

SECTION 13.11. Successors.

All agreements of the Company in this Indenture and the Notes shall bind its successors. All agreements of the Trustee in this Indenture shall bind its successors.

SECTION 13.12. Duplicate Originals.

All parties may sign any number of copies of this Indenture. Each signed copy shall be an original, but all of them together shall represent the same agreement.

SECTION 13.13. Severability.

In case any one or more of the provisions in this Indenture or in the Notes shall be held invalid, illegal or unenforceable, in any respect for any reason, the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions shall not in any way be affected or impaired thereby, it being intended that all of the provisions hereof shall be enforceable to the full extent permitted by law.

SECTION 13.14. Table of Contents, Headings, Etc.

The Table of Contents, Cross-Reference Table and Headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part of this Indenture and shall in no way modify or restrict any of the terms or provisions hereof.

SIGNATURES

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed, all as of the date first written above.

NRG ENERGY, INC.

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

Name:

Title:

**[FORM OF NOTE]****[INSERT GLOBAL NOTE LEGEND AS SPECIFIED IN SECTION 2.15 IF APPLICABLE]****[INSERT PRIVATE PLACEMENT LEGEND AS SPECIFIED IN SECTION 2.15 IF APPLICABLE]**

CUSIP No.: [\_\_\_\_\_]

NRG ENERGY, INC.

10.0% SENIOR NOTE DUE 2010

No. [\_\_\_\_\_]

\$[\_\_\_\_\_]

NRG ENERGY, INC., a Delaware corporation (the "Company," which term includes any successor entity), for value received promises to pay to [\_\_\_\_\_] or registered assigns, the principal sum of [\_\_\_\_\_] Dollars, on [\_\_\_\_\_] 2010.

Interest Payment Dates: [\_\_\_\_\_] and [\_\_\_\_\_].

Record Dates: [\_\_\_\_\_] and [\_\_\_\_\_].

Reference is made to the further provisions of this Note contained herein, which will for all purposes have the same effect as if set forth at this place.

IN WITNESS WHEREOF, the Company has caused this Note to be signed manually or by facsimile by its duly authorized officers and a facsimile of its corporate seal to be affixed hereto or imprinted hereon.

NRG ENERGY, INC.

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

Name:

Title:

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

Name:

Title:

## Certificate of Authentication

This is one of the Notes referred to in the within-mentioned Indenture.

[\_\_\_\_\_] ,  
as Trustee

Dated: [\_\_\_\_\_]

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

Authorized Signatory

(REVERSE OF SECURITY)

10.0% SENIOR NOTE DUE 2010

1. Interest. NRG Energy, Inc., a Delaware corporation (the “Company”), promises to pay interest on the principal amount of this Note as follows: Interest will accrue on this Note at a rate of 10.0% per annum from the most recent date on which interest has been paid or, if no interest has been paid, from [Effective Date] and shall be payable in cash semi-annually in arrears on each Interest Payment Date, commencing [ ]; provided, that the Company may elect on any Interest Payment Date occurring on or prior to [ ], 2008 to cause interest on this Note to accrete as additional principal at a rate of 12.0% per annum (such amounts, “PIK Interest”); provided, further, that such PIK Interest shall be payable in cash upon the earlier to occur of (i) [ ], 2008 and (ii) the date on which the outstanding principal amount of this Note is paid in full. All interest will be computed on the basis of a 360-day year of twelve 30-day months.

The Company shall pay interest on overdue principal and on overdue installments of interest (without regard to any applicable grace period) to the extent lawful from time to time on demand at the rate borne by the Notes plus 2.0% per annum.

2. Method of Payment. The Company shall pay interest on the Notes (except defaulted interest) to the Persons who are the registered Holders at the close of business on the Record Date immediately preceding the Interest Payment Date even if the Notes are cancelled on registration of transfer or registration of exchange after such Record Date. Holders must surrender Notes to a Paying Agent to collect principal payments. The Company shall pay principal and interest at the corporate offices of the Paying Agent in money of the United States that at the time of payment is legal tender for payment of public and private debts (“U.S. Legal Tender”). However, the Company may pay interest by its check payable in such U.S. Legal Tender. The Company may deliver any such interest payment to the Paying Agent (if the Paying Agent is a Person other than the Company) or to a Holder at the Holder’s registered address.

3. Paying Agent and Registrar. Initially, Wilmington Trust Company, a Delaware trust company (the “Trustee”), will act as Paying Agent and Registrar. The Company may change any Paying Agent, Registrar or co-Registrar without notice to the Holders.

4. Indenture. The Company issued the Notes under an Indenture, dated as of [ ], 2003 (the “Indenture”), by and between the Company and the Trustee. This Note is one of a duly authorized issue of Notes of the Company designated as its 10.0% Senior Notes due 2010. The Notes are limited in initial aggregate principal amount to \$500.0 million (excluding any capitalized PIK Interest). Capitalized terms herein are used as defined in the Indenture unless otherwise defined herein. The terms of the Notes include those stated in the Indenture and those made part of the Indenture by reference to the Trust Indenture Act of 1939 (15 U.S. Code §§ 77aaa–77bbb) (the “TIA”), as in effect on the date of the Indenture. Notwithstanding anything to the contrary herein, the Notes are subject to all such terms, and Holders of Notes are referred to the Indenture and the TIA for a statement of them. The Notes are general unsecured obligations of the Company.

## 5. Redemption.

(a) Optional Redemption. The Notes will be redeemable, at the Company's option, in whole at any time or in part from time to time, as set forth below:

(i) On or prior to [\_\_\_\_],<sup>3</sup> the Notes will be subject to redemption at a redemption price equal to 100% of the principal amount thereof plus accrued and unpaid interest thereon, if any, to but not including the applicable Redemption Date; and

(ii) On or after [\_\_\_\_], the Notes will be subject to redemption at the redemption prices (expressed as percentages of the principal amount thereof) set forth below plus accrued and unpaid interest thereon, if any, to but not including the applicable Redemption Date, if redeemed during the twelve-month period beginning on [\_\_\_\_] of the years indicated below:

Year	%
[200_]	[____%]
[200_]	[____%]
[200_]	[____%]
[200_] and thereafter	[____%]

provided, however, that, in the case of a redemption pursuant to either clause (i) or (ii) above, if the notice of redemption is mailed prior to an Interest Payment Date but the Redemption Date falls after such Interest Payment Date, then the applicable interest shall be paid on such Interest Payment Date and the accrued and unpaid interest to the Redemption Date shall be that interest accruing from such Interest Payment Date to the Redemption Date.

(b) Optional Redemption Upon Equity Offerings. At any time and from time to time, prior to [ ] 2006, the Company may redeem up to a maximum of 35% of the original aggregate principal amount of the Notes with the net cash proceeds of one or more Equity Offerings, at a Redemption Price equal to 100% of the principal amount thereof, plus accrued and unpaid interest thereon, if any, to the Redemption Date; provided, however, that immediately after giving effect to any such redemption, at least 65% of the original aggregate principal amount of the Notes (excluding Notes held by the Company and its Subsidiaries) remains outstanding. Any such redemption shall be made within 75 days of such Equity Offering; provided, however, that if the notice of redemption is mailed prior to an Interest Payment Date but the Redemption Date falls after the same Interest Payment Date, then the applicable interest shall be paid on the Interest Payment Date and the accrued and unpaid interest to the Redemption Date shall be that interest accruing from the Interest Payment Date to the Redemption Date.

(c) Makewhole Redemption. The Company may choose to redeem the Notes at any time following [\_\_\_\_]<sup>4</sup> and prior to [\_\_\_\_] upon the terms and subject to the conditions

<sup>3</sup> The date that is 180 days following the Effective Date.

set forth in this paragraph. The Company may redeem all or any portion of the Notes, at once or from time to time, after giving the required notice under the Indenture. To redeem the Notes prior to [ ], the Company must pay a Redemption Price equal to the greater of:

(i) 100% of the principal amount of the Notes to be redeemed, and

(ii) the sum of the present values of (i) the Redemption Price of the Notes at [ ] (such Redemption Price being [ ]%) and (ii) any interest due on the Notes through [ ], in each case discounted to the date of redemption on a semiannual basis (assuming a 360-day year consisting of twelve 30-day months) at the Makewhole Rate plus [ ]%, plus, in either case, accrued and unpaid interest, if any, to the Redemption Date; provided, however, that if the notice of redemption is mailed prior to an Interest Payment Date but the Redemption Date falls after such Interest Payment Date, then the applicable interest shall be paid on such Interest Payment Date and the accrued and unpaid interest to the Redemption Date shall be that interest accruing from such Interest Payment Date to the Redemption Date.

Any notice to Holders of Notes of such a redemption shall include the appropriate calculation of the Redemption Price, but is not required to include the Redemption Price itself. The actual Redemption Price, calculated as described above, shall be set forth in an Officers' Certificate delivered to the Trustee no later than two Business Days prior to the Redemption Date.

(d) Notice of Redemption. Notice of redemption shall be mailed at least 30 days but not more than 60 days before the Redemption Date to each Holder of Notes to be redeemed at such Holder's registered address. Notes in denominations larger than \$1,000 may be redeemed in part.

Except as set forth in the Indenture, if U.S. Legal Tender for the redemption of the Notes called for redemption shall have been deposited with the Paying Agent (if the Paying Agent is a Person other than the Company) for redemption on such Redemption Date, then, unless the Company defaults in the payment of such Redemption Price plus accrued interest, if any, the Notes called for redemption will cease to bear interest from and after such Redemption Date and the only right of the Holders of such Notes will be to receive payment of the Redemption Price plus accrued interest, if any.

6. Offers to Purchase. Sections 4.15 and 4.16 of the Indenture provide that, after certain Asset Sales (as defined in the Indenture) and upon the occurrence of a Change of Control (as defined in the Indenture), and subject to further limitations contained therein, the Company will make an offer to purchase certain amounts of the Notes in accordance with the procedures set forth in the Indenture.

7. Denominations; Transfer; Exchange. The Notes are in registered form, without coupons, in denominations of whole dollar integrals. Any Notes issued upon registration of transfer of Notes shall be in denominations of whole dollar integrals. A Holder shall register the transfer of or exchange Notes in accordance with the Indenture. The Registrar may require a

---

<sup>4</sup> 180 days following Effective Date.

Holder, among other things, to furnish appropriate endorsements and transfer documents and to pay certain transfer taxes or similar governmental charges payable in connection therewith as permitted by the Indenture. The Registrar need not register the transfer of or exchange of any Notes or portions thereof selected for redemption.

8. Persons Deemed Owners. The registered Holder of a Note shall be treated as the owner of it for all purposes.

9. Unclaimed Money. If money for the payment of principal or interest remains unclaimed for two years, the Trustee and the Paying Agent will pay the money back to the Company. After that, all liability of the Trustee and such Paying Agent with respect to such money shall cease.

10. Discharge Prior to Redemption or Maturity. If the Company at any time deposits with the Trustee U.S. Legal Tender or U.S. Government Obligations sufficient to pay the principal of and interest on the Notes to redemption or maturity and complies with the other provisions of the Indenture relating thereto, the Company will be discharged from certain provisions of the Indenture and the Notes (including certain covenants, but excluding its obligation to pay the principal of and interest on the Notes).

11. Amendment; Supplement; Waiver. Subject to certain exceptions, the Indenture or the Notes may be amended or supplemented with the written consent of the Holders of at least a majority in aggregate principal amount of the Notes then outstanding, and any existing Default or Event of Default or noncompliance with any provision may be waived with the written consent of the Holders of a majority in aggregate principal amount of the Notes then outstanding. Without notice to or consent of any Holder, the parties thereto may amend or supplement the Indenture or the Notes to, among other things, cure any ambiguity, defect or inconsistency, provide for uncertificated Notes in addition to or in place of certificated Notes, or comply with Article Five of the Indenture or make any other change that does not adversely affect in any material respect the rights of any Holder of a Note.

12. Restrictive Covenants. The Indenture imposes certain limitations on the ability of the Company and the Restricted Subsidiaries to, among other things, incur additional Indebtedness, make payments in respect of its Capital Stock or certain Indebtedness, enter into transactions with Affiliates, create dividend or other payment restrictions affecting Restricted Subsidiaries, merge or consolidate with any other Person, sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its assets or adopt a plan of liquidation. Such limitations are subject to a number of important qualifications and exceptions. The Company must annually report to the Trustee on compliance with such limitations.

13. Successors. When a successor assumes, in accordance with the Indenture, all the obligations of its predecessor under the Notes and the Indenture, the predecessor will be released from those obligations.

14. Defaults and Remedies. If an Event of Default occurs and is continuing, the Trustee or the Holders of at least 25% in aggregate principal amount of Notes then outstanding may declare all the Notes to be due and payable in the manner, at the time and with the effect

provided in the Indenture. Holders of Notes may not enforce the Indenture or the Notes except as provided in the Indenture. The Trustee is not obligated to enforce the Indenture or the Notes unless it has received indemnity reasonably satisfactory to it. The Indenture permits, subject to certain limitations therein provided, Holders of a majority in aggregate principal amount of the Notes then outstanding to direct the Trustee in its exercise of any trust or power. The Trustee may withhold from Holders of Notes notice of any continuing Default or Event of Default (except a Default in payment of principal or interest) if it determines that withholding notice is in their interest.

15. **Trustee Dealings with Company.** The Trustee under the Indenture, in its individual or any other capacity, may become the owner or pledgee of Notes and may otherwise deal with the Company, its Subsidiaries or their respective Affiliates as if it were not the Trustee.

16. **No Recourse Against Others.** No stockholder, director, officer, employee or incorporator, as such, of the Company shall have any liability for any obligation of the Company under the Notes or the Indenture or for any claim based on, in respect of or by reason of, such obligations or their creation. Each Holder of a Note by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for the issuance of the Notes.

17. **Authentication.** This Note shall not be valid until the Trustee or Authenticating Agent manually signs the certificate of authentication on this Note.

18. **Governing Law.** The laws of the State of New York shall govern this Note and the Indenture, without regard to principles of conflicts of law.

19. **Abbreviations and Defined Terms.** Customary abbreviations may be used in the name of a Holder of a Note or an assignee, such as: TEN CON (= tenants in common), TEN ENT (= tenants by the entireties), JT TEN (= joint tenants with right of survivorship and not as tenants in common), CUST (= Custodian), and U/G/M/A (= Uniform Gifts to Minors Act).

20. **CUSIP Numbers.** Pursuant to a recommendation promulgated by the Committee on Uniform Security Identification Procedures, the Company has caused CUSIP numbers to be printed on the Notes as a convenience to the Holders of the Notes. No representation is made as to the accuracy of such numbers as printed on the Notes and reliance may be placed only on the other identification numbers printed hereon.

21. **Indenture.** Each Holder, by accepting a Note, agrees to be bound by all of the terms and provisions of the Indenture, as the same may be amended from time to time.

The Company will furnish to any Holder of a Note upon written request and without charge a copy of the Indenture, which has the text of this Note in larger type. Requests may be made to: NRG Energy, Inc., 901 Marquette Avenue, Suite 2300, Minneapolis, Minnesota 55402, Attn: Chief Financial Officer.



ASSIGNMENT FORM

If you the Holder want to assign this Note, fill in the form below and have your signature guaranteed:

I or we assign and transfer this Note to:

---

---

---

(Print or type name, address and zip code and social security or tax ID number of assignee)

and irrevocably appoint \_\_\_\_\_, agent to transfer this Note on the books of the Company. The agent may substitute another to act for him.

Dated: \_\_\_\_\_

Signed: \_\_\_\_\_

(Sign exactly as name appears on the other side of this Note)

Signature Guarantee: \_\_\_\_\_

A-7

[OPTION OF HOLDER TO ELECT PURCHASE]

If you want to elect to have this Note purchased by the Company pursuant to Section 4.15 or Section 4.16 of the Indenture, check the appropriate box:

Section	4.15	[ ]
Section	4.16	[ ]

If you want to elect to have only part of this Note purchased by the Company pursuant to Section 4.15 or Section 4.16 of the Indenture, state the amount you elect to have purchased:

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

Dated: \_\_\_\_\_

NOTICE: The signature on this assignment must correspond with the name as it appears upon the face of the within Note in every particular without alteration or enlargement or any change whatsoever and be guaranteed by the endorser's bank or broker.

Signature Guarantee: \_\_\_\_\_

A-8

PROMISSORY NOTE

U.S. \$10,000,000.00

[Effective Date], 2003  
Minneapolis, Minnesota

FOR VALUE RECEIVED, NRG ENERGY, INC., a Delaware corporation ("Obligor"), promises to pay to XCEL ENERGY INC., a Minnesota corporation ("Holder"), at its offices at 800 Nicollet Mall, Minneapolis, Minnesota 55402, or at such other place or places as Holder may from time to time designate in writing, the principal amount of TEN MILLION and NO/100 U.S. DOLLARS (US\$10,000,000.00), on [2 ½ years from Effective Date], 2006 (the "Maturity Date"), together with accrued but unpaid interest thereon at the rate per annum as hereinafter set forth.

Interest shall be computed on the basis of a 360-day year consisting of twelve 30-day months, and shall be at a rate per annum equal to three percent (3%). Upon and during the continuance of a Default of the nature set forth in paragraph A below, interest shall be at a varying rate per annum equal to the Prime Rate (as such term is hereinafter defined). Interest accrued at the rate set forth above shall be due and payable quarterly on the last day of each March, June, September and December, commencing on the last day of December, 2003. After the Maturity Date, interest shall be payable on demand.

All payments hereunder shall be made in lawful currency of the United States and in immediately available funds. All payments shall be made without deduction for or on account of any present or future taxes, duties or other charges levied or imposed on this Promissory Note, the proceeds hereof, Holder or Obligor by any governmental authority or political subdivision thereof, except for any amounts that the Obligor may be required to withhold under applicable law. Obligor shall upon request of Holder pay all such taxes, duties or other charges in addition to principal and interest, including without limitation all documentary stamp and intangible taxes incurred by the Holder upon the issuance of this Promissory Note by Obligor, but excluding income taxes based solely on Holder's net income.

Obligor may prepay all or a portion of this Promissory Note at any time and from time to time without penalty or premium.

Whenever any payment to be made under this Promissory Note shall be stated to be due on a day other than a Business Day (as such term is hereinafter defined), such payment may be made on the next succeeding Business Day.

Obligor hereby represents and warrants to Holder that:

- (i) Obligor is existing and in good standing under the laws of its state of incorporation, is duly qualified, in good standing and authorized to do business in each jurisdiction where failure to do so might have a material adverse impact on the consolidated assets, condition or prospects of Obligor; the execution, delivery and performance of this Promissory Note are within Obligor's powers and have been authorized by all necessary corporate action.

(ii) The execution, delivery and performance of this Promissory Note have received any and all necessary governmental approvals, and do not and will not contravene or conflict with any provision of law or of the charter or by-laws of Obligor or any agreement affecting Obligor or its property.

(iii) Obligor is not in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation U issued by the Board of Governors of the Federal Reserve System), and no part of the proceeds of the loan represented by this Promissory Note has been or will be used to purchase or carry any margin stock or to extend credit to others for the purpose of purchasing or carrying any margin stock.

The occurrence of any one or more of the following events shall constitute a "Default" hereunder:

B. Obligor fails to pay the principal hereof or interest hereon or any other amount due hereunder, in each case within five days after the due date thereof; or

C. Obligor fails in any material respect to perform, keep or observe any other term, provision, condition or covenant contained in this Promissory Note, which is required to be performed, kept or observed by Obligor and the same is not cured within thirty (30) days after Holder gives Obligor written notice identifying such default; or

D. The Obligor shall apply for or consent to the appointment of any receiver, trustee or similar officer for it; the Obligor or any Subsidiary shall apply for or consent to the appointment of any receiver, trustee or similar officer for any assets of Obligor and/or its Subsidiaries which are material to the business, operations or financial condition of the Obligor and its Subsidiaries taken as a whole; or an application is made by a person other than Obligor for the appointment of a receiver, trustee, or custodian for the Obligor or any Subsidiary or such assets and the same is not dismissed within 60 days after the application therefor; or

E. Any assets of Obligor or any Subsidiary which are material to the business, operations or financial condition of the Obligor and its Subsidiaries taken as a whole are seized, levied upon or subjected to a writ, warrant of attachment or execution or similar process; or a notice of lien, levy or assessment is filed of record with respect to assets of Obligor or any Subsidiary which are material to the business, operations or financial condition of the Obligor and its Subsidiaries taken as a whole by the United States, or any department, agency or instrumentality thereof or by any state, county, municipal or other governmental agency, including, without limitation, the Pension Benefit Guaranty Corporation (collectively, the "Governmental Entities"); or any taxes or debts which are past due or delinquent owing to any Governmental Entity becomes a lien or encumbrance upon any such assets and such lien or encumbrance is not released within 60 days after such delinquency; or

F. Obligor becomes insolvent or fails to pay its debts generally as they become due; or Obligor makes an assignment for the benefit of its creditors; or Obligor and its Subsidiaries cease to conduct any portion of their businesses which is material to the business, operations or financial condition of the Obligor and its Subsidiaries (taken as a whole) or is

enjoined, restrained or in any way prevented by court order from conducting all or any material part of their business affairs (taken as a whole); or

G. A petition under any section or chapter of the United States Bankruptcy Code or similar law or regulation is filed by the Obligor; or a petition under any section or chapter of the United States Bankruptcy Code or any similar law or regulation is filed against Obligor and is not dismissed within 60 days after filing; or an order for relief is entered in any case under the United States Bankruptcy Code naming the Obligor as debtor; or any case or proceeding is filed by Obligor for its dissolution, liquidation, or termination; or any case or proceeding is filed against the Obligor for its dissolution, liquidation or termination and such case or proceeding is not dismissed within 60 days; or

Upon the occurrence and during the continuance of any Default specified in paragraphs (A) through (E) above, Holder at its option may declare this Promissory Note (including principal, interest and other amounts ) immediately due and payable without notice or demand of any kind. Upon the occurrence of any Default specified in paragraph (F) above, this Promissory Note (including principal, interest and other amounts) shall be immediately and automatically due and payable without any action of any kind on the part of Holder. During the continuance of any Default, Holder may exercise any rights and remedies under this Promissory Note and at law or in equity.

Obligor waives notice of dishonor or default as well as presentment, demand, protest and notice of any kind in connection herewith. Any failure of Holder to exercise any right available hereunder or otherwise shall not be construed as a waiver of the right to exercise the same or as a waiver of the right to exercise any other right at any other time.

When used herein, the following terms shall have the following meanings:

“Business Day” shall mean any day other than a Saturday, a Sunday or a day on which banking institutions located in the State of Minnesota are authorized or obligated by law or executive order to close.

“Prime Rate” shall mean the interest rate per annum from time to time announced and made effective by Wells Fargo Bank, National Association as its “Prime Rate”, or, as the case may be, the base, reference or other similar rate then designated by Wells Fargo Bank, National Association for commercial loan reference purposes.

“Subsidiary” shall mean any corporation, partnership, limited liability company, joint venture, trust, or other legal entity of which Obligor owns directly or indirectly more than fifty percent (50%) of the outstanding voting stock or interest, or of which Obligor has effective control, by contract or otherwise.

This Promissory Note shall bind Obligor, its successors and assigns, and shall inure to the benefit of Holder, its successors and assigns, except that (i) Obligor may not transfer or assign any of its rights or interest hereunder without the prior written consent of Holder and (ii) prior to the occurrence of a Default, Holder may not transfer or assign any of its rights or interest hereunder without the prior written consent of Obligor, which shall not be unreasonably withheld or delayed.

Obligor agrees to pay upon demand all reasonable out-of-pocket expenses (including without limitation attorneys' fees, legal costs and expenses) incurred or paid by Holder or any holder hereof in connection with the enforcement hereof after a Default.

Notwithstanding any other provision of this Promissory Note, interest, fees and charges payable by reason of the indebtedness evidenced hereby shall not exceed the maximum, if any, permitted by applicable law. If acceleration, prepayment or any other charges upon the principal or any portion thereof, or any other circumstance, result in the computation or earning of interest in excess of the highest lawful rate, then any and all such excess is hereby waived and shall be applied against the remaining principal balance.

This Promissory Note shall be governed and construed in accordance with the internal laws of the State of Minnesota. Wherever possible each provision of this Promissory Note shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Promissory Note shall be prohibited by or invalid under such law, such provision shall be severable, and be ineffective to the extent of such prohibition or invalidity, without invalidating the remaining provisions of this Promissory Note.

OBLIGOR HEREBY IRREVOCABLY AGREES THAT, SUBJECT TO HOLDER'S SOLE AND ABSOLUTE ELECTION, ALL SUITS, ACTIONS OR OTHER PROCEEDINGS WITH RESPECT TO, ARISING OUT OF OR IN CONNECTION WITH THIS PROMISSORY NOTE SHALL BE SUBJECT TO LITIGATION IN COURTS HAVING SITUS WITHIN OR JURISDICTION OVER HENNEPIN COUNTY, MINNESOTA. OBLIGOR HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY LOCAL, STATE OR FEDERAL COURT LOCATED IN OR HAVING JURISDICTION OVER SUCH COUNTY AND *HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO REQUEST OR DEMAND TRIAL BY JURY*, TO TRANSFER OR CHANGE THE VENUE OF ANY SUIT, ACTION OR OTHER PROCEEDING BROUGHT BY HOLDER IN ACCORDANCE WITH THIS PARAGRAPH, OR TO CLAIM THAT ANY SUCH PROCEEDING HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

NRG ENERGY, INC.

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

Its: \_\_\_\_\_

-4-

## EMPLOYEE MATTERS AGREEMENT

THIS EMPLOYEE MATTERS AGREEMENT (this "Agreement") is entered into as of \_\_\_\_\_, 2003, between Xcel Energy Inc. ("Xcel"), a Minnesota corporation, and NRG Energy, Inc. ("NRG"), a Delaware corporation.

WHEREAS, on May 14, 2003, NRG and certain related entities (the "Debtors") filed voluntary petitions for relief under Section 301 of Title 11, United States Code, 11 U.S.C. §101, et seq., as amended (the "Bankruptcy Code"), in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court");

WHEREAS, on \_\_\_\_\_, 2003, a joint plan of reorganization of the Debtors (the "Plan of Reorganization") was filed with the Bankruptcy Court, including a proposed settlement between Xcel and NRG (the "Settlement Agreement");

WHEREAS, the Settlement Agreement contemplates that the Plan of Reorganization would approve an employee matters agreement pursuant to which various obligations with respect to employees and benefit plans would be allocated between Xcel and NRG as of the "Effective Date" as defined in the Plan of Reorganization (the "Effective Date"); and

WHEREAS, in order to carry out the intent of the Settlement Agreement, Xcel and NRG desire to enter into this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the covenants and agreements set forth below, the parties hereto agree as follows:

### ARTICLE I DEFINITIONS

Wherever used in this Agreement, capitalized terms used herein and not otherwise defined shall have the respective meanings assigned to them in the Settlement Agreement. The singular shall include the plural, unless the context indicates otherwise. Headings of sections are used for convenience of reference only, and in case of conflict, the text of this Agreement, rather than such headings, shall control.

### ARTICLE II XCEL ENERGY PENSION PLAN

- 2.01 Individuals employed by NRG or any NRG Subsidiary that is a participating employer in the Xcel Energy Pension Plan (the "Pension Plan") as of May 13, 2003 (such individuals being hereinafter referred to as the "Employees") will continue to be eligible to participate in the Pension Plan until the Effective Date in accordance with the terms thereof, as in effect from time to time, applicable to

Employees, including the benefit formulas thereunder in effect as of May 13, 2003, and NRG and any applicable NRG Subsidiary will continue until the Effective Date as participating employers in the Pension Plan.

- 2.02 Prior to the Effective Date, Xcel will adopt an amendment to the Pension Plan and NRG and Xcel will take such other action as may be determined by NRG and Xcel to be necessary or desirable to provide that as of the Effective Date (i) NRG and any applicable NRG Subsidiary will cease to be participating employers in the Pension Plan, (ii) the Employees will no longer actively participate in the Pension Plan, (iii) no Employee who is not a participant in the Pension Plan immediately prior to the Effective Date will be eligible to participate in the Pension Plan and (iv) the Employees' benefits under the Pension Plan will be frozen as of the Effective Date (except as set forth in Section 2.03 below) and Employees will cease to accrue further benefits under the Pension Plan as of the Effective Date. Xcel shall be responsible for satisfying all notice and filing requirements including, but not limited to, the applicable notice and filing requirements under ERISA section 204(h) and regulations thereunder. Furthermore, with regard to all notices to Employees other than any required notice under ERISA section 204(h), Xcel shall allow sufficient time and opportunity in the preparation of such notices for NRG to review and comment on any notice prior to its distribution.
- 2.03 With respect to Employees who, as of the Effective Date, both are employed by NRG or any NRG Subsidiary and are participants in the Pension Plan (the "NRG Participants"), the Pension Plan shall provide that service, calculated in accordance with the terms of the Pension Plan, with NRG or any NRG Subsidiary from and after the Effective Date shall be credited (i) for vesting purposes under the Pension Plan for NRG Participants not fully vested under the Pension Plan, and (ii) for purposes of eligibility for entitlement for commencement or receipt of benefits under the Pension Plan, including, without limitation, for eligibility for commencement or receipt of any early retirement benefits or supplement thereunder. Service with NRG or any NRG Subsidiary on and after the Effective Date will not be credited under the Pension Plan for any other purpose, including, without limitation, benefit accrual purposes. To the extent a partial termination, within the meaning of Section 411(d)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), of the Pension Plan would occur as of the Effective Date, whether as a result of Employees ceasing to be employed by Xcel and its subsidiaries or otherwise, such Employees will become fully vested as of the Effective Date in their frozen benefit under the Pension Plan as and to the extent provided by Section 411(d)(3) of the Code.
- 2.04 The frozen benefits to which Employees are entitled under the terms of the Pension Plan, as required to be modified by this Agreement, will be paid to them as and when provided in the Pension Plan. The obligation for such benefits will remain with the Pension Plan, and Xcel and the Pension Plan will have the sole responsibility to fund and provide such benefits.



- 2.05 From and after the date hereof, Xcel shall continue to administer, or cause to be administered, the Pension Plan in accordance with its terms as in effect from time to time and applicable law, and Xcel or its delegates shall have the sole and absolute discretion and authority to construe and interpret the Pension Plan, as set forth therein. Xcel shall not, without first consulting with NRG, amend any material feature of the Pension Plan, except to the extent such amendment (i) would not adversely affect any benefits of the Employees under the Pension Plan or (ii) may be necessary or appropriate, as determined by Xcel, to comply with applicable law and rulings or regulations thereunder.
- 2.06 From and after the date hereof and through the Effective Date, NRG shall perform, and shall cause each of the applicable NRG Subsidiaries to perform, with respect to its participation in the Pension Plan as a participating employer, the duties of a participating employer as set forth in the Pension Plan including (without limitation): (i) assisting in the administration of benefit payments, to the extent requested by the administrator of the Pension Plan; (ii) cooperating fully with Pension Plan auditors and Xcel benefit personnel and benefit vendors; and (iii) preserving the confidentiality of all financial arrangements Xcel has or may have with any vendors, administrators, trustees or any other entity or individual with whom Xcel has entered into an agreement relating to the Pension Plan.

### ARTICLE III NON-QUALIFIED RETIREMENT PLANS

- 3.01 With respect to the Xcel Energy Inc. Nonqualified Deferred Compensation Plan and the Xcel Energy Inc. Nonqualified Pension Plan (collectively, the "NQRPs"), NRG and Xcel will determine prior to the Effective Date the proportion of the obligations owing thereunder as of the Effective Date to individuals employed by NRG or any NRG Subsidiary as of the date hereof ("NRG NQRP Participants") that is legally allocable to Xcel by virtue of the NRG NQRP Participants' prior service with Xcel, Northern States Power Company and any other service taken into account under the NQRPs, other than service with NRG and its subsidiaries (the "Xcel NQRP Amount"). To the extent Xcel has not previously satisfied such obligation, Xcel will maintain responsibility for payment of the Xcel NQRP Amount to which the NRG NQRP Participants become entitled under the NQRPs, and NRG will have no obligation or liability for payment of such amount.
- 3.02 NRG will be solely responsible for payment of the NRG NQRP Amount, and Xcel will have no obligation or liability for payment of such amount under the NQRPs or any replacement plan for any excess of (i) the total amount owing to NRG NQRP Participants under the NQRPs over (ii) the Xcel NQRP Amount (the "NRG NQRP Amount").

ARTICLE IV  
PARTICIPANT INFORMATION

NRG and Xcel will use reasonable best efforts to provide, or cause to be provided, to each other on a timely basis all participant information that is necessary or appropriate for the efficient and accurate administration of the Pension Plan and the NQRPs with respect to Employees, including, without limitation, information necessary or appropriate to calculate service, as defined in the Pension Plan, with NRG or any NRG Subsidiary from and after the Effective Date, information relating to the termination of employment with NRG and the NRG Subsidiaries after the Effective Date for any reason, and all information regarding the NQRPs and NRG NQRP Participants to enable Xcel and NRG to determine the Xcel NQRP Amount and the NRG NQRP Amount prior to the Effective Date.

ARTICLE V  
INDEMNIFICATION

- 5.01 NRG shall, for itself and as agent for each NRG Subsidiary, indemnify and hold Xcel and its directors, officers, employees, affiliates, agents and other representatives harmless from any liability or expense (including reasonable attorneys' fees) resulting from any claims of any nature that relate to, arise out of, or result from any of the following:
- (i) any acts or omissions or alleged acts or omissions by or on behalf of NRG or any NRG Subsidiary as participating employers under the Pension Plan except for any such acts or omissions resulting from acts or omissions described in Section 5.02(i), (ii) and (iii);
  - (ii) any acts or omissions or alleged acts or omissions by or on behalf of NRG or any NRG Subsidiary under or with respect to any plan sponsored or maintained by NRG or NRG Subsidiary that was merged into the Pension Plan except for any such acts or omissions resulting from acts or omissions described in Section 5.02(i), (ii) and (iii); or
  - (iii) any breach by NRG of this Agreement.
- 5.02 Xcel shall indemnify and hold NRG and its directors, officers, employees, affiliates, agents and other representatives harmless from any liability or expense (including reasonable attorneys' fees) resulting from any claims of any nature that relate to, arise out of, or result from any of the following:
- (i) any acts or omissions or alleged acts or omissions by or on behalf of Xcel as sponsor of the Pension Plan except for any such acts or omissions resulting from acts or omissions described in Section 5.01(i), (ii) and (iii);
  - (ii) any acts or omissions or alleged acts or omissions by or on behalf of Xcel related to the merger of any plan sponsored or maintained by NRG or NRG Subsidiary into the Pension Plan or related to the freezing of benefit

accruals of Employees under the Pension Plan except for any such acts or omissions resulting from acts or omissions described in Section 5.01(i), (ii) and (iii); or

(iii) any breach by Xcel of this Agreement.

#### ARTICLE VI MISCELLANEOUS

- 6.01 This Agreement shall not be assigned by any of the parties hereto without the prior written consent of the other party hereto. This Agreement is intended to bind and inure to the benefit of the parties hereto and their respective successors and assigns.
- 6.02 It is acknowledged and agreed by each of the parties hereto that should any provisions of this Agreement be declared or be determined to be illegal or invalid by final determination of any court of competent jurisdiction after the Effective Date, the validity of the remaining parts, terms or provisions of this Agreement shall not be affected thereby, and the illegal or invalid part, term or provision shall be deemed not to be a part of this Agreement.
- 6.03 The rights and obligations arising under this Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Minnesota.
- 6.04 This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page by facsimile shall be effective as delivery of a manually executed counterpart.
- 6.05 Nothing herein express or implied is intended or shall be construed to confer upon or give to any person, firm or corporation, other than the parties hereto and their respective permitted successors and assigns, any rights or remedies under or by reason of this Agreement, such third parties specifically including, without limitation, any employees of any party hereto.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed and delivered by its duly authorized officers as of the date first written above to be effective upon the Effective Date.

XCEL ENERGY INC.

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

Name: \_\_\_\_\_

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

NRG ENERGY, INC.

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

-6-

**AMENDED AND RESTATED KEY EXECUTIVE RETENTION, RESTRUCTURING  
BONUS**

**AND SEVERANCE AGREEMENT**

**Between  
NRG Energy, Inc.  
And  
Scott J. Davido**

## Table of Contents

Article 1.	Establishment, Term and Purpose	1
Article 2.	Definitions	1
Article 3.	Restructuring Bonus	4
Article 4.	Severance Benefits	4
Article 5.	Excise Tax	6
Article 6.	Outplacement Assistance	7
Article 7.	The Company's Payment Obligation	7
Article 8.	Withholding	8
Article 9.	Non-Competition Other Than Upon Change in Control	8
Article 10.	Non-Disparagement	10
Article 11.	Successors and Assignment	10
Article 12.	Miscellaneous	11

## Severance Agreement

### Article 1. Establishment, Term and Purpose

1.1 Establishment of the Agreement. NRG Energy, Inc., hereby enters into this Key Executive Retention, Restructuring Bonus and Severance Agreement with Scott J. Davido (the "Participant") as of July 1, 2003.

1.2 Term of the Agreement. This Agreement shall be effective on the date indicated above and shall remain in effect until the earlier of: (a) a Restructuring Event or (b) termination of the Participant's employment with the Company.

1.3 Purpose of the Agreement. The purpose of the Agreement is to provide an executive officer and key person of the Company (i) compensation for contributing to a Restructuring Event and (ii) financial security in the event of a termination of employment from the Company. This Agreement shall supercede any other restructuring incentive, severance or severance-related plan or agreement in which the Participant had participated. The Board has determined that Scott J. Davido is eligible to participate in the Agreement as of the Effective Date.

### Article 2. Definitions

Whenever used in this Agreement, the following terms shall have the meanings set forth below:

2.1 "Agreement" means this Amended and Restated Key Executive Retention, Restructuring Bonus and Severance Agreement between the Company and Scott J. Davido.

2.2 "Bankruptcy Code" means title 11 of the United States Code, 11 U.S.C. §§ 101- 1330.

2.3 "Base Salary" means an amount equal to the Participant's base annual salary as of the date of his termination of employment or the Effective Date, as applicable. As of July 1, 2003, Participant's Base Salary shall be \$500,000.00. Subsequent to the Effective Date and payment of any Restructuring Bonus, Participant's Base Salary shall be \$300,000.00. For this purpose, "Base Salary" shall not include bonuses, long-term incentive compensation, or any remuneration other than base annual salary.

2.4 "Beneficial Owner" shall have the meaning ascribed to such term in Rule 13d-3 of the General Rules and Regulations under the Exchange Act.

2.5 "Beneficiary" means the persons or entities designated or deemed to be designated by the Participant.

2.6 "Board" means the Board of Directors of the Company.

2.7 "Cause" means the occurrence of any one or more of the following events:

- (a) The continued failure by the Participant to substantially and effectively perform his normal duties (other than any such failure resulting from the Participant's Disability), after a written demand for substantial performance, signed by the CEO or the Participant's immediate supervisor, is delivered to the Participant, that identifies the manner in which the Participant has not substantially and effectively performed his duties, and the Participant has failed to remedy the situation within thirty (30) business days of receiving such notice;
- (b) The Participant's conviction or guilty plea for committing an act of fraud, embezzlement, theft, or other act constituting a felony; or the Participant's violation of the Company Code of Conduct; or
- (c) The engaging by the Participant in willful, reckless or grossly negligent conduct materially and demonstrably injurious to the Company. However, no act, or failure to act on the Participant's part, shall be considered "willful" unless done, or omitted to be done, by the Participant not in good faith and without reasonable belief that his action or omission was in the best interest of the Company.

2.8 "Code" means the United States Internal Revenue Code of 1986, as amended.

2.9 "Company" means NRG Energy, Inc., a Delaware corporation or any successor thereto as provided in Article 12 herein.

2.10 "Disability" means the definition provided in the Company's long term disability plan.

2.11 "Effective Date" shall have the meaning ascribed to it in the Plan.

2.12 "Effective Date of Termination" means the date on which Participant's employment termination occurs that triggers the payment of Severance Benefits hereunder.

2.13 "Exchange Act" means the United States Securities Exchange Act of 1934, as amended.

2.14 "Good Reason" means, without the Participant's express written consent, the occurrence of any one or more of the following:

- (a) Any reduction in the Participant's Base Salary or target annual bonus below the amount in effect immediately preceding the reduction (including all increases following July 1, 2003), except in the case of a reduction that similarly applies to all executives on a nondiscriminatory basis.



- (b) Any significant and material reduction in the Participant's benefits package, except in the case of a reduction that similarly applies to all executives on a nondiscriminatory basis.
- (c) Any assignment of new duties that requires the Participant to relocate his domicile more than fifty (50) miles from the Participant's current work location.
- (d) Any significant and material reduction or diminution in the duties, responsibilities, or position of the Participant from that in effect immediately prior to such reduction or diminution, provided that the sale of a Company division or sale of a division of a subsidiary company will not automatically be deemed to result in the significant reduction or diminution in the duties, responsibilities, or position of the Participant without a specific showing of such reduction or diminution.
- (e) Any significant increase in responsibility without corresponding compensation (with "responsibility" defined as those responsibilities as in effect as of the Effective Date).

The Participant's right to terminate employment for Good Reason shall not be affected by the Participant's incapacity due to Disability. The Participant's continued employment for fewer than 30 days after any event or change giving rise to a significant and material reduction or diminution shall not constitute consent to, or a waiver of rights with respect to, any circumstance constituting Good Reason herein.

2.15 "Notice of Termination" means a written notice that indicates the specific termination provision in this Agreement relied upon, and shall set forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of the Participant's employment under the provision so indicated.

2.16 "Participant" means Scott J. Davido, an executive officer and key person of the Company.

2.17 "Person" shall have the meaning ascribed to such term in Section 3(a)(9) of the Exchange Act and used in Sections 13(d) and 14(d) thereof, including a "group" as defined in Section 13(d).

2.18 "Plan" means the Company's chapter 11 plan of reorganization currently filed with the United States Bankruptcy Court for the Southern District of New York, as such plan may be subsequently amended.

2.19 "Restructuring Bonus" means the payment described in Section 3.2 herein.

2.20 "Retirement" means retirement as defined in the applicable NRG Energy, Inc. retirement program in which the Participant is eligible, which may be amended from time to time as directed by the Board.

2.21 "Severance Benefits" means the payment of severance compensation as provided in Article 4 herein.

2.22 "Xcel" shall mean Xcel Energy, Inc, a Minnesota corporation, or any successor thereto.

### Article 3. Restructuring Bonus

#### 3.1 Right to Restructuring Bonus.

Subject to the provisions herein, upon the occurrence of the Effective Date, the Participant shall be entitled to receive from the Company a Restructuring Bonus, as described in Section 3.2 herein, to be paid to the Participant in a lump sum within 30 days following the Effective Date. Payment of the Restructuring Bonus shall be conditioned upon the Effective Date occurring by the date specified in the Plan, unless the conditions to the Effective Date contained in the Plan regarding occurrence by a specified date shall have been waived under the Plan in accordance with its terms.

#### 3.2 Description of Restructuring Bonus.

If the Participant is entitled to receive a Restructuring Bonus, the amount of the Restructuring Bonus shall equal one and one-half (1.5) times the Participant's Base Salary.

#### 3.3 Termination of Participant

The Participant shall not be entitled to a Restructuring Bonus if he is terminated for Cause, or if his employment with the Company ends due to Disability, Retirement, or due to a voluntary termination of employment by the Participant without Good Reason.

### Article 4. Severance Benefits

4.1 Right to Severance Benefits. Subject to the provisions herein, the Participant shall be entitled to receive from the Company Severance Benefits as described in Section 4.2 herein, if the Participant's employment with the Company is terminated by the Company without Cause or the Participant terminates employment for Good Reason.

The Participant shall not be entitled to receive Severance Benefits under Section 4.2 herein if he is terminated for Cause, or if his employment with the Company ends due to Disability, Retirement, or due to a voluntary termination of employment by the Participant without Good Reason.

4.2 Description of Severance Benefits. If the Participant becomes entitled to receive Severance Benefits, as provided in Section 4.1 herein, the Participant shall receive the following Severance Benefits:

- (a) Two (2) times the sum of: (i) the Participant's Base Salary; and (ii) the greater of: (a) the Participant's average annual bonus earned over the two (2) most recent full fiscal years prior to the Effective Date of Termination; or (b) the Participant's target annual bonus established for the bonus plan year in which the Participant's Effective Date of Termination occurs.
- (b) An Amount equal to the Participant's unpaid targeted annual incentive, established for the plan year in which the Participant's Effective Date of Termination occurs, multiplied by a fraction, the numerator of which is the number of days completed in the then existing fiscal year through the Effective Date of Termination, and the denominator of which is three hundred sixty-five (365).
- (c) A net cash payment equivalent to the COBRA premiums as in effect as of the Participant's termination of employment of the medical insurance and dental insurance for a period of eighteen (18) months. This cash payment shall be made in one lump sum (net of applicable withholding).

COBRA election and continuation shall be the responsibility of the participant and/or qualified beneficiaries.

In the event the COBRA premium shall change for all employees of the Company, the premium, likewise, shall change for the Participant in a corresponding manner.

- (d) A cash payment of vacation and/or paid time off time earned prior to the Effective Date of Termination, but not taken by the Participant.

4.3 Termination due to Disability. If the Participant's employment is terminated due to Disability during the term of this Agreement, the Participant shall receive his Base Salary and accrued vacation and/or paid time off through his termination of employment and continuation of the medical insurance, dental insurance and group term life insurance shall be subject to the terms under the applicable disability plan of the Company.

4.4 Termination Due to Retirement or Death. If the Participant's employment is terminated by reason of Retirement or death, the Participant or, where applicable, the Participant's Beneficiaries, shall receive the Participant's Base Salary and accrued vacation/paid time off through his termination of employment, and continuation of the welfare benefits of medical insurance, dental insurance, and group term life insurance shall be subject to the treatment provided under the applicable retirement or health and welfare plan of the Company. If the Participant's employment is terminated by reason of death the amounts to be paid under this Agreement shall be paid to the Participant's estate.

4.5 Termination for Cause or by the Participant Other Than for Good Reason. If the Participant's employment is terminated either: (a) by the Company for Cause; or (b) by the Participant without Good Reason, the Company shall pay the Participant his unpaid Base Salary and accrued vacation/paid time off through his termination of employment, at the rate then in effect, plus all other amounts to which the Participant is entitled under any compensation plans of the Company, at the time such payments are due; and the Company shall have no further obligations to the Participant under this Agreement.

4.6 Notice of Termination. Any termination by the Company for Cause or by the Participant for Good Reason shall be communicated to the other party at least one hundred twenty (120) days prior to the date on which such termination shall be effective. The Company can terminate the employment of the Participant with no notice in which case the Company shall provide the Participant with continuation of pay of one hundred twenty (120) days.

4.7 Form and Timing of Severance Benefits. At the discretion of the Company, all cash payments set forth in Section 4.2 shall be made in 30 equal monthly installments, net of appropriate withholdings, or in one (1) lump sum, net of appropriate withholdings, within a reasonable period of time, commencing or paid at a time not to exceed one hundred twenty (120) days after the Effective Date of Termination.

## Article 5. Excise Tax

5.1 Excise Tax Equalization Payment. If the Participant becomes entitled to severance benefits or any other payment or benefit under this Agreement, or under any other agreement or plans of the Company (in the aggregate, the "Total Payments"), and any of the Total Payments will be subject to the tax (the "Excise Tax") imposed by Section 4999 of the Code (or any similar tax that may hereafter be imposed), the Company shall pay to the Participant in cash an additional amount (the "Gross-Up Payment") such that the net amount retained by the Participant after deduction of any Excise Tax upon the Total Payments and any federal, state and local income tax and Excise Tax upon the Gross-Up Payment provided for by this Section 5.1 (including FICA and FUTA), shall be equal to the Total Payments. Such payment shall be made by the Company to the Participant as soon as practicable following the effective date of termination, but in no event beyond forty-five (45) days from such date.

5.2 Tax Computation. For purposes of determining whether any of the Total Payments will be subject to the Excise Tax and the amounts of such Excise Tax:

- (a) Any other payments or benefits received or to be received by the Participant in connection with a Restructuring Bonus or the Participant's termination of employment (whether pursuant to the terms of this Agreement or any other plan, arrangement, or agreement with the Company, or with any person (which shall have the meaning set forth in Section 3(a)(9) of the Securities Exchange Act of 1934, including a "group" as defined in Section 13(d) therein) whose actions result in a Change in Control of the Company or any person affiliated with the Company or such persons) shall be treated as "parachute payments" within the meaning of Section 280G(b)(1) of the Code

and shall be treated as subject to the Excise Tax, unless in the opinion of tax counsel as supported by the Company's independent auditors and acceptable to the Participant, such other payments or benefits (in whole or in part) do not constitute parachute payments, or unless such excess parachute payments (in whole or in part) represent reasonable compensation for services actually rendered within the meaning of Section 280G(b)(4) of the Code in excess of the base amount within the meaning of Section 280G(b)(3) of the Code, or are otherwise not subject to the Excise Tax;

- (b) The amount of the Total Payments which shall be treated as subject to the Excise Tax shall be equal to the lesser of:
  - (i) the total amount of the Total Payments; or
  - (ii) the amount of excess parachute payments within the meaning of Section 280G(b)(3) (after applying clause (a) above); and
- (c) The value of any non-cash benefits or any deferred payment or benefit shall be determined by the Company's independent auditors in accordance with the principles of Section 280G(d)(3) and (4) of the Code.

For purposes of determining the amount of the Gross-Up Payment, the Participant shall be deemed to pay federal income taxes at the highest marginal rate of federal income taxation in the calendar year in which the Gross-Up Payment is to be made, and state and local income taxes at the highest marginal rate of taxation in the state and locality of the Participant's residence on the effective date of termination, net of the maximum reduction in federal income taxes which could be obtained from deduction of such state and local taxes.

5.3 Subsequent Recalculation. If the Internal Revenue Service adjusts the computation of the Company under Section 5.2 herein so that the Participant did not receive the greatest net benefit, the Company shall reimburse the Participant for the full amount necessary to make the Participant whole, plus a market rate of interest, as determined by the Committee.

#### Article 6. Outplacement Assistance

Following a termination of employment in which Severance Benefits are payable hereunder, the Participant shall be reimbursed by the Company for the costs of all outplacement services obtained by the Participant within the two (2) year period after the Effective Date of Termination; provided, however, that the total reimbursement shall be limited to \$15,000.

#### Article 7. The Company's Payment Obligation

7.1 Payment Obligations Absolute. Except as provided herein, the Company's obligation to make the payments and the arrangements provided for herein shall be absolute and unconditional, and shall not be affected by any circumstances, including, without limitation, any offset, counterclaim, recoupment, defense, or other right which the Company may have against the Participant or anyone else; provided that the Company shall retain a setoff and right to recoupment in the event of any breach by the Participant of his fiduciary duty at common law or a violation of the provisions of Articles 9.1 or 9.2. All amounts payable by the Company hereunder shall be paid

without notice or demand. Except as provided herein, each and every payment made hereunder by the Company shall be final, and the Company shall not seek to recover all or any part of such payment from the Participant or from whomever may be entitled thereto. Notwithstanding the foregoing, the Company reserves the right to conduct an independent investigation for the sole purpose of determining whether "Cause" exists that would negate a payment hereunder. Until the conclusion of such investigation (which shall be conducted expeditiously) the Company reserves the right to suspend payment of benefits or alternatively, to condition any benefits on the results of such investigation. For purposes of this section, "expeditiously" shall be defined as a reasonable period of time not to exceed six (6) months. Participant shall be notified within thirty (30) days of the conclusion of the investigation.

The Participant shall not be obligated to seek other employment in mitigation of the amounts payable or arrangement made under any provision of this Agreement, and the obtaining of any such other employment shall in no event affect any reduction of the Company's obligations to make the payments and arrangements required to be made under this Agreement.

7.2 Contractual Rights to Benefits. This Agreement establishes and vests in the Participant a contractual right to the benefits to which he is entitled hereunder. However, nothing herein contained shall required or be deemed to require, or prohibit or be deemed to prohibit, the Company to segregate, earmark, or otherwise set aside any funds or other assets, in trust or otherwise, to provide for any payments to be made or required hereunder.

### 7.3 Bankruptcy Court Approval

Participant acknowledges that the Company has commenced a reorganization case under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York. At Participant's sole option, the Company shall promptly move the bankruptcy court for an order authorizing the assumption of this Agreement under section 365 of the Bankruptcy Code or such other relief as appropriate to ensure compliance with this Agreement by the Company and receipt by the Participant of the rights granted hereunder.

### Article 8. Withholding

The Company shall be entitled to withhold from any amounts payable under this Agreement all taxes as legally shall be required (including, without limitation, any United States federal taxes, and any other state, city, or local taxes).

### Article 9. Non-Competition Other Than Upon Change in Control

9.1 Prohibition on Competition. The Participant agrees that during the course of the Participant's employment with the Company, without the prior written consent of the Company, and for one (1) year from the date of the Participant's voluntary or involuntary termination of employment with the Company, the Participant shall not:

- (a) Directly or indirectly own, manage, consult, associate with, operate, join, work for, control or participate in the ownership, management, operation or

control of, or be connected in any manner with, any business (whether in corporate, proprietorship, or partnership for or otherwise), as more than a 10% owner in such business or member of a group controlling such business, which is engaged in any activity which competes with the business of the company as conducted one (1) year prior to (and up through) the date of the Participant's involuntary or voluntary termination of employment with the Company or which will compete with any proposed business activity of the Company in the planning stage on such date of involuntary or voluntary termination. The participant and the Company agree that this provision is reasonably enforced as to any geographic area.

- (b) Directly or indirectly solicit, service, contract with or otherwise engage any past (one year prior), existing or prospective customer, client or account who then has a relationship with the Company for current or prospective business on behalf of a competitor of the Company, or on the Participant's own behalf for a competing business. The Participant and the Company agree that this provision is reasonably enforced with reference to any geographic area applicable to such relationships with the Company.
- (c) Cause or attempt to cause any existing or prospective customer, client, or account, who then has a relationship with the Company for current or prospective business, to divert terminate, limit or in any manner modify, or fail to enter into any actual or potential business relationship with the Company. The Participant and the Company agree that this provision is reasonably enforced with reference to any geographic area applicable to such relationships with the Company.
- (d) The Company agrees that the terms "activity", "which competes with the business of the Company", "competitor of the Company", "competing business", and "relationship with the Company" as used in this Agreement shall be reasonably construed and applied.

9.2 Disclosure of Information. The Participant recognizes that he has access to and knowledge of certain confidential and proprietary information of the Company, which is essential to the performance of his duties as an employee of the Company. The Participant will not, during or after the term of his employment with the Company, in whole or in part, disclose such information to any person, firm, corporation, association, or other entity for any reason or purpose whatsoever, nor shall he make use of any information for his own purposes.

9.3 Covenants Regarding Other Employees. During the period ending one (1) year following the payment of Severance Benefits under this Agreement, the Participant agrees to not directly or indirectly solicit, employ or conspire with others to employ any of the Company's employees. The term "employ" for purposes of this paragraph means to enter into an arrangement for services as a full-time or part-time employee, independent contractor, consultant, agent or

otherwise. The Participant and the Company agree that this provision is reasonably enforced as to any geographic area.

#### Article 10. Non-Disparagement

10.1 Disparagement. The Participant and the Company, each agrees not to make any disparaging or negative statements about the Company or the Participant, including but not limited to its products, services or management any person or entity whatsoever, including but not limited to past, present and prospective employees or employers, customers, clients, analysts, investors, vendors and suppliers; provided that, following the expiration of the non-compete period set forth in Article 9, the non-disparagement provisions set forth herein shall not restrain the parties from engaging in legitimate competition with each other, which could include, but would not be limited to, legitimate but unfavorable comparisons of products, services or management of each other.

10.2 Release. In order to receive the benefits provided under the Agreement (other than accrued vacation and paid time-off), the Participant will be required to provide the Company with a release in a form to be provided by the Company, or, if Xcel provides the benefits, the Participant will be required to provide Xcel and the Company with a release in a form to be provided by Xcel. Such release shall fully release the Company or Xcel, as applicable, and all of its officers, agents, directors, employees, and representatives, any affiliated companies, businesses or entities, and all other persons and entities from each and every legal claim or demand of any kind that the Participant ever had or might have arising out of any action, conduct or decision taking place during the Participant's employment with the Company, or arising out of the Participant's separation from that employment, whether or not any such claim known at the time of separation.

#### Article 11. Successors and Assignment

11.1 Successors to the Company. The Company will require any successor (whether direct or indirect, by purchase, merger, consolidation, or otherwise) of all or substantially all of the business and/or assets of the Company or of any division or subsidiary thereof that employed the Participant at the time of Termination of Employment to expressly assume and agree to perform the Company's obligations under this Agreement in the same manner and to the same extent that the Company would be required to perform them if no such succession had taken place. Failure of the Company to obtain such assumption and agreement prior to the effective date of any such succession shall be a breach of this Agreement and shall entitle the Participant to compensation from the Company in the same amount and on the same terms as he would be entitled to hereunder if he had terminated his employment with the Company voluntarily for Good Reason. Except for the purposes of implementing the foregoing, the date on which any such succession becomes effective shall be deemed the Effective Date of Termination.

11.2 Assignment by the Participant. This Agreement shall inure to the benefit of and be enforceable by the Participant's personal or legal representatives, executors, administrators, successors, heirs, distributes, devisees, and legatees. If the Participant dies while any amount would still be payable to him hereunder had he continued to live, all such amounts, unless otherwise provided herein, shall be paid in accordance with the terms of this Agreement, to the Participant's Beneficiary. If the Participant has not named a Beneficiary, then such amounts shall be paid to the



Participant's devisee, legatee, or other designee, or if there is not such designee, to the Participant's estate.

#### Article 12. Miscellaneous

12.1 Beneficiaries. The Participant may designate one or more persons or entities as the primary and/or contingent beneficiaries of any Severance Benefits or Change in Control Severance Benefits owing to the Participant under this Agreement. Such designation must be in the form of a signed writing acceptable to the Company. The Participant may make or change such designations at any time.

12.2 Gender and Number. Except where otherwise indicated by the context, any masculine term used herein also shall include the feminine, the feminine shall include the masculine; the plural shall include the singular, and the singular shall include the plural.

12.3 Severability. In the event any provision of this Agreement shall be held illegal or invalid for any reason, the illegality or invalidity shall not affect the remaining parts of the Agreement, and the Agreement shall be construed and enforced as if the illegal or invalid provision had not been included. Further, the captions of this Agreement are not part of the provisions hereof and shall have no force and effect.

12.4 Modification. No provision of this Agreement may be modified, waived, or discharged unless such modification, waiver, or discharge is agreed to in writing and signed by the Participant and by an authorized representative of the Company, or by the respective parties' legal representative and successors.

12.5 Applicable Law. To the extent not preempted by the laws of the United States, the laws of the State of Minnesota, shall be the controlling law in all matters relating to this Agreement.

SCOTT J. DAVIDO

/s/ Scott J. Davido

---

Participant's Signature

Date: 7/01/03

NRG ENERGY, INC.

By: /s/ John R. Boken

---

John R. Boken

Title: President and Chief Operating Officer

Date: 07/01/03

EMPLOYMENT AGREEMENT

Between  
NRG Energy, Inc.  
and  
David W. Crane

THIS AGREEMENT is made as of November 10, 2003, between NRG Energy, Inc. (the "Company"), and David W. Crane ("Executive").

In consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Employment.** The Company shall employ Executive, and Executive hereby accepts employment with the Company, upon the terms and conditions set forth in this Agreement for the period beginning on the later of (i) December 1, 2003, or (ii) the date the bankruptcy court approves this Agreement (the "Commencement Date") and ending as provided in Section 5 or 6 hereof (the "Employment Period"). The Company shall use its best efforts to promptly obtain bankruptcy court approval of this Agreement. This Agreement shall be void ab initio and of no force and effect if the Commencement Date does not occur on or before January 1, 2004.

2. **Position and Duties.**

(a) During the Employment Period, Executive shall serve as the President and Chief Executive Officer ("CEO") of the Company and shall have the normal duties, responsibilities, functions and authorities customarily exercised by the President and CEO of a company of similar size and nature as the Company. During the Employment Period, Executive shall render such administrative, financial and other executive and managerial services to the Company and its affiliates which are consistent with Executive's position as the Board of Directors of the Company (the "Board") may from time to time direct.

(b) During the Employment Period, Executive shall report to the Board and shall devote his best efforts and his full business time and attention (except for permitted vacation periods and reasonable periods of illness or other incapacity) to the business and affairs of the Company. Executive shall perform his duties, responsibilities and functions to the Company hereunder to the best of his abilities in a diligent, trustworthy, professional and efficient manner and shall comply with the Company's policies and procedures in all material respects. In performing his duties and exercising his authority under this Agreement, Executive shall support and implement the business and strategic plans approved from time to time by the Board and shall support and cooperate with the Company's efforts to expand its businesses and operate profitably and in conformity with the business and strategic plans approved by the Board.

During the Employment Period, Executive shall not serve as an officer or director of, or otherwise perform services for compensation for, any other entity without the prior written consent of the Board. Executive may serve as an officer or director of or otherwise participate in purely educational, welfare, social, religious and civic organizations so long as such activities do not interfere with Executive's employment. Nothing contained herein shall preclude Executive from (i) engaging in charitable and community activities; (ii) participating in industry and trade organization activities; (iii) managing his and his family's personal investments and affairs; and (iv) delivering lectures, fulfilling speaking engagements or teaching at educational institutions; provided, that such activities do not materially interfere with the regular performance of his duties and responsibilities under this Agreement.

### 3. Compensation and Benefits.

(a) During the period beginning on the Commencement Date and ending on December 31, 2004, Executive's annual base salary shall be \$875,000. For the portion of the Employment Period beginning on January 1, 2005 and for periods thereafter, the Executive's annual base salary shall be reviewed and determined by the Board (such initial annual base salary and the annual base salary as determined and adjusted from time to time by the Board are referred to herein as, the "Base Salary"). The Base Salary shall be payable by the Company in regular installments in accordance with the Company's general payroll practices (in effect from time to time) but in any event no less frequently than monthly. During the period beginning on the Commencement Date and ending December 31, 2003, the Base Salary shall be pro rated on an annualized basis. For purposes of this Agreement, the Base Salary shall not include any other type of compensation or benefit paid or payable to the Executive. Notwithstanding anything in this Agreement to the contrary, any decrease in Executive's then Base Salary shall be deemed Good Reason.

#### (b) Bonuses and Incentive Compensation.

(i) Signing Bonus. In addition to the Base Salary, on the Commencement Date the Company shall pay Executive a one-time signing bonus of \$1.75 million dollars (the "Signing Bonus") payable in a single lump-sum cash payment; provided, however, that except as set forth under Section 5 below, Executive agrees to reimburse the Company, on a pro-rata basis (based on the ratio of (x) the number of days in the period beginning on the date of Executive's termination of employment and ending on the first anniversary of the Commencement Date to (y) 365), if prior to one year from Executive's Commencement Date he (A) terminates his employment with the Company other than for "Good Reason" or following a "Change of Control" (as defined herein), or (B) is terminated by the Board for "Cause" (as defined herein).

(ii) Annual Bonus. Beginning for fiscal year 2004 and for each fiscal year thereafter during the Employment Period, based on achievement of criteria determined by the Board as soon as administratively practicable following the beginning of each such fiscal year with input from Executive, Executive will be entitled to an annual bonus with a target amount equal to 100% of the Executive's then Base Salary (the "Annual Bonus"). For the Company's fiscal year 2004 only, Executive shall receive an Annual Bonus of not less than 75% of his Base Salary. The Company shall pay the

Annual Bonus in a single cash lump-sum after the end of the Company's fiscal year in accordance with procedures established by the Board, but in no event later than April 15 of the subsequent fiscal year.

(iii) Stretch Bonus. Beginning for fiscal year 2004 and for each fiscal year thereafter during the Employment Period, based on achievement of criteria determined by the Board as soon as administratively practicable following the beginning of each such fiscal year with input from Executive, Executive shall be eligible to receive a "stretch bonus" in an amount up to, but not exceeding, 50% of Executive's then Base Salary (the "Stretch Bonus"). The Company shall pay the Stretch Bonus in a single cash lump-sum following the end of the Company's fiscal year in accordance with procedures established by the Board, but in no event later than April 15 of the subsequent fiscal year.

(iv) Long Term Incentive. The Company shall provide Executive with a combination of restricted stock or units ("restricted stock") and stock options (the "Executive LTIP") to be issued to Executive upon the Company's emergence from bankruptcy protection under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"). The aggregate value of the grant under the Executive LTIP shall be \$12.5 million, which is currently approximately 0.5% of the equity to be distributed pursuant to the Company's Plan of Reorganization under Chapter 11 of the Bankruptcy Code (the "Plan"). One-third of the grant under the Executive LTIP will be issued in restricted stock and the balance shall be issued in stock options.

It is currently contemplated that the Executive shall receive 166,667 shares of restricted stock valued at \$25 per share and 602,555 stock options valued at \$13.83 per share. The exact number of restricted stock and stock options awarded will be determined based on the equity value reflected in the final Disclosure Statement to the Plan of Reorganization; provided, however, that regardless of the actual number of restricted stock or stock options granted to the Executive, the aggregate value of such restricted stock and stock options shall be \$12.5 million. The stock options shall have a ten-year term (subject to early termination, upon termination for Cause or resignation without Good Reason prior to the third anniversary of the Commencement Date) and an exercise price equal to the per share equity value reflected in such final Disclosure Statement (currently \$25 per share). The Company shall reserve a sufficient number of shares of common stock for issuance upon exercise of the stock options to be granted hereunder, and any such stock options granted as part of the Executive LTIP shall be duly and validly authorized by a subset of the Company's board of directors comprised solely of two or more "outside directors" (as such term is defined in Treasury Regulations Section 1.162-27(e) and ratified by the Company's full board of directors.

The restricted stock granted under the Executive LTIP shall be entitled to participate currently in dividends and shall vest 100% on the third anniversary of the Executive's Commencement Date. The stock options shall vest in three equal installments on each of first three anniversaries of the Executive's Commencement Date. Notwithstanding anything above to the contrary, all grants made under the Executive LTIP will become 100% vested upon a "Change of Control" (as defined herein).

The specific terms of the restricted stock and the stock options granted under the LTIP (including, without limitation, customary anti-dilution and other provisions) will be reflected in separate stock option and restricted stock agreements that will be negotiated by Executive and the Company in good faith prior to the Commencement Date. Such agreements shall provide that, if the Company's common stock becomes registered under the Securities Exchange Act of 1934, as amended, the Company shall take such steps as are reasonably required so that any shares awarded to the Executive under the Executive LTIP shall, as soon as practicable after the award or awards of such shares, be covered by a registration statement on Form S-8 or a successor form and any other appropriate forms determined by the parties. In the event that the Executive and Company cannot mutually agree to the terms of both the stock option agreement and the restricted stock agreement as of the Commencement Date, either the Company or the Executive shall have the right to declare that this Agreement shall be void and shall not take effect.

(c) During the Employment Period, the Company shall promptly reimburse Executive for all reasonable business expenses incurred by him in the course of performing his duties and responsibilities under this Agreement which are consistent with the Company's policies in effect from time to time with respect to travel, entertainment and other business expenses, subject to the Company's requirements with respect to reporting and documentation of such expenses. The Company will promptly reimburse Executive for reasonable expenses incurred for tax return preparation, tax advice, financial planning and legal expenses incurred in connection with negotiating this Agreement and the other agreements referred to herein.

(d) In addition to the Base Salary and any bonuses and incentives payable to Executive pursuant to this Section 3, Executive shall also be entitled to the following benefits during the Employment Period, unless otherwise modified by the Board:

(i) participation in the Company's retirement plans, health and welfare plans and disability insurance plans, under the terms of such plans and to the same extent and under the same conditions such participation and coverages are provided to other senior management of the Company;

(ii) term life insurance with a death benefit of \$7.75 million through the continuation of the term life insurance provided to Executive by his former employer (other than adjustable rate life insurance) immediately prior to the Executive's employment with the Company;

(iii) prompt reimbursement of the costs, not to exceed \$10,000 per year, Executive incurs in obtaining additional disability insurance coverage with a monthly disability benefit of up to \$30,000;

(iv) five weeks paid vacation each calendar year;

(v) coverage under the Company's director and officer liability insurance policy; and

(vi) reasonable moving and relocation expenses.

Notwithstanding anything in this Agreement to the contrary, if the benefits provided to Executive under Section 3(d)(i), (iv) (v) or (vi) are materially reduced or benefits provided to Executive under Section 3(d)(ii) or (iii) are reduced at all, such reduction shall be deemed "Good Reason."

(e) During the period commencing on the Executive's Commencement Date and ending June 30, 2004, the Company shall reimburse Executive (and gross-up Executive for any income taxes incurred by Executive as a result of such reimbursement) for all reasonable expenses incurred by him in connection with commuting to Minneapolis, Minnesota from his permanent residence in Lawrenceville, New Jersey up to one round-trip each week (but not in excess of the amount of a full fare economy class round-trip ticket), (ii) leasing an apartment in Minneapolis, Minnesota, and (iii) reasonable transportation expenses while in Minneapolis Minnesota. .

4. Board Membership. With respect to all regular elections of directors during the Employment Period, the Company shall nominate, and use its reasonable efforts to cause the election of, Executive to serve as a member of the Board. Effective upon the termination or expiration of the Employment Period, Executive shall resign as a director of the Company and its affiliates, as the case may be.

5. Certain Early Terminations of Agreement. Notwithstanding anything in this Agreement to the contrary, in the event that on or prior to June 30, 2004, the effective date of the Company's Plan of Reorganization under Chapter 11 of the United States Bankruptcy Code (the "Effective Date") has not occurred, the Executive may elect to unilaterally terminate the Agreement, and the Company agrees to pay Executive \$3.5 million (in a prompt lump-sum cash payment), provided that Executive (a) notifies the Board by July 31, 2004, in writing, of Executive's decision to terminate the Agreement pursuant to this Section 5 and (b) executes and delivers the Release substantially in the form attached hereto as Exhibit A. However, in the event that Executive elects to terminate this Agreement pursuant to this Section 5, Executive shall remain entitled to the payments and benefits set forth in Section 7(d) and shall not have any obligation to repay any portion of the Signing Bonus set forth in Section 3(b)(1). Executive shall also be entitled to elect to receive all of the benefits specified in this Section 5 and in Section 7(d) if the Company shall terminate his employment without Cause or he shall terminate such employment for Good Reason prior to July 31, 2004, and prior to the Effective Date. For avoidance of doubt, Executive acknowledges that by electing to receive benefits under this Section 5 Executive shall relinquish all benefits payable to him under this Agreement (other than benefits set forth under Section 7(d)), including, without limitation, any rights or benefit associated with any non-vested restricted stock and stock options under the Executive LTIP.

6. Termination. The Employment Period shall end on the third anniversary of the Commencement Date, provided, however, that the Employment Period shall be automatically renewed for successive one-year terms thereafter on the same terms and conditions set forth herein unless either party provides the other party with notice that it has elected not to renew the Employment Period at least 90 days prior to the end of the initial Employment Period or any subsequent extension thereof. Notwithstanding the foregoing, (i) the Employment Period shall

terminate immediately upon Executive's resignation (with or without Good Reason, as defined herein), death or Disability (as defined herein) and (ii) the Employment Period may be terminated by the Company at any time prior to such date for Cause (as defined herein) or without Cause. Except as otherwise provided herein, any termination of the Employment Period by the Company shall be effective as specified in a written notice from the Company to Executive, but in no event more than 30 days from the date of such notice.

#### 7. Severance.

(a) Termination Without Cause or for Good Reason. In the event of Executive's termination of employment with the Company (i) by the Company without "Cause" (as defined herein), (ii) by Executive for "Good Reason" (as defined herein) or (iii) if the Company notifies Executive pursuant to Section 6 that it has elected not to renew this Agreement after the initial three-year term or any subsequent one-year term, Executive shall be entitled to the benefits set forth below in this Section 7(a). As a condition to the payment of any severance benefits or any other benefits to which Executive is not absolutely entitled as a matter of law, the Executive shall execute and deliver the "Release" in the form attached hereto as Exhibit A, in consideration for which the Company agrees to the following:

- (A) The Company shall pay Executive in a prompt lump-sum cash payment an amount equal to two times the Executive's annual Base Salary (as in effect at the date of Executive's termination determined without regard to any reduction in such Base Salary constituting Good Reason).
- (B) The Company shall pay Executive in a prompt lump-sum payment 50% of target Annual Bonus (75% of his target Annual Bonus for fiscal year 2004 only) then in effect (excluding the Stretch Bonus but determined without regard to any reduction in such target Annual Bonus constituting Good Reason) pro-rated for the number of days during such year that Executive was employed by the Company.
- (C) All restricted stock, stock options and other equity awards granted under the Executive LTIP, shall vest in full on the date of such termination of employment, and all stock options shall continue to be exercisable for the remainder of their stated terms.
- (D) For six (6) months from the date of termination, the Company shall arrange to provide Executive and his dependents, at the Company's cost, medical and dental coverage providing substantially similar benefits to those which Executive and his dependents were receiving immediately prior to such date, and additionally, the Company shall pay Executive, in a prompt lump-sum payment, an amount equal to the Company's monthly COBRA rate for family coverage then in effect times eighteen (18).

(E) The Company shall pay Executive the amounts described in Section 7(d).

(b) Termination for Cause or Voluntary Resignation. In the event Executive's employment with the Company is terminated (i) by the Board for Cause (as defined herein), or (ii) by Executive's resignation from the Company for any reason other than Good Reason or Disability (as defined herein) the Company agrees to the following:

(A) The Company shall pay Executive the amounts described in Section 7(d).

(B) The Company shall treat all restricted stock, stock options and other equity awards outstanding under the Executive LTIP or any other Company equity plans in accordance with the terms of the plans or agreements under which such awards were created or maintained. If Executive resigns from the Company for any reason on or after the third anniversary of the Commencement Date, all stock options granted under the Executive LTIP will remain exercisable for the remainder of their stated terms.

(c) Death or Disability. In the event that Executive's employment with the Company is terminated as a result of Executive's death or Disability, the Company agrees to the following:

(A) The Company shall pay Executive in a prompt lump-sum payment 50% of target Annual Bonus (75% of his target Annual Bonus for fiscal year 2004 only) then in effect (excluding the Stretch Bonus but determined without regard to any reduction in such target Annual Bonus constituting Good Reason) pro-rated for the number of days during such year that Executive was employed by the Company. Any stock options granted under the Executive LTIP that have vested will remain exercisable for the remainder of their stated terms.

(B) If the Executive is terminated as a result of his Death or Disability prior to the third anniversary of his Commencement Date, his "restricted stock" (as defined above) shall vest on a pro-rata basis (based on the ratio of (x) the number of complete months beginning on the Commencement Date and ending on the date of Executive's termination of employment to (y) thirty-six (36)).

(C) The Company shall treat all stock options under the Executive LTIP or other equity under any other Company plans in accordance with the terms of the plans or agreements under which such awards were created or maintained.



(D) The Company shall pay Executive the amounts described in Section 7(d).

(d) In the case of any termination of Executive's employment with the Company, Executive or his estate or legal representative shall be entitled to receive from the Company (i) Executive's Base Salary through the date of termination to the extent not theretofore paid, (ii) to the extent not theretofore paid, the amount of any bonus, incentive compensation, deferred compensation and other compensation earned or accrued by Executive as of the date of termination under any compensation and benefit plans, programs or arrangements maintained in force by the Company (for this purpose, Executive's Annual Bonus, if any, for any fiscal year shall be deemed to have accrued on the last day of such fiscal year), (iii) any vacation pay, expense reimbursements and other cash entitlements accrued by Executive, in accordance with Company policy, as of the date of termination to the extent not theretofore paid, and (iv) all benefits accrued by Executive under all benefit plans and qualified and nonqualified retirement, pension, 401k and similar plans and arrangements of the Company, in such manner and at such time as are provided under the terms of such plans and arrangements.

(e) No Other Payments. Except as provided in (a), (b) (c) or (d) above, all of Executive's rights to salary, bonuses, employee benefits and other compensation hereunder which would have accrued or become payable after the termination or expiration of the Employment Period shall cease upon such termination or expiration, other than those expressly required under applicable law (such as COBRA).

(f) No Mitigation, No Offset. In the event of Executive's termination of employment for whatever reason, Executive shall be under no obligation to seek other employment, and there shall be no offset against amounts due him under this Agreement or otherwise on account of any remuneration attributable to any subsequent employment or claims asserted by the Company or any affiliate, provided that this provision shall not apply with respect to any amounts that Executive owes the Company or any affiliate on account of any loan, advance or other payment, in respect of any of which Executive is obligated to make repayment to the Company or any affiliate of the Company.

(g) Definitions. For purposes of this Agreement, the following terms shall have the following meanings:

- (i) "Cause" shall mean one or more of the following:
  - (A) the conviction of, or an agreement to a plea of *nolo contendere* to, any felony or other crime involving moral turpitude;
  - (B) Executive's willful and continuing refusal to substantially perform duties as reasonably directed by the Board under this or any other agreement (after receipt of written notice from the Board setting forth such duties and responsibilities to be performed); or
  - (C) in carrying out his duties, Executive engages in conduct that constitutes willful gross neglect or willful gross misconduct which,

in either case, results in demonstrable harm to the business, operations, prospects or reputation of the Company.

- (D) any other material breach of Section 12 or 27 of this Agreement which is not cured to the Board's reasonable satisfaction within 15 days after written notice thereof to Executive.

For purpose of this Agreement, there shall be no termination for "Cause" pursuant to subsection (A) through (D) above unless a written notice, containing a detailed description of the grounds constituting Cause hereunder, is delivered to Executive stating the basis for the termination and Executive is given twenty (20) business days to cure fully the neglect or conduct that is the basis of such claim, and if he fails to cure fully such neglect or misconduct within such twenty (20) business day period, he has an opportunity to be heard before the full Board and, after such hearing, there is a vote of three-quarters of the Board to terminate Executive for Cause.

- (ii) "Change of Control" shall mean the first to occur of any of the following events:

- (A) Any "person" (as that term is used in Section 13 and 14(d)(2) of the Securities Exchange Act of 1934 ("Exchange Act")) becomes the beneficial owner (as that term is used in Section 13(d) of the Exchange Act), directly or indirectly, of fifty percent (50%) or more of the Company's capital stock entitled to vote in the election of directors;
- (B) Persons who on the Commencement Date constitute the Board (the "Incumbent Directors") cease for any reason, including without limitation, as a result of a tender offer, proxy contest, merger or similar transaction, to constitute at least a majority thereof, provided that any person becoming a director of the Company subsequent to the Commencement Date shall be considered an Incumbent Director if such person's election or nomination for election was approved by a vote of at least two-thirds (2/3) of the Incumbent Directors; but provided further, that any such person whose initial assumption of office is in connection with an actual or threatened election contest relating to the election of members of the Board or other actual or threatened solicitation of proxies or consents by or on behalf of a "person" (as defined in Section 13(d) and 14(d) of the Exchange Act) other than the Board, including by reason of agreement intended to avoid or settle any such actual or threatened contest or solicitation, shall not be considered an Incumbent Director;
- (C) Consummation of a reorganization, merger or consolidation or sale or other disposition of all or substantially all of the assets of the Company (a "Business Combination"), in each case, unless,

following such Business Combination, all or substantially all of the individuals and entities who were the beneficial owners of outstanding voting securities of the Company immediately prior to such Business Combination beneficially own, directly or indirectly, more than 50% of the combined voting power of the then outstanding voting securities entitled to vote generally in the election of directors, as the case may be, of the company resulting from such Business Combination (including, without limitation, a company which, as a result of such transaction, owns the Company or all or substantially all of the Company's assets either directly or through one or more subsidiaries) in substantially the same proportions as their ownership, immediately prior to such Business Combination, of the outstanding voting securities of the Company; or

- (D) The shareholders of the Company approve any plan or proposal for the liquidation or dissolution of the Company.

(iii) "Disability" shall mean Executive's inability to perform the essential duties, responsibilities and functions of his position with the Company and its affiliates as a result of any mental or physical disability or incapacity even with reasonable accommodations of such disability or incapacity, provided by the Company and its affiliates, or if providing such accommodations would be unreasonable, for a period of six consecutive months. Executive shall cooperate in all respects with the Company if a question arises as to whether he has become disabled (including, without limitation, submitting to an examination by a medical doctor or other health care specialists selected by the Company and reasonably acceptable to Executive and authorizing such medical doctor or such other health care specialist to discuss Executive's condition with the Company).

(iv) "Good Reason" shall mean the Executive's resignation from employment with the Company prior to the end of the Employment Period as a result of one or more of the following reasons:

- (A) the Company reduces the amount of his then current Base Salary or the target for his Annual Bonus,
- (B) a material reduction in Executive's benefits, provided that if the benefits provided Executive under Section 3(d)(ii) or (iii) are reduced at all, such reduction shall be deemed "Good Reason",
- (C) a material diminution in Executive's title, authority, duties or responsibilities or the assignment of duties to Executive which are materially inconsistent with his position,
- (D) a change in reporting structure of the Company where Executive is required to report to someone other than the Board,

- (E) the failure of the Company to obtain in writing the obligation to perform this Agreement by any successor to the Company or a purchaser of all or substantially all of the assets of the Company within 15 days after a merger, consolidation, sale or similar transaction,
- (F) the failure to elect Executive to the Board within 30 days of the Effective Date or to reelect Executive to the Board for each subsequent term during the Employment Period, or
- (G) the failure of the Company to grant Executive the Executive LTIP within 10 days after the Effective Date.

For purposes of this Agreement, Executive is not entitled to assert that his termination is for Good Reason unless Executive gives the Board written notice of the event or events which are the basis for such claim within ninety (90) days after the event or events occur, describing such claim in reasonably sufficient detail to allow the Board to address the event or events and a period of not less than twenty (20) business days to cure or fully remedy the alleged condition.

#### 8. Indemnification.

(a) The Company agrees that (i) if Executive is made a party, or is threatened to be made a party, to any threatened or actual action, suit or proceeding, whether civil, criminal, administrative, investigative, appellate or other (each, a "Proceeding") by reason of the fact that he is or was a director, officer, employee, agent, manager, consultant or representative of the Company or is or was serving at the request of the Company as a director, officer, member, employee, agent, manager, consultant or representative of another entity or (ii) if any claim, demand, request, investigation, dispute, controversy, threat, discovery request or request for testimony or information (each, a "Claim") is made, or threatened to be made, that arises out of or relates to Executive's service in any of the foregoing capacities, then Executive shall promptly be indemnified and held harmless by the Company to the fullest extent legally permitted or authorized by the Company's certificate of incorporation, bylaws or Board resolutions or, if greater, by the laws of the State of Minnesota, against any and all costs, expenses, liabilities and losses (including, without limitation, attorney's fees, judgments, interest, expenses of investigation, penalties, fines, ERISA excise taxes or penalties and amounts paid or to be paid in settlement) incurred or suffered by the Executive in connection therewith, and such indemnification shall continue as to Executive even if he has ceased to be a director, member, employee, agent, manager, consultant or representative of the Company or other entity and shall inure to the benefit of Executive's heirs, executors and administrators. The Company shall advance to Executive all costs and expenses incurred by him in connection with any such Proceeding or Claim within 15 days after receiving written notice requesting such an advance. Such notice shall include, to the extent required by applicable law, an undertaking by Executive to repay the amount advanced if he is ultimately determined not to be entitled to indemnification against such costs and expenses.

(b) Neither the failure of the Company (including the Board, independent legal counsel or stockholders) to have made a determination in connection with any request for indemnification or advancement under Section 8(a) that Executive has satisfied any applicable standard of conduct, nor a determination by the Company (including the Board, independent legal counsel or stockholders) that Executive has not met any applicable standard of conduct, shall create a presumption that Executive has or has not met an applicable standard of conduct.

9. Gross-up. In the event that any payment or benefit made or provided to or for the benefit of Executive in connection with this Agreement or his employment with the Company or the termination thereof (a "Payment") is determined to be subject to any excise tax ("Excise Tax") imposed by Section 4999 of the Code (or any successor to such Section), the Company shall pay to Executive, prior to the time any Excise Tax is payable with respect to such Payment (through withholding or otherwise), an additional amount (a "Gross-Up Payment") which, after the imposition of all income, employment, excise and other taxes, penalties and interest thereon, is equal to the sum of (i) the Excise Tax on such Payment plus (ii) any penalty and interest assessments associated with such Excise Tax. The determination of whether any Payment is subject to an Excise Tax and, if so, the amount and time of any Gross-Up Payment pursuant to this Section 9 shall be made by an independent auditor (the "Auditor") jointly selected by the parties and paid by the Company. Unless Executive agrees otherwise in writing, the Auditor shall be a nationally recognized United States public accounting firm that has not, during the two years preceding the date of its selection, acted in any way on behalf of the Company or any of its affiliates. If the parties cannot agree on the firm to serve as the Auditor, then the parties shall each select one accounting firm and those two firms shall jointly select the accounting firm to serve as the Auditor. The parties shall cooperate with each other in connection with any Proceeding or Claim relating to the existence or amount of any liability for Excise Tax. All expenses relating to any such Proceeding or Claim (including attorneys' fees and other expenses incurred by Executive in connection therewith) shall be paid by the Company promptly upon demand by Executive, and any such payment shall be subject to a Gross-Up Payment under this Section 9 in the event that Executive is subject to Excise Tax on such payment. This Section 9 shall apply irrespective of whether a Change of Control has occurred.

#### 10. Confidential Information.

(a) Executive acknowledges that the information, observations and data (including trade secrets) obtained by him while employed by the Company concerning the business or affairs of the Company or any of its affiliates, ("Confidential Information") are the property of the Company or such affiliate. Therefore, except in the course of Executive's duties to the Company or as may be compelled by law or appropriate legal process, Executive agrees that he shall not disclose to any person or entity or use for his own purposes any Confidential Information or any confidential or proprietary information of other persons or entities in the possession of the Company and its affiliates ("Third Party Information"), without the prior written consent of the Board, unless and to the extent that the Confidential Information or Third Party Information becomes generally known to and available for use by the public other than as a result of Executive's acts or omissions. Except in the course of Executive's duties to the Company or as may be compelled by law or appropriate legal process, Executive will not, during his employment by the Company, or permanently thereafter, directly or indirectly use, divulge,

disseminate, disclose, lecture upon, or publish any Confidential Information, without having first obtained written permission from the Board to do so. Executive shall deliver to the Company at the termination or expiration of the Employment Period, or at any other time the Company may reasonably request, all memoranda, notes, plans, records, reports, computer files, disks and tapes, printouts and software and other documents and data (and copies thereof) embodying or relating to Third Party Information, Confidential Information or the business of the Company, or its affiliates which he may then possess or have under his control.

(b) Executive shall be prohibited from using or disclosing any confidential information or trade secrets that Executive may have learned through any prior employment. If at any time during his employment with the Company or any of its affiliates, Executive believes he is being asked to engage in work that will, or will be likely to, jeopardize any confidentiality or other obligations Executive may have to former employers, Executive shall immediately advise the Board so that Executive's duties can be modified appropriately. Executive represents and warrants to the Company that Executive took nothing with him which belonged to any former employer when Executive left his prior position and that Executive has nothing that contains any information which belongs to any former employer. If at any time Executive discovers this is incorrect, Executive shall promptly return any such materials to Executive's former employer. The Company does not want any such materials, and Executive shall not be permitted to use or refer to any such materials in the performance of Executive's duties hereunder.

11. Intellectual Property, Inventions and Patents. Intellectual Property, Inventions and Patents. Executive acknowledges that all discoveries, concepts, ideas, inventions, innovations, improvements, developments, methods, trade secrets, designs, analyses, drawings, reports, patent applications, copyrightable work and mask work (whether or not including any confidential information) and all registrations or applications related thereto, all other proprietary information and all similar or related information (whether or not patentable) which may relate to the Company's or any of its affiliates' actual or anticipated business, research and development or existing or future products or services and which are conceived, developed or made by Executive (whether alone or jointly with others) while employed by the Company and its affiliates ("Work Product"), belong to the Company or such affiliate. Executive shall promptly disclose such Work Product to the Board and, at the Company's expense, perform all actions reasonably requested by the Board (whether during or after the Employment Period) to establish and confirm such ownership (including, without limitation, assignments, consents, powers of attorney and other instruments). Executive acknowledges that all applicable Work Product shall be deemed to constitute "works made for hire" under the U.S. Copyright Act of 1976, as amended. To the extent any Work Product is not deemed a work made for hire, then Executive hereby assigns to the Company or such affiliate all right, title and interest in and to such Work Product, including all related intellectual property rights.

In accordance with Minnesota Statutes §181.78, Executive is hereby advised that this paragraph 9 regarding the Company's and its affiliates' ownership of Work Product does not apply to any invention for which no equipment, supplies, facilities or trade secret information of the Company or any affiliate was used and which was developed

entirely on Executive's own time, unless (i) the invention relates to the business of the Company or any affiliate or to the Company's or any affiliate's actual or demonstrably anticipated research or development or (ii) the invention results from any work performed by Executive for the Company or any affiliate.

## 12. Non-Compete, Non-Solicitation.

(a) In further consideration of the compensation to be paid to Executive hereunder, Executive acknowledges that during the course of his employment with the Company and its affiliates he shall become familiar with the Company's trade secrets and with other Confidential Information concerning the Company and its affiliates and that his services shall be of special, unique and extraordinary value to the Company and its affiliates, and therefore, Executive agrees that, during the Employment Period and for one (1) year thereafter (the "Noncompete Period"), he shall not directly or indirectly own any interest in, manage, control, participate in, consult with, render services for, be employed in an executive, managerial or administrative capacity by, or in any manner engage in any company engaged in the business of wholesale power generation which competes with the businesses of the Company or its affiliates, as such businesses exist or are in process during the Employment Period or on the date of the termination or expiration of the Employment Period, within any geographical area in which the Company or its affiliates engage or have definitive plans to engage in such businesses. Nothing herein shall prohibit Executive from being a passive owner of not more than 2% of the outstanding stock of any class of a corporation which is publicly traded, so long as Executive has no active participation in the business of such corporation. Notwithstanding the foregoing, the provisions of this Section 12(a) shall not apply in the case of termination of Executive's employment pursuant to Section 5 of this Agreement, nor shall such provision apply following any material breach of the Company's obligations under Section 7 or Section 8 which remains uncured for more than twenty (20) days after notice is received from Executive of such breach, which such notice shall include a detailed description of the grounds constituting such breach.

(b) During the Noncompete Period, Executive shall not directly or indirectly through another person or entity (i) induce or attempt to induce any employee of the Company or any of its affiliates to leave the employ of the Company or such affiliate, or in any way interfere with the relationship between the Company or any affiliate and any employee thereof, (ii) hire any person who was an employee of the Company or any affiliate during the last six months of the Employment Period; or (iii) induce or attempt to induce any customer, supplier, licensee, licensor, franchisee or other business relation of the Company or any affiliate to cease doing business with the Company or such affiliate, or in any way interfere with the relationship between any such customer, supplier, licensee or business relation and the Company or any affiliate (including, without limitation, making any negative or disparaging statements or communications regarding the Company or its affiliates).

(c) If, at the time of enforcement of this Section 12, a court shall hold that the duration, scope or area restrictions stated herein are unreasonable under circumstances then existing, the parties agree that the maximum duration, scope or area reasonable under such circumstances shall be substituted for the stated duration, scope or area and that the court shall be allowed to revise the restrictions contained herein to cover the maximum period, scope and

area permitted by law. Executive acknowledges that the restrictions contained in this Section 12 are reasonable and that he has reviewed the provisions of this Agreement with his legal counsel.

(d) In the event of the breach or a threatened breach by Executive of any of the provisions of this Section 12, the Company would suffer irreparable harm, and in addition and supplementary to other rights and remedies existing in its favor, the Company shall be entitled to specific performance and/or injunctive or other equitable relief from a court of competent jurisdiction in order to enforce or prevent any violations of the provisions hereof (without posting a bond or other security). In addition, in the event of a breach or violation by Executive of Section 12(a), the Noncompete Period shall be automatically extended by the amount of time between the initial occurrence of the breach or violation and when such breach or violation has been duly cured.

13. Executive's Representations. Executive hereby represents and warrants to the Company that (i) the execution, delivery and performance of this Agreement by Executive do not and shall not conflict with, breach, violate or cause a default under any contract, agreement, instrument, order, judgment or decree to which Executive is a party or by which he is bound which has not been waived, (ii) Executive is not a party to or bound by any employment agreement, noncompete agreement or confidentiality agreement with any other person or entity which has not been waived, and (iii) on the Commencement Date, this Agreement shall be the valid and binding obligation of Executive, enforceable in accordance with its terms. Executive hereby acknowledges and represents that he has consulted with independent legal counsel regarding his rights and obligations under this Agreement and that he fully understands the terms and conditions contained herein.

14. Survival. Sections 5 through 29, inclusive, shall survive and continue in full force in accordance with their terms notwithstanding the expiration or termination of the Employment Period.

15. Notices. Any notice, communication or request provided for in this Agreement shall be in writing and shall be either personally delivered (with a written acknowledgement of receipt), sent by nationally recognized overnight courier service (with a written acknowledgement of receipt by the overnight courier) or mailed by certified or registered mail, return receipt requested, to the recipient at the address below indicated:

Notices to Executive:

The Address on File with the Company

Notices to the Company:



Chairman, Board of Directors  
NRG Energy, Inc.  
901 Marquette Avenue  
Minneapolis, Minnesota 55402

or such other address or to the attention of such other person as the recipient party shall have specified by ten (10) days prior written notice to the sending party. Any notice under this Agreement shall be deemed to have been given when (i) when personally delivered, (ii) two (2) days after being sent by overnight courier or (iii) three (3) days after mailing by certified or registered mail.

16. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement or any action in any other jurisdiction, but this Agreement shall be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision had never been contained herein.

17. Complete Agreement. This Agreement, those documents expressly referred to herein and other documents of even date herewith embody the complete agreement and understanding among the parties and supersede and preempt any prior understandings, agreements or representations by or among the parties, written or oral, which may have related to the subject matter hereof in any way.

18. No Strict Construction. The language used in this Agreement shall be deemed to be the language chosen by the parties hereto to express their mutual intent, and no rule of strict construction shall be applied against any party.

19. Counterparts. This Agreement may be executed in separate counterparts, each of which is deemed to be an original and all of which taken together constitute one and the same agreement.

20. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the beneficiaries, heirs and representatives of Executive and the successors and assigns of the Company. The Company shall require any successor (whether direct or indirect, by purchase, merger, reorganization, consolidation, acquisition of property or stock, liquidation, or otherwise) to all or a majority of its assets, by agreement in form and substance satisfactory to Executive, expressly to assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform this Agreement if no such succession had taken place. Regardless whether such agreement is executed, this Agreement shall be binding upon any successor of the Company in accordance with the operation of law and such successor shall be deemed the "Company" for purposes of this Agreement. Executive may not assign his rights (except by will or the laws of descent and distribution) or delegate his duties

or obligations hereunder. Except as provided by this Section 20, this Agreement is not assignable by any party and no payment to be made hereunder shall be subject to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or other charge.

21. Choice of Law. All issues and questions concerning the construction, validity, enforcement and interpretation of this Agreement and the exhibits and schedules hereto shall be governed by, and construed in accordance with, the laws of the State of Minnesota, without giving effect to any choice of law or conflict of law rules or provisions (whether of the State of Minnesota or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Minnesota.

22. Amendment and Waiver. The provisions of this Agreement may be amended, modified or waived only with the prior written consent of the Company and Executive, and no course of conduct or course of dealing or failure or delay by any party hereto in enforcing or exercising any of the provisions of this Agreement (including, without limitation, the Company's right to terminate the Employment Period for Cause) shall affect the validity, binding effect or enforceability of this Agreement or be deemed to be an implied waiver of any provision of this Agreement.

23. Insurance. The Company may, at its discretion, apply for and procure in its own name and for its own benefit life and/or disability insurance on Executive in any amount or amounts considered advisable. Executive agrees to cooperate in any medical or other examination, supply any information and execute and deliver any applications or other instruments in writing as may be reasonably necessary to obtain and constitute such insurance. Executive hereby represents that he has no reason to believe that his life is not insurable at rates now prevailing for healthy men of his age.

24. Indemnification and Reimbursement of Payments on Behalf of Executive. The Company and its affiliates shall be entitled to deduct or withhold from any amounts owing from the Company or any of its affiliates to Executive any federal, state, local or foreign withholding taxes, excise tax, or employment taxes ("Taxes") imposed with respect to Executive's compensation or other payments from the Company or any of its affiliates or Executive's ownership interest in the Company (including, without limitation, wages, bonuses, dividends, the receipt or exercise of equity options and/or the receipt or vesting of restricted equity). In the event the Company or any of its affiliates does not make such deductions or withholdings at the written request of the Executive, Executive shall indemnify the Company and its affiliates for any amounts paid with respect to any such Taxes, together with any interest, penalties and related expenses thereto.

25. Consent to Jurisdiction. EACH OF THE PARTIES IRREVOCABLY SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF THE UNITED STATES DISTRICT COURT FOR THE EIGHTH CIRCUIT LOCATED IN MINNESOTA, FOR THE PURPOSES OF ANY SUIT, ACTION OR OTHER PROCEEDING ARISING OUT OF THIS AGREEMENT, ANY RELATED AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY OR THEREBY. EACH OF THE PARTIES HERETO