*Purchase Price*”), *plus* or *minus* any adjustments to the Purchase Price pursuant to the terms and conditions set forth in this Agreement, including pursuant to Section 3.5.

Section 3.3 Payment of Base Purchase Price; Transaction Expenses.

(a) At Closing, Buyer will, subject to Section 3.3(b) below, and in accordance with the Funds Flow Statement, (i) pay or cause to be paid to Seller forty-three million dollars (\$43,000,000) by wire transfer of immediately available funds to an account designated by Seller, less the Escrowed Purchase Price Amount to be delivered to the Escrow Agent by wire transfer of immediately available funds and released to Seller in accordance with the Escrow Agreement, and (ii) deliver to Seller a promissory note in the original principal amount of two hundred two million dollars (\$202,000,000), in the form attached hereto as Exhibit E (the "**Promissory Note**"), issued in the name of, and payable to, Seller, which shall be payable in equal installments in accordance with the terms set forth therein, with the first installment to be paid on the first anniversary of the Closing Date, which shall accrue interest at an annual interest rate of 3.3%, and which shall rank *pari passu* with Buyer's existing creditor evidenced by that certain amendment to the Deed of Trust and Security Agreement, dated July 28, 2015, between Buyer and CoBank, ACB, in the form attached hereto as Exhibit F (the "**Security Agreement Amendment**").

(b) At the Closing, Buyer shall deliver the Escrowed Purchase Price Amount to the Escrow Agent to be held by the Escrow Agent pursuant to the terms of the Escrow Agreement. On the third Business Day following:

(i) **[the later of] June 30, 2020 [and the day that is sixty (60) days following the Closing Date]** (the "**First Escrow Release Date**"), Escrow Agent will distribute to Seller that portion of the Escrowed Purchase Price Amount, if any, that is greater than the sum of (A) \$7,500,000, plus (B) aggregate amount of claims outstanding at such time for indemnification or reimbursement under Section 8.1(b) or for which Buyer is otherwise entitled to recover under the Escrow Agreement (each, an "**Unresolved Claim**");

(ii) June 30, 2021 (the "**Second Escrow Release Date**"), Escrow Agent will distribute to Seller that portion of the Escrowed Purchase Price Amount, if any, that is greater than the sum of (A) \$4,000,000, plus (B) the aggregate amount of Unresolved Claims outstanding at such time; and

(iii) June 30, 2022 (the "**Final Escrow Release Date**"), Escrow Agent will distribute to Seller the remaining balance of the Escrowed Purchase Price Amount, less the aggregate amount of Unresolved Claims outstanding at such time.

(c) From time to time, promptly after final resolution of any Unresolved Claim, if any, Seller and Buyer will instruct the Escrow Agent to disburse to Seller or Buyer, as the case may be, amounts held by the Escrow Agent in respect of such Unresolved Claim. At such date after the Final Escrow Release Date as no Unresolved Claims exist unpaid, Buyer and Seller will jointly instruct the Escrow Agent to disburse any remaining Escrowed Purchase Price Amount to Seller. The fees and expenses of the Escrow Agent shall be borne one hundred percent (100%) by Buyer as part of Transaction Expenses.

Section 3.4 Additional Purchase Price. Within ten (10) Business Days after Buyer receives evidence that Seller has elected to, and has terminated the MED Defined Benefits Plan in accordance with Section 6.19, Buyer shall pay or cause to be paid to Seller an amount equal to the Pension Termination Costs, subject to Seller providing reasonably appropriate

documentation thereof to Buyer, which shall be treated as an increase to the Base Purchase Price for the Transaction (the "*Additional Purchase Price*").

Section 3.5 Selected Accounts Adjustment.

(a) Within thirty (30) days after the Closing Date, Seller shall prepare and deliver to Buyer a calculation of the Selected Accounts Amount as of the end of the day immediately prior to the Closing Date (the "*Selected Accounts Amount Statement*"). Buyer shall provide Seller and its accountants with timely access, during normal business hours, to the relevant books and records of MED reasonably necessary for Seller to prepare the Selected Accounts Amount Statement. The Selected Accounts Amount set forth on the Selected Accounts Amount Statement delivered by Seller hereunder shall be deemed final and binding on the Parties unless, within sixty (60) days after the delivery of the Selected Accounts Amount Statement, Buyer delivers to Seller, in good faith, a written notice of objection ("*Objection Notice*"), setting forth in reasonable detail any item or amount in the Selected Accounts Amount Statement to which Buyer is objecting, its reasonable basis for each such disputed item, and Buyer's alternative calculations of the Selected Accounts Amount. If Buyer timely delivers an Objection Notice, Seller and Buyer shall use their commercially reasonable and good faith efforts, during the thirty (30) days following Buyer's delivery of such Objection Notice, to cooperate with one another, including providing the other Party with the relevant information used to prepare the Selected Accounts Amount or any Objection Notice thereto to promptly resolve any disputed items in the Objection Notice. Any disputed items that are resolved by the Parties during the thirty (30) day resolution period shall be evidenced by a written agreement signed by the Parties, and shall be final and binding on the Parties. If the Parties do not fully resolve such dispute within thirty (30) days after the Objection Notice, the Parties may by mutual agreement extend such resolution period, or shall appoint an independent accounting firm (with the cost of such independent accounting firm to be borne equally by the Parties) to review the remaining disputed items set forth in the Objection Notice and determine the appropriate adjustment to the Purchase Price, if any, within thirty (30) days after such appointment, which findings shall be final and binding and conclusive on the Parties hereto. Any independent accounting firm shall act as an expert and not as an arbitrator and shall make findings only with respect to the remaining disputes so submitted to it (and not by independent review).

(b) Upon final determination of the Selected Accounts Amount, if the Selected Accounts Amount, as finally determined pursuant to this Section 3.5, exceeds the Target Selected Accounts Amount by greater than five percent (5%), then, within five Business Days following such final determination, Buyer will pay to Seller an amount equal to such excess by wire transfer of immediately available funds, and if the Selected Accounts Amount, as finally determined pursuant to this Section 3.5, is less than the Target Selected Accounts Amount by greater than five percent (5%), then Buyer may elect, in its sole discretion, to (A) request that Seller cause to be paid to Buyer an amount equal to the shortfall by wire transfer of immediately available funds to a bank account designated in writing by Buyer (which amount shall be paid within five Business Days following such election), or (B) collect such shortfall amount out of the Escrowed Purchase Price Amount pursuant to the Escrow Agreement. In the event the Selected Accounts Amount, as finally determined pursuant to this Section 3.5, does not exceed the Target Selected Accounts Amount by greater than five percent (5%), and is not more than five percent (5%) less than the

Target Selected Accounts Amount, no adjustments shall be made to the Purchase Price under this Section 3.5.

Section 3.6 Deliverables by Seller. At the Closing, Seller will deliver, or cause to be delivered, the following to Buyer:

- (a) Deeds for the Acquired Land In Fee, duly executed by Seller, in recordable form and a form reasonably acceptable to Buyer and its title company;
- (b) Upon the request of Buyer, one or more quitclaim deed(s) for any of the Acquired Land In Fee, duly executed by Seller, in recordable form and a form reasonably acceptable to Buyer and its title company, conveying to Buyer such applicable Acquired Land In Fee by the as-surveyed legal description set forth in any Survey obtained by Buyer.
- (c) The Assignment and Assumption of Easements, duly executed by Seller;
- (d) Documentary evidence of satisfaction and release of (i) all Encumbrances, other than Permitted Encumbrances, on the Acquired Assets, and (ii) all Encumbrances, other than Permitted Encumbrances, on the Acquired Land In Fee, arising after the effective date of the Title Commitments (or other action to permit the issuance of a title policy to Buyer without regard to such Encumbrances), in each case, in form and substance reasonably satisfactory to Buyer;
- (e) A standard and customary owner/seller affidavit and indemnity (with gap indemnity) in the form reasonably required by Buyer's title company and which will cause said title company to remove the so-called "standard exceptions" from Buyer's final title policy issued at Closing with respect to the Acquired Land in Fee;
- (f) Such instruments or documents as are necessary, or reasonably required by Buyer and Buyer's title company, to evidence the status and capacity of Seller and the authority of the person or persons who are executing the various documents in connection with the purchase and sale of Seller's interest in the Real Property;
- (g) The Lease Agreement, duly executed by Seller;
- (h) The Pole Attachment Agreement, duly executed by Seller;
- (i) The Bill of Sale, duly executed by Seller;
- (j) The Assignment and Assumption Agreement, duly executed by Seller;
- (k) Copies of any and all Governmental Authority and other third party consents, waivers or approvals obtained by Seller with respect to the transfer of the Acquired Assets to Buyer, or the consummation of the Transaction, set forth on Schedule 4.3;
- (l) All other Ancillary Agreements, duly executed by Seller, as applicable;
- (m) A certificate of the City Recorder of Seller certifying as to (1) the written resolutions duly adopted by the Council, signed by the Mayor of Seller and attested to by the City

Recorder approving the Transaction, this Agreement, the Ancillary Agreements and the consummation of the Transactions contemplated hereby and thereby (including the execution, delivery and performance hereof and thereof); and (2) the incumbency of such Persons authorized to execute and deliver this Agreement, the Ancillary Agreements and any other instruments contemplated hereby or thereby;

(n) To the extent available, originals of the Assumed Contracts, the Transferred Employee Records and the Transferable Permits and, if not available, true and correct copies thereof;

(o) A determination letter, termination or assignment agreement in a form and substance satisfactory to Buyer and duly executed by TVA, pursuant to which the Seller-TVA Contract shall be (i) terminated and of no further force or effect as of the Closing Date, including any Seller obligations in respect of stranded costs or (ii) assigned to Buyer, as applicable;

(p) The opinion of Bradley Arant Boult Cummings LLP, special counsel to Seller, addressed to the Buyer and dated as of the Closing Date, attached hereto as Exhibit G;

(q) The opinion of Adam Tucker, Esq., counsel to the Seller, addressed to Seller, addressed to the Buyer and dated as of the Closing Date, in the form attached hereto as Exhibit H;

(r) The execution and delivery of a license agreement between Seller and Buyer, in the form attached hereto as Exhibit I (the "*License Agreement*");

(s) A Funds Flow Statement in a form reasonably acceptable to Buyer;

(t) The Seller Closing Certificate;

(u) Evidence in a form reasonably satisfactory to Buyer that any tax equivalent payment or any other similar obligation of MED to any Governmental Authority for all periods prior to the Closing Date has been fully satisfied;

(v) The escrow agreement, duly executed by Seller in the form attached hereto as Exhibit J (the "*Escrow Agreement*");

(w) The Security Agreement Amendment;

(x) Certificates of endorsement or other evidence, in form and substance reasonably satisfactory to Buyer, of the Tail Policies contemplated by Section 6.23; and

(y) All such other instruments of assignment, transfer or conveyance as shall, in the reasonable opinion of Buyer and its counsel, be necessary or desirable to transfer to Buyer Seller's interest in the Acquired Assets and assumption by Buyer of the Assumed Liabilities in accordance with this Agreement and to perform its obligations hereunder.

Section 3.7 Deliverables by Buyer. At the Closing, Buyer will deliver, or cause to be delivered, the following to Seller:

(a) The Base Purchase Price payable pursuant to Section 3.3, as adjusted pursuant to this Agreement;

(b) The Bill of Sale, duly executed by Buyer;

(c) The Assignment and Assumption Agreement, duly executed by Buyer;

(d) The Assignment and Assumption of Easements, duly executed by Buyer;

(e) The Lease Agreement, duly executed by Buyer;

(f) The License Agreement, duly executed by Buyer;

(g) The Pole Attachment Agreement, duly executed by Buyer;

(h) The Escrow Agreement, duly executed by Buyer;

(i) All other Ancillary Agreements to which Buyer is a party, duly executed by Buyer and in recordable form, where applicable;

(j) A certificate of the Secretary or any Assistant Secretary of Buyer certifying as to (1) the resolutions adopted by Buyer's board of directors approving the Transaction, this Agreement, and the consummation of the Transactions contemplated hereby and thereby (including the execution and delivery hereof and thereof); and (2) the incumbency of the officers of Buyer authorized to execute and deliver this Agreement, the Ancillary Agreements and any other instruments contemplated hereby or thereby;

(k) A certificate of existence and good standing with respect to Buyer, issued by the Secretary of State of the State of Tennessee;

(l) The Buyer Closing Certificate;

(m) The Security Agreement Amendment; and

(n) All such other instruments of assumption as shall, in the reasonable opinion of Seller and its counsel, be necessary or desirable to transfer to Buyer Seller's interest in the Acquired Assets and assumption by Buyer of the Assumed Liabilities in accordance with this Agreement and the Ancillary Agreements and to perform its obligations hereunder.

Section 3.8 Non-Assignable Contracts and Liabilities. To the extent that the sale, assignment, transfer, or delivery, or attempted sale, assignment, transfer, or delivery, to Buyer of any Assumed Contract or assumption or attempted assumption of an Assumed Liability (i) is not assignable or transferable; (ii) would otherwise require the consent, authorization, approval or waiver of a third party (including any Governmental Authority) and such consent, authorization, approval or waiver shall not have been obtained prior to the Closing; or (iii) any such sale, assignment, transfer or delivery would otherwise constitute a breach or other contravention of any Assumed Contract or Assumed Liability, this Agreement shall not constitute a sale, assignment, transfer, or delivery, or attempted sale, assignment, transfer, or delivery, or assumption, or

attempted assumption, thereof and, subject to the satisfaction or waiver of the other conditions contained in Article 7, the Closing shall occur notwithstanding the failure to obtain the necessary consent, authorization, approval or waiver of the applicable third party; provided, that the foregoing shall not limit or affect the representations and warranties of Seller contained in Article 4. If any consent, authorization, approval or waiver is not obtained prior to Closing, Buyer and Seller shall use Commercially Reasonable Efforts to enter into such arrangements (such as subleasing, sublicensing or subcontracting), at Buyer's cost and expense subject to the limitations set forth in Section 6.3, to provide to the Parties the economic and operational equivalent, to the extent permitted by applicable Law, of the assignment to Buyer of such Assumed Contract or Assumed Liability, and Buyer's assumption of such Assumed Contract or Assumed Liability effective as of the Effective Time and the performance by Buyer of its obligations with respect thereto. Following the Closing, Seller and Buyer shall use Commercially Reasonable Efforts, and shall cooperate with each other, to obtain any such required consent, authorization, approval or waiver to the assignment or assumption of any such Assumed Contract or Assumed Liability. Seller shall enforce (at the direction and expense of Buyer) for the benefit of Buyer, any and all rights of the Seller against any third party with respect to any Assumed Contract or Assumed Liability not otherwise sold, transferred, assumed and delivered to Buyer under this Agreement (including, as applicable, the right to terminate any such Assumed Contract or Assumed Liability or the right to pursue any actions necessary to enforce Seller's rights under any such Assumed Contract or Assumed Liability).

ARTICLE 4.

REPRESENTATIONS AND WARRANTIES OF SELLER

Seller hereby represents and warrants to Buyer as follows:

Section 4.1 Organization. Seller is a duly created and validly existing municipal corporation under the Constitution and laws of the State of Tennessee and has all requisite power and authority to own, lease, and operate its properties, including the Acquired Assets, and to carry on its business as it is now being conducted, including the Business of MED Electric Utility.

Section 4.2 Authority of Seller. Except as set forth on Schedule 4.2, Seller has full power and authority to execute, deliver and perform this Agreement and the Ancillary Agreements and to consummate the Transactions. The execution, delivery and performance of this Agreement and the Ancillary Agreements and the consummation of the Transactions contemplated hereby and thereby have been duly and validly authorized by all necessary action required on the part of Seller and no other proceedings on the part of Seller are necessary to authorize this Agreement and the Ancillary Agreements or to consummate the Transactions contemplated hereby or thereby. This Agreement has been, and the other Ancillary Agreements delivered by Seller at or before Closing shall be, duly and validly executed and delivered by Seller. Assuming the due authorization, execution and delivery thereof by Buyer, this Agreement constitutes, and, assuming the due authorization, execution and delivery thereof by Buyer, the Ancillary Agreements delivered by Seller at Closing shall constitute, the legal, valid and binding obligations of Seller enforceable against Seller in accordance with their respective terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other

similar laws now or hereinafter in effect relating to creditors' rights generally, and general equitable principles (whether considered in a proceeding in equity or at law).

Section 4.3 Consents and Approvals; No Violation. Except as set forth on Schedule 4.3, the execution, delivery and performance of this Agreement and the Ancillary Agreements by Seller and the consummation by Seller of the Transactions will not:

- (a) conflict with or result in the breach or violation of any provision of the charter or other organizational or governing documents of Seller;
- (b) require any consent or other action by any Person, or result in a breach or default (or give rise to any right of amendment, termination, cancellation or acceleration or result in any loss of rights), under any Contract with respect to the Business of the MED Electric Utility to which Seller is a party or by which Seller or any of the Acquired Assets may be bound;
- (c) conflict with or violate any Law of, or applicable to, Seller in any material respect;
- (d) result in the imposition or creation of an Encumbrance (other than a Permitted Encumbrance) on any Acquired Assets; or
- (e) require consent, approval or authorization of, or registration declaration or filing with, or notice to, any Governmental Authority.

Section 4.4 Reports. Seller has filed or caused to be filed with the applicable Governmental Authority (including NERC, OSHA and other national and regional electric reliability organizations), as the case may be, all material forms, statements, reports and documents (including all exhibits, amendments and supplements thereto) required to be filed by Seller with respect to the Acquired Assets or the Business of the MED Electric Utility under applicable Law, as set forth in Schedule 4.4. To the Knowledge of Seller, all such filings complied in all material respects with all applicable requirements therefor in effect on the date each such form, statement, report and document was filed.

Section 4.5 Financial Information; Undisclosed Liabilities; Indebtedness .

(a) Schedule 4.5(a) sets forth true, complete and correct copies of (i) the audited financial statements of MED for the fiscal years ended as of June 30, 2018, June 30, 2017, and June 30, 2016, respectively, and the balance sheet and related statements of revenues, expenses and changes in net fund position, and statements of cash flows of MED as of and for the fiscal years then ended, including in each case the notes thereto, together with the report of the independent certified public accounting firm set forth therein; and (ii) the unaudited balance sheet of MED as of October 31, 2019 and the related statements of revenues, expenses and changes in net fund position, and statements of cash flows of MED for the three (3)-month period then ended, and the interim financial statements delivered pursuant to Section 6.20 (collectively, the "**Financial Statements**"). The Financial Statements (A) have been derived from, and are in accordance with, the books and other financial records of the Seller (which are true and correct in all material respects and reflect only actual and valid transactions); (B) have been prepared in accordance with the Seller's historical accounting principles, policies and methodologies applied

consistently with MED's Past Practices; and (C) present fairly and accurately, in all material respects, the financial condition, results of operations and cash flows of MED as of the dates thereof or for the periods covered thereby. Neither MED nor Seller has received any written, or to the Knowledge of Seller, any other notice of any fraud that involves any MED Employee or that would, or would reasonably be likely to, render ineffective the design and operation of Seller's internal controls over accounting or financial reporting required by applicable Law or Governmental Authority.

(b) Except as set forth in Schedule 4.5(b), the Acquired Assets are not subject to any Liabilities that would be required to be disclosed on a balance sheet prepared in accordance with GAAP, other than (i) the Liabilities that are reflected in the "Electric Utility" portion of the Seller's comprehensive annual financial report for 2019 as of June 30, 2019, as set forth on Schedule 4.5(a), including the notes thereto, and (ii) other Liabilities that (A) have been incurred in the ordinary course of the Business of MED Electric Utility since June 30, 2019 and (B) are not, individually or in the aggregate, material to the Business of MED Electric Utility. Since January 1, 2019, no Material Adverse Effect has occurred, and, to the Knowledge of the Seller, no event has occurred or circumstance exists that may be reasonably expected to result in a Material Adverse Effect.

(c) Schedule 4.5(c) sets forth a true, complete and correct list of (A) the holders of all Indebtedness of MED with respect to the Business of MED Electric Utility or otherwise secured by the Acquired Assets and (B) the amount of Indebtedness owed to each such holder as of the date hereof. All such Indebtedness of Seller may be prepaid at or prior to the Closing without penalty under the terms of the Contracts governing such Indebtedness.

(d) All accounts receivable that are reflected in the Financial Statements represent or will represent valid obligations arising from sales actually made or services actually performed by MED in the ordinary course of the Business of MED Electric Utility in accordance with MED's Past Practices. Except to the extent paid prior to the Closing, such accounts receivable are or will be as of the Closing current and collectible net of the respective reserves shown in the Financial Statements (which reserves are adequate and calculated consistent with MED's Past Practices). To Seller's Knowledge, subject to such reserves, each of such accounts receivable either has been or will be collected in full, without any setoff, within ninety (90) days after the day on which it first becomes due and payable. To Seller's Knowledge, there is no contest, claim, defense or right of setoff under any Contract with any account debtor of an account receivable relating to the amount or validity of such account receivable. The accounts receivable reflected on the October 31, 2019 Financial Statements and the accounts receivable arising after the date thereof (a) have arisen from bona fide transactions entered into by MED involving the sale of goods or the rendering of services in the ordinary course of the Business of MED Electric Utility in accordance with MED's Past Practices; and (b) to Seller's Knowledge, constitute only valid, undisputed claims of MED not subject to claims of set-off or other defenses or counterclaims other than normal cash discounts accrued in the ordinary course of business consistent with MED's Past Practices.

(e) All accounts payable of MED reflected in the Financial Statements arose in bona fide arms' length transactions in the ordinary course of the Business of MED Electric Utility in accordance with MED's Past Practices and no account payable is delinquent. Since October 31, 2019, MED has paid its accounts payable in the ordinary course and in a manner which is

consistent with MED's Past Practices. As of the date hereof, to Seller's Knowledge, MED has no account payable to any Person (other than accounts payable in the ordinary course of the Business of MED Electric Utility which are not material in the aggregate) which is an employee of Seller (other than any Transferred Employee) or to any member of the Council or any Affiliate or family member thereof.

Section 4.6 Real Property, Title and Related Matters.

(a) Schedule 4.6(a)(i) sets forth a true, complete and accurate list of the Real Property, including each Real Property Instrument and any leasehold interest in Real Property leased, subleased or licensed by, or for which a right to use, occupy, or otherwise hold (whether or not occupied by Seller) has been granted to, or by Seller that is necessary in the conduct of, and used, occupied or held in connection with, the Business of MED Electric Utility. Seller has good and marketable or insurable fee simple title to the Acquired Land in Fee, free and clear of all Encumbrances other than the Permitted Encumbrances, and Seller has good and marketable title to all other Real Property, free and clear of all Encumbrances created by, through or under Seller other than the Permitted Encumbrances. Exhibit K lists the correct street address and tax parcel number, if applicable, of each parcel of Acquired Land in Fee. With respect to Acquired Land in Fee, Seller has delivered or made available to Buyer true, complete and correct copies of the deeds and other instruments (as recorded) by which Seller acquired such Acquired Land in Fee and copies of all title insurance policies, opinions, abstracts and Surveys in the possession of Seller and relating to such Acquired Land in Fee. Schedule 4.6(a)(ii) contains a list of all Encumbrances (other than Permitted Encumbrances) relating to or affecting the Acquired Assets (including the Real Property) for which Seller will secure a release or satisfaction before Closing.

(b) Except as set forth on Schedule 4.6(b), Seller has good and valid title to each Acquired Asset constituting tangible personal property or a fixture free and clear of all Encumbrances, except Permitted Encumbrances. Except as set forth on Schedule 4.6(b), there are no outstanding rights, options, agreements or other commitments giving any Person any current or future right to require Seller or, following the Closing, Buyer, to sell or transfer to such Person or to any third Person any interest in any of the Acquired Assets that are material to the Business of the MED Electrical Utility. There are no pending, or to the Knowledge of Seller, threatened, claims or proceedings against Seller that any of the Acquired Assets encroach or trespass on the rights of another Person. No Acquired Land in Fee is part of a larger tract of land owned by Seller, is otherwise included under any unity of title or similar covenant with other lands, is part of a larger tax parcel, and each Acquired Land in Fee has its own separate real estate tax parcel(s).

(c) The Real Property and the MED Office and Storage Yard covered by the Lease Agreement constitute all of the real property owned, leased, subleased, licensed, used, operated, occupied or otherwise held (whether or not occupied, and including any leases or other occupancy agreements assigned or leased premises sublet for which Seller remains liable) by Seller that is currently used, necessary or desirable in the conduct of the Business of the MED Electric Utility. Seller makes no representation or warranty as to the status of title to any Real Property, except as otherwise set forth in this Agreement or in the Deed(s), and except that Seller has no Knowledge of any failure of its title to any Real Property evidenced by a recorded instrument that would prevent its continued operation of the Business of the MED Electric Utility in accordance with MED's Past Practices.

(d) No parcel of Acquired Land in Fee has been abandoned or leased by Seller to a third party and each such parcel is in the possession of, under the control of, or beneficially used by Seller in connection with the Business of the MED Electric Utility. There are no parties in possession of the Acquired Land in Fee other than Seller, and none of the other Real Property that relates to the Business of the MED Electric Utility have been assigned, subleased, transferred or conveyed, in whole or in part. To Seller's Knowledge, each Real Property Instrument is valid, legally binding, enforceable and in full force and effect in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other Laws of general application affecting enforcement of creditors' rights or by principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity). There is no default (or, to Seller's Knowledge, any event which would, with the passage of time or the giving of notice or both, constitute a default) by Seller under any Real Property Instrument. To Seller's Knowledge, no other party to any Real Property Instrument is in breach of or default under the terms of any such Real Property Instrument.

(e) Except as disclosed in Schedule 4.6(e), there are no pending or, to Seller's Knowledge, threatened or contemplated proceedings in eminent domain, expropriation, requisition (temporary or permanent) or similar proceedings or any rezoning proceedings, which would or could reasonably be expected to result in a taking or rezoning of any Real Property that would prevent the continued operation of the Business of the MED Electric Utility in accordance with MED's Past Practices.

(f) Seller has not received any notice of, and Seller has no Knowledge of, any violation of applicable Laws with respect to any Real Property or any violations on the Real Property or any portion thereof of any covenants, conditions, restrictions or other Encumbrances applicable thereto.

(g) Except for amounts payable or receivable as set forth in Schedule 4.6(g), there are no other rents, fees, royalties, water or sewer charges, Taxes or assessments or other amounts payable or receivable by Seller in connection with any Real Property or any tenancies, licenses, occupancies or co-tenancies related to any Real Property or any improvements thereon that are Acquired Assets.

(h) Except as set forth on Schedule 4.6(h), there are no commitments or agreements with any Governmental Authority or public or private utility to grant any rights to use any portion of the Real Property without compensation.

(i) To Seller's Knowledge, each Real Property (i) is adequate and suitable for its present and intended uses, and is in good condition and repair, normal wear and tear excepted and (ii) is not in need of maintenance or repairs except for ordinary and routine maintenance and repairs that are not material in nature or cost.

(j) To Seller's Knowledge, there is no fact or condition existing which could result in the termination or reduction of the current access from any Real Property or to the existing highway and/or roads that provide access thereto.

Section 4.7 **Operability; Condition of the MED Electric Utility; Sufficiency of Acquired Assets.**

(a) Except for the Excluded Assets, the Acquired Assets constitute all of the material assets, property and rights used in the Business of the MED Electric Utility on the Effective Date and, except as disclosed in Schedule 4.7(a), the Acquired Assets are in a condition sufficient to operate the Business of MED Electric Utility consistent with MED's Past Practices.

(b) To Seller's Knowledge, no material Acquired Asset is in need of any material repair or replacement except (i) as disclosed in Schedule 4.7(a), as may be set forth in any MED capital expenditure budget and maintenance plan, (ii) normal wear and tear, and (iii) routine repairs or replacements in the ordinary course consistent with MED's Past Practices.

(c) To Seller's Knowledge, MED has performed all regular preventative maintenance and inspections of the Acquired Assets during the last twelve (12) months in the ordinary course of the Business of MED Electric Utility in accordance with MED's Past Practices and as may be required by applicable Law or any Governmental Authority.

Section 4.8 **Insurance.** Schedule 4.8 sets forth a true, correct and complete list of all insurance policies of property damage, fire, liability, workers' compensation and other forms of insurance relating (but not necessarily exclusively) to the Acquired Assets, including a list identifying the named insureds, the holder of each policy, and the applicable carrier or carriers. Such policies are in full force and effect, all premiums with respect thereto covering all periods up to and including the Effective Date have been paid, and no written notice of cancellation, non-renewal or termination has been received by Seller with respect to any such policy which was not replaced by a policy or policy having substantially similar coverages prior to the date of such cancellation. All required notices have been sent to insurers to preserve all material claims under the aforementioned insurance policies.

Section 4.9 **Environmental Matters.** Except as disclosed in Schedule 4.9:

(a) Seller has obtained and holds all Environmental Permits required under applicable Environmental Law with respect or relating to the Real Property or the Business of the MED Electric Utility. Each such Environmental Permit is in full force and effect and Seller is, and at all times in the five (5) years prior to the Closing Date has been, in compliance with all of its obligations thereunder. There are no proceedings pending or, to Seller's Knowledge, threatened that would reasonably be expected to result in the revocation, termination, suspension, modification or amendment of any such Environmental Permit, and Seller has not failed to make in a timely fashion any application or other filing required for the renewal of any such Environmental Permit which failure would reasonably be expected to result in any Environmental Permit being revoked, terminated, suspended or adversely modified. No such Environmental Permit will terminate or be subject to termination or revocation as a result of the Transactions contemplated by this Agreement;

(b) Seller is, and at all times in the five (5) years prior to the Closing has been, in compliance with all requirements of applicable Environmental Law in all material respects, and Seller has not within the last three (3) years received any written notice from any Governmental

Authority that the Real Property or the Business of the MED Electric Utility are not or have not been in compliance with, any Environmental Law or any Environmental Permit. No material capital expenditure is required for the Acquired Land in Fee or the MED Office and Storage Yard as currently used or the Business of the MED Electric Utility as currently conducted to achieve or remain in compliance with any applicable Environmental Law in all material respects;

(c) There are no Environmental Claims pending or, to Seller's Knowledge, threatened against Seller with respect or relating to the Acquired Land in Fee, the MED Office and Storage Yard or the Business of the MED Electric Utility. Seller does not have Knowledge of any facts or circumstances that would reasonably be expected to result in any Environmental Claim with respect or relating to the Acquired Land in Fee, the MED Office and Storage Yard or the Business of the MED Electric Utility;

(d) No Releases of Hazardous Substances have occurred at, from, on or under, and no Hazardous Substances are present on or migrating from, any of the Acquired Land in Fee or the MED Office and Storage Yard and, to Seller's Knowledge, no Releases of Hazardous Substances have occurred at, from, on or under, and no Hazardous Substances are present on or migrating from any of the other Real Property. In addition, there have been no Releases of Hazardous Substances by the Seller at any location that would reasonably be expected to give rise to an Environmental Claim against Seller or require any Remediation.

(e) None of the Acquired Land in Fee, the MED Office and Storage Yard or, to Seller's Knowledge, any other Real Property is an Environmental Clean-up Site. Seller has not transported or arranged for treatment, storage, handling, disposal or transportation of any Hazardous Substances at or to any location which is an Environmental Clean-up Site;

(f) There are no underground storage tanks, active or abandoned, or polychlorinated-biphenyl-containing equipment, located at, on, or under the Acquired Land in Fee or the MED Office and Storage Yard or used in connection with the Business of the MED Electric Utility;

(g) (i) There are no Encumbrances (other than Permitted Encumbrances) arising under or pursuant to any Environmental Law with respect to the Acquired Land In Fee or the Business of the MED Electric Utility, and (ii) Seller does not have Knowledge of any facts, circumstances or conditions that would reasonably be expected to result in any Encumbrance (other than Permitted Encumbrances) arising under or pursuant to any Environmental Law with respect to the Acquired Land In Fee or relating to the Business of the MED Electric Utility;

(h) During the past five (5) years, there have been no environmental audits or assessments with respect or relating to the Acquired Land in Fee, the MED Office and Storage Yard or the Business of the MED Electric Utility that are in the possession or control of Seller which have not been made available to Buyer prior to the execution of this Agreement;

(i) During the past five (5) years, there have been no claims by Seller against comprehensive general liability or excess insurance carriers for any Loss resulting from, relating to or arising from Environmental Claims (i) with respect to the Real Property or (ii) relating to the Business of the MED Electric Utility; and

(j) Seller makes no representations or warranties in respect of Environmental matters in any section of this Agreement other than this Section 4.9 and as otherwise set forth in the Lease Agreement with respect to the MED Office and Storage Yard.

Section 4.10 Labor Matters.

(a) Seller is, and for the past three (3) years has been, in compliance in all material respects with all applicable Laws relating to employment and employment practices, including the terms and conditions of employment, termination of employment, hiring practices and procedures, immigration and employment verification matters, workplace health and safety, workers' compensation, wages and hours (including minimum wage and overtime payments) and worker classification.

(b) Except as set forth on Schedule 4.10, Seller is not, and during the last ten (10) years has not been, a party to or otherwise bound by any collective bargaining agreement or other agreement with a labor union or equivalent organization. To the Knowledge of Seller, there is no organizational campaign or other effort to cause a labor union or equivalent organization to be recognized or certified as a representative on behalf of the MED Employees in dealing with Seller. There is no pending or, to Seller's Knowledge, threatened labor strike, labor dispute or work stoppage involving the MED Employees.

(c) Schedule 4.10(c) sets forth, as of the Effective Date, a true, complete and correct list of the following information with respect to each MED Employee (i) name; (ii) title or position held; (iii) hire date; (iv) date of birth; (v) total length of time employed or in service with Seller, including any prior service credit; (vi) classification as exempt or non-exempt; (vii) status as full- or part-time; (viii) current annual salary or hourly rate; (ix) accrued bonuses, if any, and any deferred compensation as of the date hereof; and (x) accrued but unused vacation, sick leave and other paid-time off entitlements as of the date hereof (such benefits under the foregoing clause (x), the "*Accrued PTO*"). No Med Employee is party to any employment agreement or other contract related to their employment; provided, that, for clarity, all MED Employees may be entitled to due process rights provided to such employees pursuant to applicable provisions of Seller's charter documents. Except as set forth on Schedule 4.10(c), no MED Employee (x) is on a paid or unpaid medical, disability, family or other leave of absence (including "lay-off status") and who has a right of reinstatement, or (y) has given written notice of termination of his or her employment or engagement.

(d) Seller has not, within the past three (3) years, received any "cease and desist" letter or similar written communication alleging that any MED Employee is, and to the Knowledge of Seller, no MED Employee is, performing any job duties or engaging in other activities on behalf of Seller that would violate any employment, non-competition, non-solicitation, non-disclosure or other similar agreement between such individual and any former employer or any applicable Law.

Section 4.11 ERISA; Benefit Plans.

(a) Schedule 4.11(a) lists (as of the Effective Date) all Benefit Plans, including, but not limited to, the MED Defined Benefit Plan, covering any MED Employee, or maintained,

administered or with respect to which contributions are made, by Seller in respect of MED Employees or under which Seller has any other obligations or Liabilities with regard to the MED Employees ("*MED Benefit Plans*"). Seller has delivered to Buyer true, correct and complete copies of: (i) all documents embodying each MED Benefit Plan, including all amendments thereto and all related trust documents, administrative service agreements, group annuity contracts, group insurance contracts, and policies pertaining to fiduciary liability insurance covering the fiduciaries for each MED Benefit Plan; (ii) the most recent annual actuarial valuations, if any, prepared for each MED Benefit Plan; (iii) the three (3) most recent annual reports all schedules and financial statements attached thereto, if any, required under applicable Law in connection with each MED Benefit Plan; (iv) if the MED Benefit Plan is funded, the most recent annual and periodic accounting of its assets; (v) the most recent summary plan description together with the summary(ies) of material modifications thereto, if any, required with respect to each MED Benefit Plan; (vi) all IRS determination, opinion, notification and advisory letters with respect to each MED Benefit Plan, as applicable; (vii) all material communications to any employee or employees in the past three (3) years relating to any MED Benefit Plan, in each case, relating to any amendments, terminations, establishments, increases or decreases in benefits, acceleration of payments or vesting schedules or other events; (viii) all correspondence to or from any Governmental Authority relating to any MED Benefit Plan (other than routine correspondence that is not expected to result in Liability); (ix) all model COBRA forms and related notices (or such forms and notices as required under comparable Law), forms of HIPAA notices and business associate agreements; and (x) nondiscrimination, coverage and any other applicable testing performed with respect to the three (3) most recent plan years for each MED Benefit Plan (as applicable).

(b) All MED Benefit Plans are governmental plans as defined in Section 3(32) of ERISA and are not subject to ERISA.

(c) Each MED Benefit Plan and related trust agreement, annuity contract or other funding instrument has been established, administered, operated and maintained in accordance with its terms and in compliance with all applicable Laws, in each case, in all material respects. To Seller's Knowledge, no event has occurred with respect to any MED Benefit Plan that has subjected or would reasonably be expected to subject Seller or, with respect to any period on or after the Closing Date, Buyer or any of its Affiliates, to a civil action or material penalty under applicable Law or to material Taxes under Section 4975, 4980 or 4980H of the Code. All benefits, contributions and premiums relating to each MED Benefit Plan have been timely paid in accordance with the terms of such MED Benefit Plan and all applicable Laws and applicable accounting principles, and all benefits accrued under any unfunded MED Benefit Plan have been paid, accrued or otherwise adequately reserved to the extent required by, and in accordance with, all applicable Laws and applicable accounting principles, in each case, in all material respects.

(d) Seller has materially fulfilled its obligations under the applicable funding requirements and filing requirements of all applicable Laws with respect to the MED Benefit Plans, including the Public Employee Defined Benefit Financial Security Act of 2014, and T.C.A. Section 9-3-506 (2015). No MED Benefit Plan is a "multiemployer plan" as defined in Section 3(37) of ERISA and Seller has never participated in or made contributions to a multiemployer plan.

(e) Except for annual increases in base pay and the payment of bonuses in the ordinary course of the Business of the MED Electric Utility, consistent with its past practices, Seller has not made any commitment to increase the Total Compensation for any Transferred Employees above the Total Compensation of such Transferred Employees in effect on the Effective Date, except as required by Law.

(f) Other than as provided in Schedule 4.11(f), and except as required under Sections 601 to 608 of ERISA or other applicable Law, no MED Benefit Plan provides retiree medical benefits to any individual for any reason, and Seller does not have any Liability to provide retiree medical benefits to any individual or ever represented, promised or contracted in writing to any individual that such individual would be provided with retiree medical benefits.

(g) Neither the execution of this Agreement nor the consummation of the Transactions contemplated by this Agreement will, either alone or upon the occurrence of any other event: (i) entitle any current or former employee, officer, manager, director, consultant or contractor of any Seller to any bonus, change in control or similar payment, severance pay, unemployment compensation or any other payment or benefit; (ii) accelerate the time, payment, funding or vesting of any benefit or right, or increase the amount of compensation due to any such individual; (iii) except as required by applicable Law, limit or restrict a right to merge, amend, or terminate any MED Benefit Plan; or (iv) increase the amount payable under or result in any other material obligation pursuant to any MED Benefit Plan.

(h) Each MED Benefit Plan can be amended, terminated or otherwise discontinued in accordance with its terms, without material Liability to Buyer. Seller does not have any commitment or obligation nor has it made any representations to any employee, officer, director, independent contractor or consultant, whether or not legally binding, to adopt, amend, modify or terminate any MED Benefit Plan or any collective bargaining agreement, in connection with the consummation of the Transactions contemplated by this Agreement or otherwise.

(i) There is no pending or, to Seller's Knowledge, threatened action relating to a MED Benefit Plan or under workers' compensation Law (other than routine benefit claims). No MED Benefit Plan has within the three (3) years prior to the Effective Date been the subject of an examination or audit by a Governmental Authority or the subject of an application or filing under, or is a participant in, an amnesty, voluntary compliance, self-correction or similar program sponsored by any Governmental Authority.

Section 4.12 Location of Acquired Assets. Except as set forth on Schedule 4.12, and any mobile Acquired Assets in transit or any Acquired Assets under repair, in each case, as of the date hereof, all of the tangible Acquired Assets used in the Business of the MED Electric Utility are located on the Acquired Land In Fee or in the rights of way located in Seller's Service Territory for the MED Electric Utility or are otherwise easily accessible without any impairment to Seller's ownership rights, title and interests thereto.

Section 4.13 Contracts.

(a) Schedule 4.13(a) sets forth a complete list of the following Contracts that relate to the Business of the MED Electric Utility (the "**Material Seller Contracts**"):

- (i) Contracts for the future purchase, transmission, exchange or sale of electricity, energy, capacity or other energy-related products or ancillary services;
- (ii) Contracts for the transmission of electricity or that otherwise relate to the Transmission Assets;
- (iii) any warranty Contract with respect to services or equipment used in connection with rendering such services or other equipment or products owned, sold, leased or licensed by Seller;
- (iv) Interconnection Contracts;
- (v) Contracts (A) for the sale, transfer or other disposition of any Acquired Asset or (B) that grant a right, including rights of first refusal, or option to sell, lease, transfer or otherwise dispose of any Acquired Asset, including any capital lease, other than in each case under clause (A) or (B), any Contract entered into in the ordinary course of the Business of the MED Electric Utility with respect to any Acquired Assets and with a value of less than \$50,000;
- (vi) Contracts for the future receipt by MED in connection with any Acquired Assets or services requiring payments in excess of \$50,000 for each individual Contract or \$100,000 in the aggregate for Contracts with the same Person;
- (vii) Contracts under which Seller has created, incurred, assumed or guaranteed any outstanding Indebtedness or otherwise creating or granting an Encumbrance (other than Permitted Encumbrance) on the Acquired Assets;
- (viii) Contracts with any Governmental Authority (other than standard utility agreements governing services to the Real Property of Seller);
- (ix) any Contract pursuant to which Seller holds any rights or interests in any MED Intellectual Property Assets, including any Intellectual Property Licenses except "click-wrap" or "shrink-wrap" agreements or agreements contained in "off-the-shelf" software that is generally commercially available or terms of use or service for any web site or licenses secured for less than \$10,000 annually, or pursuant to which Seller grants any rights or interests in MED Intellectual Property Assets;
- (x) any Contract relating to (A) the employment, engagement or termination of any MED Employee or independent contractor or providing for any bonus, deferred compensation, or (B) other payment to be made to any MED Employee or independent contractor as a result of the execution of this Agreement or consummation of the Transactions;
- (xi) Attachment Agreements or any Contract granting the right to use, to attach to or of access to, any portion of the Acquired Assets;
- (xii) outstanding futures, swap, collar, put, call, floor, cap, option or other Contracts that have underlying value and payment liability driven by or tied to fluctuations in the price of commodities, including electric power, natural gas, fuel oil, other fuel or securities;

(xiii) Contracts that purport to (A) limit MED's freedom to compete in any line of business or in any geographic area, (B) contain any exclusivity, (C) contain any most-favored nation or similar covenant, or (D) limit MED's freedom to solicit or accept business from any Person or solicit employment or hire any Person; and

(xiv) (A) operation, maintenance or management Contracts with any third-party vendor or service provider requiring payments to such third-party vendor or service provider in excess of \$50,000, individually, or \$100,000, in the aggregate, or (B) Contracts relating to the purchase or sale of air pollutant emission allowances or credits.

(b) Except for the Material Seller Contracts, as of the Effective Date, Seller is not a party to any Contract that is material to the ownership or operation of the Acquired Assets or that is material to the Business of the MED Electric Utility.

(c) Each Assumed Contract is in full force and effect and, assuming that each Assumed Contract constitutes a legal, valid and binding obligation of the other parties thereto, constitutes a legal, valid and binding obligation of Seller, is enforceable against Seller and, to the Knowledge of Seller, constitutes a legal, valid and binding obligation of the other parties thereto and is enforceable against the other parties thereto, in each case except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereinafter in effect relating to creditors' rights generally, and general equitable principles (whether considered in a proceeding in law or at equity).

(d) There are no breaches, violations or defaults under any Assumed Contract (or any conditions or events which, with notice or lapse of time or both, would constitute a default on the part of Seller, or to the Knowledge of Seller, on the part of any of the other parties thereto), which breaches, violations or defaults, individually or in the aggregate, would be material to the Business of the MED Electric Utility. To Seller's Knowledge, Seller has not received notice from any other party to any Assumed Contract that such other party intends to terminate or fail to renew at the end of its term any such Assumed Contract or materially reduce the level of any goods or services to be provided under any such Assumed Contract.

Section 4.14 Legal Proceedings. Except as set forth on Schedule 4.14, there is no Action before any court, arbitrator or other Governmental Authority is pending or, to the Knowledge of Seller, threatened against Seller or MED which relates to the Business of the MED Electric Utility or the Acquired Assets or the Transactions contemplated by this Agreement and, to Seller's Knowledge, no event has occurred or circumstance exist that would reasonably likely give rise to any such Action. Seller is not a party to or subject to the provisions of any Order or award of any court, arbitrator or other Governmental Authority which may adversely affect the Business of the MED Electric Utility or the Transactions contemplated hereby.

Section 4.15 Non-Environmental Permits; Compliance with Law.

(a) Schedule 4.15(a) sets forth all material Non-Environmental Permits that are necessary to own, lease, operate and use its assets and to carry on and conduct the Business of the MED Electric Utility under applicable Laws. All such Non-Environmental Permits are (i) in full force and effect, (ii) in compliance with all obligations under applicable Law in all material

respects, (iii) not subject to any proceedings pending or threatened, nor has Seller or MED received any written notice of any such proceeding that would reasonably be expected to result in the revocation, termination, modification, limitation, withdrawal, amendment or nonrenewal of any of such Non-Environmental Permits, except for any such revocation, termination, modification or amendment as would not affect the Business of the MED Electric Utility in any material respect, and (iv) Seller has not failed to make in a timely fashion any application or other filing required for the renewal of any such Non-Environmental Permit which failure would reasonably be expected to result in any such Non-Environmental Permit being revoked, terminated, suspended or adversely modified, except for any such failure as would not affect the Business of the MED Electric Utility in any material respect. The Acquired Assets and the Business of the MED Electric Utility are in compliance in all material respects with all terms, conditions and provisions of all applicable Laws (excluding from this representation Environmental Laws, Tax Laws and ERISA and COBRA Laws covered elsewhere in this Agreement) and Non-Environmental Permits, and Seller has not, during the three (3) years prior to the Effective Date, received any written notice from any Governmental Authority that Seller is not or has not been in compliance with, any applicable Law (excluding from this representation the Environmental Laws, Tax Laws and ERISA and COBRA Laws covered elsewhere in this Agreement) or any Non-Environmental Permit.

Section 4.16 Intellectual Property.

(a) Schedule 4.16(a) sets forth a complete and accurate list of all MED Intellectual Property Assets. Except as set forth in Schedule 4.16(b)(i), Seller owns all right, title and interest in or has a valid and enforceable right or license to use, all of the MED Intellectual Property Assets free and clear of all Encumbrances (other than Permitted Encumbrances).

(b) Except as set forth in Schedule 4.16(b)(ii):

(i) all MED Intellectual Property Assets are in compliance with all Laws (including the payment of any required maintenance fees) and are valid, enforceable and subsisting;

(ii) no claims, or to the Knowledge of Seller, threat of claims, have been asserted in writing or other over communications by any third party against Seller related to the use in the Business of the MED Electric Utility that the MED Intellectual Property Assets or the conduct of the Business of the MED Electric Utility infringes, misappropriates, dilutes or otherwise violates any Intellectual Property rights of any third party;

(iii) the conduct of the Business of the MED Electric Utility has not and currently does not infringe, misappropriate, dilute or otherwise violate any Intellectual Property rights of any third party;

(iv) to the Knowledge of Seller, no third party is infringing, misappropriating, diluting or violating any MED Intellectual Property Assets;

(v) the rights of Seller in the Intellectual Property Licenses are freely assignable to Buyer; and

(vi) the consummation of the Transaction will not result in the loss or impairment of Buyer's rights to own or use any of the MED Intellectual Property Assets or obligate Buyer to pay any royalties or other amounts to any third party in excess of the amounts payable by them prior to the Closing, nor will such consummation require the consent of any third party in respect of any MED Intellectual Property Assets.

(c) Seller has taken all commercially reasonable measures to protect the secrecy, confidentiality and value of MED's confidential information, and, to Seller's Knowledge, such confidential information has not been used, divulged or appropriated by any Person either for the benefit of any Person (other than MED or Seller) or to the detriment of MED.

(d) Seller has not received written notice of any claims or demands of any other Person pertaining to any of the MED Intellectual Property Assets or Licensed Intellectual Property, and no Action is pending or, to Seller's Knowledge, threatened, which challenges the rights of Seller in respect thereof.

(e) Seller has not granted, licensed or sublicensed any of its rights in any MED Intellectual Property Assets, or received or been granted any such rights other than pursuant to the Intellectual Property Licenses.

(f) The material information technology systems, including payment processing systems, currently used in the conduct of the Business of MED Electric Utility (the "*IT Systems*") are reasonably sufficient for the immediate and anticipated needs of the Business of MED Electric Utility as is currently conducted by the Seller. Seller has used its Commercially Reasonable Efforts to safeguard the security of and protect the IT Systems and maintains backup and data recovery systems, disaster recovery and business continuity plans, procedures and facilities, regularly tests the foregoing, and corrects any deficiency in the foregoing revealed by such testing. The IT Systems are configured and maintained to minimize the effects of viruses and, to Seller's Knowledge, do not contain Trojan Horses, spyware, adware, malware, or other malicious code. There have been no material errors, breakdowns, failures, unauthorized intrusions or breaches of the security of the IT Systems since December 31, 2015 that, pursuant to any applicable Law, would require the Seller to notify customers or MED Employees of such breach or intrusion.

(g) MED has: (i) complied in all material respects with its applicable privacy policies and complied in all material respects with all Privacy Laws (as in effect and applicable to MED, the Business of the MED Electric Utility, the Acquired Assets or the Assumed Liabilities, whether by the express terms of such Law or as interpreted by a court or other Governmental Agency with proper jurisdiction, of as of the Closing Date) governing the receipt, collection, use, storage, disposal, processing, sharing, security, disclosure or transfer of any personally identifiable data or information that is possessed by or otherwise subject to the control of MED (collectively, the "*Information*") and bulk commercial faxes and email (including unsolicited communications), and (ii) implemented and maintained measures sufficient to ensure that Seller materially complies with (A) such Privacy Laws, (B) any required notice to or consent from the provider of the Information, (C) any policy adopted by the Seller, (D) any Seller Contract that is applicable to such Information, or (E) any information technology or privacy policy or privacy statement from time to time published or otherwise made available to the providers of the Information by the Seller

to which the Seller was obligated. Except as set forth in Schedule 4.16(g), neither the Seller nor MED has disclosed, transferred or provided access to any Information (including any de-identified Information) collected by MED with any third party service provider or business. The Seller has the right (and upon consummation of the Agreement, Buyer will have the right) to use all of the information in each of its databases in the operation of the business conducted by the Seller consistent with the Seller's rights prior to consummation of the Agreement. Except for disclosures of Information required or authorized by Privacy Law, authorized by the provider of Information or provided for in the Seller's privacy policies, the Seller has not sold, leased or otherwise made available to third parties (other than third party service providers of Seller subject to appropriate confidentiality obligations) any Information and each has utilized commercially reasonable tools and procedures to prevent loss, damage, and unauthorized access, use, disclosure, modification, or other misuse of Information. There has been no loss, damage, or unauthorized access, use, disclosure modification or other misuse of any Information. No claims have been asserted in writing or threatened or are reasonably expected to be asserted or threatened, with respect to any Information. The execution of this Agreement and the consummation of the transactions contemplated thereby do not violate any privacy policy, Seller Contract or Privacy Law relating to the use, dissemination, or transfer of any Information. For the avoidance of doubt, the term "privacy" as used in this Section 4.16(g) includes the concepts of data protection and data security.

Section 4.17 Service Territory. Except as set forth on Schedule 4.17, the Delivery Point for each Customer purchasing electricity from MED is located within the Service Territory.

Section 4.18 No Brokers. No broker, finder or other Person is entitled to any brokerage fee, commission or finder's fee in connection with the transaction contemplated hereby by reason of any action taken by Seller.

ARTICLE 5.

REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Seller as follows:

Section 5.1 Organization; Qualification. Buyer is a non-profit membership cooperative duly organized and validly existing under the Laws of the State of Tennessee and its status is active. Buyer has all requisite corporate power and authority to own, lease and operate its properties and to carry on its business as is now being conducted. Buyer has heretofore delivered to Seller complete and correct copies of its articles of incorporation and bylaws as currently in effect.

Section 5.2 Authority of Buyer. Buyer has full power and authority to execute and deliver this Agreement and the Ancillary Agreements and to consummate the Transactions contemplated hereby and thereby. The execution and delivery of this Agreement and the Ancillary Agreements and the consummation of the Transactions contemplated hereby and thereby have been duly and validly authorized by all necessary action required on the part of Buyer and no other proceedings on the part of Buyer are necessary to authorize this Agreement and the Ancillary Agreements or to consummate the Transactions contemplated hereby or thereby. This Agreement has been, and the other Ancillary Agreements delivered by Buyer at or before Closing shall be,

duly and validly executed and delivered by Buyer. Assuming the due authorization, execution and delivery thereof by Seller, this Agreement constitutes, and, assuming the due authorization, execution and delivery thereof by Seller, the Ancillary Agreements delivered by Buyer at Closing shall constitute, the legal, valid and binding obligations of Buyer enforceable against Buyer in accordance with their respective terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereinafter in effect relating to creditors' rights generally, and general equitable principles (whether considered in a proceeding in equity or at law).

Section 5.3 Consents and Approvals; No Violation.

(a) Subject to the receipt of the third-party consents set forth in Schedule 5.3(a) and the Buyer's Required Regulatory Approvals, neither the execution and delivery of this Agreement and the Ancillary Agreements by Buyer nor the consummation by Buyer of the Transactions contemplated hereby or thereby will (i) conflict with or result in any breach of any provision of the articles of incorporation or bylaws of Buyer, (ii) require any consent or other action by any Person, or result in a default (or give rise to any right of termination, cancellation or acceleration), under any of the terms, conditions or provisions of any Contract to which Buyer is a party or by which Buyer or any of its assets may be bound, or (iii) violate any Laws applicable to Buyer.

(b) Except as set forth in Schedule 5.3(b) (the Permits referred to in such Schedule are collectively referred to as the "**Buyer's Required Regulatory Approvals**"), no Permit, consent or Order is necessary for the consummation by Buyer of the Transactions contemplated hereby. Buyer has no Knowledge of any facts or circumstances that make it reasonable to expect that Buyer's Required Regulatory Approvals will not be obtained.

Section 5.4 Availability of Funds. Buyer currently has sufficient funds immediately available to it through corporate funds, credit facilities and access to capital markets to provide sufficient funds to pay that portion of the Base Purchase Price payable at Closing in accordance with Section 3.3 and to enable Buyer to timely perform all of its obligations under this Agreement and the Ancillary Agreements.

Section 5.5 Legal Proceedings. There are no Actions pending or, to Buyer's Knowledge, threatened against Buyer that seek to challenge, enjoin, prohibit, restrain or make illegal the performance of this Agreement or Ancillary Agreements or the consummation of any of the Transactions contemplated hereby or thereby.

Section 5.6 No Brokers. No broker, finder or other Person is entitled to any brokerage fee, commission or finder's fee in connection with the Transactions contemplated hereby by reason of any action taken by Buyer.

Section 5.7 Independent Investigation; As Is. Buyer has conducted its own independent investigation, review and analysis of the Business of the MED Electric Utility and the Acquired Assets. Buyer acknowledges and agrees that: (a) in making its decision to enter into this Agreement and the Ancillary Agreements to which it is or will be a party and to consummate the transactions contemplated hereby and thereby, Buyer has relied solely upon its own investigation

and physical inspection of the Acquired Assets and the express representations and warranties of Seller set forth in Article 4 of this Agreement; and (b) neither Seller nor any other Person has made and Seller specifically negates and disclaims any representation, warranty, promise, covenant, agreement or guaranty of any kind or character whatsoever, whether express or implied, oral or written, past, present or future, of, as to, concerning or with respect to Seller, the Business of the MED Electric Utility, the Acquired Assets or this Agreement or any Ancillary Agreement, except as expressly set forth in Article 4 of this Agreement; provided, that neither the foregoing nor anything set forth herein, shall be intended to, and shall not, limit any claim by Buyer or any Buyer Indemnitee based on intentional or willful misrepresentation or fraud. Buyer acknowledges and agrees that, except as expressly represented by Seller in Article 4 and in any Ancillary Agreement, the sale of the Acquired Assets is made in an “as is” “where is” condition and basis and with all faults. Without in any way limiting the generality of the foregoing, the sale of the Acquired Assets contemplated hereby is without any warranty of Seller other than Seller’s express warranties in Article 4 of this Agreement, and those warranties expressly set forth in the Ancillary Agreements, and Seller and Seller’s Representatives have made no representations or warranties, they each expressly and specifically disclaim, and Buyer accepts that Seller and Seller’s Representatives have disclaimed, any and all representations, guaranties or warranties, express or implied, or arising by operation of law (other than Seller’s warranties expressly set forth in Article 4 of this Agreement, and those warranties expressly set forth in the Ancillary Agreements), of or relating to: (i) the use, expenses, operation, characteristics or condition of the Acquired Assets, or any portion thereof, including, warranties of suitability, habitability, merchantability, design or fitness for any specific purpose or a particular purpose, or good and workmanlike construction; (ii) the environmental condition of any of the Real Property or contamination by Hazardous Substances, or the compliance of any of the Real Property with any or all regulations or laws relating to health or the Environment, including the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, and the Clean Water Act, each as may be amended from time to time, and including any and all regulations, rules or policies promulgated thereunder; or (iii) the soil conditions, drainage, flooding characteristics, accessibility or other conditions existing in, on, or under any of the Real Property; provided, that neither the foregoing nor anything set forth herein, shall be intended to, and shall not, limit any claim by Buyer or any Buyer Indemnitee based on intentional or willful misrepresentation or fraud.

ARTICLE 6.

COVENANTS OF THE PARTIES

Section 6.1 Conduct of Business Relating to the Acquired Assets.

(a) Seller retains the exclusive responsibility for safe operation of the MED Electric Utility until the Closing in a manner that is consistent with MED’s Past Practices, and nothing in this Agreement shall in any way alter Seller’s duties or obligations under any Law or Permit. Except as described in Schedule 6.1(a), during the period from the Effective Date to the Closing (the “*Interim Period*”), Seller shall (i) operate and maintain the Acquired Assets and conduct the Business of the MED Electric Utility in the ordinary course consistent with MED’s Past Practices, (ii) use Commercially Reasonable Efforts to preserve and protect in all material respects the Acquired Assets and the Business of MED Electric Utility, (iii) maintain the Transferable Permits and (iv) comply, in all material respects, with all applicable Laws and Permits

relating to the Acquired Assets or the Business of the MED Electric Utility. Without limiting the generality of the foregoing, and, except as contemplated in this Agreement or as described in Schedule 6.1(a), during the Interim Period, without the prior written consent of Buyer, such consent of Buyer not to be unreasonably withheld, Seller shall not do any of the following with respect to the Acquired Assets or take or permit to occur any of the following actions:

- (i) any action or omission that would result in a breach of any of the representations, warranties or covenants of Seller in this Agreement;
- (ii) except in the event of a Casualty for which the Cure Amount does not exceed Available Proceeds, sell, transfer, remove, assign, convey, distribute or otherwise dispose of, any Acquired Assets unless such action is expressly set forth in Seller's 2020 fiscal year capital expenditure and maintenance plan and other than with respect to inventory and materials consumed in a manner consistent with MED's Past Practices;
- (iii) create, permit or allow any new Encumbrances to be imposed on or against any of the Acquired Assets or otherwise amend or modify any Permitted Encumbrance;
- (iv) grant any waiver of any term under, exercise any option under, or give any consent with respect to any Material Seller Contract, or waive any default by, or release, settle or compromise any claim, pending or threatened, against any other party thereto;
- (v) enter into any Contract that would, upon its effectiveness, constitute an Assumed Contract, unless such Contract replaces a comparable Assumed Contract, is terminable without cause upon not more than thirty (30) days' notice and upon such termination, Buyer's Liability for such termination would not exceed \$25,000 for such Contract, and \$100,000 in the aggregate, without Buyer's consent, which consent shall not be unreasonably withheld, conditioned or delayed;
- (vi) enter into any Assumed Contract that is not in the ordinary course of the Business of the MED Electric Utility consistent with MED's Past Practices;
- (vii) amend or voluntarily terminate prior to the expiration date thereof any Assumed Contract or Transferable Permit, except for an Assumed Contract or Transferable Permit which is replaced by a comparable Contract or Permit or such entry, amendment or termination that is in the ordinary course of the Business of the MED Electric Utility consistent with MED's Past Practices;
- (viii) enter into any amendment or modification to the Seller-TVA Contract, or waive any rights of Seller under the Seller-TVA Contract;
- (ix) amend in any respect or cancel any property, liability or casualty insurance policies related to the Acquired Assets or the Business of the MED Electric Utility, unless a cancelled policy is replaced with a policy having substantially similar coverages prior to the date of such cancellation, or fail to maintain such insurance policies with current insurance companies that have issued such policies, their successors, or other financially responsible insurance companies in such amounts and against such risks and losses as are customary for such assets and businesses consistent with MED's Past Practices;

(x) except as required by any applicable Law or GAAP, change any Tax practice or policy (including making new Tax elections or changing Tax elections and settling Tax controversies not in the ordinary course of the Business of the MED Electric Utility) to the extent such change or settlement would be binding on Buyer;

(xi) (A) hire any individual as a MED Employee (other than to replace any MED Employee who may have resigned or have been terminated); or (B) increase the compensation, bonus or other benefits payable to any MED Employee (including any severance or termination pay), or make any commitment to or take any action to establish any new Benefit Plan or modify or amend any MED Benefit Plan in such a way that increases the Total Compensation for any Transferred Employees above the Total Compensation of such Transferred Employee as of the Effective Date, except as required by Law; or

(xii) incur, assume or guaranty any Indebtedness or capitalized lease obligations or make any loans, advances or investments in any other Person in connection with the Business of MED Electric Utility;

(xiii) make any change in connection with its accounts payable or accounts receivable terms, systems, policies or procedures;

(xiv) make any material change in its accounting methods;

(xv) fail to timely pay all accounts payable of MED in the ordinary course of the Business of MED Electric Utility in accordance with MED's Past Practices, and in any event within thirty (30) days of the invoice date, subject to resolution of good faith disputes;

(xvi) fail to satisfy in full on or prior to the last day of each calendar month, any Liability or obligation of Seller or MED to make payment to TVA with respect to electricity purchased from TVA by Seller or MED for the preceding calendar month prior to the Closing; or

(xvii) agree or commit to do any of the foregoing.

(b) During the Interim Period, in the interest of cooperation between Seller and Buyer and Buyer's conducting of diligence on the Transactions contemplated hereunder (including the representations and warranties of Seller hereunder) and to plan for and facilitate an orderly and seamless transition from Seller to Buyer at the Closing of ownership and operation of the Acquired Assets and the Business of the MED Electric Utility, the Parties agree that at the sole expense of Buyer, and subject to compliance with all applicable Laws and Permits, Seller will permit designated Representatives of Buyer (the "**Observers**") to observe any and all aspects of the Business of the MED Electric Utility, and such observation will be permitted on a cooperative basis in the presence of one or more individuals designated by Seller; provided, however, that such Observers and their actions shall not interfere unreasonably with the Business of the MED Electric Utility and such observation will be done during normal office hours of the MED Electric Utility. Seller shall use Commercially Reasonable Efforts to provide to the Observers interim furnished office space and utilities at the principal office of the MED Electric Utility, as reasonably necessary to allow Buyer to conduct its transition efforts through the Closing; provided, however, that Buyer shall be responsible for all of the costs relating thereto.

Section 6.2 Access to Information; Reporting.

(a) In addition to the rights granted by Section 6.1(b), during the Interim Period, in the interest of cooperation between Seller and Buyer and Buyer's conducting of diligence on the Transactions contemplated hereunder (including the representations and warranties of Seller hereunder) and to plan for and facilitate an orderly and seamless transition from Seller to Buyer at the Closing of the Acquired Assets and the Business of the MED Electric Utility, Seller will (i) give Buyer and Buyer's Representatives reasonable access to (x) all management personnel engaged in the Business of the MED Electric Utility, and (y) all books, documents, records and information (including financial and operating data and Permits, reports, schedules or other documents filed with or received from any Governmental Authority) relating to the Acquired Assets or the Business of the MED Electric Utility and furnish copies thereof as Buyer may from time to time reasonably request; and (ii) permit Buyer and Buyer's Representatives to make such reasonable inspections thereof as Buyer may reasonably request; provided, however, that (A) any such investigation shall be conducted in such a manner as not to interfere unreasonably with the Business of the MED Electric Utility and during normal office hours of Seller, and (B) Seller need not supply Buyer with any information that Seller is legally prohibited from supplying or that is covered by the attorney work product doctrine or similar doctrine, in which case other reasonable arrangements shall be made by Seller to communicate such information in a way that does not jeopardize such work product protections, and including, where applicable, will enter into a joint defense agreement or other similar arrangement if reasonably requested by Buyer.

(b) During the Interim Period, promptly after obtaining Knowledge thereof (but in any event, no later than two (2) Business Days after obtaining Knowledge thereof), Seller shall notify Buyer in writing of (i) any fact or condition that causes or constitutes or would reasonably be likely to cause or constitute a breach of the representations and warranties in Article 4, (ii) any Material Adverse Effect that has occurred since the Effective Date, (iii) any change that would require amendment or supplement to the Seller Disclosure Schedules as set forth in Section 6.8 of this Agreement, (iv) the execution of any Contract that would constitute an Assumed Contract or any Transferable Permit, copies of which shall be provided to Buyer in connection with such notice hereunder, (v) any unanticipated maintenance or repair of any of the Acquired Assets in an amount greater than \$150,000, (vi) any material emergency condition affecting, or material unscheduled interruption of, the operation of the Acquired Assets or the Business of the MED Electric Utility, or (vii) any receipt by Seller's management personnel of a written notice of a violation of any material Law or Permit relating to the Acquired Assets or the Business of the MED Electric Utility. Any such notice shall be deemed a Schedule Supplement; provided, however, that no such notice pursuant to this section will otherwise prevent or cure any breach of any representation, warranty or covenant contained herein.

Section 6.3 Transaction Expenses. Except to the extent specifically provided herein, whether or not the Transactions contemplated hereby are consummated, all costs and expenses incurred in connection with this Agreement and the Transactions contemplated hereby, including the cost of legal, accounting, technical and financial consultants, shall be borne by the Party incurring such costs and expenses; provided, however, that (i) Buyer shall, within thirty (30) days after the Closing Date and upon receipt of reasonable supporting documentation, reimburse Seller up to \$400,000 (the "**Reimbursement Cap**") of such third party out-of-pocket Transaction

Expenses reasonably incurred by Seller, and (ii) Buyer will bear the cost of filing for and prosecuting applications for Buyer's Required Regulatory Approvals.

Section 6.4 Further Assurances; Cooperation.

(a) Subject to the terms and conditions of this Agreement, each of the Parties hereto will take, or cause to be taken, all action, and to do, or cause to be done, all things reasonably necessary, proper or advisable under applicable Laws to consummate and make effective the sale, transfer, conveyance, assignment and delivery of the Acquired Assets, the assumption of the Assumed Liabilities pursuant to this Agreement, including taking reasonable action that is within the control of such Party to satisfy or cause to be satisfied the conditions precedent to the other Party's obligations hereunder, including, subject to the terms of Section 6.6, all regulatory approvals, consents, notices or waivers set forth on Schedules 4.3 and 5.3. To the extent that authorized representatives of the Parties mutually determine that the implementation of any covenant or obligation under this Agreement of a Party is not consistent with, or may be likely to impede, the satisfaction of the conditions precedent to a Party's obligations hereunder, including, subject to the terms of Section 6.6, obtaining all regulatory approvals, the Parties may by mutual written agreement (but without need for any amendment of this Agreement) agree to take alternative actions that the Parties determine are necessary or desirable to ensure satisfaction of the conditions precedent to each Party's obligations hereunder or to otherwise ensure consummation of the Transactions contemplated by this Agreement. Except as permitted on Schedule 6.4(a), neither Buyer nor Seller will, without the prior written consent of the other, advocate or take any action which would reasonably be expected to prevent or materially impede, interfere with or delay the Transactions contemplated by this Agreement or the Ancillary Agreements or which would reasonably be expected to cause, or to contribute to causing, the other to receive less favorable regulatory treatment than that sought by the other.

(b) From time to time after the Closing Date, Seller will, without further consideration, execute and deliver such documents to Buyer as Buyer may reasonably request in order to more effectively consummate the sale and purchase, including the transfer, conveyance and assignment, of the Acquired Assets or to more effectively vest in Buyer such title to the Acquired Assets (or such rights to use, with respect to Acquired Assets not owned by Seller), in accordance with the terms of this Agreement, subject to the Permitted Encumbrances. From time to time after the Closing Date, without further consideration, Buyer will execute and deliver such documents to Seller as Seller may reasonably request in order to evidence Buyer's assumption of the Assumed Liabilities. Without limiting the generality of the foregoing, Seller hereby covenants and agrees with Buyer as follows:

(i) Seller acknowledges and agrees that certain of the Acquired Land in Fee is titled in the name of "Murfreesboro Electric Department, a municipal corporation," "Murfreesboro Electric Department, a municipal corporation established pursuant to the Public Power Act of 1935" or other similar variations thereof (collectively, the "**MED Properties**"), but such MED Properties should be titled in the name of Seller. After the Effective Date, Seller agrees that it shall, at its sole cost and expense, take all steps as may be necessary to (1) allow Seller to convey such MED Properties to Buyer at Closing in a manner that will vest Buyer with fee simple title to such MED Properties free and clear of all Encumbrances other than the Permitted Encumbrances and (2) allow Buyer's title company to issue title insurance policies in accordance

with the Title Commitments, at regular rates, insuring that Buyer has good, marketable and insurable fee simple title to the MED Properties and the right to control, occupy and use the MED Properties, free and clear of Encumbrances other than Permitted Encumbrances.

(ii) With respect to that certain parcel of Acquired Land in Fee commonly known as the Jean Anne Rogers Substation, identified for ad valorem tax purposes as 135-005.02 (the "**Rogers Substation Property**"), after the Effective Date, Seller agrees that it shall, at its sole cost and expense, take all steps as may be reasonably necessary to (A) allow Seller to convey the Rogers Substation Property to Buyer at Closing in a manner that will vest Buyer with fee simple title to such Rogers Substation Property free and clear of all Encumbrances other than the Permitted Encumbrances, and (B) allow Buyer's title company to issue title insurance policies in accordance with the Title Commitments, at regular rates, insuring that Buyer has good, marketable and insurable fee simple title to the Rogers Substation Property and the right to control, occupy and use the Rogers Substation Property, free and clear of Encumbrances other than Permitted Encumbrances.

(iii) In the event the Assignment and Assumption of Easements is insufficient, either at Closing or at any time in the future after Closing, to properly vest Buyer with all of Seller's right, title and interest in and to the Easements, Seller agrees that it shall, at its sole cost and expense, take all steps as may be necessary to more effectively vest in Buyer title to the Easements and to grant Buyer the right to control, occupy and use the Easements.

(iv) From time to time after the Closing Date, without further consideration, Seller will execute and deliver such documents to Buyer as Buyer may reasonably request in order to comply with the provisions of this Section 6.5(b).

(c) Seller agrees to reasonably cooperate if requested by Buyer to resolve any actual or alleged defect in title of an Acquired Asset, whether or not such defect is covered under a title insurance policy, at Seller's sole expense. In addition, each party shall cooperate reasonably with the other party, in furnishing reasonably available information, testimony and other assistance in connection with any Action, Tax audits or disputes involving any of the parties hereto (other than in connection with disputes between the parties hereto) following the Closing.

Section 6.5 Confidentiality; Public Documents. In the event that Seller is required by applicable Law or any Governmental Authority to disclose any document submitted by a Party to the other under this Agreement or during the negotiation of this Agreement or any Ancillary Agreements ("**Transaction Documents**"), including pursuant to any public record request in accordance with Tennessee Law, Seller shall, within two (2) Business Days of its receipt such request, notify Buyer of each request or requirement and prior to disclosure so that Buyer may seek an appropriate protective order if Buyer believes certain information included in such Transaction Document is confidential, or has been treated as being exempt from disclosure under applicable Law; provided, however, that any fees and costs associated with such protective order shall be paid by Buyer, and, provided that Seller has promptly notified Buyer of such request in accordance with this Section 6.5, Buyer shall indemnify, defend, and hold harmless Seller from any and all Liability arising from any Third Party Claim and pay any fees, costs, or penalties associated with contesting the confidentiality or exemption of any Transaction Document. To the extent reasonably possible and permissible under Tennessee Law, Seller shall endeavor to provide

redacted versions of Transaction Documents, upon Buyer's assertion that certain information included in any Transaction Document is exempt from public disclosure under Tennessee Law. Except to the extent otherwise required by Law, the Parties shall reasonably consult with the other in advance of, and concerning its consent for, any official press release, interview or other public communication regarding this Agreement or the Transactions contemplated hereby.

Section 6.6 Consents; Approvals.

(a) Seller and Buyer shall cooperate with each other and, as promptly as practicable after the Effective Date and prior to the Closing Date, unless otherwise waived in writing by Buyer, (i) prepare and make with the TVA and the Federal Communications Commission and, to the extent not specified in Section 6.6(a) and (b), any other Governmental Authority having jurisdiction over Seller, Buyer or the Acquired Assets, all necessary filings required to be made with respect to the Transactions contemplated hereby, (ii) effect all necessary applications, notices, petitions and filings, (iii) use Commercially Reasonable Efforts to obtain the transfer or reissuance to Buyer of all necessary Transferable Permits, and (iv) use Commercially Reasonable Efforts to obtain all necessary consents, approvals and authorizations of all other parties, in the case of each of the foregoing clauses (i), (ii), (iii), and (iv), necessary or advisable to consummate the Transactions contemplated by this Agreement (including Buyer's Required Regulatory Approvals). The Parties shall respond promptly to any requests for additional information made by such agencies, use their respective Commercially Reasonable Efforts to participate in any hearings, settlement proceedings or other proceedings ordered with respect to the applications, and use their respective Commercially Reasonable Efforts to cause regulatory approval to be obtained at the earliest possible date after the date of filing. Except as otherwise set forth in this Agreement, each Party will bear its own costs of the preparation and review of any such filing. Seller and Buyer shall have the right to review in advance all filings made in connection with the Transactions contemplated hereby and the filing Party shall consider in good faith any revisions reasonably requested by the non-filing Party.

(b) ²Buyer shall have the responsibility for securing the transfer, reissuance or procurement of the Transferable Permits effective as of the Closing Date, and for those Transferable Permits that may not be transferred or reissued until after the transfer of ownership of the Acquired Assets, promptly after the Closing Date. Seller shall cooperate with Buyer's efforts in this regard and assist in any transfer or reissuance of Transferable Permits held by Seller or the procurement of any other Permit when so reasonably requested by Buyer, even after the Closing. In the event that Buyer is unable, despite its Commercially Reasonable Efforts, to obtain a transfer or reissuance of one or more of the Transferable Permits as of the Closing Date, Buyer may use the applicable Transferable Permit issued to Seller, provided (i) such use is not unlawful, (ii) Buyer continues to make Commercially Reasonable Efforts to obtain a transfer or reissuance of such Transferable Permit after the Closing Date, and (iii) Buyer indemnifies and holds Seller harmless for any Losses, claims or penalties suffered by Seller and pays Seller for any costs or expenses incurred by Seller in connection with such Transferable Permit that is not transferred or reissued as of the Closing Date resulting from Buyer's ownership or operation of the Acquired Assets following the Effective Time.

² Note to Draft: Subject to confirmation of scope of "Transferable Permits" set forth in final schedules.

Section 6.7 Tax Matters.

(a) Buyer shall pay any and all Transfer Taxes in connection with this Agreement and the Transactions contemplated hereby, including all required documentary stamp tax on the Deed and all instruments executed by either of the Parties in connection with this Agreement. Buyer and Seller will file, to the extent required by applicable Law, all necessary Tax Returns and other documentation with respect to all such Transfer Taxes, and, if required by applicable Law, will each join in the execution of any such Tax Returns or other documentation.

(b) The Parties acknowledge that Seller is classified as a non-taxable entity. Notwithstanding such classification, in the event Seller is required by applicable Law to make any Tax payment in connection with the Transaction, Buyer shall reimburse Seller for up to \$100,000 of such Tax payments within a reasonable time after Seller provides Buyer with adequate supporting documentation for such Tax payments.

Section 6.8 Updating Disclosure Schedules. During the Interim Period and in accordance with Section 6.2(b), Seller shall promptly (but no later than two (2) Business Days after obtaining Knowledge thereafter) notify Buyer of any changes or additions to the Seller Disclosure Schedules required by this Agreement with respect to any matter occurring after the date hereof which, if existing or occurring on the Effective Date, would have been required to be set forth or described in such Seller Disclosure Schedules (each, a "**Schedule Supplement**"). Following receipt of such Schedule Supplement, Buyer may elect to terminate this Agreement pursuant to Section 9.1(e) if the Buyer determines, in its sole discretion, that the condition in either Section 7.1(a) or Section 7.1(b) is not reasonably likely to be satisfied (taking into account such fact, occurrence, event, effect, change, circumstance or development set forth or identified in the Schedule Supplement, but without giving effect or regard to any such Schedule Supplement for such purpose); provided, that Buyer must make such election by delivering written notice of such election to terminate this agreement to Seller within sixty (60) days of Buyer's receipt of such Schedule Supplement. If Buyer does not terminate this Agreement under the terms and conditions of Section 9.1(e), then such Schedule Supplement will be deemed to have amended the Seller Disclosure Schedules and Buyer shall be deemed to have irrevocably waived any right to (a) terminate this Agreement with respect to such matters (including, without limitation, any later right to terminate this Agreement under the terms and conditions of Section 9.1(e) based solely on such matters disclosed and previously disclosed in prior Schedule Supplements), or (b) fail to consummate the Transaction described in this Agreement based solely on such matters disclosed and previously disclosed in prior Schedule Supplements; provided, however, such matters can be taken into consideration together with any matters which are subsequently disclosed to Buyer, or of which Buyer becomes aware, in determining whether the aggregate breaches of representations or warranties and aggregate matters disclosed in any Schedule Supplements, collectively, constitute a Material Adverse Effect.

Section 6.9 Employees.

(a) Buyer shall offer employment commencing as of the Closing Date (or such later date that any such MED Employee agrees to accept such offer of employment of Buyer, which shall be no later than five (5) Business Days following the Closing Date) to all MED Employees (i) who are employed by Seller on the date immediately preceding the Closing Date and named on

Schedule 4.10(c), and (ii) who meet applicable qualification requirements for the applicable positions with Buyer (which qualification requirements with respect to the MED Employees will not vary materially from the qualification requirements for other comparable positions within Buyer). Subject to any voluntary separations of MED Employees from Buyer, Buyer shall continue to employ at least the minimum number of MED Employees, who accepted Buyer's offer of employment, for the minimum duration necessary to avoid creating any obligation under the WARN Act on the part of Seller. Total Compensation for Transferred Employees shall be in the aggregate comparable to the Total Compensation provided to similarly situated employees of Buyer. Notwithstanding the foregoing, Transferred Employees offered positions that are covered by Buyer's collective bargaining agreement shall be provided with employment, Total Compensation and terms and conditions of employment as required by Buyer's contractual arrangements with applicable unions. The Parties shall cooperate in preparation of communications materials applicable to the Transferred Employees. Seller agrees to provide to Buyer, within five (5) Business Days following receipt of a written request from Buyer at any time and from time to time during the Interim Period and at Closing, an updated Schedule 4.10(c) as of the most recent practicable date. Not later than thirty (30) days before the Closing Date, Buyer shall give Seller notice as to which MED Employees, if any, Buyer has determined are not eligible to receive an offer of employment by Buyer as a result of such person not meeting applicable qualification requirements and hiring policies for the applicable positions with Buyer, or otherwise being ineligible for hire by Buyer as a result of any contractual, legal or other bona fide restriction.

(b) Buyer shall use its Commercially Reasonable Efforts to cause the Transferred Employees to become participants in the Benefit Plans of Buyer or its ERISA Affiliates, in accordance with and subject to any limitations of such Benefit Plans (the "**Buyer Benefit Plans**").

(c) Effective as of the Business Day immediately following the Closing Date, Transferred Employees prospectively shall accrue pension benefits under Buyer's existing retirement plan(s) on terms and conditions applicable to similarly situated Buyer employees, including any applicable eligibility, vesting or other requirements of such plans.

(d) Subject to any collective bargaining requirements applicable to Buyer, Buyer shall use its Commercially Reasonable Efforts, subject to the consent of any applicable insurer to (i) waive all waiting periods with respect to the Transferred Employees and (ii) provide each Transferred Employee with credit for any deductibles for claims incurred during the plan year of the applicable Buyer Benefit Plan in which the Closing Date falls. Seller will use its reasonable best efforts to provide sufficient information to enable Buyer to provide such credits for and deductibles. To the extent Seller fails to provide such sufficient information, each Transferred Employee shall be responsible for providing written evidence to enable Buyer to provide accurate credit for such deductibles.

(e) Subject to any collective bargaining requirements applicable to Buyer, Transferred Employees shall be granted credit for all service with Seller under all Buyer Benefit Plans in which such Transferred Employees become participants for purposes of eligibility, vesting and service related level (except for purposes of qualifying for Buyer's retiree welfare benefits and benefit accrual under Buyer's defined benefit pension plan). No period of service with Seller may

be credited to Transferred Employees under any Buyer Benefit Plan for the purpose of any benefit accrual under any Buyer Benefit Plan which is a pension plan.

(f) Seller shall be responsible for continuing or extending COBRA continuation coverage, or its equivalent, to former MED Employees and qualified beneficiaries of such former MED Employees who are currently enrolled or became entitled to such COBRA continuation coverage, including during the Interim Period, by reason of the occurrence of a qualifying event occurring before the Closing Date. Buyer shall be responsible for providing COBRA continuation coverage only to Transferred Employees and qualified beneficiaries of Transferred Employees for COBRA qualifying events occurring on or after the Closing Date, to the extent required.

(g) Seller shall remain responsible for paying Transferred Employees for: (a) all MED Benefit Plan benefits (other than salary and wage obligations that constitute Assumed Liabilities), and (b) all workers' compensation, disability benefits, or life insurance benefits for which entitlement to payment is based upon events occurring prior to the Closing including any incurred but unreported claims under the MED Benefit Plans and Seller shall be responsible for making its required contributions (if any) to the MED Defined Benefit Plan to ensure such plan is fully funded to pay all benefits due thereunder, including after the Closing Date. The Buyer shall not assume any Liability with regard to the MED Benefit Plans, including the MED Defined Benefit Plan or any obligation of Seller to provide post-employment health, dental, vision or life insurance benefits to any current or former MED Employee (including retirees). Subject to any collective bargaining requirements applicable to Buyer, Buyer will assume Liability for all sick days, vacation days and personal days of each Transferred Employee that have accrued but remain unused by or unpaid to such Transferred Employee as of the date immediately preceding the Closing Date up to the accrual limits therefor under Buyer's employee policies and procedures for similarly situated employees of Buyer.

(h) Any individual who would have otherwise become a Transferred Employee but who on the date immediately preceding the Closing Date is not actively at work due to a leave of absence covered by the Family and Medical Leave Act or similar state or local Law, short-term disability or any other authorized leave of absence shall be entitled to become a Transferred Employee once the individual is able to return to active-at-work status, but only if the individual is able to return to active-at-work status within ninety (90) days after the Closing Date.

(i) Following the Closing Date and until Seller elects to terminate the MED Defined Benefit Plan in accordance with applicable Law, the MED Defined Benefit Plan will continue to be the sole responsibility of Seller, and will be maintained and administered by Seller on behalf of the Transferred Employees who are also participants in the MED Defined Benefit Plan immediately prior to the Closing Date, in accordance with applicable Law.

Section 6.10 Casualty.

(a) If a Casualty occurs during the Interim Period, or if Seller obtains Knowledge that a Casualty is pending or otherwise potentially anticipated to occur, Seller shall give prompt written notice to Buyer of such occurrence or Knowledge, which notice shall be delivered not more than five (5) Business Days after such occurrence commenced or Knowledge

is obtained, and shall include in such notice a detailed estimate of the Cure Amount and an estimate of the Available Proceeds (including the amount, type and expected timing of recovery of any Available Proceeds) with respect to such Casualty (the "*Casualty Notice*"). Upon delivery of such Casualty Notice and in connection with satisfaction of the condition to Closing set forth in Section 7.1(I), Buyer and Buyer's Representatives shall be entitled to inspect and observe any repairs and replacements performed or provided by Seller prior to the Closing Date and shall be entitled to determine, in its sole discretion, such repairs or replacements have been completed in compliance with all applicable Laws and in a manner that is reasonably satisfactory such that the operations of the Business of the MED Electric Utility is fully and permanently restored as operated prior to the occurrence the Casualty.

(b) If the Closing occurs before all of the repairs or replacements have been made to the damaged or destroyed Acquired Assets, then (i) at the Closing, Seller will stop conducting such repairs and replacements, as applicable, and will assign to Buyer all Contracts with respect to such repairs or replacements which have not been completed, or as to which payment in full has not been made by Seller, and Buyer shall assume all of such Contracts as Assumed Liabilities (subject to Buyer's prior approval of such Contracts which approval shall not be unreasonably withheld, conditioned or delayed); (ii) at the Closing, to the extent permitted by applicable Law, Seller shall pay to Buyer any Available Proceeds that have been collected by Seller and that have not been expended by Seller in connection with such repairs and replacements; and (iii) after the Closing, Buyer shall be solely responsible for the completion of any remaining repairs or replacements and the payment of any and all costs associated with such repairs and replacements and, (A) to the extent permitted by applicable Law, Buyer shall be entitled to pursue and retain any Available Proceeds for any repairs or replacements expenses incurred by Buyer in connection with such Casualty, and (B) to the extent Buyer is not permitted under applicable Law to pursue certain Available Proceeds, following the Closing, Seller shall use Commercially Reasonable Efforts to pursue and collect such Available Proceeds, and upon collection, promptly pay over to Buyer in respect of any repairs or replacements expenses incurred by Buyer in connection with such Casualty.

(c) If, after the Closing, the payor of any proceeds (as described in clause (ii) of the definition of Available Proceeds) that have been expended to make repairs and replacements to any of the Acquired Assets pursuant to a Casualty that occurred during the Interim Period, demands repayment of all or any portion of such proceeds, the Party that spent such proceeds shall pay the amount of proceeds required to be repaid after all reasonable objections and protest to the repayment are properly exhausted.

Section 6.11 Data Conversion. The Parties shall cooperate with each other to facilitate an orderly and seamless transition from Seller to Buyer of the IT Systems, computer applications and processing of data for Buyer to commence conducting the Business of the MED Electric Utility as of the Closing Date in the manner and format acceptable to Buyer. Subject to the limitations of Section 6.3, any third party costs incurred by Seller in connection with this Section 6.11, shall be subject to reimbursement as a Transaction Expense.

Section 6.12 Exclusivity. Except as expressly permitted by this Agreement, until the Closing or until this Agreement is terminated, Seller will not, and Seller shall cause its Representatives not to, (a) offer to sell or transfer any of the Acquired Assets to (or offer to enter

into any transaction contemplated by this Agreement with) any Person other than Buyer, or initiate or participate in any discussions or correspondence concerning the foregoing, or (b) request, solicit or otherwise encourage inquiries, proposals or offers from, or participate in any discussions or negotiations with, any Person other than Buyer with respect to the sale or transfer of any of the material Acquired Assets or any transaction contemplated by this Agreement. As promptly as practicable (and in any event within one day) after receipt of any third party proposal regarding any purchase or acquisition of any Acquired Asset or any request for nonpublic information or inquiry that could reasonably be expected to lead to such purchase or acquisition, Seller shall provide Buyer with notice of any such request or inquiry, and copies of all related written materials and the identity of the Person or group making any such proposal, request or inquiry.

Section 6.13 No Seller Changes in Law. At or prior to the Closing, Seller agrees not to promulgate, enact, adopt, repeal, amend, modify or make effective any Law or resolution, or take or support any action, that would (a) adversely affect Buyer's rights or Seller's obligations in this Agreement or any Ancillary Agreements or (b) adversely affect any of the Transactions contemplated by this Agreement or Ancillary Agreements.

Section 6.14 Customer Consumption Allocation and Demand Data. Seller shall use Commercially Reasonable Efforts to read the meters of all Customers of Seller within one (1) month (reading used for billing) prior to the Closing Date. Customer usage from meter date of last bill to the date of billing cycle closing (midnight of last day of the month) should be obtained from Buyer's automatic meter reading system and used to calculate unbilled revenue using NISC Unbilled Revenue process, with customer charges and demand charges prorated based on days of service. Unbilled revenue as of the Closing Date will be recorded on the balance sheet of Seller and shall be included in the calculation of the Selected Accounts Amount.

Section 6.15 Environmental Matters.

(a) Except to the extent exacerbated or contributed to by Buyer, Seller agrees to be responsible for any and all Losses of Buyer, and pay and perform when due any and all Liabilities of Buyer:

(i) under Environmental Laws, Environmental Permits or Environmental Claims with respect to the Business of the MED Electric Utility or the Acquired Assets arising from any event, condition, circumstance, act or omission that occurred prior to the Closing Date; or

(ii) arising from: the presence of Hazardous Substances on the Real Property prior to the Closing Date; the Release of Hazardous Substances by the Seller; or the Release of Hazardous Substances other than by Buyer at, on, in, under, or from the Real Property (such Losses or Liabilities under Section 6.15(a)(i) and (ii) hereof, the "**Environmental Liabilities**");

provided, however, that, with respect to all Real Property other than the MED Office and Storage Yard, and as an absolute condition to such responsibility and agreement to pay and perform, Buyer must give to Seller notice (the "**Environmental Notice**") of any claim of Environmental Liabilities no later than thirty (30) days prior to the anticipated Closing Date and, solely with respect to any

Environmental Liability which Buyer demonstrates occurred less than thirty (30) days prior to the Closing Date, Buyer must give the Environmental Notice prior to the Closing Date, which Environmental Notice, in either case, must contain the estimated total amount of the Environmental Liabilities and a summary of facts then known to Buyer that support such claim; and provided, further that, with respect to all Real Property other than the MED Office and Storage Yard, in no event shall Seller be liable or responsible for any Environmental Liabilities that exceed five hundred thousand dollars (\$500,000) in the aggregate (the "**Aggregate Environmental Cap**"). With respect to all Real Property other than the MED Office and Storage Yard, Buyer hereby releases Seller from, and Seller shall not be responsible for, Environmental Liabilities that exceed the Aggregate Environmental Cap; provided, however, that the Aggregate Environmental Cap shall not apply to any knowing or willful breach of the representations and warranties in Section 4.9.

(b) Notwithstanding the foregoing, none of the foregoing limitations in subsection (a) above shall apply to Environmental Liabilities arising from, or in connection to Seller's ownership of the MED Office and Storage Yard, which shall remain the obligation of Seller following the Closing, subject to the terms of the Lease Agreement.

(c) Buyer must provide all environmental reports and testing, including Phase I reports and Phase II environmental testing, that Buyer or its representatives conduct on each Real Property location (collectively, "**Buyer's Environmental Testing**") and, if so performed, must have submitted the reports and the results of Buyer's Environmental Testing to Seller prior to the Closing Date.

Section 6.16 Name Change. Following the Closing Date, Buyer shall use its Commercially Reasonable Efforts to change the company name on all Acquired Assets to a name not including the words "MED" or "Murfreestboro" or any name reasonably considered similar or related to the words "MED" or "Murfreestboro".

Section 6.17 Creation of a New Sub-District Seat under Buyer's Organizational Documents.

(a) Within thirty (30) days following the Closing Date, the Board of Directors of Buyer shall, by resolution, appoint two (2) representatives designated by Seller and mutually acceptable to Buyer (the "**Interim Board Representatives**") to attend and participate in an advisory capacity in all meetings and other activities of the Board of Directors of Buyer, other than committee and subcommittee meetings thereof, until such time in the ordinary course of Buyer's business when Buyer's Organizational Documents can be amended to enlarge the maximum number of seats on the Board of Directors of Buyer. The Interim Board Representatives shall be entitled to receive timely notice of meetings and all documentation that is made available to the other members of the Board of Directors of Buyer and shall be reimbursed for reasonable out-of-pocket expenses incurred in connection with the Interim Board Representatives' attendance at any meetings of the Board of Directors of Buyer in accordance with Buyer's existing policies and procedures applicable to Buyer's current directors; provided, that such Persons shall have executed a customary confidentiality agreement in a form satisfactory to Buyer. The Interim Board Representatives shall continue in that role until the creation of the two new sub-district seats on Buyer's Board of Directors described in (b) below. Any vacancy in the position of Interim Board

Representatives shall be filled by the Nominating Committee of Buyer's Board of Directors pursuant to Article III, Section 4 of Buyer's current bylaws.

(b) At the first annual meeting of Buyer's members following the Closing Date, Buyer shall present for adoption by its members (A) an amendment to the Buyer's Organizational Documents to provide two new sub-district seats on the Buyer's Board of Directors. Following adoption of such amendment by Buyer's members, the two-sub-district seats will be filled by the Nominating Committee of the Board of Directors of Buyer by appointment of two (2) Persons who are mutually acceptable to the Parties; and (B) the appointment of one (1) additional Person to the Nominating Committee of the Buyer's Board of Directors who is mutually acceptable to the Parties. In each case, following an initial term as set forth in the Buyer's Organizational Documents as amended, the new seats created on the Buyer's Board of Directors and the Nominating Committee shall be filled via a regular election process consistent with Buyer's then-existing bylaws.

(c) Within thirty (30) the Closing Date, Buyer shall cause its Board of Directors to appoint one (1) Person to the board of directors of the Sharing Change Foundation who is mutually acceptable to the Parties in accordance with the applicable organizational documents thereof.

(d) The Parties expressly acknowledge and agree that Buyer may further amend its bylaws in its sole discretion and as deemed necessary and appropriate for the conduct of its business by either its Board of Directors or its members from time to time.

Section 6.18 Vehicle Transfers. To the extent that Buyer has not on or prior to the Closing Date, received all of the titles for the Vehicles included as Acquired Assets, duly endorsed for transfer, sufficient to validly transfer ownership of each such Vehicle to Buyer, Seller agrees to take all action necessary, at its sole expense, to promptly deliver all such undelivered Vehicle titles to Buyer following the Closing Date.

Section 6.19 Termination of MED Defined Benefits Plan. Seller shall use its reasonable best efforts to freeze the MED Defined Benefit Plan as of the Closing Date. Seller shall have the right, exercisable in its sole discretion, to terminate the MED Defined Benefit Plan. If Seller elects to terminate the MED Defined Benefit Plan, and such termination becomes effective on or prior to the third anniversary of the Closing Date, then in connection with such termination, Buyer hereby agrees to pay to Seller as Additional Purchase Price an amount equal to one-half of the actual costs and expenses incurred by Seller in connection with the termination of the MED Defined Benefit Plan (including but not limited to any cost or expense incurred by Seller to terminate the MED Defined Benefit Plan and pay the fully accrued benefits thereunder) in an amount not to exceed three million five hundred thousand dollars (\$3,500,000) (the "**Pension Termination Costs**"); provided, that, such obligation to pay Seller Additional Purchase Price shall be subject to Buyer's receipt of evidence reasonably sufficient to Buyer that the MED Defined Benefit Plan was fully funded and terminated on or prior to the third anniversary of the Closing in compliance with all applicable Laws and that all assets have been properly funded and distributed from the MED Defined Benefit Plan to the MED Defined Benefits Plan participants in accordance with applicable Law and the terms of the MED Defined Benefit Plan. Notwithstanding the foregoing, no assets, Liabilities or obligations of Seller as provided under the MED Defined

Benefit Plan or any other MED Benefit Plan are assumed by or otherwise transferred to Buyer in connection with the Transaction or this Section 6.19 and any such Liabilities shall be treated as an Excluded Liability retained by Seller following the Closing and all Liabilities with regard to the MED Defined Benefit Plan and all other MED Benefit Plans shall remain the sole responsibility of Seller. For the avoidance of doubt, nothing contained in this Section 6.19 shall result in the assumption of the MED Defined Benefit Plan nor result in Buyer being a successor employer for purposes of the MED Defined Benefit Plan. In the event Seller elects not to terminate the MED Defined Benefit Plan, Buyer shall have no obligation to pay any Pension Termination Costs, including the Additional Purchase Price as provided in Section 3.4.

Section 6.20 *Interim Financial Statements.* Until the Closing Date, Seller shall deliver, or cause to be delivered, to Buyer within fifteen (15) days after the end of each month an unaudited balance sheet of MED as of the end of the preceding calendar month then-ended, and the related statements of revenues, expenses and changes in net fund position, and statements of cash flows of MED, in each case prepared in a manner and containing information consistent with MED's Past Practices.

Section 6.21 *Payment of Other Excluded Liabilities.* If Seller fails to pay any Excluded Liability in the ordinary course of business or when otherwise due and payable and Buyer reasonably determines that failure to make such payment would impair Buyer's use of the Acquired Assets, increase or accelerate any Assumed Liability or otherwise affect Buyer's conduct of the Business of MED Electric Utility, at any time after the Closing, Buyer may, but shall have no obligation to, elect to make all such payments directly and obtain reimbursement from Seller in accordance with the terms and conditions of this Agreement.

Section 6.22 *Agreement Regarding Fiber Optic Network Assets.* As of the Closing Date, Buyer hereby agrees to voluntarily cancel, or otherwise forgive and release Seller from Seller's obligation to reimburse or otherwise remit payment for any unbilled amounts owed to MED for the cost of development and construction of the Fiber Optic Network Assets; provided, that Seller shall not, and shall not permit MED to, cancel or otherwise forgive, release, or waive any claim or right against any third party other than Seller related to construction or installation of the Fiber Optic Network Assets or otherwise materially alter any Contract or plans for construction, including any relevant construction budget, prior to the Closing Date.

Section 6.23 *Insurance Matters.* As a condition and material inducement to the Buyer's willingness to enter into this Agreement and to consummate the Transactions, at Buyer's election, the Seller shall purchase and fully pay the premium for a non-cancellable extended reporting period ("tail") endorsements or similar coverage reasonably acceptable to Buyer with respect to one or more of the insurance policies set forth on Schedule 4.8 (the "*Tail Policies*"). At least ten (10) Business Days prior to the Closing, Buyer shall notify Seller as to which insurance policy(ies) a Tail Policy is being requested. Each such Tail Policy shall list Buyer as an additional insured or loss payee, as applicable, and shall be bound and effective as of the Closing. The premium and other costs of the Tail Policies shall be treated as Transaction Expenses to the extent of the Reimbursement Cap set forth in Section 6.3, and thereafter, any remaining premium and other costs of the Tail Policies will be borne by Buyer. Without limiting the generality of the foregoing, the endorsements evidencing the Tail Policies shall not contain an "other insurance" or similar provision that purports to make the coverage afforded under the Tail Policies excess rather

than primary and non-contributory coverage as to any action, inaction, error, omission, event or condition that existed or occurred prior to or on the Closing Date.

ARTICLE 7.

CONDITIONS PRECEDENT

Section 7.1 *Conditions Precedent to Obligations of Buyer.* The obligations of Buyer to purchase the Acquired Assets and to consummate the other transactions contemplated by this Agreement shall be subject to the satisfaction at or prior to the Closing of the following conditions precedent (except to the extent waived in writing by Buyer in its sole discretion):

(a) (i) The representations and warranties of Seller (other than the Seller Fundamental Representations) set forth in Article 4 of this Agreement shall have been true and correct in all material respects on and as of the Effective Date and shall be true and correct in all material respects as of the Closing as though made as of the Closing (except for those representations and warranties that address matters only as of a specified date, the truth and correctness of which shall be determined as of that specified date), and (ii) each of the representations and warranties of Seller (other than the Seller Fundamental Representations) set forth in Article 4 of this Agreement that contains an express materiality or any Material Adverse Effect qualification shall have been true and correct in all respects on and as of the Effective Date and shall be true and correct in all respects as of the Closing as though made as of the Closing (except for those representations and warranties that address matters only as of a specified date, the truth and correctness of which shall be determined as of that specified date);

(b) The Seller Fundamental Representations (without regard to any Schedule Supplement) shall be true and correct in all respects on and as of the Effective Date and as of the Closing as though made as of the Closing (except for those representations and warranties that address matters only as of a specified date, the truth and correctness which shall be determined as of that specified date);

(c) Buyer shall have received all of Buyer's Required Regulatory Approvals and each of the consents or notices set forth on Schedule 4.3, in form and substance satisfactory to Buyer in its reasonable discretion, and such approvals shall be in full force and effect and either (i) shall be final and non-appealable or (ii) if not final and non-appealable, shall not be subject to the possibility of appeal, review or reconsideration which is reasonably likely to be unsuccessful as to Buyer;

(d) Seller shall have performed and complied in all material respects with the covenants and agreements contained in this Agreement which are required to be performed and complied with by Seller at or prior to the Closing, including, without limitation, those set forth in Section 6.4(b);

(e) Buyer shall have received a certificate from Seller, dated the Closing Date, signed on behalf of Seller by the City Manager, to the effect that the conditions set forth in Section 7.1(a), Section 7.1(b), Section 7.1(c) and Section 7.1(d) have been satisfied (the "**Seller Closing Certificate**");

(f) Buyer shall have conducted and received Buyer's Environmental Testing, with findings and results satisfactory to Buyer in its reasonable discretion;

(g) Seller shall have delivered, or caused to be delivered, to Buyer at the Closing, Seller's closing deliverables described in Section 3.6;

(h) Since the Effective Date, no Material Adverse Effect shall have occurred, and be continuing;

(i) If Buyer has obtained Title Commitments for the Acquired Land in Fee, the title company thereunder being ready, willing and able, at Buyer's cost and expense, to issue title insurance policies, or agreements to issue such policies, in accordance with the Title Commitments, at regular rates, in the amounts identified in the Title Commitments from the title company issuing the Title Commitments, insuring that Buyer has good, marketable and insurable title to the Acquired Land in Fee and the right to control, occupy and use the Acquired Land in Fee, free and clear of Encumbrances other than Permitted Encumbrances;

(j) Buyer shall have secured requisite approvals and satisfied certain conditions under the Buyer Loan Documents, including any amendments or modifications thereto, as may be necessary to pay the aggregate Base Purchase Price in accordance with Section 3.3, consummate the Transaction and perform its obligations under this Agreement and the Ancillary Agreements;

(k) The satisfaction, discharge and payment in full of the Bonds prior to the Closing in a manner satisfactory to Buyer in its reasonable discretion; and

(l) MED shall not have suffered either (i) a Casualty where the reasonable uninsured costs reasonably expected to be incurred by Buyer after Closing to repair such Casualty exceeds \$1,000,000, or (ii) a Casualty where the Cure Amount in respect of such Casualty exceeds \$6,000,000.

Section 7.2 *Conditions Precedent to Obligations of Seller.* The obligations of Seller to sell the Acquired Assets and to consummate the other transactions contemplated by this Agreement shall be subject to the satisfaction at or prior to the Closing of the following conditions precedent (except to the extent waived in writing by Seller in its sole discretion):

(a) The representations and warranties (other than the Buyer Fundamental Representations) of Buyer set forth in Article 5 of this Agreement (without regard to any materiality or material adverse effect qualification therein) shall be true and correct in all respects on and as of the Effective Date and as of the Closing as though made as of the Closing (except for those representations and warranties that address matters only as of a specified date, the truth and correctness of which shall be determined as of that specified date) except for such failures to be true and correct which would not reasonably be expected to constitute, individually or in the aggregate, a material adverse effect;

(b) The Buyer Fundamental Representations shall be true and correct in all respects on and as of the Effective Date and as of the Closing as though made as of the Closing (except for those representations and warranties that address matters only as of a specified date, the truth and correctness which shall be determined as of that specified date);

(c) Buyer shall have performed and complied with in all material respects the covenants and agreements contained in this Agreement which are required to be performed and complied with by Buyer at or prior to the Closing;

(d) Seller shall have received a certificate from Buyer, dated the Closing Date, signed by an authorized officer of Buyer, to the effect that the conditions set forth in Section 7.2(a), Section 7.2(b), and Section 7.2(c) have been satisfied (the “*Buyer Closing Certificate*”); and

(e) Buyer shall have delivered, or caused to be delivered, to Seller at the Closing, Buyer’s closing deliverables described in Section 3.7.

Section 7.3 ***Conditions Precedent to Obligations of Both Parties.*** The obligations of Buyer to purchase the Acquired Assets and consummate the other transactions contemplated by this Agreement and of Seller to sell the Acquired Assets and consummate the other transactions contemplated by this Agreement shall be subject to the satisfaction at or prior to the Closing of the following conditions precedent (except to the extent waived in writing by both Parties in their sole discretion):

(a) No preliminary or permanent injunction or other Order by any Governmental Authority other than Seller which restrains or prevents the consummation of the transactions contemplated hereby shall have been issued and remain in effect (each Party agreeing to cooperate to take all Commercially Reasonable efforts that are within its reasonable control to have any such injunction or Order lifted) and no Law shall have been enacted by any Governmental Authority which prohibits the consummation of the transactions contemplated hereby.

ARTICLE 8.

INDEMNIFICATION AND PAYMENT FOR LOSSES

Section 8.1 ***Indemnification and Payment for Losses.***

(a) Subject to the terms and limitations of this Article 8, from and after the Closing, Buyer shall indemnify, defend and hold harmless Seller and its elected and appointed officials, officers, employees and agents (each, a “*Seller Indemnitee*”) from and against, and pay, reimburse and compensate each Seller Indemnitee for, any and all Losses to the extent arising or resulting, directly or indirectly, from:

(i) any breach or inaccuracy of any representation or warranty made by Buyer in Article 5 of this Agreement;

(ii) any breach, violation or nonfulfillment by Buyer of any covenant or agreement of Buyer contained in this Agreement which, by its terms, contemplates performance prior to or after the Closing Date;

(iii) any Assumed Liability;

(iv) any Third Party Claim asserted against a Seller Indemnitee arising in connection with or resulting from Buyer’s ownership or use of the Acquired Assets or its

operation of the Business of the MED Electric Utility on or after the Closing Date (other than any Loss resulting from any Excluded Asset or Excluded Liability);

(v) the Release of Hazardous Substances at, on, in, or to the Acquired Land in Fee after the Closing Date, except for Seller's responsibility with respect thereto under the terms of Section 6.15 (as limited by the Aggregate Environmental Cap on Seller's responsibility set forth in Section 6.15(a)); or

(vi) (a) negligence of, or intentional misconduct by, Buyer or Buyer's Representatives in the course of their due diligence investigations while on any of the Real Property; or (b) gross negligence of, or intentional misconduct by, Buyer or Buyer's Representatives in the course of their due diligence investigations of the MED's IT Systems, Intellectual Property Assets, or Customer data.

(b) Subject to the terms and limitations of this Article 8, to the full extent permitted by applicable Law, after the Closing, Seller shall indemnify, defend and hold harmless Buyer and its Affiliates and its and their officers, directors, employees, shareholders and agents (each, a "**Buyer Indemnitee**") from and against, and pay, reimburse and compensate each Buyer Indemnitee for, any and all Losses to the extent arising or resulting, directly or indirectly, from:

(i) any breach or inaccuracy of any representation or warranty made by Seller in Article 4 of this Agreement;

(ii) any breach, violation or nonfulfillment by Seller of any covenant or agreement of Seller contained in this Agreement which, by its terms, contemplates performance prior to or after the Closing Date;

(iii) any Excluded Asset;

(iv) any Excluded Liabilities;

(v) all Environmental Liabilities arising from or in connection with Seller's ownership and maintenance of the MED Office and Storage Yard as set forth in the Lease Agreement, whether arising prior to or following the Closing; or

(vi) any Liabilities or obligation, regardless of when such claim is made or asserted, with respect to any under-billing or under-metering for electricity purchased from TVA by Seller and MED (or any of its Customers) prior to the Closing Date.

(c) Notwithstanding anything in this Agreement to the contrary:

(i) the representations and warranties of the Parties hereto contained in or made pursuant to this Agreement shall survive the Closing and continue in full force and effect until the Final Escrow Release Date, except that the Seller Fundamental Representations and the Buyer Fundamental Representations shall survive the Closing and continue in full force and effect indefinitely;

(ii) the covenants and agreements of the Parties contained in or made pursuant to this Agreement shall survive the Closing and continue in full force and effect until fully satisfied, except for such covenants and agreements explicitly subject to a shorter survival period, then breaches of any such covenants and agreements shall survive until the date that is sixty (60) days following expiration of such shorter survival period;

(iii) Seller shall not be required to indemnify, reimburse or hold harmless any Buyer Indemnitees against, or reimburse any Buyer Indemnitees for, and Buyer shall not be entitled to reimbursement for any Losses (A) to the extent such Loss relates to Assumed Liabilities under Section 2.3; (B) if pursuant to Section 8.1(b)(i), until the aggregate amount of Losses of Buyer Indemnitees under such Section 8.1(b)(i) exceeds one million dollars (\$1,000,000) (the “*Deductible*”), after which Seller shall indemnify, reimburse and hold harmless the Buyer Indemnitees for, and Buyer shall be entitled to assert, as its sole and exclusive remedy, a claim against the Escrowed Purchase Price Amount, in accordance with the terms of the Escrow Agreement, in the amount of such Losses arising under Section 8.1(b)(i) that exceeds the Deductible; provided, that any claim for indemnification or reimbursement under Section 8.1(b)(i) resulting from a breach of Seller Fundamental Representation shall not be subject to the Deductible; and (C) if pursuant to Section 8.1(b)(vi), until the aggregate amount of Losses of Buyer Indemnitees under Section 8.1(b)(vi) exceeds five hundred thousand dollars (\$500,000), after which Seller shall indemnify, reimburse and hold harmless the Buyer Indemnitees for, and Buyer shall be entitled to assert, as its sole and exclusive remedy, a claim against the Escrowed Purchase Price Amount, in accordance with the terms of the Escrow Agreement, in the amount of such Losses incurred by such Buyer Indemnitees under Section 8.1(b)(vi) in excess of five hundred thousand dollars (\$500,000);

(iv) Buyer shall not be required to indemnify, defend and hold harmless any Seller Indemnitees against, or reimburse Seller Indemnitees for, any Losses pursuant to Section 8.1(a)(i) until the aggregate amount of Losses of Seller Indemnitees under such Section 8.1(a)(i) exceeds the Deductible, after which Buyer shall indemnify, reimburse and hold harmless the Seller Indemnitees for the amount of such Losses arising under Section 8.1(a)(i) that exceeds the Deductible; provided, that any such claim for indemnification or reimbursement under Section 8.1(a)(i) resulting from breach of Buyer Fundamental Representation shall not be subject to the Deductible;

(v) (A) the cumulative indemnification, payment, reimbursement or compensation obligations of Seller under Section 8.1(b)(i) (other than for Seller Fundamental Representations) and under Section 8.1(b)(vi) shall not exceed, in the aggregate, the Escrowed Purchase Price Amount, and (B) the cumulative indemnification, payment, reimbursement or compensation obligations of Buyer under Section 8.1(a)(i) (other than for Buyer Fundamental Representations) shall not exceed, in the aggregate, four million dollars (\$4,000,000); and

(vi) the foregoing limitations on indemnification, payment, reimbursement and compensation set forth in this Section 8.1(c) shall not apply with respect to any claims pursuant to Sections 8.1(a)(ii)-(vi) or Sections 8.1(b)(ii)-(v), or any claim based on intentional or willful misrepresentation or fraud; provided, that (A) the maximum aggregate obligations of Seller to provide indemnification, payment, reimbursement or compensation for Losses under this Article 8 shall not exceed the Purchase Price; and (B) the maximum aggregate

obligations of Buyer to provide indemnification, payment, reimbursement or compensation for Losses under this Article 8 shall not exceed the Purchase Price.

(d) For the purposes of the determination of (A) whether there was a breach of any representation or warranty of Seller or Buyer as of any particular date for purposes of this Agreement and (B) the amount of Losses arising from such a breach for which an Indemnitee is entitled to recover under this Agreement, all limitations and qualifications relating to “material”, “materiality”, “Material Adverse Effect”, or “material adverse effect” contained in such representation or warranty shall be disregarded.

(e) The expiration or termination of any representation, warranty, covenant or agreement in this Agreement pursuant to Section 8.1(c) shall not affect the Parties’ obligations under this Section 8.1 if the Indemnitee provided the Person required to provide indemnification, or payment, reimbursement or compensation for Losses under this Article 8 (the “*Indemnifying Party*”) with timely written notice of the claim or event for which indemnification, payment, reimbursement or compensation is sought in accordance with Section 8.2 prior to such expiration or termination.

(f) Except for the remedy of injunctive relief or for claims based on intentional or willful misrepresentation or fraud, the rights and remedies of Seller and Buyer as set forth under this Article 8 shall be the exclusive remedies with respect to claims for indemnifiable Losses under this Agreement.

(g) Each Indemnified Party shall use their commercially reasonable efforts to mitigate any Loss upon becoming aware of any event or circumstance that results in, or would reasonably be expected to result in any Loss for which such party may seek indemnification, payment, reimbursement or compensation under this Article 8. Payments by an Indemnifying Party pursuant to Sections 8.1(a) or (b) in respect of any Loss shall be limited to the amount of Losses that remains after deducting therefrom any insurance proceeds, indemnity, contribution or other similar payment received by an Indemnitee in respect of such Loss.

(h) In no event shall any Indemnifying Party be liable to any Seller Indemnitee or Buyer Indemnitee, as the case may be, for (i) any punitive, special or exemplary damages, except to the extent such losses are payable to a third party in connection with a Third Party Claim, or (ii) any indirect damages, including loss of future revenue or income, loss of business reputation or opportunity or diminution of value or any damages based on any type of multiple that, in the case of this clause (ii), are not reasonably foreseeable.

(i) Seller acknowledges and agrees that it is the express intent of the Parties hereto that Seller Indemnitees and Buyer Indemnitees would be entitled to the benefits, protections and remedies set forth in this Article 8, in accordance with, and subject to, the terms and conditions set forth in this Article 8. Therefore, in the event any obligation of Seller to provide indemnification, payment, reimbursement or compensation for Losses under this Article 8, or any provision of this Agreement related to such obligation of Seller, is held by a court of competent jurisdiction to be illegal, invalid or unenforceable under any present or future Law or Order (“Invalidity Holding”), Buyer and Seller shall negotiate in good faith to substitute for any such illegal, invalid or unenforceable obligation of Seller a legal, valid and enforceable remedy in

respect of any Losses determined to have been incurred or suffered by any Buyer Indemnitee under Section 8.1(b) and to which it would otherwise be entitled but for the Invalidity Holding, in a manner that will approximate insofar as practicable the benefits reasonably anticipated to have been received by Buyer Indemnitee but for the Invalidity Holding.

Section 8.2 Defense of Claims.

(a) If any Indemnitee has been notified of the assertion of any claim or of the commencement of any Action made or brought by any Person who is not a Party to this Agreement or any Affiliate of a Party to this Agreement or a Representative of any of the foregoing (a "**Third Party Claim**") against such Indemnitee with respect to which indemnification, payment, reimbursement or compensation is to be sought by such Indemnitee from an Indemnifying Party, the Indemnitee shall give the Indemnifying Party reasonably prompt written notice thereof, but in any event such notice shall be given within ten (10) Business Days after the Indemnitee's having been notified of such Third Party Claim (provided that any failure to give timely notice as provided in this sentence shall not affect the rights or obligations of either Party hereunder except to the extent, if any, that the Indemnifying Party which was entitled to receive such notice was actually prejudiced as a result of such failure). Such notice shall describe the nature of the Third Party Claim in reasonable detail and shall indicate the estimated amount, to the extent then known, of the Losses that have been or are reasonably expected to be sustained by such Indemnitee. The Indemnifying Party will have the right to participate in or, by giving written notice to the Indemnitee, may elect to assume the defense of any Third Party Claim at such Indemnifying Party's expense and by such Indemnifying Party's own counsel; provided, however, that the counsel for the Indemnifying Party who shall conduct the defense of such Third Party Claim shall be reasonably satisfactory to the Indemnitee; provided, further, that the Indemnifying Party shall not have the right to assume the defense of a Third Party Claim by a Governmental Authority or a Third Party Claim seeking any relief other than monetary damages. The Indemnitee shall cooperate in good faith in the Indemnifying Party's defense of a Third Party Claim at such Indemnitee's own expense.

(b) After an Indemnitee gives timely written notice to the Indemnifying Party of any Third Party Claim:

(i) If the Indemnitee is given written acknowledgement by the Indemnifying Party that the Indemnifying Party has elected to assume the defense of such Third Party Claim as provided in Section 8.2(a), (A) the Indemnifying Party will not be liable for any legal expenses subsequently incurred by the Indemnitee in connection with the defense thereof, and (B) subject to Section 8.2(b)(ii), the Indemnifying Party shall have the right to take such action as it deems necessary to avoid, dispute, defend, appeal or make counterclaims pertaining to any such Third Party Claim in the name and on behalf of the Indemnitee. Seller and Buyer shall cooperate with each other in all reasonable respects in connection with the defense of any Third Party Claim.

(ii) For any matter in which the Indemnifying Party has elected to assume the defense of such Third Party Claim as provided in Section 8.2(a), the Indemnifying Party shall not agree to or enter into any judgement, compromise or settlement of any Third Party Claim which would result in a Liability or create any Encumbrance on the Acquired Assets or

financial or other obligation on the part of the Indemnitee. If a firm offer is made to settle a Third Party Claim that would result in a Liability or create any Encumbrance on the Acquired Assets or a financial or other obligation on the part of the Indemnitee, and the Indemnifying Party desires to accept and agree to such offer, the Indemnifying Party shall give written notice to the Indemnitee to that effect. If, after Indemnifying Party gives such written notice to the Indemnitee, (A) the Indemnitee unreasonably withholds, conditions or delays consent, (B) such compromise or settlement neither creates an Encumbrance on the assets of the Indemnitee, nor contains any restriction or condition that would reasonably be expected to have a material adverse effect on the Indemnitee or its business, and (C) such compromise or settlement solely involves the payment of money damages (all of which will be paid in full by the Indemnifying Party concurrently with the effectiveness thereof) and, upon such payment, releases the Indemnitee from all Liabilities and obligation with respect to the subject Third Party Claim, then the Indemnifying Party, at its election, may accept such compromise or settlement and shall be relieved of its obligations under this Article 8; provided, however, that the Indemnitee has not, within twenty (20) Business Days of receipt of a notice of a Third Party Claim or notice of any offer of compromise or settlement, under this subsection, delivered written notice to the Indemnifying Party of its election to assume control of the defense, compromise or settlement of such Third Party Claim at its sole expense. In such event, the maximum Liability of the Indemnifying Party as to such Third Party Claim will be the amount of such firm offer of settlement.

(iii) If the Indemnitee maintains control of the defense of any Third Party Claim in the event Indemnifying Party does not provide written acknowledgement of control pursuant to Section 8.2(a) or Indemnitee assumes control of the defense, compromise or settlement of any Third Party Claim pursuant to this Section 8.2(b), it shall be entitled to agree to any compromise or settlement without the written consent of the Indemnifying Party.

(c) Any claim by an Indemnitee on account of a Loss which does not result from a Third Party Claim (a "**Direct Claim**") shall be asserted by giving the Indemnifying Party reasonably prompt written notice thereof, stating the nature of such claim in reasonable detail and indicating the estimated amount, to the extent then known.

(d) A failure to give timely notice as provided in this Section 8.2 shall not affect the rights or obligations of either Party hereunder except to the extent, if any, that the Indemnifying Party which was entitled to receive such notice was actually prejudiced as a result of such failure.

(e) Payment, reimbursement or compensation of a Loss shall be made by the Indemnifying Party within thirty (30) days after a final and non-appealable adjudication of such Indemnifying Party's responsibility for such Loss or such Indemnifying Party's agreement in writing to accept responsibility for such Loss; provided, however, that this Section 8.2(e) shall not be construed to limit or impair the Indemnifying Party's right to dispute its responsibility to indemnify, reimburse or hold harmless with respect to a Loss or to assert limitations as to such responsibility, under the terms of this Agreement.

Section 8.3 Escrowed Purchase Price Amount. The Escrowed Purchase Price Amount shall be available to indemnify, hold harmless and reimburse any Buyer Indemnitee from any Losses indemnifiable by Seller under this Article 8. The Escrowed Purchase Price Amount is the sole and exclusive sources available to satisfy any claims of the Buyer Indemnitees under

Section 8.1(b)(i) (except in connection with any breaches of Seller Fundamental Representations or any claim based on intentional or willful misrepresentation or fraud). In no event shall Seller be obligated to reimburse, replenish or make any further contribution to the Escrowed Purchase Price Amount following the Closing.

ARTICLE 9.

TERMINATION

Section 9.1 Termination.

(a) This Agreement may be terminated at any time prior to the Closing by the mutual written agreement signed by Seller and Buyer.

(b) This Agreement may be terminated by Seller or Buyer, if: (i) any federal or state court of competent jurisdiction shall have issued an Order permanently restraining, enjoining or otherwise prohibiting the Closing, and such Order shall have become final and nonappealable; (ii) any Law shall have been enacted or issued by any Governmental Authority (other than Seller or the Council) which, directly or indirectly, prohibits the consummation of the Transaction; or (iii) the Closing contemplated hereby shall have not occurred on or before the Termination Date; provided, however, that the right to terminate this Agreement under Section 9.1(b)(iii) shall not be available to either Party whose failure to fulfill any obligation under this Agreement has been the cause of, or resulted in, the failure of the Closing to occur on or before the Termination Date.

(c) Subject to the limitations on the right to terminate this Agreement in Section 6.8, this Agreement may be terminated by Buyer if (i) there exists any breach by Seller of any representation or warranty contained in Article 4, or (ii) Seller has breached or failed to perform any of its covenants or other agreements contained in this Agreement to be complied with by Seller such that, in either case, any closing condition set forth in Section 7.1 would not be satisfied, and, in the case of both (i) and (ii) above, such breach or failure to perform is not cured within sixty (60) days of receipt by Seller of written notice thereof from Buyer or is incapable of being cured by Seller.

(d) This Agreement may be terminated by Seller if (i) there exists any breach by Buyer of any representation or warranty contained in Article 5, or (ii) Buyer has breached or failed to perform any of its covenants or other agreements contained in this Agreement to be complied with by Buyer such that, in either case, any closing condition set forth in Section 7.2 would not be satisfied, and, in the case of both (i) and (ii) above, such breach of failure to perform is not cured within sixty (60) days of receipt by Buyer of written notice thereof from Seller or is incapable of being cured by Buyer.

(e) Buyer may terminate this Agreement if permitted under the terms of Section 6.8.

Section 9.2 Effect of Termination. In the event of a termination of this Agreement by Seller or Buyer pursuant to Section 9.1 (other than Section 9.1(a)) the terminating Party shall give prompt written notice to the other Party of its intention to terminate, and this Agreement shall thereupon be deemed terminated upon the date set forth in such written notice,

except as otherwise provided in this Agreement; provided, however, that Buyer's obligations pursuant to Section 8.1(a)(vi) shall survive any such termination. If this Agreement is terminated pursuant to Section 9.1, this Agreement shall be null and void and neither Party shall have any Liability or obligation to the other Party under this Agreement (with respect to such breach or otherwise) or as a result of the termination of this Agreement. If this Agreement is terminated as provided herein, all filings, applications and other submissions made to any Governmental Authority shall, to the extent practicable, be withdrawn from the Governmental Authority to which they were made.

ARTICLE 10.

MISCELLANEOUS PROVISIONS

Section 10.1 Amendment and Modification. This Agreement may not be amended, modified or supplemented, except by written agreement of Seller and Buyer.

Section 10.2 Waiver of Compliance; Consents. Any term or condition of this Agreement may be waived at any time by the Party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by or on behalf of the Party waiving such term or condition. Except as otherwise provided herein, the failure of a Party to this Agreement to assert any of its rights under this Agreement or otherwise shall not constitute a waiver of such rights. A waiver by a Party of the performance of any covenant, condition, representation or warranty of the other Party shall not invalidate this Agreement, nor shall such waiver be construed as a waiver of any other covenant, condition, representation or warranty. A waiver by a Party of the time for performing any act shall not constitute a waiver of the time for performing any other act or the time for performing an identical act required to be performed at a later time.

Section 10.3 Third Party Beneficiaries. This Agreement is intended solely for the benefit of the Parties and their respective successors or permitted assigns, and is not intended by the Parties to confer third-party beneficiary rights upon any other Person, including any employee or any beneficiaries or dependents thereof. No provision of this Agreement shall create any third party beneficiary rights in any Transferred Employee or any former employee of Seller (including any beneficiary or dependent thereof) in respect of terms and conditions of employment or continued or resumed employment with Buyer or its Affiliates. No provision of this Agreement shall create any rights in any such Persons in respect of any compensation or any benefits that may be provided, directly or indirectly, under any Buyer Benefit Plan, nor shall any provision of this Agreement be deemed an amendment of any Benefit Plan.

Section 10.4 Notices. All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally or by overnight courier or sent by registered or certified mail (return receipt requested), postage prepaid, to the recipient Party at its address (or at such other address for a Party, or to the attention of such other individual or office holder, as shall be specified by like notice; provided, however, that any notice of a change of address (or the individual or office holder to whose attention such notice is to be given) shall be effective only upon receipt thereof):

(a) if to Seller, to:

City of Murfreesboro
111 West Vine Street
Murfreesboro, TN 37130
Attention: City Manager

with copies to:

City of Murfreesboro
111 West Vine Street
Murfreesboro, TN 37130
Attention: City Attorney

-and-

if to Buyer, to:

Middle Tennessee Electric Membership Corporation
555 New Salem Highway
Murfreesboro, TN 37129
Attention: Managing Counsel

with a copy to:

Bass Berry & Sims PLC
150 Third Avenue South
Suite 2800
Nashville, TN 37201
Attention: W. Brantley Phillips

(b) A notice delivered personally, under the terms of this Section 10.4, will be deemed given when received. A notice sent by U.S. mail will be deemed given (1) on the fifth (5th) day after such mailing is deposited in the U.S. mail if sent registered or certified mail, postage prepaid, return receipt requested, or (2) on the first (1st) Business Day following deposit with a reputable overnight courier.

Section 10.5 Seller Disclosure Schedules. The Seller Disclosure Schedules shall be arranged in separate parts corresponding to the numbered and lettered sections in Article 4 hereof. The information disclosed in any schedule of the Seller Disclosure Schedules shall be deemed to be a representation of Seller as if set forth in Article 4 hereof. Disclosure of any matter in the Seller Disclosure Schedule shall not constitute an admission or raise any inference that such matter constitutes a violation of Law or an admission of liability or facts supporting liability.

Section 10.6 Assignment. Neither this Agreement nor any right, interest or obligation hereunder may be assigned or delegated by either Party without the prior written consent of the other Party, which may be withheld in such Party's sole discretion. This Agreement is

binding upon, inures to the benefit of and is enforceable by the Parties and their respective successors and permitted assigns.

Section 10.7 *Governing Law; Venue; and No Jury Trial.*

(a) This Agreement shall be governed by and construed in accordance with the Laws of the State of Tennessee (without giving effect to conflict of law principles) as to all matters, including matters of validity, construction, effect, performance and remedies.

(b) THE PARTIES HERETO AGREE THAT VENUE IN ANY AND ALL ACTIONS AND PROCEEDINGS RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT SHALL BE IN THE CHANCERY COURT OF THE STATE OF TENNESSEE, 16TH JUDICIAL DISTRICT, IN RUTHERFORD COUNTY, TENNESSEE, WHICH COURT THE PARTIES AGREE SHALL HAVE EXCLUSIVE JURISDICTION FOR SUCH PURPOSE; PROVIDED, HOWEVER, THE PARTIES HERETO LIKEWISE AGREE TO VENUE IN THE BUSINESS COURT, OR IF THE BUSINESS COURT IS NO LONGER IN EXISTENCE, THE CHANCERY COURT, FOR THE 20TH JUDICIAL DISTRICT, AT NASHVILLE, LOCATED IN DAVIDSON COUNTY, FOR ANY SUCH ACTIONS OR PROCEEDINGS. THE PARTIES EXPRESSLY AND IRREVOCABLY WAIVE ANY OBJECTION TO VENUE OR JURISDICTION IN THE BUSINESS COURT DOCKET FOR SUCH ACTIONS AND PROCEEDINGS. SERVICE OF PROCESS MAY BE MADE IN ANY MANNER RECOGNIZED BY TENNESSEE COURTS.

(c) EACH OF THE PARTIES HERETO IRREVOCABLY WAIVES ITS RIGHT TO A JURY TRIAL WITH RESPECT TO ANY ACTION OR CLAIM ARISING OUT OF ANY DISPUTE IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES HERETO TO ENTER INTO THIS AGREEMENT, AND SHALL SURVIVE THE CLOSING OR TERMINATION OF THIS AGREEMENT.

(d) The Parties acknowledge that Seller may entitled under the Tennessee Government Tort Liability Act to certain protections and limitations of liability to third parties in respect of torts committed by or on behalf of Seller.

Section 10.8 *Counterparts.* This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section 10.9 *Schedules and Exhibits.* Except as otherwise provided in this Agreement, all Exhibits and Schedules (including Seller Disclosure Schedules) referred to herein are intended to be and hereby are specifically made a part of this Agreement.

Section 10.10 *Entire Agreement.* This Agreement and the Ancillary Agreements, including the Exhibits, Schedules, documents, certificates and instruments referred to herein or therein, embody the entire agreement and understanding of the Parties hereto in respect of the Transactions contemplated by this Agreement and shall supersede all previous oral and written agreements and understandings and all contemporaneous oral negotiations, representations, warranties, commitments and understandings including (a) that certain Term Sheet dated August

14, 2019, between Seller and Buyer, as amended, and (b) all documents or communications, whether oral, written or electronic, submitted or made by (i) Buyer or any of its representatives to Seller or any of its representatives or (ii) Seller or any of its representatives to Buyer or any of its representatives, in connection with the sale process that occurred prior to the execution of this Agreement or otherwise in connection with the negotiation and execution of this Agreement.

Section 10.11 No Joint Venture. Nothing in this Agreement creates or is intended to create an association, trust, partnership, joint venture or other entity or similar legal relationship between the Parties, or imposes a trust, partnership or fiduciary duty, obligation or liability on or with respect to the Parties.

Section 10.12 Change in Law. If and to the extent that any Laws (other than Laws of Seller) that govern any aspect of this Agreement shall change, so as to make any aspect of the transaction described in this Agreement unlawful, then the Parties agree to make such modifications to this Agreement as may be reasonably necessary for this Agreement to accommodate any such legal or regulatory changes, without materially changing the overall benefits or consideration expected hereunder by either Party.

Section 10.13 Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future Law, and if the rights or obligations of any Party under this Agreement will not be materially and adversely affected thereby, such provision will be fully severable, this Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement and in lieu of such illegal, invalid or unenforceable provision, Seller and Buyer shall negotiate in good faith to restore insofar as practicable the benefits to each party that were affected by such holding and to include as a part of this Agreement a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible.

[Signatures appear on the following page]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by their respective duly authorized officers as of the date first above written.

MIDDLE TENNESSEE ELECTRIC MEMBERSHIP CORPORATION

By: _____

Name: _____

Title: _____

ATTEST:

CITY OF MURFREESBORO, TENNESSEE

By: _____

Name: _____

City Recorder

Title: _____

(City Seal)

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