**Notice to bidders:**

Although this form of power purchase agreement (“**PPA**”) contemplates solar energy and a related battery energy storage system (“**BESS**”), it will serve as the form utilized for PPAs for all forms of energy and for PPAs without a BESS, in each case with some modification:

* For those PPAs without a BESS, the provisions relating to the BESS will be removed or modified, as appropriate.
* For those PPAs which utilize wind energy, the description of, and specifications for, the energy source, the tests and testing procedures and the performance guarantee and related liquidated damages will be modified so that they conform to the corresponding provisions in the form of Membership Interest Purchase, Project Development and Construction Management Agreement for a wind energy project made available in connection with this RFP.
* For those PPAs for projects which utilize technologies other than wind, solar and/or energy storage, the description of, and specifications for, the energy source, the tests and testing procedures and the performance guarantee and related liquidated damages will be modified so that they: (i) conform to the corresponding provisions in this PPA modified, as appropriate, for an energy project of the type proposed; and (ii) reflect parameters consistent with those set out in Schedule E3 of Appendix C of Bidder’s proposal.

A PPA modified as described above will be made available to a bidder upon request.

Solar Energy

and Storage Power Purchase Agreement

Between

Indianapolis Power & Light Company  
d/b/a AES Indiana

(“Company”)

and

[Seller]

(“Seller”)

[•], 20[•]

**[Project Name] Project**

THIS DOCUMENT IS INTENDED SOLELY TO FACILITATE DISCUSSIONS AMONG THE PARTIES IDENTIFIED ABOVE AND THEIR RESPECTIVE AFFILIATES AND REPRESENTATIVES. IT IS NOT INTENDED TO CREATE, AND IT WILL NOT BE DEEMED TO CREATE, A LEGALLY BINDING OR ENFORCEABLE OFFER OR AGREEMENT PRIOR TO THE ACTUAL EXECUTION OF THIS DOCUMENT BY ALL SUCH PARTIES AND THE DELIVERY OF A FULLY EXECUTED COPY OF THIS DOCUMENT BY ALL SUCH PARTIES TO ALL other PARTIES. THIS DOCUMENT IS CONFIDENTIAL AND IS SUBJECT TO A CONFIDENTIALITY AGREEMENT ENTERED INTO BY THE PARTIES.

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***[Exhibits List To Be Added]***

Solar Energy and Storage Power Purchase Agreement

Between

Indianapolis Power & Light Company  
d/b/a AES Indiana

and

[*insert name*]

**This Solar Energy and Storage Power Purchase Agreement** (this “**PPA**”) is made this [•], 20[•] (the “**Effective Date**”), by and between (i) Indianapolis Power & Light Company d/b/a AES Indiana, an Indiana corporation with its principal place of business in Indianapolis, Indiana (“**Company**”), and (ii) [*Insert Name*], a [*state of formation*] with its principal place of business in [*insert state*] (“**Seller**”). Company and Seller are hereinafter referred to individually as a “**Party**” and collectively as the “**Parties**.”

The Parties agree:

# Rules of Interpretation

## Interpretation

.

### Capitalized terms listed in this PPA shall have the meanings set forth in Exhibit A-Definitions or as otherwise defined in this PPA, whether in the singular or the plural or in the present or past tense. Words not otherwise defined in this PPA shall, as applicable (i) have meanings as commonly used in the English language, (ii) be given their generally accepted meaning consistent with Prudent Industry Practices, and (iii) be given their well-known and generally accepted technical or trade meanings.

### The following rules of interpretation shall apply: (1) The masculine shall include the feminine and neuter and vice versa; (2) references to “Articles,” “Sections,” or “Exhibits” shall be to articles, sections, or exhibits of this PPA except as the context may otherwise require; (3) all Exhibits are incorporated into this PPA; *provided*, *however*, that in the event of any conflict with the terms of this PPA, the PPA shall control; and (4) use of the words “include” or “including” or similar words shall be interpreted as “include without limitation” or “including, without limitation;” and (5) use of the words “herein,” “hereof,” “hereunder” and “hereby” shall be interpreted as a reference to this PPA as a whole and not to any particular Exhibit, Article or Section.

### This PPA was negotiated and prepared by both Parties with the advice and participation of counsel. The Parties have agreed to the wording of this PPA and none of the provisions hereof shall be construed against one Party on the ground that the Party is the author of this PPA or any part hereof.

## Interpretation with Other Agreements

.

### This PPA does not provide Seller authorization to interconnect the Facility or inject power into the electric delivery system of Company. Seller shall contract for interconnection services in accordance with the applicable Transmission Tariff. Seller acknowledges that the Generator Interconnection Agreement or any related agreement Seller enters into with Transmission Provider is a separate contract and that (i) this PPA is not binding on the Transmission Provider, (ii) this PPA does not create any rights between Seller and the Transmission Provider, and (iii) the Generator Interconnection Agreement does not modify the Parties’ rights and obligations under this PPA. Seller agrees that the Transmission Provider shall be deemed to be a separate and unaffiliated contracting party regardless of whether the Transmission Provider is Company or an Affiliate of Company.

### This PPA does not provide for the supply of House Power. Seller may contract with the Local Provider for the supply of House Power. Seller acknowledges that obtaining House Power is a separate contract and that (i) this PPA is not binding on the Local Provider, (ii) this PPA does not create any rights between Seller and the Local Provider, and (iii) the House Power contract does not modify the Parties’ rights and obligations under this PPA.

### Seller agrees that the Local Provider shall be deemed to be a separate and unaffiliated contracting party regardless of whether the Local Provider is Company. To the extent allowed by Applicable Law, and to the extent practicable, Seller may obtain House Power by self-generating and netting the self-generation from the Energy provided to Company.

## Good Faith and Fair Dealing

. The Parties shall act in accordance with the principles of good faith and fair dealing in the performance of this PPA.

## Waiver

. The failure of either Party to enforce or insist upon compliance with or strict performance of any of the terms or conditions of this PPA, or to take advantage of any of its rights hereunder, shall not constitute a waiver or relinquishment of any of those terms, conditions, or rights, but the terms shall be and remain at all times in full force and effect in accordance with the applicable terms of this PPA.

# Term and Termination

This PPA shall become effective as of the date of its execution, and shall remain in full force and effect until the Scheduled Termination Date, subject to early termination or extension as provided in this PPA or otherwise agreed to by the Parties in written amendments to this PPA. Applicable provisions of this PPA shall continue in effect after termination to the extent necessary to (i) provide for final billings, payments and adjustments, (ii) enforce or complete the duties, obligations or responsibilities of the Parties and (iii) address any remedies available, claims or indemnification obligations arising prior to termination.

# Facility Description

## Description

. Seller shall own the Facility and possess the contractual rights necessary for its performance under the PPA required for the then-current stage of development or operations. A scaled map that identifies the Site, the location of the Facility, Interconnection Point, Interconnection Facilities, the Point of Delivery and other material facilities is included in Exhibit C-Facility Description.

## General Design of the Facility

.

### Seller shall cause the design, engineering, construction, operation and maintenance of the Facility to be performed materially in accordance with the applicable requirements of the Generator Interconnection Agreement, Exhibit C-Facility Description, and Prudent Industry Practices.

### The Facility shall include all equipment necessary to successfully interconnect with [*Company’s System*] for the delivery of the Facility’s output to the Point of Delivery.

### The Facility shall include all equipment and telecommunications capabilities necessary to communicate with Company’s SCADA System. The equipment shall be approved by Company, acting reasonably.

### The Facility shall include all equipment specified in Exhibit C-Facility Description or otherwise necessary to fulfill Seller’s obligations under this PPA.

# Implementation

## Project Development

.

### No later than thirty (30) Days following signing of this PPA, Seller shall complete a Phase 1 environmental site assessment of the Site in accordance with ASTM standard 1527-13 and shall disclose the report to Company. Seller shall promptly inform Company if, due to any Environmental Contamination identified in the Phase 1 environmental assessment or of which Seller has knowledge, Seller is constrained in a way that will limit, reduce, interfere with or preclude Seller’s ability to perform fully its obligations under this PPA, and provide Company with a statement of whether and to what extent this circumstance may limit or preclude Seller’s ability to perform under this PPA.

### Seller shall at its own expense enter into the Construction Contract and all other project contracts necessary to achieve the Commercial Operation Date and sell Energy, Generation Benefits, Ancillary Services, and capacity (including Zonal Resource Capacity Credits) (collectively, “**Products**”) to Company under this PPA, except to the extent entering into the contracts would be inconsistent with Prudent Industry Practices, *provided*, *however*, that the exception shall not excuse Seller from its obligation to reach the Commercial Operation Date consistent with the timing for the Commercial Operation Milestone.

### From the Effective Date until the Commercial Operation Date, Seller shall (i) submit monthly progress reports to Company in a form agreed upon by the Parties advising Company of the current status of each Construction Milestone, any significant developments or delays to the Construction Milestones along with an action plan for making up delays, and Seller’s best estimate of the Commercial Operation Date; (ii) provide copies of reports submitted to the Facility Lender, if any, relating to status, progress and development of the Facility; (iii) provide a transmission/generator model(s) for the Facility, including power flow modeling data, along with a working stability model that is compatible with the Transmission Provider standard models (typically PSS/E or PSLF models) for Seller’s power generation and interconnection facilities to ensure consistent and accurate information (refer to Exhibit J-Facility Transmission Modeling Requirements for the specific requirements to be followed); and (iv) invite Company to participate in monthly meetings to discuss the progress reports, ask and answer questions, and assess the schedule.

### Seller shall provide reasonable access to the Facility for Company to monitor the construction, start-up, testing, and operation of the Facility at the Facility for compliance with this PPA; *provided*, *however*, that Company shall provide Seller with reasonable advance written notice (Seller agreeing that, except in the case of an emergency for which no advance written notice shall be necessary, 48 hours advance written notice shall be considered reasonable) of each request for access and Company shall comply with all of Seller’s (and its subcontractors’) applicable safety and health rules and requirements. Company’s monitoring of the Facility shall not be construed as inspections or endorsements of the design thereof nor as any express or implied warranties of Company including performance, safety, durability, or reliability of the Facility.

### Between Company and Seller, Seller shall be responsible for obtaining and paying for (or causing to be obtained and paid for) all Permits necessary for the construction, ownership, operation and maintenance of the Facility and the generation and delivery of any output from the Facility to Company. Seller shall keep Company informed timely as to the status of its permitting efforts. Seller shall promptly inform company of any Permits it is unable to obtain, that are delayed, limited, suspended, terminated or otherwise constrained in a way that will limit, reduce, interfere with or preclude Seller’s ability to fully perform its obligations under this PPA, along with a statement of whether and to what extent this circumstance may limit or preclude Seller’s ability to fully perform under this PPA. Seller shall provide Company with written recommendations to overcome any the issue(s) with any Permits to allow Seller to fully perform under this PPA.

### Seller shall provide Company with a report detailing any significant inspections by any Governmental Authority relating to the Facility, including the nature and outcome of the inspections which inspections could have a material impact on the Facility or Seller’s ability to perform its obligations under the Agreement.

### Prior to the Commercial Operation Date, the Market Participant shall register the Facility with the Transmission Provider in accordance with the asset registration provisions of the Transmission Tariff.

## Commercial Operation

. Subject to Section 4.5, the Facility shall satisfy all COD Conditions no later than the Commercial Operation Milestone; *provided*, *however*, that Seller shall not be obligated to satisfy the COD Conditions earlier than the Commercial Operation Milestone and Company shall not be obligated to accept a Commercial Operation Date that is earlier than [ ].

## COD Conditions

. Seller shall timely meet all of the COD Conditions and provide Company a Notice of the date Seller believes the Facility has fulfilled all of the COD Conditions along with all supporting documentation of the satisfaction or occurrence of all COD Conditions. As soon as reasonably practicable after receipt of the Notice, but in no event later than five (5) Business Days after receipt of the Notice, Company shall either:

### deliver a countersigned copy of the Certificate of Project Completion; or

### provide written notice to Seller that Company believes the COD Conditions have not been met, and specify the reasons therefor; in which case, Seller shall address the deficiencies noted by Company and submit a new request for a countersigned Certificate of Project Completion; and

### if Company fails to respond within five (5) Business Days after receipt of Seller’s Notice, then, Seller shall redeliver such Notice and if Company fails to respond within two (2) Business Days after Seller’s redelivery of such Notice, satisfaction of the COD Conditions shall be deemed to have occurred.

## Test Energy

.

### Seller shall provide Company and Transmission Provider with the information necessary for the Market Participant to register the Facility with the Transmission Provider for inclusion in any generation modeling maintained by the Transmission Provider sufficiently in advance to allow the Facility to be registered in that model at least three (3) months prior to generating any Test Energy. Upon receipt of that information, Company will cooperate reasonably to assist Seller in the registration of the Facility to allow generation of Test Energy.

### Prior to COD, Seller shall coordinate the production and delivery of Test Energy with Company, with not less than five (5) Business Days’ Notice, or the other Commercially Reasonable prior Notice as Company may reasonably request. The Parties shall cooperate to facilitate Seller’s testing of the Facility necessary to timely satisfy the COD Conditions. All Test Energy delivered by Seller shall be delivered to MISO at the Point of Delivery.

## Commercial Operation Guarantee

.

### The Commercial Operation Milestone will be extended on a day-for-day basis to the extent that satisfaction of the COD Conditions are delayed beyond the Commercial Operation Milestone as a result of delay resulting from any Delay Attributable to Company, Force Majeure, a delay by the Transmission Provider/transmission owner not caused by any act or omission of Seller, or any act or omission of Company that is in material breach of the PPA or in violation of applicable law; provided that extensions attributable to Force Majeure shall not exceed one hundred eighty (180) Days. If the COD Conditions are not satisfied on or before the Commercial Operation Milestone as extended, Seller will pay Company daily delay liquidated damages in an amount based on MISO Zone 6 CONE for the COD year per MW of Contract Capacity per Day (the “**Delay Liquidated Damages**”), which damages will begin accruing on the Day after the Commercial Operation Milestone (as extended) and will end on the earlier of the satisfaction of the COD Conditions or termination of this PPA.

### In the event that the Capacity Installed as of, or prior to, the Commercial Operation Date is less than the Contract Capacity, but by no more than two percent (2%) of Contract Capacity (the deficit, in MW, the “**Capacity Deficiency**”) but all other COD Conditions are satisfied on or prior to the Commercial Operation Milestone, Seller may elect by notice given to Purchaser on or prior to the Commercial Operation Milestone to pay Company liquidated damages in the amount of [\_\_\_\_\_\_\_\_][[1]](#footnote-2) ($[\_\_\_]) per MW of Capacity Deficiency (“**Capacity Deficiency Damages**”). The payment shall accompany the notice. If Seller meets the conditions of the first sentence of this paragraph, Seller, at any time after the Commercial Operation Milestone, may elect to stop paying liquidated damages under Section 4.5(a) and to pay liquidated damages for the Capacity Deficiency under this Section 4.5(b) by notice given to Purchaser accompanied by the payment of the Capacity Deficiency Damages. In that event, the Capacity Deficiency Damages would be in addition to, and not in lieu of, any Delay Liquidated Damages previously paid by Seller. If Seller meets the conditions of the first sentence of this paragraph and has not elected to pay Capacity Deficiency Damages, Purchaser may require Seller to pay Capacity Deficiency Damages any time after one hundred and twenty Days after the Commercial Operation Milestone.

### Subject to Section 4.5(b), in the event that the COD Conditions are not satisfied on or prior to one hundred eighty (180) Days after the Commercial Operation Milestone : (i) either Party may elect to terminate the PPA at any time as long as the Commercial Operation Date has not occurred; (ii) Seller will pay Company liquidated damages in the amount of [\_\_\_\_\_\_\_\_][[2]](#footnote-3) ($[\_\_\_]) per MW of Contract Capacity (“**Termination Liquidated Damages**”) ; and (iii) a right of first offer will apply as set forth in Section 6.3(b).

### The Parties agree that Company’s actual damages in the event of the delay or failure may be extremely difficult or impracticable to determine. After negotiation, the Parties have agreed that the Delay Liquidated Damages, Capacity Deficiency Damages, and Termination Liquidated Damages are: (i) in the nature of liquidated damages and are a reasonable and appropriate measure of the damages that Company would incur as a result of those delays or failures, and do not represent a penalty; and (ii) if paid, the payment of those amounts is Company’s sole and exclusive remedy, and Seller’s sole and exclusive liability, for a delay, failure of the installed capacity to be equal to the Contract Capacity, or for termination as the case may be.

# Delivery

## Electric Delivery Arrangements

. Seller shall be responsible for making, maintaining and paying all costs associated with the interconnection of the Facility to the [*Company’s System*]. Seller shall materially comply with the Generator Interconnection Agreement and shall materially comply with all requirements set forth in the applicable Transmission Tariff. In the event of any conflict between the Generator Interconnection Agreement and the PPA, the Generator Interconnection Agreement shall control.

### Seller authorizes Company to contact and obtain information concerning the Facility and the Interconnection Facilities directly from Transmission Provider and, upon request, Seller shall confirm the authorization in writing to Transmission Provider or any applicable transmission owners in the form as reasonably requested by Company or the Transmission Provider.

### Seller shall be responsible for all interconnection, electric losses, transmission and ancillary service arrangements and all costs required to deliver Energy from the Facility to the Point of Delivery. No provisional or conditional interconnection agreements or arrangements shall be used unless agreed upon by both Company and Seller.

### Company or the Market Participant, as applicable, shall be responsible for all electric losses, transmission and ancillary service arrangements and all costs required to transmit and deliver Energy from and beyond the Point of Delivery. If at any time during the Term, the entity owning the transmission facilities at the Point of Delivery changes or the facilities at the Point of Delivery cease to be subject to the Transmission Tariff, then the Parties shall cooperate in good faith to amend this PPA in a manner to facilitate the delivery of output from the Point of Delivery to Company as contemplated by this PPA, while maintaining the original economic intent of this PPA.

## Electric Metering Devices

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### All Electric Metering Devices used to measure energy shall be owned, installed and maintained by Seller in accordance with the Generator Interconnection Agreement at no cost to Company under this PPA. Electric Metering Devices shall be approved by Company and shall meet the technical characteristics described in Exhibit C. Company shall be the “Meter Data Management Agent” under the Transmission Tariff.

* + - 1. For purposes of this PPA, in accordance with the Generator Interconnection Agreement, meter readings will be adjusted to reflect losses from the Electric Metering Devices to the Point of Delivery based on the amount specified by the manufacturer for expected losses; *provided*, *however*, that the Operating Committee may revise this loss adjustment based on actual experience and the requirements of the Generator Interconnection Agreement.

#### To the extent permitted under the Generator Interconnection Agreement, Seller shall arrange any necessary authorization to provide Company access to all Electric Metering Devices for all purposes necessary to perform under this PPA and shall provide a notice to Company at least twenty (20) Business Days prior to any regularly scheduled inspection, testing, or adjustment of Electric Metering Devices to permit Company representatives to observe the work; in the event that testing must be performed on an emergency basis, Seller shall provide immediate notice of the circumstance requiring the test and use its best efforts to permit observation by Company. Seller shall perform inspection and tests of Electric Metering Devices on at least an annual basis. Upon written request, and to the extent permitted by the Generator Interconnection Agreement, Seller shall conduct retests reasonably requested by Company. The actual cost of any retest requested by Company shall be borne by Company, unless, upon the retest, the Electric Metering Devices are inaccurate by more than one-half of one percent (0.5%), in which case the cost of the retest shall be borne by Seller. Seller shall provide copies of any inspection or testing reports including references to current manufacturer’s test sheets of equipment to Company.

### Seller shall install and maintain, at its own expense, backup metering devices (“**Back-Up Metering**”); *provided*, *however*, that the specifications, installation and testing of the Back-Up Metering shall be consistent with the requirements for the Electric Metering Devices and the Generator Interconnection Agreement. Upon written request, Seller shall conduct retests of the Back-up Metering requested by Company. The actual cost of any retest shall be borne by Company, unless, upon the retest, the Back-Up Metering is inaccurate by more than half of one percent (0.5%), in which case the cost of the retest shall be borne by Seller. Seller shall provide copies of any inspection or testing reports to the requesting Party.

### If an Electric Metering Device or the Back-Up Metering fails to register, or if the measurement is inaccurate by more than one-half of one percent (0.5%), an adjustment shall be made correcting all measurements as follows:

#### If the Electric Metering Device is found to be defective or inaccurate, the Parties shall use Back-up Metering to determine the amount of the inaccuracy; *provided*, *however*, that the Back-Up Metering has been tested and maintained and adjusted for losses on the same basis as the Electric Metering Device. If the Back-Up Metering is also found to be inaccurate by more than one-half of one percent (0.5%), the Parties shall use the best available information for the period of inaccuracy, adjusted as agreed by the Parties for losses to the Point of Delivery.

#### If the Parties cannot agree on the actual period during which the inaccurate measurements were made, the period shall be the shorter of (A) the last one-half of the period from the last previous test of the Electric Metering Device that found the Electric Metering Device to be accurate to the test that found the Electric Metering Device to be defective or inaccurate, or (B) one hundred and eighty (180) Days immediately preceding the test that found the Electric Metering Device to be defective or inaccurate.

#### To the extent that the adjustment period covers a period of deliveries for which payment has already been made by Company, Company shall use the corrected measurements as determined in accordance with this Article 5 to re-compute the amount due for the period of the inaccuracy and shall subtract the previous payments made by Company for this period from the re-computed amount. The net difference shall be reflected as an adjustment on the next regular, and, if necessary, any subsequent bill in accordance with Article 9.

# Parties’ CPs, Rights and Obligations

## Parties’ Rights and Obligations

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### Company shall use Commercially Reasonable Efforts to make an initial filing for State Regulatory Approval no later than twenty (20) Business Days after the Effective Date. Seller shall act diligently and cooperate with Company’s efforts to seek State Regulatory Approval and promptly provide any information, including the filing of testimony, reasonably requested by Company or required for State Regulatory Approval and/or any regulatory proceedings or litigation that may arise relating to the State Regulatory Approval. No later than twenty (20) Business Days after the Effective Date, Seller shall file an application for a certificate of public convenience and necessity and/or decline to exercise jurisdiction and other approvals as may be necessary with the State Regulatory Agency in connection with, and Company shall cooperate with Seller’s efforts to file, this application. If either Party fails to perform its filing obligations described in this Section 6.1(a) within twenty (20) Business Days after the Effective Date, such Party shall have ten (10) Business Days to cure the default prior to the failure becoming an Event of Default, provided however, that if the sole reason that a Party fails to perform its filing obligations by the due date, is that the other Party is unable or unwilling to perform its filing obligations by that date, then the failure to perform its filing obligations by the due date by the Party capable and willing to perform its filing obligations, shall not constitute a default by that Party.

### Company shall have the right to terminate this PPA, without any further financial or other obligation or liability to Seller as a result of the termination, by Notice to Seller not more than ten (10) Business Days after receipt of a written order from the State Regulatory Agency rejecting State Regulatory Approval or imposing conditions on, limitations on, or other requirements concerning the issuance of State Regulatory Approval that, in Company’s sole discretion, are unacceptable to Company. Seller shall have the right to terminate this PPA not more than ten (10) Business Days after receipt of a written order from the State Regulatory Agency rejecting State Regulatory Approval or imposing conditions or requirements on Seller or the Facility that are unacceptable in the Commercially Reasonable discretion of Seller insofar as those conditions impose additional material costs or obligations on Seller or the Facility, or potentially affect Seller’s ability to timely achieve the Commercial Operation Milestone. If Seller fails to provide that Notice within the ten (10) Business Day period, Seller shall be deemed to have waived its right to terminate this PPA under this Section 6.1(b).

### Company may terminate this PPA if the following conditions precedent have not been satisfied by Seller or waived by Company within sixty (60) Days of the Effective Date:

#### Seller has provided Company the unabridged and unredacted report concerning the electric energy producing potential of the Facility prepared by an independent engineer which assesses the solar resource potential at the Facility and is used by Seller to obtain Facility financing and the Facility design;

#### Seller has provided Company an initial construction timeline including at least the milestones set forth in Attachment Exhibit B hereto;

#### Seller has provided Company a list of all required permits to develop the Facility and estimated dates for receipt of the permits, the list to be in the form set forth in Exhibit F hereto;

#### Seller has provided Company copies of material communications relating to the Interconnection Agreement and any other material agreements between Seller and the RTO and/or the Transmission Provider that are required for Seller’s performance under the Agreement (including as are necessary to deliver delivered energy, ancillary services and capacity-related benefits to the applicable point of delivery set forth in the PPA), each executed by the RTO and/or the Transmission Provider, as applicable; and

#### Seller has provided Company with a detailed description of any actual, known (as of the Effective Date) opposition (i.e., legal claims, filed written comments, testimony at hearings, organizing an anti-Facility group) to the Facility or use of the Facility Site from Stakeholders. “**Stakeholders**” means all persons who could be affected by or are interested in the planning, construction, and/or operation of the Facility, including potentially affected landowners, nearby residents, concerned citizens, elected representatives, federal, state and local government officials, non-governmental organizations (local or national advocacy groups and chambers of commerce), Native American tribes, community leaders, and the media.

#### If Company elects to terminate the Agreement pursuant to this Section 6.1(c), then Company may immediately draw down in full all of the Pre-COD Credit Assurance posted by Seller in accordance with Section 12.1 as liquidated damages for termination of this PPA. The Parties agree that Company’s actual damages in the event of Seller’s failure to meet these conditions may be extremely difficult or impracticable to determine. After negotiation, the Parties have agreed that the Effective Date Performance Assurance is in the nature of liquidated damages and is a reasonable and appropriate measure of the damages that Company would incur as a result of that failure and does not represent a penalty.

### Company may terminate this PPA if State Regulatory Approval is not received by [*date*].

## Early Termination for Failure to Satisfy Seller CP

. Company shall have the right to terminate this PPA, without any further financial or other obligation or liability to Seller as a result of the termination, by Notice to Seller within ten (10) Business Days following the failure of Seller to satisfy the [*Seller CP*] by the required date set forth in the definition of Seller CP. If Company fails to provide that Notice within the ten (10) Business Day period, Company shall be deemed to have waived its rights to terminate this PPA under this Section 6.2.

## Company Right of First Refusal

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### No earlier than twenty-four (24) months and no later than eighteen (18) months prior to the expiration of the Term, the Parties may negotiate in good faith either a new PPA in substantially the same form as the PPA or amendment to the PPA, for the purchase and sale of delivered energy and associated capacity-related benefits, environmental attributes, and ancillary services generated by the Facility.

### If Company terminates the Agreement in accordance with its terms (i) because Seller fails to achieve the Commercial Operation Date by the Commercial Operation Milestone, (ii) because of a Force Majeure event declared by Seller that extends for greater than one hundred eighty (180) Days, or (iii) because of an event of default of Seller, then for a period of one (1) year from the date upon which Company notifies Seller of the termination, neither Seller, nor its successors and assigns, nor its affiliates will enter into an obligation or agreement to sell or otherwise transfer any delivered energy, ancillary services, capacity-related benefits or environmental attributes from the Facility to any third party, unless Seller first offers, in writing, to sell to Company the products from the Facility on the same terms and conditions as the PPA; provided that the Energy Payment Rate may be adjusted based on actual, demonstrable costs incurred by Seller to enable the Facility to generate electric energy following a Force Majeure event.

### The Parties recognize that any new PPA or amendment to the PPA extending the Term would be subject to State Regulatory Approval.

# Sale and Purchase

## General Obligation

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### Beginning on the Commercial Operation Date, Seller shall generate Energy from the Facility, deliver it to the Point of Delivery and sell it to Company. Company shall receive and purchase that Energy at the Point of Delivery and simultaneously shall purchase all other Products, including capacity, associated with that Energy. Except as otherwise provided in this PPA, Seller shall not curtail or interrupt deliveries from the Facility for economic reasons of any type whatsoever.

### Title and risk of loss of the Energy transacted by this PPA shall transfer from Seller to Company at the Point of Delivery. Title and risk of loss of all other Products transacted by this PPA shall transfer from Seller to Company upon Company’s purchase of the corresponding Energy delivered hereunder or pursuant to the requirements of the REC Registration Program and/or the Transmission Tariff, as applicable.

### Company shall cause the Market Participant to offer the full available output of the Facility into Transmission Provider’s day-ahead and real-time markets, as applicable, pursuant to the Operating Procedures, and shall be solely responsible for any costs charged by the Transmission Provider to the Market Participant, including, without limitation, charges associated with schedule imbalances and revenue sufficiency guarantees related to the Facility.

## AGC

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### Beginning on the Commercial Operation Date and from time to time thereafter, Seller shall provide the equipment needed to dispatch the Facility in accordance with the requirements of the Transmission Provider.

### Company may notify Seller by telephonic communication or through use of the AGC Set-Point to curtail the delivery of Energy to Company from the Facility to the Point of Delivery for any reason and in its sole discretion, and Seller shall promptly comply with the notification.

### The AGC Set-Point is calculated by the EMS AGC system and communicated electronically through the SCADA System; provided, that Seller, Company and Market Participant shall cooperate to establish the AGC Set-Point in accordance with the operating procedures set forth in Exhibit G to maximize Energy delivered hereunder.

### Seller shall ensure that Facility AGC Remote/Local status is in “Remote” set-point control during normal operations.

## Compensation for Other Products and Services

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### The Parties acknowledge that existing and future Applicable Laws create value in the ownership, use or allocation of RECs. To the fullest extent allowed by the Applicable Law, Company shall own or be entitled to claim all RECs to the extent the credits may exist or be created during the Term associated with Energy delivered to Company. For the avoidance of doubt, Seller shall own or be entitled to claim (i) any local, state or federal depreciation deductions or other tax credits or other tax-related attributes providing a tax benefit to Seller based on ownership of, or energy production from, any portion of the Facility, including the investment tax credit that may be available to Seller with respect to the Facility under Applicable Laws, and (ii) depreciation and other tax benefits arising from ownership or operation of the Facility unrelated to its status as a generator of renewable or environmentally clean energy.

#### Seller hereby automatically and irrevocably assigns to Company all Transmission Provider Zonal Resource Capacity Credits based on the applicable provision in the Transmission Tariff (currently, MISO Module E) available from the Facility during the Term. Seller shall electronically deliver or cause to be delivered the Annual Contract Quantity to Company by submitting the transfer to the Zonal Resource Capacity Credits in the MISO Module E capacity tracking system (“**MECT**”), or any successor system. Company shall confirm the appropriate transaction(s) submitted by Seller in the MECT. Seller shall electronically deliver or cause to be delivered to Company the Zonal Resource Capacity Credits by December 31st prior to the start of the MISO Capacity Planning Year, or 60 Days prior to the Fixed Resource Adequacy Plan (FRAP) deadline, whichever is earlier. To the extent the procedures under the Transmission Tariff change, the Parties shall conform to the changed procedures to maximize the accreditable capacity to Company.

#### Seller shall register the Facility as an Eligible Energy Resource and, prior to the conveyance thereof to Company, own, hold and manage RECs associated with Energy delivered under this PPA in Seller’s own name and to Seller’s account. Throughout the Term, Seller shall transfer to Company, and Company shall accept from Seller, all of Seller’s right and title to, and interest in, RECs associated with Energy delivered under this PPA, including any rights associated with the REC Registration Program with regard to monitoring, registering, tracking, certifying or trading the credits. Upon the request of Company, at no cost to Company, Seller shall deliver or cause to be delivered to Company the attestations/certifications of RECs reasonably requested by Company.

#### Seller shall make all applications and/or filings for REC accreditation and for the provision of the RECs to Company, or, upon Company’s request, provide the information needed for Company to make the applications and/or filings on Seller’s behalf.

### Seller may utilize the Facility for the provision of Ancillary Services; *provided, however*, that the provision of any such Ancillary Services shall not interfere with either Party’s compliance with the terms of this PPA. Seller shall make available to Company all Generation Benefits and Ancillary Services associated with the Facility during the Term at no additional charge under this PPA. Any compensation Seller receives under the Generator Interconnection Agreement or otherwise for Generation Benefits or Ancillary Services associated with the Facility and its output shall be provided to Company at no additional cost to Company under this PPA. Seller shall credit Company, as a reduction to Seller’s monthly invoice or other mutually agreed mechanism, for any compensation that Seller receives for Generation Benefits or Ancillary Services; *provided*, *however*, that any curtailment of Energy from the Facility requested or required by Company necessary to provide Company all Generation Benefits and Ancillary Services hereunder shall represent Compensable Curtailment Energy in accordance with Section 8.2.

#### Seller shall cooperate with Company and the Market Participant, including by exercising Commercially Reasonable Efforts, to maximize (A) the availability of the Facility, and (B) the Generation Benefits and Ancillary Services from the Facility; *provided*, *however*, that Seller shall not be required to make any material capital expenditures or incur any material increased operating expenses in connection with Seller’s cooperation.

#### In the event a Governmental Authority or Transmission Provider implements new or revised requirements for generators to create, modify, change or supply Energy and/or other Products, requiring Seller to install additional equipment after the Commercial Operation Date to meet the requirements, then the requirements shall be subject to Section 7.3(b)(i) above. Seller shall be allowed to reduce the amount owed to Company for Ancillary Services by an amount sufficient to recover the cost of the additional equipment; *provided*, *however*, that the difference between the amount owed to Company for Ancillary Services and the amount of credit shall in no event be less than zero. Any excess of the cost over the amount of the credit actually taken by Seller in any year shall instead be carried forward as a reduction of the amount owing to Company for Ancillary Services in subsequent years.

### Seller shall provide Company with solar production forecasting services, and source data from Seller or a third-party of Seller’s choice, commencing on the Commercial Operation Date; *provided*, *however*, Company shall have no obligation to utilize the solar production forecasting services in preparing solar production or other forecasts to be provided to MISO. Seller shall use Commercially Reasonable Efforts consistent with Prudent Industry Practices to provide, or cause the third-party to provide, the solar production forecasting services in a form and manner reasonably sufficient for Company to utilize the solar production forecasting services, in its discretion, in preparing solar production and other forecasts for the Facility to MISO; *provided*, *however*, Company acknowledges that any forecast produced from the solar production forecasting services is based on predictions of future events which are impossible to control and which may not be completely reliable, and Seller makes no guarantee, representation or warranty regarding the quality, accuracy or reliability of the forecasts and will have no liability or obligation to Company regarding the quality, accuracy or reliability of any forecasts delivered under this paragraph so long as Seller used Commercially Reasonable Efforts consistent with Prudent Industry Practice to provide the solar production forecasting services. The Parties further agree that if at any time the Parties mutually determine that the solar production forecasting services are not sufficiently reliable to be of benefit to Company, Seller shall have no further obligation to provide the solar production forecasting services to Company.

## Solar Performance Guarantee

. For each calendar year during the Term, it is expected that the Facility shall generate that number of MWh of Energy (measured by Electric Metering Devices), as set forth in Exhibit K (the “**Expected Energy Amount**”) for such calendar year. Commencing with the first full calendar year following the Commercial Operation Date, Seller shall guarantee delivery to Company for each calendar year an amount of Energy of not less than ninety five percent (95%) of annual Expected Energy Amount (as adjusted each calendar year for actual insolation measured by an on-site weather station using procedures similar to ASTM standard 2848-13) for such calendar year (the guaranteed amount for each calendar year period, as so adjusted, the “**Guaranteed Energy Amount**”). On or before February 1 following the end of the first the full calendar year following the Commercial Operation Date, and thereafter following the end of each full calendar year, Seller shall determine, and shall provide documentation of same to Company, whether it has satisfied the applicable Guaranteed Energy Amount for such calendar year, and pay shortfall liquidated damages if applicable, as hereinafter described. Seller shall determine if there has been any shortfall from the Guaranteed Energy Amount for the applicable calendar year, which shall be determined by calculating the positive amount by which (A) the total Guaranteed Energy Amount for the period exceeds (B) on an annual basis the sum of (i) Energy delivered during the period plus (ii) the Excused Energy for the period. The “**Excused Energy**” for the period shall mean the sum of electric energy in MWh that would have been generated and delivered, but was not, on account of a Non-Compensable Curtailment, Force Majeure in accordance with Article 14, or Company default. If there has been any positive shortfall, Seller shall pay to Company (as the sole and exclusive remedy therefor) liquidated damages in an amount equal to the shortfall (expressed in MWh) multiplied the Energy Payment Rate for the applicable contract year multiplied by fifty percent (“**Solar Performance LD**”), in accordance with Section 9.2.

## Parties’ Agreement

. The Parties agree that Company’s actual damages in the event of failures to perform may be extremely difficult or impracticable to determine. After negotiation, the Parties have agreed that the Solar Performance LD is in the nature of liquidated damages and is a reasonable and appropriate measure of the damages that Company would incur as a result of those delays or failures, and do not represent a penalty.

## Communication and Control Equipment

. The Facility shall incorporate communication and control equipment that the Facility can receive and respond to AOC dispatch signals provided by Company or any applicable NERC-approved Balancing Authority, to the extent required by and otherwise in accordance with the Generator Interconnection Agreement. As of the effective date of this PPA, MISO is to be informed of the state of charge of the battery through Inter-Control Center Communications Protocol (ICCP).

## BESS Operation

. The BESS shall be charged and discharged at the direction of Company in accordance with the communications protocols and procedures set forth in the Operating Procedures, and in all cases subject to the BESS Operating Parameters.

# Payment

## Energy Payment Rate

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### Prior to the Commercial Operation Date, Company shall pay Seller for Test Energy delivered to the Point of Delivery pursuant to Section 4.4 at the Test Energy Rate.

### Commencing on the Commercial Operation Date, Company shall pay Seller the Energy Payment Rate for Energy delivered to the Point of Delivery and all other Products associated with the Energy, including any RECs associated therewith.

## Curtailment Energy Payment Rate

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### If delivery of Energy is curtailed (x) by Company (other than as a result of any curtailment required by the Transmission Provider) pursuant to Section 7.2(b) or the proviso in the last sentence in Section 7.3(b), (y) due to tags, offers, bids, plans or schedules for the Facility submitted by the Market Participant, or (z) due to acts or omissions of Company, Market Participant or otherwise, and any the reduction is not a Non-Compensable Curtailment (a “**Compensable Curtailment**”), then:

#### the Parties shall determine, as provided in (ii) below, the quantity of Energy that would have been available for delivery had its generation not been so curtailed pursuant to a Compensable Curtailment (“**Compensable Curtailment Energy**”).

#### Compensable Curtailment Energy shall be calculated as the number of MWh represented by the difference between (A) Potential Energy, less (B) the Energy actually delivered and measured by the Electric Metering Devices, less (C) any Non-Compensable Curtailments, in each case during the period of curtailment.

#### Company shall pay to Seller for the Compensable Curtailment Energy (A) all amounts that Seller would have received from Company under this PPA had the Compensable Curtailment Energy actually been delivered.

### For purposes of determining Compensable Curtailment Energy, the amount of Potential Energy at any given time shall be calculated by Seller using the best-available data and methods to determine an accurate representation of the amount of Energy.

#### To the extent available, Seller will use Seller’s real time Facility Potential communicated to Company through the Facility’s SCADA System as the proxy for Potential Energy, except to the extent that Facility Potential is demonstrated not to accurately reflect the Potential Energy (i.e., Facility Potential is 2% greater or less than Potential Energy determined over a period of one month).

#### During those periods of time when the Facility Potential is unavailable or does not accurately represent Potential Energy as provided in clause (i) above, Seller shall use the best available data obtained through Commercially Reasonable methods to determine the Potential Energy.

### Notwithstanding anything in this Article 8 to the contrary, curtailments or reductions of delivery for any of the following reasons shall constitute “**Non-Compensable Curtailments**”, and no payment shall be due Seller under Section 8.2(a)(a)(iii) for curtailments of delivery of Energy arising out of or resulting from:

#### an Emergency;

#### order(s) issued by MISO to curtail all or part of the Facility; provided that the Market Participant has offered the output of the Facility in accordance with the Operating Procedures and the order is not due to the action or inaction of Company or its Affiliates;

#### any action not caused by Company, that reduces or limits the allowable output of Energy of the Facility under the Generator Interconnection Agreement or a provisional or conditional Generator Interconnection Agreement, including curtailments arising out of interconnection limits established by the Transmission Provider or market rules which make conditional or provisional Generator Interconnection Agreements subordinate to those with unconditional interconnection agreements;

#### a LMP of zero or less than zero.

#### Outages not caused by Company or its Affiliates, whether forced or unforced, whether planned or unplanned, of any part of the transmission system or any testing of the transmission system;

#### the lack of available transmission for Energy generated from the Facility to the Point of Delivery;

#### Seller’s failure to maintain in full force and effect any Permit to construct and/or operate the Facility;

#### Seller’s failure to maintain AGC capability or its failure or refusal to respond to any AGC instructions from the EMS; and

#### Any curtailment by Seller to install, maintain or repair any of its equipment or facilities or in connection with a condition likely to result in significant damage to Seller’s equipment or if Seller otherwise deems the curtailment necessary to protect life or property.

## **BESS Monthly Capacity Payment**

. Once the Facility has achieved its Commercial Operation Date, Company shall pay Seller a monthly capacity payment (the “**Monthly Capacity Payment**”). The Monthly Capacity Payment for the Facility payable each month of the Delivery Period shall be determined in accordance with the calculation set forth in Exhibit L. For the month in which the Commercial Operation Date occurs, the Monthly Capacity Payment will be prorated for the remaining Days of that month. For the last month of the Term, the Monthly Capacity Payment will be prorated for the number of Days remaining in the Term.

## Solar Performance Guarantee

. For each calendar year during the Term, it is expected that the Facility shall generate the Expected Energy Amount as set forth in Exhibit K. Commencing with the first full calendar year following the Commercial Operation Date, Seller shall guarantee delivery to Company the Guaranteed Energy Amount. On or before February 1 following the end of the first the full calendar year period, and thereafter following the end of each full calendar year, Seller shall determine, and shall provide documentation of same to Company, whether it has satisfied the applicable Guaranteed Energy Amount, and pay shortfall liquidated damages if applicable, as hereinafter described. Seller shall determine if there has been any shortfall from the Guaranteed Energy Amount for the applicable calendar year period, which shall be determined by calculating the positive amount by which (A) the total Guaranteed Energy Amount for the period exceeds (B) on an annual basis the sum of (i) Energy delivered during the period plus (ii) the Excused Energy for the period. If there has been any positive shortfall, Seller shall pay to Company (as the sole and exclusive remedy therefor) liquidated damages in an amount equal to the Solar Performance LD.

## BESS Capacity Guarantee

. For each MISO Capacity Planning Year, or part thereof, following the Commercial Operation Date, the BESS shall be required to complete a Generation Verification Test Capacity (“**GVTC**”). For each MISO Capacity Planning Year for which the BESS fails to qualify under the MISO GVTC for its full BESS Contract Capacity in MW, Seller shall pay, and Company shall accept, as liquidated damages for that shortfall, (i) for the initial MISO Capacity Planning Year if Seller utilizes the testing exemption to receive provisional capacity credit an amount equal to the shortfall (expressed in MW) multiplied by the sum of then effective MISO Planning Year CONE per MW-day plus the then effective MISO Planning Resource Auction (PRA) per MW-day clearing price multiplied by 365 (CONE and PRA shall have the meaning given them under the Transmission Tariff) or (ii) for the initial MISO Capacity Planning Year when a GVTC test is performed and all subsequent MISO Capacity Planning Years an amount equal to the shortfall (expressed in MW) multiplied by the then effective MISO Planning Year CONE per MW-day clearing price multiplied by 365 (CONE shall have the meaning given under the Transmission Tariff). For purposes of determining liquidated damages under this Section 8.5, the Parties agree that the MISO GVTC testing requirements (or any applicable replacement test) shall govern. Each Party agrees and acknowledges that (y) the damages that Company would incur if Seller fails to achieve the BESS Capacity Performance Metric for a BESS Measurement Period would be difficult or impossible to calculate with certainty and (z) the liquidated damages are an appropriate approximation of those damages.

## GVTC Testing

. MISO GVTC Testing requirements, as in effect from time to time, shall govern for the determination of Seller’s annual compliance with its contractual capacity obligations. As of the effective date of this PPA, the schedule is as follows:

### The new resource must be registered in the MISO Commercial & Energy Management Systems (EMS) Network Model [\_\_\_\_\_\_\_\_\_\_\_]

### As a new resource greater than 10 MW, for the initial MISO GVTC testing, the ESR should be tested by March 1 to participate in the MISO Capacity Planning Year starting on [\_\_\_\_\_\_\_\_\_\_\_]. In the event that the ESR is not available prior to [\_\_\_\_\_\_\_\_\_\_\_], a letter should be sent to MISO signed by a Company Officer by [\_\_\_\_\_\_\_\_\_\_\_]to receive provisional capacity credit.

### For all subsequent MISO GVTC testing cycles, the resource must complete the MISO GVTC testing by [\_\_\_\_\_\_\_\_\_\_\_] and submit GVTC to MISO by [\_\_\_\_\_\_\_\_\_\_\_]1, for the ensuing MISO Planning Year PRA.

## Termination for Continued GVTC Failure

. The Parties acknowledge that, although the intent of the liquidated damages payable under Section 8.5 is to compensate Company for the damages that Company would incur if the BESS fails to demonstrate satisfaction of the full BESS Contract Capacity during a BESS MISO GVTC, those liquidated damages are not intended to compensate Company for the damages that Company would incur if a pattern of underperformance establishes a reasonable expectation that the BESS is likely to continue to substantially underperform Company’s expectations. Accordingly, and without limitation to Company’s rights under Section 8.5 for those BESS MISO GVTC testing results for the ensuing MISO Capacity Planning Year during which the BESS fails to demonstrate its full BESS Contract Capacity in MW, substantial underperformance shall give rise to a termination right as set forth in this Section 8.7. If the BESS is assigned a XEFORd (as that term is defined by MISO in its business practices manuals or elsewhere) greater than ten percent (10%) for any two consecutive MISO Capacity Planning Year periods, an 18-month cure period (the “**BESS Capacity Cure Period**”) will commence on the Day following the close of the second MISO GVTC testing. For each MISO GVTC during that BESS Capacity Cure Period, BESS MISO GVTC tests shall continue to be conducted in accordance with the MISO procedures and liquidated damages paid and accepted as set forth in Section 9.2; *provided*, *however*, that if Seller fails to demonstrate satisfaction of the BESS full BESS Contract Capacity in MW prior to the expiration of the BESS Capacity Cure Period, that failure shall constitute an Event of Default under Section 11.1 of this PPA (a “**GVTC Default**”) for which Company shall have the rights set forth in Section 11.3.

# Billing and Payment

## Billing

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### The billing period shall be the calendar month with any partial months prorated appropriately. Within ten (10) Days after Seller’s request, Company will provide to Seller a statement based on Company’s reading of the Electric Metering Devices and Company’s assessment of the amount due during the previous calendar month. No later than fifteen (15) Business Days after the end of each month, Seller shall submit an invoice to Company in a form and by a method mutually agreed to by the Parties showing the payment amount due Seller during the previous calendar month, specifying the Products and services provided, all billing parameters, rates and factors, and any other data reasonably relevant to the calculation of payments due to or from Seller.

### Seller shall include an explanation of any items in dispute, as well as all supporting documentation upon which Seller relies. Billing disputes shall be resolved in accordance with Section 9.3.

### All billing data based on metered deliveries to Company shall be based on meter readings in accordance with Section 5.2.

## Payment

. Unless otherwise specified herein, undisputed payments shall be payable by check or electronic funds transfer, as designated by the owed Party, on or before the 15th Business Day following receipt of the invoice. Remittances received by mail will be considered to have been paid when due if the postmark indicates the payment was mailed on or before the 15th Business Day following receipt of the billing invoice.

### If a payment is late, a late payment charge shall be applied to the unpaid balance for the number of Days payment was late and shall be added to the next billing statement. Late payment charges shall include interest calculated using an annual rate of interest equal to one percent (1%) plus the prime rate as published on the date of the invoice in The Wall Street Journal (or, if unavailable, an equivalent publication on or about that date).

### Each Party at any time may offset against any and all undisputed amounts that may be due and owed to the other Party under this PPA, any and all undisputed amounts, including damages and other payments, that are owed pursuant to this PPA.

### Seller and Company shall net their obligations to each other under this PPA, and payment of the net amount will discharge all mutual undisputed obligations between the Parties.

## Billing Disputes

. Either Party may dispute invoiced amounts, but shall pay at least the undisputed portion on or before the date due. To resolve any billing dispute, the Parties shall use the procedures set forth in Article 12. When the billing dispute is resolved, the Party owing shall pay the amount owed within five (5) Business Days of the date of the resolution, without late payment interest except to the extent that it shall have been established that the amount owed was not disputed in good faith, in which case late payment interest charges shall be calculated on the amount found not to have been disputed in good faith in accordance with the provisions of Section 9.2.

# Operations and Maintenance

## Operation and Administration

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### Seller shall staff, control, and operate the Facility consistent with Prudent Industry Practices and the Operating Procedures. Seller personnel shall be available at all times via telephone or other electronic means with (i) the capability of remotely starting, operating and stopping the Facility within 5 minutes when the relevant primary or back-up communications are operational, and (ii) the ability to be present at the Site within one hour.

### Seller shall materially comply with the requirements of NERC, the ERO, the Transmission Provider, FERC, all Governmental Authorities, and Prudent Industry Practices in the operation of the Facility.

#### To the extent that the acts or omissions of Seller in violation of Section 10.1(a) or any other provision of this PPA contribute in whole or in part to actions that result in monetary penalties being assessed to Company by NERC, the ERO, Transmission Provider, FERC, or any other Governmental Authority, Seller shall reimburse Company for all the monetary penalties.

#### Seller shall register with NERC as the initial “Generator Owner” and “Generator Operator” (each as defined by NERC) for the Facility.

### Seller shall be responsible for providing accurate and timely updates on the current availability of the Facility to Company’s EMS. Seller shall provide to Company a day- ahead solar forecast in accordance with Exhibit G-Operating Procedures (AGC Protocols, Data Collection). Seller acknowledges that the forecasting is consistent with the reporting requirements required for compliance with NERC Reliability Standards intended to maintain reliability. Seller, as the generator, is primarily responsible for complying with the NERC Reliability Standards and to report the information to Transmission Provider, ERO or other reliability coordinator. Company agrees to provide the forecasted information to the reliability coordinator on Seller’s behalf; *provided*, *however*, that Seller shall remain responsible to provide forecasts and any changes to the real-time or forecast availability of the Facility in accordance with Section 7.3(c) using the best data available to Seller.

## Facility Maintenance

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### Seller shall maintain the Facility in accordance with Prudent Industry Practices and relevant equipment manufacturers’ requirements. Seller shall provide Company with an annual schedule of its regular maintenance requirements for the Facility, substation, and Photovoltaic Modules detailing any maintenance that Seller reasonably expects will reduce deliveries of Energy under this PPA by more than ten (10) percent of the Contract Capacity of the Facility (“**Maintenance Schedule(s)**”). Maintenance Schedules shall be provided to Company in writing and sufficiently in advance for reasonable review, and Company may, within ten (10) Days after receipt of the schedule, request Commercially Reasonable modifications to the Maintenance Schedule with which requests Seller agrees to use Commercially Reasonable Efforts to comply. Seller shall be permitted to make changes to the Maintenance Schedules to the extent agreed to by Company or as required by Prudent Industry Practices or Applicable Law. Seller shall be permitted to reduce deliveries of Energy and cease operation of the entire Facility, Photovoltaic Modules or BESS, if applicable, during any period of Facility or BESS maintenance.

### Except as otherwise agreed to by Company, Seller shall minimize the amount of scheduled maintenance during On-Peak Months, except to the extent (i) the scheduled maintenance is required by or necessary to avoid damage to the Facility or necessary to preserve any equipment warranties, (ii) the failure to perform the maintenance is contrary to operation in accordance with Prudent Industry Practices, (iii) maintenance of the PV Plant occurs during period of darkness and does not affect the BESS, or (iv) Curtailment related to scheduled maintenance is deemed necessary to protect life or property.

### When Forced Outages occur, Seller shall notify Company’s EMS of the existence, nature, start time and expected duration of the Forced Outage in accordance with Exhibit H; provided that Seller shall provide notice no later than one hour after learning of the occurrence of a Forced Outage affecting ten (10) percent or more of the Photovoltaic Modules. Seller shall promptly inform Company’s EMS of changes in the expected duration of the Forced Outage unless expressly relieved of this obligation by Company’s EMS for the duration of each Forced Outage.

## Financial Reporting

. Seller shall provide Company:

### As soon as available, but in any event within 90 Days after the end of each Fiscal Year of Seller, a copy of the annual audit report of Seller for the Fiscal Year including a copy of the audited consolidated balance sheet of Seller as at the end of the Fiscal Year and the related audited consolidated statements of income or operations, shareholders' equity and cash flows for the Fiscal Year, setting forth in each case in comparative form the figures for the previous Fiscal Year, all in reasonable detail and prepared in accordance with GAAP, together with an unqualified opinion as to the audit report of a registered public accounting firm, which opinion does not contain a “going concern” or similar qualification or exception, or any qualification or exception arising out of the scope of the audit.

### As soon as available, but in any event within 45 Days after the end of each of the first three Fiscal Quarters of each Fiscal Year of Seller, a copy of the unaudited balance sheet of Seller as at the end of the Fiscal Quarter, and the related unaudited statements of income or operations, shareholders' equity and cash flows for the Fiscal Quarter and for the portion of the Fiscal Year through the end of the Fiscal Quarter, setting forth in each case in comparative form the figures for (i) the corresponding Fiscal Quarter of the previous Fiscal Year and (ii) the corresponding portion of the previous Fiscal Year, all in reasonable detail. The quarterly financial statements shall be certified by a responsible officer of Seller as fairly presenting in all material respects the financial condition, results of operations, shareholders' equity and cash flows of Seller as of the end of the Fiscal Quarter in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes.

### As soon as available, but in any event within 30 Days after the end of each month occurring during each Fiscal Year of Seller, the unaudited balance sheets of Seller as at the end of the month, and the related unaudited statements of income or operations and cash flows for the month, and for the portion of the Fiscal Year through the end of the month, setting forth in each case in comparative form the figures for (i) the corresponding month of the previous Fiscal Year and (ii) the corresponding portion of the previous Fiscal Year, all in reasonable detail. The monthly financial statements to be certified by a responsible officer of Seller as fairly presenting in all material respects the financial condition, results of operations and cash flows of Seller as of the end of the month in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes.

## Books and Records

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### Seller shall maintain an accurate and up-to-date operating log in electronic format at the Facility with records of production for each 5 minute interval, changes in operating status, Forced Outages, information required by Applicable Law, any Governmental Authority, the Transmission Provider, or the ERO in the prescribed format, and any other information reasonably requested by Company.

### Seller shall provide Company, at its request, historic information on the operation of the Facility, including, but not limited to, 5-minute interval output, facility availability (panel/inverter), charge levels at specific historic points.

### Seller and Company shall each keep complete and accurate records and all other data reasonably required by each of them for the purposes of proper administration of this PPA, including the records as may be required by Governmental Authorities, Transmission Provider, NERC or the ERO as applicable. All records of Seller pertaining to the operation of a Facility shall be maintained on the premises of the Facility or the other location as is mutually agreed to by the Parties.

### Each Party shall keep all books and records necessary for metering, billing and payment and shall provide the other Party Commercially Reasonable access to those records.

### Company may audit and examine from time to time upon at least 24-hours advance request and during normal business hours: (i) Seller’s operating procedures, (ii) equipment manuals and Operating Records and (iii) data kept by Seller in each case relevant to transactions under and administration of this PPA, for compliance with this PPA, Applicable Law and relevant accounting standards. Seller shall maintain all the records at the Facility or some other mutually-agreeable location and shall cooperate with Company’s audit rights under this Section 10.4.

## Operating Committee and Operating Procedures

.

### Company and Seller shall each appoint one representative and one alternate representative to act as the Operating Committee in matters relating to the Parties’ performance obligations under this PPA and to develop operating arrangements for the generation, delivery and receipt of any Products from the Facility. Operating Committee representatives shall be included in Exhibit D-Notices.

#### The Operating Committee may develop mutually agreeable written Operating Procedures consistent with the requirements of this PPA to address matters of day-to-day communications; key personnel; operations-center interface; metering, telemetering, telecommunications and data acquisition procedures; operations and maintenance scheduling and reporting; reports; operations log; testing procedures; and the other matters as may be mutually agreed upon by the Parties.

### The Operating Committee shall review the requirements for AGC from time to time after the date hereof and may agree on modifications thereto to the extent necessary or convenient for operation of the Facility in accordance with this PPA.

### The Operating Committee shall have authority to act in all technical and day-to-day operational matters relating to performance of this PPA and to attempt to resolve disputes or potential disputes; *provided*, *however*, that except to the extent explicitly provided for in this PPA, the representatives and the Operating Committee shall not have the authority to amend or modify any provision of this PPA.

## Access to Facility

. Appropriate representatives of Company shall have access to the Facility with Commercially Reasonable prior notice to read meters and perform inspections as may be appropriate to facilitate the performance of this PPA. While at the Facility, the representatives shall observe all safety precautions as may be reasonably required by Seller and its subcontractors and shall conduct themselves in a manner that will not unreasonably interfere with the operation of the Facility.

## Real Time Data

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### Seller shall communicate all data necessary for Company to integrate the Facility into Company’s EMS in real time through the Facility’s SCADA System in accordance with the AGC Protocols. Seller shall maintain the Facility’s SCADA System so that it is capable of interfacing with and reacting to Company’s AGC Set-Point and responding to signals from Company’s EMS in accordance with the AGC Protocols.

#### Seller shall use Commercially Reasonable Efforts to adjust the real time Facility Potential when Company communicates to Seller a measured difference of plus or minus two percent between (A) the metered Energy, during a time where there was no AGC Set-Point, and (B) Facility Potential.

#### In the event that Company reasonably concludes that Seller is not (A) providing the data required by this Section 10.7, (B) interfacing with and reacting to Company’s AGC Set-Point as required by this PPA, and/or (C) providing Facility Potential data within the required margin of error, then upon Notice from Company, Seller shall, at Seller’s expense, take those actions necessary to fully comply with this Section 10.7. Upon Seller’s request, Company shall cooperate with Seller in taking any actions.

### From and after the Commercial Operation Date, Seller shall provide Company, at Seller’s expense, real time performance and meteorological data for all Photovoltaic Modules at the Facility in accordance with Exhibit G-Operating Procedures (AGC Protocols, Data Collection) for the Term of this PPA. So long as Company has provided Seller with the interface specifications of Company’s PI, or successor historian system, as requested by Seller from time to time, Seller shall undertake to maintain Seller-owned data collection systems which are compatible with Company’s PI, or successor historian system. Seller shall ensure that real time communications capabilities are available and maintained for the transmission to Company’s PI. Seller shall ensure that all meteorological equipment at a minimum meets the specifications set forth in Exhibit G-Operating Procedures (AGC Protocols, Data Collection). Company shall be entitled to disclose data gathered through Company’s PI to any Governmental Authority or MISO, or any company agent, consultant and subcontractor as needed for the administration of this PPA or regulation of Company. Company shall not disclose the price terms of any Products sold under this PPA unless the third parties are subject to a confidentiality agreement that is compliant with the terms of Section 21.19.Neither of the disclosure restrictions set forth above are applicable to any disclosure to any Governmental Authority, MISO or any Intervening Party (as defined in and subject to the terms of Section 21.19(a)); provided, that, information disclosed to the Governmental Authorities, MISO, or Intervening Parties, as applicable, shall be limited as provided in Section 21.19(a).

# Default and Remedies

## Events of Default

. Any of the following events shall constitute an “**Event of Default**” of the specified Party if the event has not been cured within the cure period specified for the event:

### Either Party’s failure to make any undisputed payment to the other Party as required by this PPA, including invoices, Actual Damages, any required indemnification, or any other required payment under this PPA, and the amount remains unpaid for a period of twenty (20) Business Days after the date the defaulting Party receives Notice from the non-defaulting Party that the amount is overdue.

### Either Party’s application for, or consent (by admission of material allegations of a petition or otherwise) to, the appointment of a receiver, trustee or liquidator for a Party or for all or substantially all of its assets, or its authorization of the application or consent, or the commencement of any proceedings seeking the appointment against it without the authorization, consent or application, which proceedings continue undismissed or unstayed for a period of sixty (60) Days from its inception.

### Either Party’s authorization or filing of a voluntary petition in bankruptcy or application for or consent (by admission of material allegations of a petition or otherwise) to the application of any bankruptcy, reorganization, readjustment of debt, insolvency, dissolution, liquidation or other similar law of any jurisdiction or the institution of the proceedings against a Party without the authorization, application or consent, which proceedings remain undismissed or unstayed for ninety (90) Days from its inception or which result in adjudication of bankruptcy or insolvency within the time.

### A Change of Control of Seller.

### Either Party’s unauthorized assignment of this PPA in violation of the terms of this PPA that is not cured or otherwise waived within thirty (30) Days of receipt by the defaulting Party of a Notice from the non-defaulting Party that such assignment violates this PPA.

### Any representation or warranty made by a Party in this PPA is proven to have been false in any material respect when made or ceases to remain true during the Term and the result of which would reasonably be expected to result in a Material Adverse Effect on the non-defaulting Party if (a) the misrepresentation or breach of warranty is not remedied within thirty (30) Business Days after notice is received by the defaulting Party (or up to sixty (60) Business Days in the event the misrepresentation can likely be cured in the longer period and the breaching party is diligently pursuing a cure), or (b) the inaccuracy is not capable of being remedied, but the non-defaulting Party’s damages resulting from the inaccuracy can be reasonably ascertained and the payment of the damages is not made within thirty (30) Business Days after a written notice of the damages is provided by the non-defaulting Party to the defaulting Party.

### Seller’s failure to maintain insurance coverages in the types and amounts required by this PPA.

### The occurrence of a GVTC Default as specified in Section 8.7.

### Seller’s breach of the Generator Interconnection Agreement that has a Material Adverse Effect on Company and has not been cured in accordance with the cure periods set forth in the Generator Interconnection Agreement.

### The failure by either Party to perform or observe any other material obligation to the other Party under this PPA that is not excused by Force Majeure and the failure shall remain unremedied for thirty (30) Days after Notice thereof (or up to ninety (90) Days in the event the failure can be cured in the longer period and the defaulting Party is diligently pursuing a cure) shall have been given by the non-defaulting Party; provided that the cure period for any breaches of Section 6.1(a) shall be solely as provided in Section 6.1(a).

## Remedies

. Upon the occurrence of any Event of Default of this PPA, the non-defaulting Party may pursue all rights and remedies available to it at law and in accordance with the terms of this PPA. Except as explicitly provided to the contrary in this PPA, each right or remedy of the Parties provided for in this PPA shall be cumulative of and shall be in addition to every other right or remedy provided for in this PPA, and the exercise of one or more of the rights or remedies provided for herein shall not preclude the simultaneous or later exercise by the Party of any other rights or remedies provided for herein.

## Termination and Damages

. For any uncured Event of Default, the non- defaulting Party may, at its option do any, some, or all of the following:

### Offset from any payments due from the non-defaulting Party any amount otherwise due, including any unpaid Actual Damages;

### Seek Actual Damages in the amounts and on the basis for the default as authorized by this PPA; or

### Terminate this PPA immediately upon Notice, without penalty or further obligation to the defaulting Party. Upon the termination of this PPA under this Section 11.23, the non-defaulting Party shall be entitled to receive from the defaulting Party all of the Actual Damages and any other damages to which the Party is entitled under this PPA in connection with the Event of Default resulting in the termination.

## Actual Damages

. For all Events of Default, the non-defaulting Party shall be entitled to receive from the defaulting Party all direct damages proximately caused by the Event of Default, subject to Section 11.7 (“**Actual Damages**”) incurred by the non-defaulting Party; *provided*, *however*, that if an Event of Default has occurred and has continued uncured for a period of three hundred and sixty-five (365) Days following Notice of the Event of Default, plus in the case of Company, the additional time that may be required to afford Company a reasonable period of time in which to exercise its termination remedy factoring in any applicable cure rights granted by Company to Seller under this PPA and to any Facility Lenders, under Article 19 and under Section 13.1(“**Damages Period**”), the non-defaulting Party shall be required to either waive its right to collect further damages on account of the Event of Default for any period extending beyond the Damages Period or elect to terminate this PPA. In the event of a Party’s termination of this PPA within the Damages Period, the non-defaulting Party shall be entitled to exercise any, some or all of the applicable remedies set forth in Section 11.3(a), Section 11.3(b), Section 11.3(c) or elsewhere in this PPA. Nothing in this Section 11.4 shall require a Party to terminate this PPA, and only the failure to adhere to the time limitations in the first sentence in this Section 11.4 shall create a waiver of the non-defaulting Party’s right to collect further damages on account of the Event of Default otherwise allowed under this PPA. If Seller is the defaulting Party, the Parties agree that Actual Damages recoverable by Company hereunder on account of an Event of Default of Seller shall consist of any direct damages available under this PPA including any Replacement Power Costs. If Company is the defaulting Party, the Parties agree that Actual Damages recoverable by Seller hereunder on account of an Event of Default of Company shall consist of any direct damages available under this PPA, including any Seller Contract Losses.

## Specific Performance

. In addition to the other remedies specified in this Article 11, in the event that any Event of Default of either Party is not cured within the applicable cure period set forth herein, the non-defaulting Party may elect to treat this PPA as being in full force and effect and the non-defaulting Party shall have the right to seek specific performance.

## Limitation on Damages

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### Neither Party’s Damages Cap shall apply to:

#### a Party’s intentional misrepresentation or fraud, gross negligence or willful misconduct in connection with this PPA or the operation of the Facility;

#### any claim for indemnification under Section 18.1 of this PPA; or

#### damages incurred by a Party in connection with any bankruptcy or insolvency proceeding involving the other Party, including the claiming Party’s loss of the benefit of its bargain due to rejection or other termination of this PPA in the proceeding.

### Other than as set forth in Section 11.6(a) and Section 11.6(e), Seller’s liability for damages under the PPA arising prior to the Commercial Operation Date shall not exceed the Seller Pre-COD Damages Cap.

### Seller’s liability for damages under the PPA arising after the Commercial Operation Date shall not exceed the Seller Post-COD Damages Cap.

### The Seller Pre-COD Damages Cap and the Seller Post-COD Damages Cap shall not apply to Actual Damages arising out of any of the following events acts or omissions;

#### damage to Company-owned facilities caused by Seller’s negligent acts or omissions;

#### the sale or diversion by Seller to a third party of any capacity, Energy, RECs or Generation Benefits committed to Company under this PPA;

#### Seller’s failure (i) to maintain insurance coverages in the types and amounts required by this PPA or (ii) to apply any insurance proceeds to restoration of damaged equipment of the Facility following a casualty except to the extent allowed by this PPA or required by the Financing Documents or Applicable Law; or

#### any Environmental Contamination caused by Seller in connection with this PPA or the Facility.

### Other than as set forth in Section 11.6(a), Company’s liability for damages under the PPA shall not exceed the applicable IPL Damages Cap.

### The Parties confirm that the express remedies and measures of damages provided in this PPA satisfy the essential purposes hereof. If no remedy or measure of damages is expressly provided herein, the obligor’s liability shall be limited to Actual Damages only. Neither Party shall be liable to the other Party for consequential, incidental, punitive, exemplary, special, equitable or indirect damages, lost profits or other business interruption damages by statute, in tort or contract (except to the extent expressly provided herein); *provided*, *however*, that if either Party is held liable to a non-Affiliate third party for the damages and the Party held liable for the damages is entitled to indemnification from the other Party hereto, the indemnifying Party shall be liable for, and obligated to reimburse the indemnified Party for, the damages.

## Duty to Mitigate

. Each Party agrees that it has a duty to mitigate damages and covenants that it will use Commercially Reasonable Efforts to minimize any damages it may incur as a result of the other Party’s performance or non-performance of this PPA.

# Seller Credit Support

## Seller Credit Support

. No later than ten (10) Business Days after the Effective Date, Seller shall provide Pre-COD Credit Assurance to secure the obligations of Seller under this PPA. This amount shall be adjusted to the Post-COD Credit Assurance as of COD. Pre-COD Credit Assurance may only be fulfilled through cash deposit or Seller Letter of Credit. Post-COD Credit Assurance may be fulfilled through a combination of cash deposit, Seller Letter of Credit or Seller Guaranty. The Credit Support shall be: (a) a Seller Guaranty from an Acceptable Guarantor in form and substance reasonably satisfactory to Company for Post-COD Credit Assurance; (b) a Seller Letter of Credit in form and substance, and from an issuer, reasonably satisfactory to Company; or (c) a cash escrow deposited with a financial institution reasonably acceptable to Company and subject to the collateral security arrangements as are reasonably acceptable to Company, in an amount equal to the necessary Credit Support. For the Post-COD Credit Assurance, Seller shall have the right in its sole discretion to post a Seller Letter of Credit or a Seller Guaranty (or a combination thereof) for its security posting obligations under this Section 12.1 so long as the security meets the requirements for that security set out in this Article 12. The Seller Guaranty shall be substantially in the form of Exhibit M. If Seller elects to provide a letter of credit, it shall be an irrevocable standby letter of credit, in form and substance acceptable to Company, from a Qualified Issuer. The letter of credit must be issued for a minimum term of three hundred sixty (360) Days. Seller shall cause the renewal or extension of the letter of credit for additional consecutive terms of three hundred sixty (360) Days until the Scheduled Termination Date. Each extension or renewal shall occur no later than forty-five (45) Days prior to each expiration date of the then current letter of credit. If the letter of credit is not renewed or extended as required herein, Company shall have the right to draw immediately upon the letter of credit and to place the amounts so drawn, at Seller’s cost and with Seller’s funds, in an interest bearing escrow account, until and unless Seller provides a substitute form of security meeting the requirements of this PPA in the form of an irrevocable standby letter of credit. The Letter of Credit shall be in the substantially the form of Exhibit N.

## Draws on Credit Support

. The Credit Support will be maintained at the expense of Seller, and Company shall be entitled to access the Credit Support as necessary to secure Seller’s performance pursuant to this PPA, including for satisfaction of any amounts owed to Company herein. Company shall have the right to draw against the Seller Letter of Credit and/or claim against the Seller Guaranty (i) upon the occurrence of a Seller Default, (ii) to satisfy any Claim by Company under Article 18, (iii) as to any Seller Letter of Credit, if Seller fails to timely renew or extend the Seller Letter of Credit or provide substitute Credit Support, or the issuer no longer qualifies as a Qualified Issuer, and (iv) as to any Seller Guaranty, if Seller fails to timely provide a replacement Seller Guaranty from an Acceptable Guarantor or provide alternate Credit Support as provided in Section 12.3. Amounts drawn pursuant to Section 12.2(iii) and (iv) may be applied to amounts owed under Section 12.2(i) and (ii) and shall otherwise be held in an interest bearing escrow account and returned to Seller upon Seller’s replacement of the Seller Letter of Credit or Seller Guaranty with a replacement Seller Letter of Credit or Seller Guaranty meeting the requirements of Section 12.1.

## Replacement Credit Support

. If the Seller Guarantor ceases to be an Acceptable Guarantor, then Seller shall be required to either (i) provide a replacement Seller Guaranty from a different Acceptable Guarantor, or (ii) replace the Seller Guaranty provided by the unqualified Seller Guarantor with a Seller Letter of Credit meeting the criteria set forth in this Article 12, in each case, no later than ten (10) Business Days after the Guarantor ceases to be an Acceptable Guarantor.

## Financial Statements

. If Seller provides a Seller Guaranty as Credit Support, Seller shall provide Company as to the Seller Guarantor (unless the same are publicly available) the same financial statements, reports and deliverables, and at the same times, as are required to be delivered for Seller pursuant to Sections 10.3(a) and (b) until the Seller Guaranty is released in accordance with Section 12.6.

## Security is Not a Limit on Liability

. Credit Support contemplated by this Article 12 constitutes security for, but is not a limitation of, Seller’s obligations hereunder, and shall not be Company’s exclusive remedy for Seller’s failure to perform its obligations in accordance with this PPA.

## Release of Credit Support

. The remaining balance of Credit Support required under Section 12.1, if any, shall be returned (if a Seller Letter of Credit) or released (if a Seller Guaranty) to Seller at the earlier of (i) replacement by a Seller Letter of Credit or Seller Guaranty in accordance with Section 12.3, (ii) if this PPA is terminated, within fifteen (15) Business Days of the termination, and (iii) the date the obligations of Seller under this PPA have been fully satisfied; *provided*, *however*, in either case of the preceding clause (i) or clause (ii), the Credit Support required under Section 12.1 must remain in place in an amount equal to the aggregate value of the claims by Company under this PPA made in good faith and then pending, if any, but no more than the aggregate amount required under Section 12.1, which Credit Support shall be released once the pending claims are resolved and any monies due in connection therewith have been paid to Company.

# Dispute Resolution

## Arbitration

. The Parties shall attempt in good faith to resolve all disputes arising out of, related to or in connection with this PPA (a “**Dispute**“) promptly by negotiation as follows. Any Party may give the other Party written notice of any dispute not resolved in the normal course of business. Executives of both Parties at levels at least one level above the Facility personnel who have previously been involved in the dispute (the “**Executives**“) shall meet at a mutually acceptable time and place (which may be virtual) within ten (10) Days after delivery of the notice, and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute. If the Executives are unable to resolve the Dispute within thirty (30) Days following the commencement of their attempt to resolve the Dispute, the Dispute shall be finally resolved by arbitration by a single arbitrator and pursuant to the CPR Institute for Dispute Resolution Rules for Non-Administered Arbitration then in-effect, including any appellate provisions in those rules. The Parties waive any judicial challenges to or judicial appeals from the arbitrator’s order. The CPR’s rules for appeal from an arbitration award shall be the Parties’ sole recourse from an adverse award. The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1 et seq., and judgment upon the award rendered by the arbitrator may be entered by any court having jurisdiction thereof. The place of arbitration shall be Indianapolis, Indiana and the substantive law of Indiana shall apply. No Party can recover punitive damages in the arbitration. Each Party, regardless of outcome, shall bear its own fees, costs and expenses associated with any arbitration. The Parties agree to work with each other and the arbitrator to facilitate and permit discovery from third parties and/or witnesses, including from entities, persons, and witnesses outside the State of Indiana.

## Arbitration of Technical Disputes

. A Technical Dispute that is not resolved by the Executives in accordance with Section 12.1 shall be resolved pursuant to this Section 13.2. For any Unresolved Technical Dispute following the expiration of the thirty (30) Day period described in Section 13.1, the Parties shall jointly name a neutral engineer to resolve the dispute in accordance with this Section 13.2 (the “**Engineering Arbitrator**”) within five (5) Business Days. If the Parties engage an Engineering Arbitrator as provided in this Section 13.2, the disputing Party shall deliver to the Engineering Arbitrator and to the other Party written notice stating (i) the general nature of each Technical Dispute, (ii) the amount or extent of the Technical Dispute, and (iii) supporting data for the Technical Dispute. The opposing Party shall endeavor to submit any response to the disputing Party and the Engineering Arbitrator within five (5) Business Days after receipt of the disputing Party’s last submittal (unless the Engineering Arbitrator allows additional time). Each Party’s submission shall be in the form of written statements of position by the Party, and each Party shall have an opportunity to respond to the written statements of the other Party and any requests for statements or information by the Engineering Arbitrator; *provided*, *however*, that all responses to submissions (except as provided above) shall be made within two (2) Business Days of receipt of the submission being responded to and, notwithstanding any provision herein to the contrary, any unresolved disputed items shall be determined by the Engineering Arbitrator within three (3) Business Days of receipt by the Engineering Arbitrator of the opposing Party’s initial response or the expiration of the deadline therefor. The decision of the Engineering Arbitrator shall be final and binding on each of the Parties and may be enforced by either Party. If the Engineering Arbitrator does not render a formal decision in writing within the time stated in this Section 13.2, the Parties may pursue all its rights and remedies provided at law or in equity or otherwise in this PPA. The Parties shall each bear their own costs with respect to the arbitration of any the Technical Dispute. When functioning as interpreter and judge under Section 13.2, the Engineering Arbitrator will take into consideration the results of any inspection or test performed by or on behalf of any Governmental Authority relating to the Facility that is relevant to the Technical Dispute that is the subject of the proceeding and will not show partiality to either Party. The Engineering Arbitrator will not be liable in connection with any interpretation or decision rendered in good faith in the capacity. The costs of the Engineering Arbitrator shall be shared equally by the Parties.

## Tolling Applicable Time Limits

. The Parties agree that, upon delivery of written Notice of a Dispute, any and all periods of limitation, including the time set forth in this PPA to make a claim and give Notice of a claim, whether statutory, contractual, or otherwise, and statutes of repose, governing any claim, cause of action, legal theory, defense, lawsuit or legal or equitable action by and between the Parties arising out of this PPA are hereby tolled for a period of sixty (60) Days plus any additional time required for the resolution of the Technical Dispute set forth in Section 13.5. The Parties agree and covenant that the tolling period triggered by delivery of written Notice of a Dispute shall not be asserted or relied upon in any way in computing the amount of time which may have expired under and periods of limitations for any the claims, defenses, legal theories, causes of action, lawsuits or actions by and between the Parties, or extend the Commercial Operation Milestone.

## Expedited Relief

. Nothing in this Article 12 shall limit any Party’s right to seek temporary or preliminary injunctive relief or temporary or preliminary specific performance and/or interim measures for the protection or conservation of property from any Federal or state court located in Marion County, Indiana.

## Continued Prosecution of Work

. In case of any Dispute, including any Dispute that is or may be the subject of mediation or other form of dispute resolution, Seller and Company shall continue to prosecute their obligations under this PPA and maintain their progress and/or deliveries of Products pending final determination of the Dispute, and both Parties shall continue to make payments of any undisputed amounts then due and continue with their obligations under this PPA. Nothing in this Section 13.5 shall limit any Party’s legal or equitable rights and remedies set forth in this PPA.

## Settlement Discussions

. No statements of position or offers of settlement made in the course of the negotiation described in Section 13.1 may be offered into evidence for any purpose in any litigation between the Parties, nor will any the statements or offers of settlement be used in any manner against either Party in any the litigation. Further, no the statements or offers of settlement shall constitute an admission or waiver of rights by either Party in connection with any the litigation. At the request of either Party, any the statements and offers of settlement, and all copies thereof, shall be promptly returned to the Party providing the same.

## Waiver of Jury Trial

. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS PPA IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT A PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION RESULTING FROM, ARISING OUT OF OR RELATING TO THIS PPA; PROVIDED, THAT ANY DISPUTE DETERMINED TO BE WITHIN THE EXCLUSIVE JURISDICTION OF FERC OR THE IURC SHALL BE ADJUDICATED BY THAT GOVERNMENTAL AUTHORITY. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (a) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THE OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (b) THE PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (c) THE PARTY MAKES THIS WAIVER KNOWINGLY, VOLUNTARILY AND UNCONDITIONALLY, AND (d) THE PARTY HAS BEEN INDUCED TO ENTER INTO THIS PPA BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

## Attorneys’ Fees

. In any court proceeding to enforce or interpret the provisions of this PPA, each Party shall bear their own costs.

# Force Majeure

## Effect of Force Majeure

. Neither Party shall be in default or in breach of its obligations under this PPA or otherwise be liable to the other Party for any delay or failure in the performance of any of its obligations under this PPA if and to the extent the delay or failure is a result of Force Majeure arising after the Effective Date and is excused by this Article 14. The protections afforded under this Article 14 to a Party shall be of no greater scope and no longer duration, than is required by the Force Majeure. Notwithstanding anything to the contrary contained herein, no Force Majeure shall relieve, suspend or otherwise excuse any Party from performing any obligation to make any payment owed to another Party or to indemnify, defend or hold harmless another Party pursuant to this PPA.

## Notice of Force Majeure

. If either Party considers that any event of Force Majeure has occurred which may affect performance of its obligations under this PPA, it shall promptly, but in any event no more than two (2) Business Days after its knowledge of the event of Force Majeure affecting the Party’s performance, notify the other Party thereof stating the particulars, including the obligations that are potentially affected thereby and identifying any potential specific impact on the Commercial Operation Milestone, the actions taken to minimize the impact thereof, the estimated period during which performance may be delayed or prevented, and the particulars of the program to be implemented to resume normal performance hereunder. Within twenty-one (21) Days thereafter, the notifying Party shall provide the other Party with an updated notice identifying the particulars set forth above. The failure of the notifying Party to comply with the notice requirements set forth in this Section 14.2 shall act as a waiver of the notifying Party’s entitlement to an adjustment to the Commercial Operation Milestone for the particular Force Majeure event.

## Commercial Operation Milestone Adjustment for Force Majeure

. After the notifying Party’s compliance with Section 14.2, the Commercial Operation Milestone will be extended on an equitable basis to the extent that the Commercial Operation Date is delayed beyond the Commercial Operation Milestone as a result of delay resulting from Force Majeure; *provided, however*, that extensions attributable to Force Majeure shall not exceed one hundred eighty (180) Days.

## Continued Performance to Mitigate

. Upon the occurrence of any event of Force Majeure, the affected Party shall use Commercially Reasonable Efforts to mitigate the effects of Force Majeure, resume normal performance of this PPA within the shortest time practicable and continue to perform its obligations under this PPA insofar as they are not affected by the Force Majeure.

## Force Majeure

. In no event shall any Force Majeure entitle Seller to a claim for or create a right to any increase in the Test Energy Payment Rate or Energy Payment Rate or create any liability of Company for the an increase.

# Representations and Warranties

## General Representations and Warranties

. Each Party hereby represents and warrants to the other as of the Effective Date:

### It is a valid separate legal entity, duly organized, validly existing and in good standing under Applicable Law. It is qualified to do business in the State of Indiana and each other jurisdiction where the failure to so qualify would have a Material Adverse Effect on the other Party; it has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this PPA.

### The Party’s execution, delivery, and performance of all of its obligations under this PPA have been duly authorized by all necessary corporate or company (as applicable) action, and do not and will not:

#### require any consent or approval by any governing corporate or management body, other than that which has been obtained and is in full force and effect (evidence of which shall be delivered to the other Party upon its request);

#### violate any Applicable Law, or violate any provision in any formation documents;

#### result in a breach or constitute a default under the representing Party’s formation documents or bylaws, or under any agreement relating to its management or affairs or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which it is a party or by which it or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a Material Adverse Effect on the representing Party’s ability to perform its obligations under this PPA; or

#### result in, or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than as may be contemplated by this PPA) upon or with respect to any of the assets or properties of the representing Party now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a Material Adverse Effect on the representing Party’s ability to perform its obligations under this PPA.

### This PPA has been duly executed and delivered and is a valid and binding obligation of the representing Party.

### The representing Party intends that within the meaning of the United States bankruptcy code, (i) this PPA constitutes a “master netting agreement”, (ii) all transactions pursuant to this PPA constitute “forward contracts”, (iii) the representing Party is a “forward contract merchant” and “master netting agreement participant”, and (iv) all payments made or to be made pursuant to this PPA constitute “settlement payments.”

### The representing Party is (i) an “eligible contract participant” as defined in Section 1a(18) of the Commodity Exchange Act, as amended, 7 U.S.C. § 1a(18), (ii) a “market participant” under applicable exchange and market rules; (iii) a producer, processor, or commercial user of, or a merchant handling, the commodity which is the subject of this PPA, or the products or by products thereof; and (iv) entering into this PPA solely for purposes related to its business as such.

### The representing Party intends that this PPA grant each Party the contractual right to “cause the liquidation, termination or acceleration” of the transactions within the meaning of Section 556, 560 and 561 of the bankruptcy code, as they may be amended superseded or replaced from time to time. Upon a bankruptcy, a non-defaulting Party shall be entitled to exercise its rights and remedies under this PPA in accordance with the safe harbor provisions of the bankruptcy code set forth in, inter alia, Sections 362(b)(6), 362(b)(17), 362(b)(27), 362(o), 546(e), 548(d)(2), 556, 560 and 561, as they may be amended superseded or replaced from time to time.

### Each Party is a commercial market participant that regularly makes or takes delivery of the commodity which is the subject of this PPA in connection with the ordinary course of its business, and who intends to make or take delivery, as applicable, of the commodity under the terms and conditions of this PPA in connection with the business.

### There is no pending or, to the knowledge of the Party threatened, action or proceeding affecting the Party before any Governmental Authority, which purports to adversely affect the legality, validity or enforceability of this PPA.

## Seller’s Specific Representation

. Subject to Section 16.1, except for those Permits identified in Exhibit F-Seller’s Required Permits, which Seller anticipates will be obtained by Seller in the ordinary course of business, all Permits, or other action required by any Governmental Authority to authorize Seller’s execution, delivery and performance of this PPA have been duly obtained and are in full force and effect.

## Company’s Specific Representation

. Except for the State Regulatory Approval(s) identified in Section 6.1(a), and the FERC filings addressed in Section 16.3, all approvals, authorizations, consents, or other action required by any Governmental Authority to authorize Company’s execution, delivery and performance of this PPA, have been duly obtained and are in full force and effect.

# Covenants

## Seller’s Covenants

. Seller covenants that in all material respects from the date hereof during the Term: (i) Seller shall comply with this PPA and all Applicable Law[[3]](#footnote-4), (ii) Seller will operate and maintain the Facility in accordance with this PPA, Prudent Industry Practices, and Applicable Laws and (iii) Seller will cause its employees to comply with the Occupational Safety and Health Act, and the rules promulgated thereunder by the U.S. Department of Labor, and all applicable statutes and regulations affecting job safety. Seller covenants not to support, and to cooperate with Company, at Seller’s sole cost and expense, in opposing, any action of any regulatory body having jurisdiction thereover that could result in the vitiation of any of the terms or conditions hereof or have any other Material Adverse Effect. Seller covenants that it shall obtain authority from FERC, under Section 205 of the Federal Power Act, to make wholesale sales of energy, capacity and ancillary services at market-based rates (“**MBR Authority**”) to be effective no later than the commencement of sales of Test Energy under this PPA.

## Company’s Covenants

. Company covenants that from the date hereof during the Term: (i) Company shall comply in all material respects with this PPA and all Applicable Laws that apply to Company in connection with this PPA; (ii) Company will reasonably cooperate with Seller in connection with Seller securing the Generator Interconnection Agreement; and (iii) Company will, at Seller’s cost and expense, reasonably cooperate with Seller in opposing, and will not lend unreasonable support to any action of any regulatory body having jurisdiction over Seller that could result in the vitiation of any of the terms or conditions hereof or have any other material adverse effect on Seller, the Facility or this PPA.

## Mutual Covenant

. Seller and Company shall file, consistent with the timing set forth in Article 2, the regulatory filing(s) to be made to FERC requesting approval under Sections 203 and 205 of the Federal Power Act with respect to the transactions contemplated under this PPA. Seller and Company agree to continue to be: (i) an “eligible contract participant” as defined in Section 1a(18) of the Commodity Exchange Act, as amended, 7 U.S.C. § 1a(18), (ii) a “market participant” under applicable exchange and market rules; (iii) a producer, processor, or commercial user of, or a merchant handling, the commodity which is the subject of this PPA, or the products or by products thereof; (iv) entering into this PPA solely for purposes related to its business as such; and (v) a commercial market participant that regularly makes or takes delivery of the commodity which is the subject of this PPA in connection with the ordinary course of its business, and who intends to make or take delivery, as applicable, of the commodity under the terms and conditions of this PPA in connection with the business.

## Officer Certificates

. Each Party shall deliver or cause to be delivered to the other Party certificates of its officers, accountants, engineers or agents as to matters as may be reasonably requested, and shall make available personnel and records relating to the Facility to the extent that the requesting Party requires the same in order to fulfill any regulatory reporting requirements, or to assist the requesting Party in litigation except in litigation against the other Party and its Affiliates, including administrative proceedings before utility regulatory commissions.

## Notices, Permits

. As applicable, each Party shall give all required notices, shall procure and maintain all necessary Permits, licenses, and inspections necessary for performance of this PPA, and shall pay its respective charges and fees in connection there with.

## Disclosure of Violation of Law

. Seller shall promptly disclose to Company, any violation of any Applicable Laws arising out of or in connection with the Facility or this PPA that could reasonably be expected to have a material adverse effect on the Facility or Seller’s ability to perform its obligations hereunder.

# Insurance

## Insurance Requirements

. Throughout the term of this PPA (or later if and as required by Exhibit E), Seller shall obtain and continuously maintain (and pay the premiums and other applicable amounts for) any and all insurance coverages required pursuant to Applicable Laws and any and all insurance coverages required in Exhibit E and otherwise comply with the associated insurance requirements provided in the Exhibit.

# Indemnity

## Indemnification

. Each Party (the “**Indemnifying Party**”) agrees to indemnify, defend and hold harmless the other Party (the “**Indemnified Party**”) from and against all third party claims, demands, losses, liabilities, penalties, and expenses (including attorneys’ fees) for personal injury or death to persons and damage to the Indemnified Party’s real property and tangible personal property or facilities or the property of any other person or entity to the extent arising out of, resulting from, or caused by (i) an Event of Default or breach of a representation, warranty, covenant or material obligation under this PPA, (ii) violation of Applicable Laws, (iii) negligent or tortious acts, errors, or omissions, or (iv) intentional acts or willful misconduct, of the Indemnifying Party, its Affiliates, its directors, officers, employees, or agents.

### This indemnification obligation shall apply notwithstanding any negligent or intentional acts, errors or omissions of the Indemnified Party, but the Indemnifying Party’s liability to indemnify the Indemnified Party shall be reduced in proportion to the percentage by which the Indemnified Party’s negligent or intentional acts, errors or omissions caused the damages.

### Neither Party shall be indemnified for its damages resulting from its sole negligence, intentional acts or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

### Nothing in this Section 18.1 shall enlarge or relieve Seller or Company of any liability to the other for any breach of this PPA.

## Notice of Claim

. Promptly after receipt by a Party of any claim or notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article 18 may apply, the Indemnified Party shall provide Notice thereof to the Indemnifying Party. The Indemnifying Party shall assume the defense thereof with counsel designated by the Party and satisfactory to the Indemnified Party; *provided*, *however*, that if the defendants in any the action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party’s expense, unless a liability insurer is willing to pay the costs.

## Settlement of Claim

. If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay the claim; *provided*, *however*, that settlement or full payment of any the claim may be made only following consent of the Indemnifying Party or, absent the consent, written opinion of the Indemnified Party’s counsel that the claim is meritorious or warrants settlement.

## Amounts Owed

. Except as otherwise provided in this Article 18 in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 18, the amount owing to the Indemnified Party will be the amount of the Indemnified Party’s actual loss net of any insurance proceeds or other amounts received by the Indemnified Party following a Commercially Reasonable effort by the Indemnified Party to obtain the insurance proceeds or remedies under third party contracts.

# Lender Provisions

## Accommodation of Facility Lender

. Without limiting Section 20.1(c), Company shall make Commercially Reasonable Efforts to provide the consents to collateral assignment, certifications, representations, information, estoppels, legal opinions or other documents, as may be reasonably requested by Seller in connection with the financing (including tax equity financing) of the Facility, consistent with the terms set forth in Exhibit I – Lender Consent Provisions for collateral assignments to Facility Lenders (generally, a “**Lender Consent**”): *provided*, *however*, that in providing a Lender Consent, Company shall have no obligation to exceed the provisions set forth in Exhibit I for collateral assignments to Facility Lenders or to alter or modify the terms of this PPA. Seller shall reimburse, or shall cause the Facility Lender, if any, to reimburse, Company for the direct expenses (including the reasonable fees and expenses of counsel) incurred by Company in the preparation, negotiation, execution and/or delivery of any Lender Consent and any documents requested by Seller or any Facility Lender, and provided by Company, pursuant to this Section 19.1.

## Facility Lender Notice and Right to Cure

. Seller shall provide Company with a Notice identifying any Facility Lender(s) and providing appropriate contact information for any Facility Lender(s). Following receipt of the Notice, Company shall provide Notice of any breach or default of Seller to any Facility Lender(s), and Company will accept a cure performed by the Facility Lender(s), so long as the cure is accomplished within the applicable cure period set forth in this PPA or as otherwise agreed in a Lender Consent.

## Notice of Facility Lender Action

. Within ten (10) Days following Seller’s receipt of each Notice from the Facility Lender, if any, of default, Seller shall notify Company of receipt of any claim or Notice and shall keep Company apprised of the actions it is taking in connection with the Notice of default.

# Assignment and Other Transfer Restrictions

## Transfer Without Consent

. Except in connection with a Permitted Transfer or as otherwise permitted in this Section 20.1, any Change of Control of Seller or sale, transfer, or assignment of any interest in the Facility or in this PPA made by either Party without fulfilling the requirements of this PPA shall be a breach of this PPA.

### Except as expressly provided in this Section 20.1, neither Party shall assign this PPA or any portion thereof without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed; *provided*, *however*, that (i) at least thirty (30) Days prior Notice of any proposed assignment requiring consent shall be given to the other Party; (ii) any assignee shall expressly assume the assignor’s obligations under this PPA unless otherwise agreed by the other Party; (iii) no assignment shall relieve the assignor of its obligations under this PPA in the event the assignee fails to perform, and the assignor shall remain primarily liable for the performance of the obligations under this PPA, unless the other Party waives in writing the assignor’s continuing obligations under this PPA; (iv) all Credit Support shall remain in place or be replaced as of the date of such assignment; and (v) before this PPA is assigned by the assigning Party, the assignor and the assignee must first obtain the approvals as may be required by all applicable Governmental Authorities.

### Seller’s consent shall not be required for Company to assign this PPA to an Affiliate of Company or to a lender or financing party (and any successors or assigns thereof) providing credit facilities to Company or any of its Affiliates; *provided*, *however*, that Company shall remain liable for obligations incurred under this PPA unless released in accordance with the next sentence of this PPA. In the event that a permitted assignee of Company is an entity that provides retail electric service in the State in which the Facility is located and is subject to rate and quality service regulation under the jurisdiction of the State Regulatory Agency and has an Investment Grade Rating at the time of assignment, Seller shall release Company from its obligations under this PPA if Company requests to be so released by Notice to Seller.

### Company’s consent shall be required for Seller to assign this PPA for collateral purposes to any Facility Lender(s), which consent shall not be unreasonably withheld or delayed, *provided, however,* that the rights and remedies of Facility Lenders with respect to this PPA shall not be more burdensome on Company than the terms and conditions of this PPA as determined by Company in its sole discretion, and shall not be materially changed without the prior written consent of Company in its sole discretion. Seller shall provide Company Notice of any assignment no later than thirty (30) Days prior to the assignment. The Parties shall agree on a form of consent and acknowledgement to effect the assignment.

### Any Change of Control of Seller, other than a Permitted Transfer set forth in clauses (a)-(c) of such definition, whether voluntary or by operation of law, shall require the prior written consent of Company in its sole discretion.

## Subcontracting

. Seller may subcontract its duties or obligations under this PPA without the prior written consent of Company; *provided*, *however*, that no subcontract shall relieve Seller of any of its duties or obligations hereunder.

# Miscellaneous

## Notices

. Notices required by this PPA (each, a “**Notice**”) shall be in writing and addressed to the other Party, including the other Party’s representative on the Operating Committee, at the addresses noted in Exhibit D-Notices as either Party updates them from time to time by Notice to the other Party. Notices shall be (a) hand delivered, (b) mailed, postage prepaid, with return receipt requested, (c) emailed, or (d) sent by nationally-recognized overnight courier service with signed receipt required for delivery. If hand delivered, mailed or sent by overnight courier service, Notices shall be simultaneously sent by email (provided that such Notices shall be attached to such email in portable document format (PDF)). Any Notice shall be deemed to have been received by the close of the Business Day on which it was hand delivered or transmitted electronically (unless hand delivered or transmitted after the close of the Business Day, in which case it shall be deemed received at the close of the next Business Day). Real-time or routine communications concerning Project operations shall be exempt from this Section 21.1.

## Taxes and Change of Law

.

### Except as set forth in Section 21.2(b), Seller shall be solely responsible for any and all present or future taxes and other impositions of Governmental Authorities relating to the construction, ownership or leasing, operation or maintenance of the Facility, or any components or appurtenances thereof, any sales or ad valorem taxes relating to the Facility, or any taxes on the products and services generated by Seller, sold and delivered to Company up to the Point of Delivery. Seller’s prices under Article 8 are inclusive of the taxes and impositions during the Term.

### Company shall be solely responsible for the payment of any taxes imposed by Governmental Authorities on the Energy and other Products purchased under this PPA at and beyond the Point of Delivery, including any sales tax, gross receipts tax or similar taxes on the Products.

### The Parties shall cooperate to minimize tax exposure; *provided*, *however*, that neither Party shall be obligated to incur any financial burden to reduce taxes for which the other Party is responsible hereunder. All electric energy delivered by Seller to Company hereunder shall be sales for resale, with Company reselling the electric energy. Company shall obtain and provide Seller with any certificates required by any Governmental Authority, or otherwise reasonably requested by Seller to evidence that the deliveries of electric energy hereunder are sales for resale.

### The Parties acknowledge the possibility that a change in law or regulation (including in the interpretation thereof) may occur that requires or will require Seller to incur additional costs during the term of this PPA beyond those projected to be incurred by Seller as of the Effective Date. Notwithstanding the foregoing, if a change in law or regulation occurs, Company will not be required to share in, reimburse or otherwise pay all or any portion of those additional costs.

## Decommissioning

. Upon permanent cessation of generation from the Facility, Seller shall decommission the Facility, remove the Facility and remediate the Site as, if and when required by Applicable Laws.

## Service Contract

. Itis the intent of the Parties that for U.S. federal income tax purposes this PPA is a service contract pursuant to Section 7701(e)(3) of the Internal Revenue Code of 1986, as amended (the“**Code**”**)**.

## Fines and Penalties

.

### Seller shall pay when due all fees, fines, penalties or costs incurred by Seller or its agents, employees or contractors for noncompliance by Seller, its employees, or subcontractors with any provision of this PPA, or any contractual obligation, Permit or requirements of Applicable Law, except for the fines, penalties and costs that are being actively contested in good faith and with due diligence by Seller and for which adequate financial reserves have been set aside to pay the fines, penalties or costs in the event of an adverse determination; provided that Company shall reimburse and hold Seller harmless for any fees, fines, penalties or costs incurred by Seller or its agents, employees or contractors for noncompliance to the extent attributable to any acts or omissions by Company, its Affiliates, and its and their employees, subcontractors and representatives.

### If fees, fines, penalties, or costs are claimed or assessed against Company by any Governmental Authority due to noncompliance by Seller, its employees, or subcontractors with any provision of this PPA, or any contractual obligation, Permit or requirements of Applicable Law, or, if the work of Seller or any of its contractors or subcontractors is delayed or stopped by order of any Governmental Authority due to Seller’s noncompliance, its employees, or subcontractors with any provision of this PPA, or any contractual obligation, Permit or requirements of Applicable Law, Seller shall reimburse (to the extent of Company’s payments) and/or hold Company harmless against any the costs incurred by Company, including claims for indemnity or contribution made by third parties against Company in accordance with Article 18.

## Rate Changes

.

### The terms and conditions and the rates for service specified in this PPA shall remain in effect for the Term.

### Absent the written agreement of both Parties to a proposed change, this PPA shall not be subject to change by application of either Party pursuant to Section 205 or 206 of the Federal Power Act. Absent the agreement of both Parties to the proposed change, the standard of review for changes to this PPA whether proposed by a Party, a non-party, or FERC acting *sua sponte* shall be the “public interest” standard of review set forth in United Gas Pipe Line v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956) (the Mobile-Sierra doctrine), as interpreted and applied by the Supreme Court of the United States in subsequent cases.

## Disclaimer of Third Party Beneficiary Rights

. In executing this PPA, Company does not and does not intend to extend its credit or financial support for the benefit of any third parties lending money to or having other transactions with Seller. Nothing in this PPA shall be construed to create any duty to, or standard of care with reference to, or any liability to, any person not a party to this PPA.

## Relationship of the Parties

.

### This PPA shall not be interpreted to create an association, joint venture, or partnership between the Parties nor to impose any partnership obligation or liability upon either Party. Except as specifically provided for in this PPA to the contrary, neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, the other Party.

### Between Seller and Company, Seller shall be solely liable for the payment of all wages, taxes, and other costs related to the employment of persons by Seller to perform services, including all federal, state, and local income, social security, payroll, and employment taxes and statutorily mandated workers’ compensation coverage. None of the persons employed by Seller shall be considered employees of Company for any purpose; nor shall Seller represent to any person that he or she is or shall become a Company employee.

## Equal Employment Opportunity Compliance Certification

. Seller acknowledges that as a government contractor Company is subject to Applicable Laws regarding equal employment opportunity and affirmative action. The Applicable Laws may also be applicable to Seller as a subcontractor to Company. All the Applicable Laws shall be deemed to be incorporated herein as required by Applicable Law, including 41 C.F.R. § 60-1.4(a)(1-7).

## Survival of Obligations

. Cancellation, expiration, or earlier termination of this PPA shall not relieve the Parties of obligations, including warranties, remedies, or indemnities, that by their nature should survive the cancellation, expiration, or termination, which obligations shall survive for the period of the applicable statute(s) of limitation.

## Severability

. In the event any of the terms, covenants, or conditions of this PPA, its Exhibits, or the application of any the terms, covenants, or conditions, shall be held invalid, illegal, or unenforceable by any court or administrative body having jurisdiction, all other terms, covenants, and conditions of this PPA and their application not adversely affected thereby shall remain in force and effect; *provided*, *however*, that Company and Seller shall negotiate in good faith to attempt to implement an equitable adjustment in the provisions of this PPA with a view toward effecting the purposes of this PPA by replacing the provision that is held invalid, illegal, or unenforceable with a valid provision the economic effect of which comes as close as possible to that of the provision that has been found to be invalid, illegal or unenforceable.

## Complete Agreement; Amendments

. The terms and provisions contained in this PPA constitute the entire agreement between Company and Seller with respect to the Facility and shall supersede all previous communications, representations, or agreements, either verbal or written, between Company and Seller with respect to the sale of any output from the Facility. This PPA, including Exhibits, may be amended, changed, modified, or altered in accordance with the terms of this PPA; *provided*, *however*, that the amendment, change, modification, or alteration shall be in writing and executed by both Parties.

## Binding Effect

. This PPA is binding upon and shall inure to the benefit of the Parties hereto and their respective permitted successors, legal representatives, and assigns.

## Headings

. Captions and headings used in this PPA are for ease of reference only and do not constitute a part of this PPA.

## Counterparts

. This PPA may be executed in counterparts, and each executed counterpart shall have the same force and effect as an original instrument.

## Governing Law

. The interpretation and performance of this PPA shall be governed and construed in accordance with the laws of the State of Indiana without giving effect to the choice of law principles thereof.

## Press Releases and Media Contact

. Upon filing this PPA for State Regulatory Approval, either Party may issue a press release summarizing the filing, subject to obtaining the consent of the other Party on the content of the press release not to be unreasonably withheld, delayed or conditioned and using Commercially Reasonable Efforts to minimize any details concerning the Facility itself. At the request of either Party, the Parties shall in good faith develop a mutually agreed press release to be issued describing the location, size, type and/or timing of the Facility, the long-term nature of this PPA, and/or other relevant factual information about the relationship. Each Party shall have a right to issue such mutually agreed press release and to otherwise disclose the contents of any press release agreed to by the Parties. In addition, each Party shall have the right to issue any other press release, subject to obtaining the consent of the other Party on the content of such other press release, such consent not to be unreasonably withheld, delayed or conditioned. In the event during the term of this PPA, either Party is contacted by the media concerning this PPA or the Facility, the contacted Party shall inform the other Party of the existence of the inquiry, any questions asked, and the substance of any information provided to the media.

## Exhibits

. Either Party may change the information in Exhibit D-Notices at any time by Notice without the approval of the other Party. All other Exhibits may be changed to the extent allowed by specific provisions of this PPA or with the mutual consent of both Parties.

## Confidentiality

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### The Parties hereby irrevocably agree that both Parties may, in their sole discretion and without prior notice to or consent of the other Party, provide this PPA and all appendices, exhibits, and amendments hereto to any Governmental Authorities, their staffs or in connection with any regulatory proceedings including regulatory filings and responses to discovery requests, redacted to the fullest extent permitted by Applicable Law; and provided further, that Confidential Information may be disclosed (i) to the extent necessary or appropriate in connection with the regulatory proceeding (ii) to any party to a formally docketed regulatory or judicial proceeding (“**Intervening Party**”) that requests the Confidential Information through a formal discovery request and who has executed a regulatory confidentiality agreement with a Party that limits disclosure of the Confidential Information to the Intervening Party’s outside counsel and outside consultants that have agreed to be bound to the regulatory confidentiality agreement; (iii) to the extent required by any Applicable Law; (iv) to the extent disclosure is required by public filings to be made by Seller or its Affiliates in compliance with Applicable Law or stock exchange requirements; or (v) to the extent necessary or appropriate in connection with the regulatory proceeding to any governmental, judicial or regulatory authority provided that in each the exception enumerated herein: (i) the Confidential Information is submitted under any applicable provisions for confidential treatment by the government, judicial or regulatory authority; and (ii) prior to the disclosure, and if the Party providing the Confidential Information is legally allowed to do so, the other Party is given prompt notice of the disclosure requirement(s) so that it may take whatever action it deems appropriate, including intervention in any proceeding and the seeking of an injunction or a protective order, to prohibit or limit the disclosure. A Party shall have no responsibility for any public dissemination that occurs as a result of the disclosure in accordance with this Section 21.19(a).

### The Parties acknowledge and agree that during the course of the performance of their respective obligations under this PPA, either Party may need to provide information to the other Party, which the disclosing party deems confidential, proprietary or a trade secret (“**Confidential Information**”).

#### Confidential Information shall include this PPA and all appendices, exhibits, and amendments hereto, all other documentation and data, including special techniques, methods, computer programs and software, that the disclosing Party considers proprietary or trade secret and furnishes to the receiving Party. The materials may be designated as Confidential Information by clear and distinct notation on the documentation or by equivalent method, and shall be treated as the by the receiving Party. Documentation and data not so designated need not be considered by the receiving Party to be proprietary or a trade secret; *provided*, *however*, that any and all data and documentation regarding Facility output, performance, outages and similar operational information shall be considered Confidential Information without the need for further designation if any disclosure thereof would be in a form or by a means that associates the data or documentation with the Facility or Seller or any of its Affiliates, or from which a reasonable person could make the an association. The disclosing Party hereby grants to the receiving Party authority to use Confidential Information for the purposes of this PPA, including keeping electronic copies of the Confidential Information. The receiving Party agrees to keep the Confidential Information confidential, except as set forth in this Section 21.19, to use it for work necessary to the performance of this PPA, and not to sell, transfer, sublicense, disclose or otherwise make available any the Confidential Information to others; *provided*, *however*, that Confidential Information may be disclosed by the receiving Party to the agents, officers, directors, managers, employees, advisors, consultants, or potential or actual debt or equity investors, of the receiving Party or its Affiliates, subject to their acceptance of the obligations of confidentiality imposed hereby and for whose violations of this requirement of confidentiality the receiving Party shall be responsible.

#### Confidential Information shall not include any data or information:

##### Which can be documented was in the public domain as allowed by this Section 21.19 or Section 21.17, or through no fault or action of the receiving Party or its Affiliates at the time it was disclosed by the disclosing Party to the receiving Party or at any time thereafter;

##### Which can be documented was independently developed by the receiving Party;

##### Which can be documented was known to the receiving Party from an ultimate source other than the disclosing Party without breach of this PPA by the receiving Party; or

##### Which is disclosed by a Party, in connection with the Party’s performance of its obligations under this PPA, to its consultants or contractors or other third parties who are in turn subject to a confidentiality agreement with the disclosing Party to treat the information at least with the care required by this PPA.

### The Parties will cooperate to prepare a “public version” of this PPA for inclusion in the public record at the IURC. The Parties agree that the public version of this PPA will redact only that information that properly constitutes “trade secret” information as that term is construed by the State Regulatory Authority.

### The Parties acknowledge that certain information concerning the Facility may be designated Confidential Energy Infrastructure Information (“**CEII**”) by FERC or the Secretary of the Department of Energy pursuant to Section 215A(d) of the Federal Power Act. To the extent information concerning the Project is CEII, the Parties agree to, and agree to cause their Affiliates and agents to, conform to the applicable regulations and orders.

## Time is of the Essence

. Time is hereby declared to be of the essence of this PPA and of every part, term and provision hereof and each and every obligation hereunder.

In Witness Whereof, the Parties have executed this PPA on the Effective Date.

|  |  |
| --- | --- |
|  | Seller  [*insert name*]  By:  Printed:  Title: |
|  | Company  Indianapolis Power & Light Company d/b/a AES Indiana  By:  Printed:  Title: |

Exhibit A

The following terms shall have the meanings set forth herein:

“**Acceptable Credit Rating**” means, with respect to a Person, a Credit Rating of no less than (as applicable): (a) “**BBB-**” from S&P, or (b) “**Baa3**” from Moody’s, or (c) if such Person has a Credit Rating at such time from both S&P and Moody’s, “**BBB-**” from S&P and “**Baa3**” from Moody’s.

“**Acceptable Guarantor**” means with respect to a Seller Guaranty, [      ] (so long as it has an Acceptable Credit Rating or a tangible net worth of at least One Billion Dollars ($1,000,000,000)), or another Person that has an Acceptable Credit Rating or a tangible net worth of at least One Billion Dollars ($1,000,000,000).

“**Actual Damages**” has the meaning set forth in Section 11.4.

“**Affiliate**”means any person or entity that directly or indirectly controls, is under the control of, or is under common control with, the named entity by the power to direct or cause the direction of the managementof the policies of named entity, whether through ownership interest, by contract or otherwise.

“**AGC**”means the equipment and capability of an electric generation facility to automatically adjust the generation quantity within the applicable Balancing Authority with the purpose of interchange balancing and specifically, the Facility’s capability of accepting AGC Set-Point electronically and automatically adjusting and regulating the Facility’s energy production via the Facility’s SCADA System.

“**AGC Protocols**” means the protocols attached hereto as Exhibit G-Operating Procedures (AGC Protocols), modified in accordance with Section 10.5.

“**AGC Remote/Local**”means a handshake electronic signal sent from the Facility to the EMS AGC system, and from the EMS AGC system to the Facility, indicating the Facility is receiving AGC Set-Point locally (from the Facility via the Facility’s SCADA System) or remotely (from the EMS AGC system) and is following that AGC Set-Point.

“**AGC Set-Point**” means the Company-generated analog or digital signal sent by the SCADA System to the Facility, representing the maximum Energy output for the Facility.

“**AGC System**” means the equipment, computers and software used by Facility Personnel to control the generation of Energy by the PV Plant and the discharge and charge of the BESS and conforming to the requirements of Exhibit G-Operating Procedures (AGC Protocols, Data Collection). The AGC System shall include, but not be limited to, a demarcation cabinet, ancillary equipment and software necessary for Seller to connect to Company's remote terminal unit telemetry and control, located in Company's portion of the Facility switching station which shall provide the control signals to the Facility and send feedback status to the Company System Operations Control Center. The control type shall be analog output (set point) controls. The AGC System shall also include provision for feedback points from the Facility indicating when the Company System Operator active power controls are in effect and the analog value of the controls received from Company.

“**Ancillary Services**” means those ancillary services defined under the Transmission Tariff as well as those other services and products that may be included under the Transmission Tariff from time to time, which are associated, directly or indirectly, with the capacity of the Facility or the transmission of energy from the Facility.

“**Applicable Law**” means all laws, statutes, treaties, policies, standards, codes, ordinances, regulations, certificates, orders, licenses and Permits of any Governmental Authority that are applicable to a Party, the business of a Party or the Facility, now in effect or hereafter enacted, amendments to or interpretations of any of the foregoing by a Governmental Authority having jurisdiction, and all applicable judicial, administrative, arbitration and regulatory decrees, directives, judgments, injunctions, writs, orders, awardsor like actions.

“**Back-Up Metering**” shall have the meaning set forth in Section 5.2(b).

“**Balancing Authority**” means the system of electrical generation, distribution and transmission facilities to which the Facility is subject and within which generation is regulated in order to maintain interchange schedules with other the systems.

“**BESS**” means the DC-connected battery energy storage system, on the Facility Site, and all related assets and properties, including ancillary equipment and the Interconnection Facilities it being understood and agreed that, as used herein, “BESS” includes any common facilities between the battery energy storage system (and related assets and properties) and the PV Plant. A general description of the BESS is provided in Exhibit C.

[“**BESS Availability**” means the availability rate of the BESS, expressed as a percentage, determined in accordance with Exhibit L and this PPA.][[4]](#footnote-5)

“**BESS Contract Capacity**” shall have the meaning set forth in Exhibit L.

“**BESS Measurement Period**” means, in any contract year, the following periods of three calendar months each: (i) the period beginning on the first Day of the first calendar month of the contract year; (ii) the period beginning on the first Day of the fourth calendar month of the contract year and extending through the last Day of the sixth calendar month of the contract year; (iii) the period beginning on the first Day of the seventh calendar month of the contract year and extending through the last Day of the ninth calendar month of the contract year; and (iv) the period beginning on the first Day of the tenth calendar month of the contract year and extending through the last Day of the twelfth calendar month of the contract year.

“**BESS Operating Parameters**” means Dispatch Targets, Setpoint Instructions, the Deficient Energy Threshold, the Excessive Energy Threshold and any other relevant parameters for a Stored Energy Resource—Type 2 specified in the Transmission Tariff.

[“**BESS Power Rating**” means the aggregate net power rating (AC) of the BESS at the Interconnection Point, expressed in whole kW (with a fractional kW amount below 0.5 being rounded down to the nearest whole kW and a fractional kW amount equal to or above 0.5 being rounded up to the nearest whole kW), determined in accordance with Exhibit P and this PPA.]

[“**BESS RT Efficiency**” means the percentage equal to (i) the aggregate net energy output (AC) of the BESS at the Interconnection Point, divided by (ii) the energy input (AC) measured immediately before the BESS inverter, each expressed in whole kWh (with a fractional kWh amount below 0.5 being rounded down to the nearest whole kWh and a fractional kWh amount equal to or above 0.5 being rounded up to the nearest whole kWh), determined in accordance with Exhibit P and the other applicable provisions of this PPA.]

[“**BESS Storage Capacity**” means the aggregate net energy storage capacity (AC) of the BESS at the Interconnection Point, expressed in whole kWh (with a fractional kWh amount below 0.5 being rounded down to the nearest whole kWh and a fractional kWh amount equal to or above 0.5 being rounded up to the nearest whole kWh), determined in accordance with the Exhibit P and the other applicable provisions of this PPA.]

“**Business Day**” means a Day, other than Saturday, Sunday or any Day on which banks located in Indianapolis, Indiana are authorized or obligated to close.

“**Capacity Installed**” means the aggregate output capacity of the PV Plant and the BESS as measured by the Capacity Tests.

“**Capacity Test**” means a test of the Facility conducted in accordance with the testing procedures specified in Exhibit P.

[“**Capacity Test Procedures**”means the written test procedures, standards, protective settings and testing programs for the Capacity Tests pursuant to Exhibit P.]

“**CEII**” shall have the meaning set forth in Section 21.19(b).

“**Change of Control**”means with respect to an entity, an event in which a Person who prior to a transaction or series of transactions, possessed, whether directly or indirectly, legally or beneficially:

### fifty percent (50%) or more of the equity, capital or profits interest of the entity; or

### control of the entity through the ownership of voting securities with the power to direct the day-to-day management policies of the entity or otherwise;

and as a result of a consummation of any transaction or series of transactions (including any merger or consolidation), the Person or Persons fails to maintain, whether directly or indirectly, legally or beneficially, either of the elements of control listed in clause (a) or (b) above.

For the avoidance of doubt, and notwithstanding anything to the contrary in the Transaction Documents, the sale of any equity interest, directly or indirectly, in Seller, or the sale of any equity interest in any entity that owns, directly or indirectly, legally or beneficially an equity interest in Seller shall not constitute a Change of Control; provided that following any the sale, (x) either (1) the purchaser or transferee of the equity interests in Seller, (2) Seller or (3) an Affiliate or subsidiary of the purchaser, transferee or Seller, is (or contracts with) a Qualified Operator and (y) all Credit Support remains in place or is replaced.

“**COD Conditions**” means all of the following:

### The Facility has been constructed in conformity with Section 3.2.

### The Facility shall have been registered with the Transmission Provider in accordance with the Transmission Tariff.

### A provisional or final generator interconnection agreement has been executed and all other rights necessary for the electrical interconnection of the Facility have been obtained.

### All instruments and relays have been installed and are functional.

### All Functional Tests of the Facility have been Successfully Run.

### The Capacity Test has been Successfully Run and either the results of the Capacity Test reflect achievement of the Contract Capacity or Seller has paid to Purchaser the Capacity Deficiency Damages.

“**Code**” shall have the meaning set forth in Section 21.4.

“**Commercial Operation**” means that Seller has fulfilled all of the COD Conditions and Seller’s Notice of the satisfaction of all COD Conditions has been accepted by Company or deemed accepted.

“**Commercial Operation Date**” or “**COD**” means 12:00 am on the date following the date upon which Seller achieves Commercial Operation, or the other date as is mutually agreed upon by the Parties.

“**Commercial Operation Milestone**” means the date set forth for the Commercial Operation Milestone specified in Exhibit B-Construction Milestones.

“**Commercial Operation Year**” means any consecutive twelve (12) month period during the Term, commencing with the Commercial Operation Date or any of its anniversaries.

“**Commercially Reasonable**” or “**Commercially Reasonable Efforts**” means, with respect to any action required to be made, attempted or taken by a Party under this PPA, the level of effort in light of the facts known to the Party at the time a decision is made that: (a) can reasonably be expected to accomplish the desired action without a material increase in cost; (b) is consistent with Prudent Industry Practices; and (c) takes into consideration the amount of advance notice required to take the action, the duration and type of action and the competitive environment in which the action occurs.

“**Company**” shall have the meaning set forth in the first paragraph of this PPA.

“**Company’s System**” means the contiguously interconnected electric transmission and sub-transmission facilities that are owned by Company, over which the Transmission Provider has rights (by ownership or contract) to provide bulk transmission of capacity and energy from the Interconnection Point.

[“**Company System Operations Center**” means the facility maintained by Company to control the transmission, distribution and generation of Energy for Company System.]

“**Company System Operator**” means the person designated by Company by notice to Seller, from time to time, as the person to direct the production of Energy at the Facility. The person may be designated by position.

“**Compensable Curtailment**” shall have the meaning set forth in Section 8.2(a)

“**Compensable Curtailment Energy**” shall have the meaning set forth in Section 8.2(a).

“**Confidential Information**” shall have the meaning set forth in Section 21.19(b).

“**Construction Contract**” means the primary contract or contracts providing for the engineering, procurement, construction, acquisition, manufacture, delivery and installation of the generating and step-up transformation equipment that is to be part of the Facility and the engineering, procurement and construction of the Facility.

“**Construction Milestones**” means the dates set forth in Exhibit B-Construction Milestones.

“**Contract Capacity**” means [sum of PV Plant contract capacity and BESS contract capacity ] MW.

“**Credit Rating**” means the rating then assigned to a Person’s senior, unsecured long-term debt obligations (not supported by third party credit enhancements) by S&P or Moody’s or if such Person does not have a rating for its senior, unsecured long-term debt, then the rating assigned to such Person as an issuer rating by S&P, Moody’s or any other rating agency agreed to by the Parties.

“**Credit Support**” means the guaranty, cash escrow or letter of credit provided under Article 12.

“**Current Inverter**” means devices used to convert DC electric energy to AC electric energy.

“**Day**” means a calendar day.

“**Delay Attributable to Company**” means any delay or failure by Company to perform its obligations under this PPA or the Generator Interconnection Agreement where the failure was the direct cause of Seller’s failure to perform under this PPA.

“**Delivery Period**” means [\_\_\_\_\_].

“**Dispute**” shall have the meaning set forth in Section 13.1.

“**Effective Date**” shall have the meaning set forth in the introductory paragraph.

“**Effective Date Performance Assurance**” means $[ ] million dollars.

“**Electric Metering Devices**” means revenue quality meters, metering equipment and data processing equipment used to measure, record or transmit data relating to the output from the Facility, including the metering current transformers and the metering voltage transformers.

“**Eligible Energy Resource**” means any resource that qualifies as a renewable energy resource eligible to be certified to receive, claim, own or use Renewable Energy Credits pursuant to the protocols and procedures developed and approved by the State Regulatory Agency in the REC Registration Program.

“**Emergency**” means, regardless of whether communicated directly to Seller or indirectly to Seller through Company as Market Participant or otherwise, (i) any Emergency Condition (or similar successor term), as defined by the Transmission Tariff or the Generator Interconnection Agreement, or (ii) a transmission system condition identified by MISO, the transmission owner (via its transmission operator) or any Governmental Authority, including a system reliability condition related to endangering life, property or public safety or the ability to maintain safe, adequate, continuous and reliable electric service, and that, in order to achieve the same, a curtailment of the Facility or firm transmission service that reduces or precludes delivery of Energy to or from the delivery point is required and requested by MISO, the transmission owner (via its transmission operator) or any Governmental Authority.

“**EMS**” means Company’s energy management system responsible for dispatch of generating units, including the Facility.

“**Energy**” means all electric energy generated by the Facility during the Term, including all Test Energy.

“**Energy Payment Rate**” means, for all Energy in a Commercial Operation Year, net of energy self-generated and concurrently consumed by the Facility, and net of losses prior to the Point of Delivery, a price equal to $[ ] per megawatt hour.

“**Engineering Arbitrator**” shall have the meaning set forth in Section 13.2.

“**Environmental Contamination**” means the introduction or presence of Hazardous Materials at the levels, quantities or location, or of the form or character, as to constitute a violation of Applicable Law, and present a material risk under Applicable Laws that the Site will not be available or usable for the purposes contemplated by this PPA.

“**Equivalent Availability Factor**” shall have the meaning set forth in Exhibit L.

“**ERO**” means the Electric Reliability Organization certified by FERC pursuant to Section 215 of the Federal Power Act or any successor organization. As of the date hereof, NERC is the ERO.

“**Event of Default**” shall have the meaning set forth in Section 11.1.

“**Facility**” means the solar photovoltaic energy generation facility site with integrated battery energy solar storage as further described in Exhibit C-Facility Description. The Facility includes the Facility Site but, for the avoidance of doubt, does not include any generation or power production units at the Facility Site (or otherwise) that are not Inverter Block Units.

“**Facility Contract Capacity**” means the aggregate BESS Contract Capacity and the PV Plant Contract Capacity.

“**Facility Debt**” means the obligations of Seller or its Affiliates to any Facility Lender pursuant to the Financing Documents, or any portfolio financing, including principal of, premium and interest on indebtedness, fees, expenses or penalties, amounts due upon acceleration, prepayment or restructuring, swap or interest rate hedging breakage costs and any claims or interest due with respect to any of the foregoing.

“**Facility Lender**” means, collectively, any third-party lenders or non-Affiliate financing parties providing any Facility Debt and any successors or assigns thereto.

“**Facility Potential**” means the number provided to Company in real time through Company’s SCADA System in accordance with the AGC Protocols, which depicts Seller’s real time calculation of the Potential Energy capable of being provided by the Facility Site to Company as measured at the Point of Delivery. Facility Potential shall be calculated as the aggregate energy available in real time for delivery at the Point of Delivery using the best-available data obtained through Commercially Reasonable methods; and shall be dependent upon the solar energy measurements and adjustment necessary to accurately reflect the Potential Energy at the Point of Delivery.

“**Facility Property**” means all property rights owned, leased, or otherwise obtained by Seller for the use of the Facility for its intended purpose, including (i) the Facility; (ii) the Site; (iii) Seller’s Interconnection Facilities; (iv) the Facility collection facilities and substation; (v) Seller’s rights and obligations under the Generator Interconnection Agreement; (vi) Permits, and all material contracts; and (vii) all Facility fixtures, equipment and personal property.

“**Facility Site**” shall have the meaning set forth in Exhibit C.

“**Federal Power Act**” means the Federal Power Act, 16 U.S.C. §791a et seq., as amended, and all regulations promulgated thereunder by FERC.

“**FERC**” means the Federal Energy Regulatory Commission or any successor agency.

“**Fiscal Quarter**” means a fiscal quarter in any Fiscal Year.

“**Fiscal Year**” means the calendar year, unless with respect to any Party such Party is required to have a taxable year other than the calendar year, in which case Fiscal Year shall be the period that conforms to its taxable year.

“**Financing Documents**” means any loan and credit agreements, notes, bonds, indentures, security agreements, lease financing agreements, contribution agreements, mortgages, deeds of trust, interest rate exchanges, swap agreements and other documents relating to Facility Debt or any other development, bridge, construction or permanent debt or tax equity financing for the Facility, including any credit enhancement, credit support, working capital financing, portfolio financing, or refinancing documents, and any and all amendments, modifications, or supplements to the foregoing that may be entered into from time to time at the discretion of Seller in connection with development, construction, ownership, leasing, operation or maintenance of the Facility.

“**Force Majeure**” means an event, circumstance, or Unforeseeable Condition that prevents a Party from timely performing its obligations under this PPA, which event or circumstance (i) was not anticipated as of the date of this PPA, (ii) is not within the control of or the result of the fault or negligence of the Party claiming its occurrence, and (iii) which by exercise of due diligence and foresight could not reasonably have been avoided, *provided*, *however*, that Force Majeure shall not include: (a) inability, or excess cost, to procure any equipment or labor necessary to perform any obligations under this PPA; (b) acts or omissions of a third party (including any Affiliate of Seller or any subcontractor), unless the acts or omissions are themselves excused by reason of Force Majeure; (c) mechanical or equipment breakdown or inability to operate, attributable to circumstances which would not themselves be considered a Force Majeure; (d) changes in market conditions; (e) any labor strikes, slowdowns, work stoppages, or other labor disruptions other than those that are national, regional, or industry-wide, rather than specific to the Facility; (f) Seller’s ability to sell, or Company’s ability to purchase the Products and any services contemplated by this PPA, at a more advantageous price than is provided hereunder; or (g) economic hardship, including lack of money. The circumstances include, without limitation, pandemics or outbreak of communicable disease, quarantines, national or regional emergencies, or any other cause, whether similar in kind to the foregoing or otherwise, beyond the Party’s reasonable control.

“**Forced Outage**” means any condition at one or more Photovoltaic Modules at the Facility that requires the immediate and unplanned removal of that Photovoltaic Module from service, another outage state, or a reserve shutdown state, resulting from immediate mechanical/electrical/hydraulic control system trips and operator-initiated trips in response to abnormal conditions or alarms relating to a Photovoltaic Module and which may result from conditions in inverters, transformers or collection systems that make up the PV Plant. Forced Outage shall only apply to affected Photovoltaic Modules. Potential MWs of capacity from unaffected Photovoltaic Modules shall remain available for dispatch and not be considered part of a Forced Outage.

“**Functional Tests**” means the tests to determine the functionality of the Facility, equipment, and components incorporated therein, as described in Exhibit P.

“**Generation Benefits**” means existing or future environmental benefits or attributes, economic and other related carbon credits, carbon offsets, carbon allowances or benefits, RECs or green tags, carbon dioxide emissions credits, avoided or reduced carbon dioxide emissions, that are attributable to Energy generated by Seller and sold to Company under this PPA, whether pursuant to or arising from any Governmental Authority or international agreement or treaty.

“**Generator Interconnection Agreement**” means [*insert reference to relevant Generator Interconnection Agreement*].

“**Governmental Authority**” means any (a) government, political subdivision, quasi­government or regulatory authority, whether federal, state, local, foreign or international, or any branch, agency, instrumentality, official or entity of any the government, political subdivision, quasi-government or regulatory authority, (b) federal, state, local, foreign or international court, arbitrator or tribunal, (c) agency, commission, authority or body exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power of any nature, or (d) regional entities.

**GVTC** has the meaning set forth in Section 8.5.

**GVTC Default** has the meaning set forth in Section 8.7.

“**Hazardous Materials**” means any substance, material, gas, or particulate matter that is regulated by any local Governmental Authority, any applicable State, or the United States of America, as an environmental pollutant or dangerous to public health, public welfare, or the natural environment including, without limitation, protection of non-human forms of life, land, water, groundwater, and air, including any material or substance that is (i) defined as “toxic,” “polluting,” “hazardous waste,” “hazardous material,” “hazardous substance,” “extremely hazardous waste,” “solid waste” or “restricted hazardous waste” under any provision of local, state, or federal law; (ii) petroleum, including any fraction, derivative or additive; (iii) asbestos; (iv) polychlorinated biphenyls; (v) radioactive material; (vi) designated as a “hazardous substance” pursuant to the Clean Water Act, 33 U.S.C. §1251 et seq. (33 U.S.C. §1251); (vii) defined as a “hazardous waste” pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq. (42 U.S.C. §6901); (viii) defined as a “hazardous substance” pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601 et seq. (42 U.S.C. §9601); (x) defined as a “chemical substance” under the Toxic Substances Control Act, 15 U.S.C. §2601 et seq. (15 U.S.C. §2601); or (x) defined as a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §136 et seq. (7 U.S.C. §136).

“**House Power**” means retail power to the Facility, for purposes of turbine unit start-up or shut-down, or for any other purpose.

“**Indemnified Party**” shall have the meaning set forth in Section 18.1.

“**Indemnifying Party**” shall have the meaning set forth in Section 18.1.

“**Interconnection Facilities**” means [*insert reference to term as defined in relevant Generator Interconnection Agreement*].

“**Interconnection Point**” means the physical point within the operational authority of Transmission Provider as specified in the Generator Interconnection Agreement, at which electrical interconnection is made between the Facility and [*Company’s System*] in accordance with the Transmission Tariff and the Generator Interconnection Agreement.

“**Intervening Party**” shall have the meaning set forth in Section 21.19(a).

“**Inverter Block Unit**” means each Current Inverter, together with the DC collection systems and Photovoltaic Modules connected to the Current Inverter, that have been installed on the Facility Site as part of the Facility and satisfied the requirements for Commercial Operation applicable thereto, or (subject to Section 9.2) any replacement or substitute therefor after Commercial Operation.

“**Investment Grade Rating**” means a long-term credit rating (corporate or long-term senior unsecured debt) of (a) Baa3 or higher by Moody’s, and (b) BBB- or higher by S&P.

“**IPL Damages Cap**” means from the Effective Date through the first [X] years of Commercial Operation $[ ] million, and, for the remaining term, $[ ] million.

“**kW**” means kilowatt.

“**kWh**” means kilowatt hour.

“**Lender Consent**” shall have the meaning set forth in Section 19.1.

“**LMP**” means the price of Energy at the Point of Delivery, as established by the Transmission Provider pursuant to the Transmission Tariff.

“**Local Provider**” means the utility providing House Power to the Facility.

“**Maintenance Schedule**” has the meaning set forth in Section 10.2.

“**Market Participant**” has the meaning given to the term in the MISO Rules.

“**Material Adverse Effect**” means any event, result, occurrence, development, fact, change or effect of whatever nature, that, individually or in the aggregate (a) is or could reasonably be expected to be materially adverse to the ability of Seller or Company, as applicable, to satisfy all of their respective obligations contemplated by this PPA, (b) has or could reasonably be expected to have a material adverse effect on the business, operations, assets, prospects, liabilities or condition (financial or otherwise) of Seller or Company, as applicable, (c) has or could reasonably be expected to have a material and adverse effect on the Facility or Facility Property, including the condition thereof, (d) has or could reasonably be expected to have a material and adverse effect on the ability to develop the Facility or on the design, development, interconnection, construction, start-up, testing, commissioning, ownership, use, operation or maintenance of the Facility, or (e) has or could reasonably be expected to have a material and adverse effect on the validity or enforceability of this PPA or the transactions contemplated hereby.

“**MBR Authority**” shall have the meaning set forth in Section 16.1.

“**Minimum Guaranteed Capacity**” of the PV Plant means [ ] MW.

“**MISO**” shall mean the Midcontinent Independent System Operator, Inc., its successors or assigns, or any similar entity or power system regional reliability authority that in the future may replace MISO with respect to all or a substantial part of its current responsibilities.

“**MISO Capacity Planning Year**” means [\_\_\_\_\_\_\_\_].

“**Monthly Capacity Payment**” has the meaning set forth in Section 8.3.

“**Moody’s**” means Moody’s Investor Services, Inc.

“**MW**” means megawatt or one thousand kW.

“**MWh**” means megawatt hours.

“**NERC**” means the North American Electric Reliability Corporation or any successor organization.

“**NERC Reliability Standards**” means the minimum requirements adopted by NERC and approved by the Federal Energy Regulatory Commission regarding the reliability, efficiency, safety and risk management of operations that provide bulk power within the borders of the United States, Canada and Mexico as in effect from time to time.

“**Non-Compensable Curtailment**” shall have the meaning set forth in Section 8.2(c).

“**Notice(s)**” shall have the meaning set forth in Section 21.1.

“**On-Peak Months**” means the on-peak months as determined by MISO.

“**Operating Committee**” means one representative each from Company and Seller pursuant to Section 10.5.

“**Operating Procedures**” means those procedures developed pursuant to Section 10.5, if any.

“**Operating Records**” means all agreements associated with the Facility, operating logs, blueprints for construction, operating manuals, all warranties on equipment, and all documents, whether in printed or electronic format, that Seller uses or maintains for the operation of the Facility.

“**Party**” and “**Parties**” shall have the meanings set forth in the first paragraph of this PPA.

“**Permit(s)**” means all applicable construction, building, land use, air quality, emissions control, environmental and other permits, exemptions, variances, registrations, licenses, certifications, authorizations, inspections, approvals, and consents from any Governmental Authority required under Applicable Laws for construction, ownership, operation and maintenance of the Facility and the generation and delivery of any output from the Facility Site to Company.

“**Permitted Transfer**” means any of the following (a) transactions between or among Affiliates of Seller, including any corporate reorganization, merger, combination or similar transaction or transfer of assets or ownership interests between or among Affiliates of Seller; (b) any exercise by the Facility Lender or a tax equity investor of its rights and remedies under the Financing Documents; (c) any change of economic and voting rights triggered in Seller’s organization documents arising from the financing of the Facility and which does not result in the transfer of ownership, economic or voting rights in any entity that had no such rights immediately prior to the change; or (d) the direct or indirect transfer of shares of, or other equity interests in, Seller or any direct or indirect owner of Seller to a tax equity investor so long as such transfer does not result in a Change of Control; provided that following any of the actions set forth in clauses (a) – (d) all Credit Support remains in place or is replaced.

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

“**Photovoltaic Module**” means each solar power photovoltaic module that has been installed on the Facility Site as part of the Facility and satisfied the requirements for Commercial Operation applicable thereto, or any replacement or substitute therefor after Commercial Operation.

“**PI**” means the “plant information” system as described and implemented in Section 10.7.

“**Planned Capacity**” shall have the meaning set forth in Exhibit C.

“**Point of Delivery**” means the physical point within the operational authority of Transmission Provider at which Seller makes available to Company and delivers to Company the Energy being provided by Seller to Company under this PPA as specified in Exhibit C-Facility Description to this PPA.

“**Post-COD Credit Assurance**” means $[ ] million.

“**Potential Energy**” means the quantity of the energy that Seller is capable of delivering at the Point of Delivery from the Facility. In the event that Facility Potential is not a reliable proxy for Potential Energy pursuant to Section 8.2(b), Potential Energy shall be calculated as the aggregate energy available for delivery at the Point of Delivery using the best-available data obtained through Commercially Reasonable methods; and shall be dependent upon measurements and adjustments necessary to accurately reflect the Facility’s capability to produce and deliver energy to the Point of Delivery.

“**PPA**” shall have the meaning set forth in the first paragraph of this PPA.

“**Pre-COD Credit Assurance**” means $[ ] million.

“**Products**” shall have the meaning set forth in Section 4.1(b).

“**Prudent Industry Practices**” means the implementation and exercise of those practices, methods, standards, and the performance of any obligations of Seller under this PPA, in accordance with the degree of judgment and skill that is ordinarily possessed and exercised by (and generally accepted as being appropriate for) the solar photovoltaic generation industry for projects which are of similar scope, nature and complexity as the Facility; which shall include those practices, methods and standards as are commonly used in performing work and services of a nature similar to those obligations of Seller under this PPA, which in the exercise of reasonable judgment by those experienced in the solar power generation industry and in light of the facts known at the time a decision was made, are considered good, safe, reliable and prudent practices, methods and standards. Prudent Industry Practices are not intended to be limited to the optimum practices, methods, specifications, standards or acts to the exclusion of all others, but rather to be a spectrum of good and proper practices, methods, specifications, standards and acts.

“**PVPlant**” means the solar photovoltaic electric generation facility, with a capacity equal to at least the Minimum Guaranteed Capacity, to be located and constructed in accordance with this PPA on the Facility Site, and all related assets and properties, including ancillary equipment and the Interconnection Facilities, and, subject to the other terms hereof, any additions thereto or replacements to any of the foregoing, it being understood and agreed that, as used herein, “PV Plant” includes any common facilities between the solar photovoltaic electric generation facility (and related assets and properties) and the BESS. A general description of the PV Plant is provided in Exhibit C.

“**PV Plant Contract Capacity**” shall mean [ ] MW.

“**Qualified Issuer**” means a U.S. commercial bank (or a foreign bank with a U.S. branch) having total assets of at least One Billion Dollars ($1,000,000,000) and a Credit Rating of no less than (as applicable): (a) “A-” from S&P, or (b) “A3” from Moody’s, or (c) if such bank has a Credit Rating at such time from both S&P and Moody’s, “A-” from S&P and “A3” from Moody’s. If such rating is A- or equivalent to A-, such issuer must not be on negative credit watch or have a negative outlook by any rating agency.

“**Qualified Operator**” means a person that directly has at least five (5) years of experience operating and maintaining solar facilities of at least an aggregate of 1000 MW.

“**REC Registration Program**” means the Midwest Renewable Energy Tracking System, or its successor program established to register Eligible Energy Resources connected to the MISO- controlled transmission system and create and certify RECs arising from energy generated from the Eligible Energy Resources.

“**Renewable Energy Credits**” or “**RECs**” means any contractual right to the full set of non­-energy attributes, including any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, directly attributable to a specific amount of capacity and/or electric energy generated from an Eligible Energy Resource, including any and all environmental air quality credits, benefits, emissions reductions, off-sets, allowances, or other benefits as may be created or under any existing or future statutory or regulatory scheme (federal, state, or local) by virtue of or due to the Facility’s actual energy production or the Facility’s energy production capability because of the Facility’s environmental or renewable characteristics or attributes, including any Renewable Energy Credits or similar rights arising out of or eligible for consideration in the REC Registration Program. For the avoidance of doubt, RECs exclude (i) any local, state or federal depreciation deductions or other tax credits providing a tax benefit to Seller based on ownership of, or energy production from, any portion of the Facility, including the investment tax credit that may be available to Seller with respect to the Facility under Applicable Laws, and (ii) depreciation and other tax benefits arising from ownership or operation of the Facility unrelated to its status as a generator of renewable or environmentally clean energy.

“**Replacement Power Costs**” means the costs incurred by Company after COD that are necessary to replace the Products and services that Seller was required to provide under this PPA, but failed to so provide, less the sum of any payments from Company to Seller under this PPA that were eliminated as a result of the failure; *provided*, *however*, that the net amount shall never be less than zero, and if the calculation results in a number less than zero, the net amount shall be deemed to be zero. Replacement Power Costs shall be determined as follows.

Replacement Power Costs = (A + B + C + D) - E, where

“A” is the market value of Zonal Resource Capacity Credits from the Facility that would in the ordinary course, have qualified for capacity credit with MISO until the Scheduled Termination Date;

“B” is the sum of (i) the product of the number of MWh of energy purchased by Company to replace any of the Energy that was not delivered under this PPA (“Replacement Energy“), and the applicable market price for the energy delivered to Company’s system at a point nearest to the Point of Delivery for the hour, and (ii) the product of the MWh of “Replacement Energy” derived in clause (i) and the reasonable, actual costs incurred by Company in purchasing replacement RECs, or, if replacement RECs are not purchased by Company, the applicable market price of the replacement RECs (the “REC Price“). If applicable, the REC Price will be determined based on the midpoint of the average of each of (A) the Front Half (FH) and the Back Half (BH), and (B) the “Bid” and “Offer” for [ ] as set forth in the most recent broker sheets published by [ ] (individually, a “Broker Sheet“; collectively the “Broker Sheets“). In the event a Broker Sheet or the Broker Sheets are not published, then the Operating Committee will agree in good faith to an appropriate substitute proxy for REC Prices for that number of MWh; and

“C” is an amount equal to the actual cost of transmission, ancillary services, fuel and fuel transportation and related penalties that could not be avoided or mitigated and transaction charges to deliver reasonably available energy to Company in amounts equal to the number of MWh for which Replacement Power Costs are owed;

“D” are reasonable attorneys’ fees and expenses, brokerage fees and commissions, other third party transaction costs and expenses and any other incremental costs and expenses to be reasonably incurred by Company in connection with the termination of this PPA and/or in entering into transaction(s) replacing this PPA; and

“E” is the product of the MWh of Energy associated with the Facility Contract Capacity that was not delivered under this PPA and the Energy Payment Rate.

“**S&P**” means Standard & Poor’s, a division of the McGraw Hill Companies.

“**SCADA System**” means supervisory control and data acquisition system.

“**Scheduled Termination Date**” means the [ ] anniversary of the COD.

“**Seller**” shall have the meaning set forth in the first paragraph of this PPA.

“**Seller Contract Losses**” means any direct damages incurred by Seller reasonably attributable to an Event of Default by Company, including any unpaid amounts for Compensable Curtailment Energy under this PPA and an amount equal to (a) the difference (positive or negative) between (i) the present value of the payments to be made and received by Seller under this PPA during the remaining Term of this PPA and (ii) the present value of the payments to be made and received (less the costs and expenses to be incurred) under transaction(s) reasonably forecasted to replace this PPA, plus (b) reasonable attorneys’ fees and expenses, brokerage fees and commissions, other third-party transaction costs and expenses and any other incremental costs and expenses to be reasonably incurred by Seller in connection with the termination of this PPA and/or in entering into transaction(s) replacing this PPA; *provided*, *however*, that, if the foregoing amount is negative, the Seller Contract Losses shall be deemed to be zero.

“**Seller CP**” means the conditions set forth in Section 6.1(c).

“**Seller Guarantor**” means (i) [                  ] (so long as it qualifies as an Acceptable Guarantor) or (ii) any other Acceptable Guarantor.

“**Seller Guaranty**” means a guaranty of payment and performance issued by a Seller Guarantor in the form attached to this PPA as Exhibit M or in such other form as may be acceptable to Purchaser acting reasonably.

“**Seller Letter of Credit**” means an unconditional, irrevocable letter of credit issued by a Qualified Issuer on behalf of Seller either (a) substantially in the form of the letter of credit attached hereto as Exhibit N or (b) otherwise in form and substance satisfactory to Purchaser in Purchaser’s reasonable discretion.

“**Seller Post-COD Damages Cap**” means $[ ] million.

“**Seller Pre-COD Damages Cap**” means $[ ] million.

“**Site**” means the parcel of real property on which the Facility will be constructed and located, including any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of the Facility. The Site is more specifically described in Exhibit C-Facility Description to this PPA.

“**State Regulatory Agency**” means the Indiana Utility Regulatory Commission, or any successor agency.

“**State Regulatory Approval**” means a final, non-appealable written order of the State Regulatory Agency making the affirmative determination that execution of this PPA by Company is reasonable, in the public interest, and all costs incurred under this PPA are recoverable from the retail customers pursuant to Applicable Law.

“**Successfully Run**” means, (a) with respect to the Capacity Test, that the Capacity Test was completed in accordance with the procedures, conditions, and requirements for the proper performance of such test as set forth in Exhibit O and, (b) with respect to a Functional Test, that the Functional Test was completed in accordance with the procedures, conditions, and requirements for the proper performance of the test as set forth in Exhibit P.

“**Technical Dispute**” means any dispute that the Parties mutually agree in writing in their reasonable discretion will primarily require the application of engineering principles or other specialized technical knowledge in order to reach resolution thereof.

“**Term**” means the period of time during which this PPA shall remain in full force and effect as further defined in Article 2.

“**Test Energy**” means that Energy which is produced by the Facility prior to COD, delivered to Company at the Point of Delivery pursuant to Section 4.4.

“**Test Energy Rate**” means a payment rate of the real time Locational Marginal Pricing (LMP) at the generator node.

“**Transmission Provider**” means the entity operating the interconnected transmission system applicable to Seller and the Facility pursuant to the Transmission Tariff. As of the date hereof, MISO is the Transmission Provider.

“**Transmission Tariff**” means the applicable Open Access Transmission Tariff of the Transmission Provider, as amended from time to time. As of the date hereof, the MISO Tariff is the Transmission Tariff.

“**Unforeseeable Conditions**” means any conditions at the Site which (a) are concealed physical conditions of an unusual nature and (b) could not be reasonably have been foreseen with appropriate due diligence.

“**Zonal Resource Capacity Credits**” means all credits for capacity and like attributes provided for under the Transmission Tariff for areas in which IPL has load. As of the date hereof, the Zonal Resource Capacity Credits are MISO Zone 6 Resource Capacity Credits.

Exhibit B

Construction Milestones

With the exception of the Commercial Operation Milestone, the milestones listed below represent preliminary estimates and are subject to change without amendment of this PPA.

|  |  |
| --- | --- |
| Construction Milestone | Outcome |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |

Exhibit C

[Facility Description and Site Maps]

**Metering**

**Electric Metering Devices must meet the following AGENCY STANDARDS and be approved by COMPANY.**

• ANSI Standard C12.20-2010

• FCC Part 68, FCC Part 15

• IEC6100-4-30-15

• EN50160

Exhibit D

Notice and Contact Information

|  |  |
| --- | --- |
| **Company** | **Seller** |
| **Notices:** | **Notices:** |
| **Operating Committee Representatives:**  **Alternate:** | **Operating Committee Representative:**  **Alternate:** |
| **Real-Time Contact Information:**  To be provided by Company from time to time and at least 90 Days prior to the Commercial Operation Date | **Real-Time Contact Information:**  To be provided by Company from time to time and at least 90 Days prior to the Commercial Operation Date |

Exhibit E

Insurance Coverage

**General**

Capitalized terms used and not defined in this Exhibit E shall have the meaning ascribed to those terms in the [Power Purchase Agreement] between [IPL/AES Indiana], an Indiana corporation (“**Purchaser**”), and [SELLER], a [      ] [limited liability company] (“**Seller**”, and with Purchaser, each a “**Party**” and together the “**Parties**”) (the “**Agreemen**t”), and if not in the Agreement, in the commercial insurance industry.

**SELLER REQUIRED INSURANCE**

Seller shall procure and maintain or cause to be procured and maintained the insurance types, amounts and provisions listed below, (the “**Seller Required Insurance**”) continuously throughout the duration of the Agreement and subsequent thereto (as applicable) in each case from responsible insurance carriers authorized to do business in Indiana.

1. Operational All Risk Insurance. An operational all risk insurance in accordance with the terms hereof. Such operational all risk insurance insureds shall cover all property on a replacement cost basis from all risks of physical loss or damage, subject to standard insurance market exclusions, sub-limits and deductibles only for the type of applicable project, and shall include mechanical and electrical breakdown coverage as well as coverage for resultant damage caused by faulty workmanship, design, specifications or materials. Such insurance shall include business interruption cover for a period of not less than 12 (twelve) months.

2. Commercial General Liability Insurance. A commercial general liability insurance, including coverage for premises and operations, personal injury, bodily injury (including death), broad form contractual, broad form property damage, products and completed operations with limits not less than $1,000,000 per occurrence and $2,000,000 general aggregate and products/completed operations aggregate. Coverage must not exclude or sublimit liability for (i) injury to or destruction of pipes or other similar property, or any apparatus in connection with them, below the surface of the ground, (ii) explosion, collapse and underground (XCU); (iii) liability arising from the use of cranes, (iv) liability arising from wildfire, (v) operations on or adjacent to a railroad or railroad right of way, and (vi) ISO CG 22 79 and CG 22 80, such coverages may be procured on a standalone basis. Products/completed operations coverage, including additional insured protection, shall continue through the expiration of time within which a claim may be filed under all applicable laws. Such insurance shall include by endorsement or the equivalent ISO CG 2417 Contractual Liability Rail Roads (if work is occurring near a railroad line) and on a per project aggregate.

1. Automobile Liability Insurance. Automobile liability insurance covering all owned, non-owned, and hired automobiles used in connection with the property in an amount of not less than $1,000,000 per accident for combined bodily injury, property damage or death arising out of the ownership, maintenance or use, loading or unloading of any motor vehicle. Such insurance shall include all state mandatory and/or statutory endorsements.
2. Workers’ Compensation Insurance. Workers’ Compensation insurance to cover statutory limits of the Workers’ Compensation laws including USL&H and Jones Act coverage, where applicable, and Employer’s Liability (including Occupational Disease) coverage with limits $1,000,000 for bodily injury by disease, $1,000,000 for bodily injury by accident, and $1,000,000 in the aggregate. Coverage shall also include claims for disability benefits and other state or federal required benefit.
3. Umbrella/Excess Insurance. An Umbrella/Excess Insurance on a follow form basis, covering claims in excess of the underlying insurance, including drop down coverage in the event the underlying limits are eroded, described in the above sections 2 and 3 with $25,000,000 per occurrence and $25,000,000 annual aggregate.

**Insurance Provisions**

Seller shall ensure the following insurance provisions are maintained continuously throughout the term of the Agreement:

(a) With respect to the insurances required in 1, 2, 3 and 5 above provide that in the event of any loss payment the insurer(s) shall waive any rights of subrogation against Purchaser and lenders/investors of Purchaser and its Affiliates and their affiliates, successors, assigns, owners, directors, officers, members, employees and agents and any other additional insureds and waive any setoff or counterclaim or any other deduction whether by attachment or otherwise as applicable to such parties.

(b) With respect to insurances required in 2, 3 and 5 above include Purchaser, lenders/investors of Purchaser and its Affiliates and Purchaser indemnitees, successors, assigns and their directors, officers, members, employees and agents, as additional insureds.

(c) With respect to insurances required in 2, 3 and 5 above provide that Seller’s insurance, including any deductibles and self-insured retentions, shall be primary, and any insurance, deductibles or self-insurance of Purchaser shall be excess and non-contributory.

(d) Seller shall be responsible for the payment of all premiums, self-insured retentions, and deductible amounts with respect to the Seller required insurance under this Agreement.

(e) With respect to insurances required in 2, 3 and 5 above contain a severability of interests clause, or a separation of insureds clause, whereby except with respect to the coverage limits, the insurance coverage shall apply to each insured or additional insured as though a separate policy were issued to each. There shall be no exclusion or limitation for cross suits or cross liability.

(f) All insurance companies must maintain a minimum A.M. Best rating of A/ IX, or equivalent or better.

(g) Seller shall provide to Purchaser, upon the request of Purchaser from time to time, certificates of insurance and supporting additional insured, waiver of subrogation, and notice of cancellation endorsements, or policy excerpts evidencing the insurances and provisions required in this Exhibit E.

(h) The insurance coverage described in this Exhibit E shall not be deemed to limit the Seller’s liability under the Agreement. Purchaser makes no representations or warranties with respect to coverages or limits, including whether such insurance coverage or limits will necessarily be adequate to protect Seller or Purchaser.

(i) Failure to comply with the terms of this Exhibit E shall be considered a material breach of the Agreement.

Exhibit F

Seller’s Permits

|  |  |  |
| --- | --- | --- |
| **Document Type** | **Description** | **External Party** |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |

Exhibit G

Operating Procedures

**AGC Protocols**

**AGC Data Points**

Seller shall transmit the following data points from the Facility AGC System to Company using the data communications link described in Exhibit H. The data points will consist of real time Facility level data:

|  |  |
| --- | --- |
| **Description** | **Units** |
| AGC Set-Point (echo) | MW |
| Power demand | MW |
| Actual power | MW |
| Facility Potential | MW |
| Actual reactive power | Mvars |
| Average Voltage | kV |
| AGC Status | Remote/Local |

**Response Times**

The protocols in this Exhibit outline the expectations for Seller responding to Company directions to set the AGC Set-Point. Except in the case of the Frequency of Changes, these protocols will be generally bound by the manufacturers’ specifications for the equipment that Seller has chosen for the Facility and will be detailed when that equipment has been specified by mutual agreement of the Parties.

**Range of AGC Set-Point**s

The range of set point values can be between 0% and 100% of Facility Potential.

The requirements of the AGC Protocols may be modified as mutually agreed upon in writing by both Company and Seller.

**Maintenance**

Seller shall provide and maintain in good working order all equipment, computers and software associated with AGC System necessary to interface the Facility active power controls with the Company System Operations Control Center for real power control of the Facility by the Company System Operator.

**AGC System Requirements**

The AGC System will be used to control the net real power import or export from the Facility as required under this PPA. The implementation of the AGC System will allow Company System Operator to control the net real power import to or export from the entire Facility remotely from the Company System Operations Control Center through control signals from the Company System Operations Control Center.

Company shall review and provide prior written approval of the design for the AGC System to ensure compatibility with Company's SCADA and EMS. In order to ensure continued compatibility, Seller shall not materially change the approved design of the AGC System without Company's prior review and prior written approval.

The Facility AGC System shall provide the feedback to the Company SCADA system within 2 seconds of receiving the respective control signal from Company.

Seller shall provide an analog input to the RTU Telemetry and Control for the MW output of the PV Plant, and an analog signal for the total MW output at the Point of Interconnection.

Facility's AGC System will control the rate at which electric energy is changed to achieve the active power limit. The Facility will respond to the active power control request immediately.

The AGC System shall accept the following active power control(s) from the Company SCADA and EMS systems:

* Maximum Power Import and Export Limits: The Facility is not allowed to exceed these settings under any circumstances.
* Power Reference Set Point: The Facility is to import or export active power at this level to the extent allowed by the solar resource and energy storage and is not allowed to exceed this setting when system frequency is
* Inverter Enable/Disable Control: The Facility shall include an inverter Enable/Disable control. When Disable is selected, the Facility shall ramp down, shutdown, and leave offline its inverters. When Enable is selected, the Facility inverters can start up, ramp up, and remain in normal operations.

Seller shall not override Company's active power controls without first obtaining specific approval to do so from the Company System Operator.

**Backup Communications**

In the event of an AGC System failure, Company and Seller shall communicate via telephone in order to correct the failure.

**Non-Generation status**

The AGC System shall provide for remote control of the net real power input or output of the Facility by Company at all times. If the AGC System is unavailable or disabled, the Facility shall not import or export net real power from or to Company, unless Company, in its sole discretion, agrees to supply or accept net real power and Seller and Company agree on an alternate means of dispatch. Notwithstanding the foregoing, if Seller fails to provide remote control features through the AGC System (whether temporarily or throughout the Term) and fails to discontinue importing or exporting electric energy to Company, then Company shall have the right to derate or disconnect the entire Facility during those periods that those control features are not provided and the Curtailment shall not be a Compensable Curtailment.

If all local and remote active power controls become unavailable or fail, the Facility shall immediately disconnect from the Transmission Provider. This shall not be a Compensable Curtailment.

If the direct transfer trip is unavailable due to loss of communication link, RTU telemetry and control failure, or other event resulting in the loss of the remote control by Company, Seller shall, or shall cause, the Facility to be, shut down and shall open and lockout the main circuit breaker. This shall not be a Compensable Curtailment.

Exhibit H

Data Collection

Company shall own the communication link. The communication link shall extend from a Company station or substation to either the Facility control house (preferred) or the Transmission Provider’s substation control house (alternate). Seller shall be responsible for, and own, an interface device that will be approved by the local communications company. Seller shall cause a 4-wire circuit to be connected from the communications company to Company’s relay communications device. The communications device(s) shall be programmed and owned by Company. The preferred method of communication is IPsec VPN tunnel and the speed of this communication is dictated by the number of points that will be transmitted to the Company EMS. A 1Mb or greater connection will suffice.

Seller shall install a Remote Terminal Unit (“**RTU**”) - at the Facility control house. Seller shall own and operate this RTU. Company will specify the manufacture and model of the RTU upon request. Company will need necessary ‘contact’ information for appropriate maintenance personnel and prior 24-hour notification when work is to be done on the RTU.

Seller shall provide and maintain communication equipment at the Facility so that information specified by Company from the Transmission Provider substation can be read from the Transmission Provider’s RTU in response to Company’s requests for appropriate status, analog, and accumulator values as necessary from the Transmission Provider’s RTU.

Seller shall test the communication equipment and links and provide evidence to Company that the equipment performs to Company’s satisfaction before the Test Energy date occurs.

Exhibit I

Lender’s Consent

Exhibit J

Facility Transmission Model Requirements

Seller will provide Company with necessary model information that conforms to the MISO Market Participant rules. This includes all data relevant to the Master Commercial Model Template and MISO Tariff Attachment B – Change of Information Form. Specifically, and at a minimum, Seller will provide the following information:

* + CPnode Name
  + Solar farm common name
  + Latitude (in degrees with a least 4 decimal points)
  + Longitude (in degrees with a least 4 decimal points)
  + Postal Code
  + Maximum Capacity inverter (in MW)
  + Maximum Capacity modules (in MW)
  + Number of PV cells
  + Tilt
  + Azimuth
  + Autotracking
  + Inverter type
  + Operational date

Seller will communicate the above model information to Company in a timely manner that meets the model development schedule associated with inclusion of the Facility in the MISO Planning Reserve Auction.

Exhibit K

Expected Energy Amounts

Exhibit L

Monthly Capacity Payment

Exhibit M

Seller Guaranty

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, including, without limitation, the entering into by Indianapolis Power & Light Company d/b/a AES Indiana, an Indiana corporation (“**Purchaser**”) with [*Seller*], a [\_\_\_\_\_\_\_\_\_\_] [limited liability company] (“**Seller**”), of the Solar and Storage Power Purchase Agreement between Seller and Purchaser, as it may be amended and supplemented from time to time, together with all schedules and attachments thereto and any replacements or substitutes (the “**PPA**”), the undersigned guarantor (“**Guarantor**”), hereby unconditionally and irrevocably guarantees to Purchaser and all Purchaser’s Affiliates (as defined in the PPA) the prompt and complete payment of all amounts that Seller now or hereafter owes, and the performance of all other obligations of Seller, under the terms and conditions of the PPA, any agreements entered into by Seller under, pursuant to, or in connection with the PPA and/or any related agreements to which Purchaser and Seller are parties, as may be amended or supplemented from time to time whether now existing or hereafter arising in accordance with their respective terms, together with costs of enforcement and collection, including attorneys’ fees (collectively, the “**Liabilities**”). The PPA, any and all agreements entered into by Seller under, pursuant to or in connection with the PPA, and any and all agreements to which Seller and Purchaser are parties, each as it may be amended from time to time and whether it currently exists or is entered into at any time in the future are collectively referred to herein as the “**Agreements**”.

1. If Seller does not perform each of its obligations in strict accordance with each respective Agreement, Guarantor shall immediately pay upon demand all amounts now or hereafter due under all of the Agreements (including, without limitation, all principal, interest and fees) and otherwise proceed to complete the same and satisfy all of the Liabilities, including Seller’s obligations under all of the Agreements. This Guaranty may be satisfied by Guarantor paying and/or performing (as appropriate) Seller’s Liabilities or by the Guarantor causing Seller’s Liabilities to be paid or performed; *provided*, *however*, that Guarantor shall at all times remain fully responsible and liable for its obligations hereunder notwithstanding any such payment or performance (or failure thereof) by any third party.
2. This Guaranty is an absolute, unconditional and continuing guaranty of the full and punctual payment and performance by Seller of all of the Liabilities, including each of its obligations under each of the Agreements, and not of collectability only, and is in no way conditioned upon any requirement that Purchaser (or any other person) first attempt to collect payment from Seller or any other guarantor or surety or resort to any security or other means of obtaining payment of all or any part of the Liabilities or upon any other contingency. This is a continuing guaranty and shall be binding upon Guarantor regardless of: (i) how long after the date hereof the Agreement is entered into; (ii) how long after the date hereof any part of the obligations under the Agreements is incurred by Seller; and (iii) the amount of the obligations under the Agreements at any time outstanding. Purchaser may enforce this Guaranty from time to time and as often as occasion for such enforcement may arise.
3. The obligations hereunder are independent of the obligations of Seller and a separate action or actions may be brought and prosecuted against Guarantor whether action is brought against Seller or whether Guarantor is joined in any such action or actions. Guarantor’s liability under this Guaranty is not conditioned or contingent upon genuineness, validity, regularity or enforceability of any of the Agreements.
4. Guarantor authorizes Purchaser, without notice or demand and without affecting its liability hereunder, from time to time, to: (i) renew, extend, modify, supplement or otherwise change the terms of any or all the Agreements or any part thereof; (ii) take and hold security for the payment of this Guaranty or any or all of the Liabilities, and exchange, enforce, waive and release any such security; and (iii) apply such security and direct the order or manner of sale of any collateral provided as such security as Purchaser (or any other person) in its sole discretion may determine. The obligations and liabilities of Guarantor hereunder shall be absolute and unconditional, shall not be subject to any counterclaim, set-off, deduction or defense based upon any claim Guarantor may have against Seller, any other Guarantor, or any other person or entity, and shall remain in full force and effect until all of the obligations of Guarantor hereunder and all of the Liabilities, including all obligations of Seller under each of the Agreements, have been fully and irrevocably satisfied, without regard to, or release or discharge by, any event, circumstance or condition (whether or not Guarantor shall have knowledge or notice thereof) which might constitute a legal or equitable defense or discharge of a Guarantor or surety or which might in any way limit recourse against Guarantor, including without limitation: (i) any renewal, amendment or modification of, or supplement to, the terms of any or all of the Agreements; (ii) any waiver, consent or indulgence by Purchaser (or any other person), or any exercise or non-exercise by Purchaser (or any other person) of any right, power or remedy, under or in respect of this Guaranty or any of or all the Agreements (whether or not Guarantor or Seller has or have notice or knowledge of any such action or inaction); (iii) the invalidity or unenforceability, in whole or in part, of any or all of the Agreements, or the termination, cancellation or frustration of any thereof, or any limitation or cessation of Seller’s liability under any thereof (other than any limitation or cessation expressly provided for therein), including without limitation any invalidity, unenforceability or impaired liability resulting from Seller’s lack of capacity, power and/or authority to enter into any or all of the Agreements and/or to incur any or all of the obligations thereunder, or from the execution and delivery of any or all of the Agreements by any person acting for Seller without or in excess of authority; (iv) any actual, purported or attempted sale, assignment or other transfer by Purchaser (or any other person) of any or all of the Agreements or of any or all of its rights, interests or obligations thereunder; (v) the taking or holding by Purchaser of a security interest, lien or other encumbrance in or on any property as security for any or all of the Liabilities, including any or all of the obligations of Seller under any or all of the Agreements, the posting of a cash deposit, letter of credit, performance bond or other financial accommodation, or any exchange, release, non-perfection, loss or alteration of, or any other dealing with, any such security; (vi) the addition of any party as a guarantor or surety of all or any part of the Liabilities, including obligations of Seller under any or all of the Agreements; (vii) any merger, amalgamation or consolidation of Seller into or with any other entity, or any sale, lease, transfer or other disposition of any or all of Seller’s assets or any sale, transfer or other disposition of any or all of the shares of capital stock or other securities of Seller to any other person or entity; or (viii) any change in the financial condition of Seller or (as applicable) of any subsidiary, affiliate, partner or controlling shareholder thereof, or Seller’s entry into an assignment for the benefit of creditors, an arrangement or any other Agreement or procedure for the restructuring of its liabilities, or Seller’s insolvency, bankruptcy, reorganization, dissolution, liquidation or any similar action by or occurrence with respect to Seller.
5. Guarantor unconditionally waives, to the fullest extent permitted by law: (i) notice of any of the matters referred to in §4 hereof; (ii) any right to the enforcement, assertion or exercise by Purchaser (or any other person) of any of its rights, powers or remedies under, against or with respect to (a) any of the Agreements, (b) any other guarantor or surety, or (c) any security for all or any part of the Liabilities, including the obligations of Seller under all or any of the Agreements or obligations of Guarantor hereunder; (iii) any requirement of diligence and any defense based on a claim of laches; (iv) all defenses which may now or hereafter exist by virtue of any statute of limitations, or of any stay, valuation, exemption, moratorium or similar law, except the sole defense of full and indefeasible payment; (v) any requirement that Guarantor be joined as a party in any action or proceeding against Seller to enforce any of the provisions of any of the Agreements; (vi) any requirement that Guarantor be involved in any dispute resolution procedures involving Seller to enforce any of its obligations under any of the Agreements (including the dispute resolution procedures set forth in the PPA); (vii) any requirement that Purchaser (or any other person) mitigate or attempt to mitigate damages resulting from a default by Guarantor hereunder or from a default by Seller under any of the Agreements; (viii) acceptance of this Guaranty; and (ix) all presentments, protests, notices of dishonor, demands for performance and any and all other demands upon and notices to Seller, and any and all other formalities of any kind, the omission of or delay in performance of which might but for the provisions of this Section constitute legal or equitable grounds for relieving or discharging Guarantor in whole or in part from its irrevocable, absolute and continuing obligations hereunder, it being the intention of Guarantor that its obligations hereunder shall not be discharged except by payment and performance and then only to the extent thereof.
6. Guarantor waives any right to require Purchaser (or any other person) to (i) proceed against Seller; (ii) proceed against or exhaust any security held from Seller; or (iii) pursue any other remedy whatsoever. So long as any obligations remain outstanding under this Guaranty or any of the Agreements, Guarantor shall not exercise any rights against Seller arising as a result of payment by Guarantor hereunder, by way of subrogation or otherwise, and will not prove any claim in competition with Purchaser (or any other party to any of the Agreements) in respect of any payment under the Agreements in bankruptcy or insolvency proceedings of any nature. Guarantor will not claim any set-off or counterclaim against Seller in respect of any liability of Guarantor to Seller and Guarantor waives any benefit of any right to participate in any collateral which may be held by Purchaser (or any other party to any of the Agreements or holding any security for any of the Liabilities).
7. If after receipt of any payment of, or the proceeds of any collateral for, all or any part of the Liabilities, the surrender of such payment or proceeds is compelled or volunteered to any person because such payment or application of proceeds is or may be avoided, invalidated, recaptured, or set aside as a preference, fraudulent conveyance, impermissible set -off or for any other reason, whether or not such surrender is the result of: (i) any judgment, decree or order of any court or administrative body having jurisdiction, or (ii) any settlement or compromise of any claim as to any of the foregoing with any person (including Seller), then the Liabilities, or part thereof affected, shall be reinstated and continue and this Guaranty shall be reinstated and continue in full force as to such Liabilities or part thereof as if such payment or proceeds had not been received, notwithstanding any previous cancellation of any instrument evidencing any such Liabilities or any previous instrument delivered to evidence the satisfaction thereof. The provisions of this Section shall survive the termination of this Guaranty and any satisfaction and discharge of Seller by virtue of any payment, court order or any Federal, state or local law.
8. Any indebtedness of Seller now or hereafter held by Guarantor is hereby subordinated to the Liabilities and any indebtedness of Seller under any of the Agreements; and such indebtedness of Seller to Guarantor shall be collected, enforced and received by Guarantor as trustee for Purchaser and be paid over to Purchaser on account of the Liabilities but without reducing or affecting in any manner the liability of Guarantor under the other provisions of this Guaranty.
9. Guarantor represents and warrants to Purchaser, as an inducement to Purchaser to make the credit advances to Seller, that: (i) the execution, delivery and performance by Guarantor of this Guaranty (a) are within Guarantor’s powers and have been duly authorized by all necessary action; (b) do not contravene Guarantor’s charter documents or any law or any contractual restrictions binding on or affecting Guarantor or by which Guarantor’s property may be affected; and (c) do not require any authorization or approval or other action by, or any notice to or filing with, any public authority or any other person except such as have been obtained or made; (ii) this Guaranty constitutes the legal, valid and binding obligation of Guarantor, enforceable in accordance with its terms, except as the enforceability thereof may be subject to or limited by bankruptcy, insolvency, reorganization, arrangement, moratorium or other similar laws relating to or affecting the rights of creditors generally and by general principles of equity; (iii) Seller is a wholly owned subsidiary of Guarantor; and (iv) there is no action, suit or proceeding affecting Guarantor pending or threatened before any court, arbitrator, or public authority that may materially adversely affect Guarantor’s ability to perform its obligations under this Guaranty.
10. The Guarantor must submit (i) at least annually a current bond/debt rating report for senior unsecured debt of the Guarantor and an issuer rating issued by Moody’s Investor Services or Standard & Poor’s, promptly upon its issuance, and (ii) financial reports of the Guarantor promptly upon their issuance including, without limitation, annual audited financial statements prepared in accordance with generally accepted accounting principles, with auditor notes and auditor’s report, to be delivered no later than one hundred twenty (120) days after the end of each Fiscal Year of the Guarantor and internally prepared quarterly financial statements, if requested by Purchaser, prepared in accordance with generally accepted accounting principles, no later than sixty (60) days after the end of each fiscal quarter of the Guarantor. Further, Guarantor must inform Purchaser in writing within five (5) business days of any material change in its financial status. In addition to any other remedies available at law or in equity, a Guarantor’s failure to provide this information may result in proceedings by Purchaser to terminate the Agreements with Seller.
11. Guarantor agrees to pay on demand reasonable attorneys’ fees and all other costs and expenses which Purchaser, its affiliates, representatives, successors and assigns may incur in the enforcement of this Guaranty. No terms or provisions of this Guaranty may be changed, waived, revoked or amended without Purchaser’s prior written consent. Should any provision of this Guaranty be determined by a court of competent jurisdiction to be unenforceable, all of the other provisions shall remain effective. This Guaranty embodies the entire Agreement among the parties hereto with respect to the matters set forth herein, and supersedes all prior Agreements among the parties with respect to the matters set forth herein. No course of prior dealing among the parties, no usage of trade, and no parole or extrinsic evidence of any nature shall be used to supplement, modify or vary any of the terms hereof. There are no conditions to the full effectiveness of this Guaranty. Purchaser may assign this Guaranty, and its rights hereunder in whole or in part, without consent and without in any way affecting Guarantor’s liability under it. This Guaranty shall inure to the benefit of and be binding on Guarantor, Purchaser, Seller, and their successors and assigns. Guarantor may not assign this Guaranty without Purchaser’s consent. This Guaranty is in addition to the guaranties of any other guarantors and any and all other guaranties of any of the Liabilities, including Seller’s indebtedness or obligations under any or all of the Agreements.
12. This Guaranty shall be governed by the laws of the State of Indiana, without regard to conflicts of law principles. Guarantor hereby irrevocably submits to the jurisdiction of any Indiana or United States Federal court sitting in Indiana over any action or proceeding arising out of or relating to this Guaranty or any of the Agreements, and Guarantor hereby irrevocably agrees that all claims in respect of such action or proceeding may be heard and determined in such Indiana state or federal court. Guarantor irrevocably consents to the service of any and all process in any such action or proceeding by the mailing of copies of such process to Guarantor at its address set forth herein. Guarantor agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Guarantor further waives any objection to venue in Indiana and any objection to an action or proceeding in such State on the basis of *forum non-conveniens*. Guarantor further agrees that any action or proceeding brought against Purchaser shall be brought only in Indiana or the United States Federal courts sitting in Indiana. Nothing herein shall affect the right of Purchaser to bring any action or proceeding against the Guarantor or its property in the courts of any other jurisdictions.
13. **Payments**. All payments by Guarantor under this Guaranty shall be made (a) in U.S. dollars to such account in the United States as Purchaser may from time to time designate to Guarantor and (b) free and clear of, and without deduction or withholding for or on account of any present or future income, stamp other taxes or levies, imposts, duties, charges, fees, deductions or withholdings now or hereafter imposed, levied, collected, withheld or assessed by an governmental authority (collectively “**Taxes**”). If any Taxes are required to be withheld from any amounts payable by Guarantor under this Guaranty, the amounts payable shall be increased to the extent necessary to provide the full amount (after payment of all Taxes) owing by Guarantor under this Guaranty.
14. **Judgment Currency**. The obligations of Guarantor under this Guaranty shall, notwithstanding judgment in a currency other than U.S. dollars (the “**Judgment Currency**”), be discharged only to the extent that, on any day following receipt by Purchaser of any sum adjudged to be due in the Judgment Currency, Purchaser may in accordance with normal banking procedures purchase U.S. dollars with the Judgment Currency. If the amount of U.S. dollars so purchased is less than the sum originally due to the Purchaser in U.S. dollars, Guarantor agrees, as a separate obligation and notwithstanding such judgment, to indemnify the Purchaser against such loss.
15. GUARANTOR ACKNOWLEDGES THAT IT HAS BEEN ADVISED BY COUNSEL OF ITS CHOICE WITH RESPECT TO THIS GUARANTY AND THAT IT MAKES THE FOLLOWING WAIVER KNOWINGLY AND VOLUNTARILY. GUARANTOR IRREVOCABLY WAIVES TRIAL BY JURY IN ANY COURT AND IN ANY SUIT, ACTION OR PROCEEDING OR ANY MATTER ARISING IN CONNECTION WITH OR IN ANY WAY RELATED TO THE TRANSACTIONS CONTEMPLATED BY THIS GUARANTY, THE AGREEMENTS OR ANY DOCUMENTS RELATED THERETO (INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS) AND THE ENFORCEMENT OF ANY OF COMPANY’S RIGHTS AND REMEDIES.
16. GUARANTOR HEREBY KNOWINGLY AND VOLUNTARILY AGREES THAT THE RESOLUTION OF ANY DISPUTE THAT ARISES UNDER THIS GUARANTY SHALL NOT BE SUBJECT TO THE DISPUTE RESOLUTION PROCEDURES SET FORTH IN THE PPA AND WAIVES ANY RIGHTS TO THE CONTRARY.

[**Signature Page Follows**]

In Witness Whereof, the undersigned Guarantor has executed this Guaranty as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20[\_\_].

[**Guarantor**]

By:

Printed:

Title:

(Officer of the Corporation)

Address:

Tax ID #

Exhibit N

Seller Irrevocable Letter of Credit

Irrevocable Standby Letter of Credit No.

Issued: [Date]

Expires at our counter (unless evergreen): [Date]

[*DevCo*], [an Indiana/a Delaware] limited liability company

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

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

Attn: [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

Ladies and Gentlemen:

We [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_], a [\_\_\_\_\_\_\_\_\_\_] [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] (“**Issuer**”) do hereby issue this Irrevocable Non-Transferable Standby Letter of Credit No. \_\_\_\_\_ by order of, for the account of and on behalf of [*Seller*], a [\_\_\_\_\_\_\_\_\_\_] [limited liability company] (“**Account Party**”) and in favor of Indianapolis Power & Light Company d/b/a AES Indiana, an Indiana corporation (“**Beneficiary**”). The term “Beneficiary” includes any successor by operation of law of the named beneficiary including without limitation any liquidator, receiver or conservator.

This Letter of Credit is issued, presentable and payable and we guaranty to the drawers, endorsers and bona fide holders of this Letter of Credit that drafts under and in compliance with the terms of this Letter of Credit will be honored on presentation and surrender of certain documents pursuant to the terms of this Letter of Credit.

This Letter of Credit is available in one or more drafts and may be drawn hereunder for the account of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ up to an aggregate amount not exceeding $\_\_\_\_\_\_\_\_\_\_.00 (United States Dollars \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and 00/100).

This Letter of Credit is drawn against by presentation to us at our office located at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of a drawing certificate: (i) signed by an officer or authorized agent of the Beneficiary; (ii) dated the date of presentation; and (iii) containing one (1) of the following statements:

1. “The undersigned hereby certifies to [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_], a [\_\_\_\_\_\_\_\_\_\_] [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] (“**Issuer**”), with reference to its Irrevocable Non-Transferable Standby Letter of Credit No. \_\_\_\_\_, dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, issued on behalf of [*Seller*], a [\_\_\_\_\_\_\_\_\_\_] [limited liability company] (“**Account Party**”) and in favor of Indiana Power & Light Company, an Indiana corporation (“**Beneficiary**”) that said Account Party has failed to make a payment in accordance with the terms and provisions of one or more of the following, as applicable: Solar and Storage Power Purchase Agreement, as may be amended and supplemented from time to time, together with all schedules and attachments thereto and any replacements or substitutes (the “**PPA**”), any and all agreements entered into by Account Party under, pursuant to, or in connection with the PPA and any and all agreements to which Account Party and Beneficiary are parties, as such agreements may be amended and supplemented from time to time, whether now or hereafter executed, and any replacements or substitutions thereof, (collectively, the “**Agreements**”). The Beneficiary hereby draws upon the Letter of Credit in an amount equal to $\_\_\_\_\_\_\_\_\_\_.00 (United States Dollars \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and 00/100)”; or
2. “As of the close of business on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_ (fill in date which is less than one hundred ten (110) days before the expiration date of the Letter of Credit), Account Party has failed to renew, replace or amend the Letter of Credit in a manner acceptable to Beneficiary”; or
3. “As of the close of business on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_ (fill in date which is more than ten (10) Business Days after the Beneficiary has requested that Account Party replace the Letter of Credit because the Issuer’s Long Term rating is lower than “A-” by S&P or lower than “A3” by Moody’s), Account Party has failed to replace the Letter of Credit in a manner acceptable to Beneficiary.”

Beneficiary shall have the right, in the event of a draw pursuant to subparagraph (2) or (3) of the immediately preceding paragraph, to draw down the entire face value of the Letter of Credit. If presentation of any drawing certificate is made on a Business Day and such presentation is made on or before 10:00 a.m. Eastern Time, Issuer shall satisfy such drawing request on the same Business Day. If the drawing certificate is received after 10:00 a.m. Eastern Time, Issuer will satisfy such drawing request on the next Business Day.

It is a condition of this Letter of Credit that it will be automatically extended without amendment for one (1) year from the expiration date hereof, or any future expiration date, unless at least one hundred twenty (120) days prior to any expiration date we notify you at the above address by registered mail that we elect not to consider this Letter of Credit renewed for any such period. In connection with any draw on this Letter of Credit, if you have not received from us within five Days from the date of your draw, a notice from us in the form of the certificate attached hereto as Exhibit A appropriately completed, indicating we have not reinstated the Letter of Credit for all amounts drawn on this Letter of Credit, your right to draw on us for the full face amount of this Letter of Credit shall be automatically reinstated and this automatic reinstatement of your right to make a draw for the full face amount of this Letter of Credit shall be applicable to successive draws so long as this Letter of Credit shall have not terminated as set forth herein.

This Letter of Credit may be terminated upon Beneficiary’s irrevocable receipt of full payment from the Account Party of all amounts due from Account Party under the Agreements and Issuer’s receipt of a written release from the Beneficiary releasing the Issuer from its obligations under this Letter of Credit. Disbursements under the Letter of Credit shall be in accordance with the following terms and conditions:

1. The amount, which may be drawn by the Beneficiary under this Letter of Credit, shall be automatically reinstated by the amount of any drawings hereunder unless Issuer timely delivers the Certificate of Non Reinstatement of Amounts Available under the Irrevocable Standby Letter of Credit attached as Exhibit A hereto as provided above.
2. All commissions and charges will be borne by the Account Party.
3. This Letter of Credit may not be transferred or assigned by the Issuer.
4. This Letter of Credit is irrevocable.
5. This Letter of Credit shall be governed by the International Standby Practices Publication No. 590 of the International Chamber of Commerce, including any amendments, modifications or revisions thereof (the “**ISP**”), except to the extent that terms hereof are inconsistent with the provisions of the ISP, in which case the terms of the Letter of Credit shall govern. This Letter of Credit shall be governed by the internal laws of the State of Indiana to the extent that the terms of the ISP are not applicable; provided that, in the event of any conflict between the ISP and such Indiana laws, the ISP shall control.
6. This Letter of Credit may not be amended, changed or modified without the express written consent of the Beneficiary and the Issuer.
7. The Beneficiary shall not be deemed to have waived any rights under this Letter of Credit, unless the Beneficiary or an authorized agent of the Beneficiary shall have signed a written waiver. No such waiver, unless expressly so stated therein, shall be effective as to any transaction that occurs subsequent to the date of the waiver, nor as to any continuance of a breach after the waiver.
8. A failure to make any partial drawings at any time shall not impair or reduce the availability of this Letter of Credit in any subsequent period or our obligation to honor your subsequent demands for payment made in accordance with the terms of this Letter of Credit.

[Authorized Signature]

Printed:

Title:

Date:

Continued, Exhibit N

Seller Irrevocable Letter of Credit

**Certificate of Nonreinstatement**

**of Amounts Available Under Irrevocable**

**Letter of Credit No. \_\_\_\_\_**

The undersigned, a duly authorized officer of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “**Bank**”), hereby certifies to Indianapolis Power & Light Company d/b/a AES Indiana, an Indiana corporation (“**Beneficiary**”) with reference to Bank’s Irrevocable Letter of Credit No. \_\_\_\_\_ (the “**Letter of Credit**”) issued by the Bank in favor of Beneficiary that the amount drawn by Beneficiary pursuant to its most recent drawing dated as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ has not been reinstated either (a) because the Bank has not been reimbursed for such drawing, or (b) a Default has occurred under the Reimbursement and Pledge Agreement dated as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_, between the Bank and the Account Party, as defined in the Letter of Credit, and is continuing.

Except as herein expressly set forth, all other terms and conditions of the Letter of Credit remain unchanged.

In Witness Whereof, the Bank has executed and delivered this certificate this \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_.

[**Name of Bank**]

By:

Title:

Exhibit P

Functional and Capacity Tests and Procedures

1. **Note to Draft**: Amount dependent on duration of PPA. [↑](#footnote-ref-2)
2. **Note to Draft**: Amount dependent on duration of PPA. [↑](#footnote-ref-3)
3. **Note to Draft**: Inclusion of additional AES compliance terms will depend on the status of the bidder.  [↑](#footnote-ref-4)
4. Bracketed defined terms to be used in Exhibits. [↑](#footnote-ref-5)