Membership Interest Purchase, Project Development and Construction Management Agreement

Between

[AESI DevCo]

(“Purchaser”)

[Seller]

(“Seller”)

Effective as of [ ], [ ]

[Project Name] Project

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Table of Contents

[Table of Contents 1](#_Toc134018510)

[Defined Terms 10](#_Toc134018511)

[Article 1. Rules of Interpretation 1](#_Toc134018512)

[Section 1.1 Interpretation 1](#_Toc134018513)

[Section 1.2 Intent of Agreement Documents 2](#_Toc134018514)

[Section 1.3 Priority of Agreement Documents 2](#_Toc134018515)

[Article 2. Termination Prior to Closing 2](#_Toc134018516)

[Section 2.1 Purchaser Termination Rights 2](#_Toc134018517)

[Section 2.2 Seller Pre-Closing Obligations 3](#_Toc134018518)

[Section 2.3 Failure to Achieve the Purchaser Pre-Closing Obligations 3](#_Toc134018519)

[Section 2.4 Seller Termination Rights 3](#_Toc134018520)

[Section 2.5 Purchaser Pre-Closing Obligations 3](#_Toc134018521)

[Section 2.6 Failure to Achieve Purchaser Pre-Closing Obligations 3](#_Toc134018522)

[Article 3. Purchase & Sale and Contract Price 4](#_Toc134018523)

[Section 3.1 Purchase and Sale of ProjectCo Interests 4](#_Toc134018524)

[Section 3.2 Purchase Price 4](#_Toc134018525)

[Section 3.3 Purchase Price Installments 4](#_Toc134018526)

[Section 3.4 Purchase Price Adjustments 4](#_Toc134018527)

[Section 3.5 Prorations 5](#_Toc134018528)

[Section 3.6 Fixed Contract Price 5](#_Toc134018529)

[Section 3.7 Liabilities 5](#_Toc134018530)

[Section 3.8 Payments under this Agreement 5](#_Toc134018531)

[Section 3.9 Purchase Price Allocation 5](#_Toc134018532)

[Article 4. Closing 5](#_Toc134018533)

[Section 4.1 Closing Date 5](#_Toc134018534)

[Section 4.2 Purchaser’s Closing Deliveries 6](#_Toc134018535)

[Section 4.3 Seller’s Closing Deliveries 6](#_Toc134018536)

[Section 4.4 Closing Conditions Precedent 9](#_Toc134018537)

[Section 4.5 Purchaser Conditions Precedent to the Closing 9](#_Toc134018538)

[Section 4.6 Seller’s Conditions Precedent to the Closing 11](#_Toc134018539)

[Section 4.7 Mutual Conditions Precedent to the Closing 11](#_Toc134018540)

[Section 4.8 Satisfaction of Conditions 12](#_Toc134018541)

[Article 5. Work And Services of Seller 12](#_Toc134018542)

[Section 5.1 Performance of the Work 12](#_Toc134018543)

[Section 5.2 Assumption of Transmission Owner Scope of Work 12](#_Toc134018544)

[Section 5.3 General 13](#_Toc134018545)

[Section 5.4 Development Activities 13](#_Toc134018546)

[Section 5.5 Design and Engineering Activities 14](#_Toc134018547)

[Section 5.6 Construction and Procurement Activities 17](#_Toc134018548)

[Section 5.7 Payment and Performance Bond 17](#_Toc134018549)

[Section 5.8 Licensing and Other Qualifications 17](#_Toc134018550)

[Section 5.9 Sufficient Personnel and Oversight 17](#_Toc134018551)

[Section 5.10 Seller’s Representative 18](#_Toc134018552)

[Section 5.11 Periodic Reports & Meetings 18](#_Toc134018553)

[Section 5.12 Reports During Construction 18](#_Toc134018554)

[Section 5.13 Cooperation and Access 19](#_Toc134018555)

[Section 5.14 Signage and Publicity 20](#_Toc134018556)

[Section 5.15 Books and Records 20](#_Toc134018557)

[Section 5.16 Legal Requirements 20](#_Toc134018558)

[Section 5.17 Permitting Obligations 21](#_Toc134018559)

[Section 5.18 Project Contracts and Subcontractors 21](#_Toc134018560)

[Section 5.19 Project Contracts 21](#_Toc134018561)

[Section 5.20 Sole Authority to Negotiate 22](#_Toc134018562)

[Section 5.21 Project Contract 22](#_Toc134018563)

[Section 5.22 Select Subcontractors 23](#_Toc134018564)

[Section 5.23 Ordinary Course 24](#_Toc134018565)

[Section 5.24 Prohibited Acts 24](#_Toc134018566)

[Section 5.25 Insurance 26](#_Toc134018567)

[Section 5.26 Project Representations 27](#_Toc134018568)

[Section 5.27 Impact of Purchaser Approval or Inspection of Work 27](#_Toc134018569)

[Article 6. Changes in the Work 27](#_Toc134018570)

[Section 6.1 No Seller Changes 27](#_Toc134018571)

[Section 6.2 Purchaser Initiated Changes 27](#_Toc134018572)

[Section 6.3 Waiver of Claims 28](#_Toc134018573)

[Article 7. Purchaser Obligations 28](#_Toc134018574)

[Section 7.1 Pursuit of State Regulatory Approval 28](#_Toc134018575)

[Section 7.2 Purchaser’s Representative 28](#_Toc134018576)

[Section 7.3 Purchaser Approvals 28](#_Toc134018577)

[Section 7.4 Safety; Compliance with Law 29](#_Toc134018578)

[Section 7.5 Independent Engineer 29](#_Toc134018579)

[Article 8. Critical Path Project Schedule & Completion Criteria 29](#_Toc134018580)

[Section 8.1 Critical Path Project Schedule 29](#_Toc134018581)

[Section 8.2 Recovery Plan 30](#_Toc134018582)

[Article 9. Correction of Work 30](#_Toc134018583)

[Section 9.1 Corrective Work 30](#_Toc134018584)

[Section 9.2 Non-Conforming Work 30](#_Toc134018585)

[Section 9.3 Punch List Completion 30](#_Toc134018586)

[Section 9.4 Punch List Reduction and Holdback 30](#_Toc134018587)

[Section 9.5 Completion by Purchaser 31](#_Toc134018588)

[Article 10. Excusable Event 31](#_Toc134018589)

[Section 10.1 Effect of Excusable Event 31](#_Toc134018590)

[Section 10.2 Notice of Excusable Event 31](#_Toc134018591)

[Section 10.3 Change Order for Excusable Event 31](#_Toc134018592)

[Section 10.4 Continued Performance to Mitigate Effect 31](#_Toc134018593)

[Article 11. Force Majeure 32](#_Toc134018594)

[Section 11.1 Effect of Force Majeure 32](#_Toc134018595)

[Section 11.2 Notice of Force Majeure 32](#_Toc134018596)

[Section 11.3 Change Order for Force Majeure 32](#_Toc134018597)

[Section 11.4 Continued Performance to Mitigate 32](#_Toc134018598)

[Article 12. Commissioning and Testing 32](#_Toc134018599)

[Section 12.1 Commissioning 32](#_Toc134018600)

[Section 12.2 Performance Test 33](#_Toc134018601)

[Section 12.3 Completion Testing 33](#_Toc134018602)

[Section 12.4 Performance Test Schedules 33](#_Toc134018603)

[Section 12.5 Mechanical Completion 34](#_Toc134018604)

[Section 12.6 Notice of Mechanical Completion 34](#_Toc134018605)

[Section 12.7 Project Substantial Completion 34](#_Toc134018606)

[Section 12.8 Notice of Project Substantial Completion 35](#_Toc134018607)

[Section 12.9 Final Completion 36](#_Toc134018608)

[Section 12.10 Notice of Final Completion 36](#_Toc134018609)

[Section 12.11 Seller’s Access After Closing 36](#_Toc134018610)

[Article 13. Warranties Concerning the Work 37](#_Toc134018611)

[Section 13.1 Warranty 37](#_Toc134018612)

[Section 13.2 Warranty Term 37](#_Toc134018613)

[Section 13.3 Remedy 37](#_Toc134018614)

[Section 13.4 Failure to Correct 38](#_Toc134018615)

[Section 13.5 Conditions of Warranty 38](#_Toc134018616)

[Section 13.6 Warranty Administration 38](#_Toc134018617)

[Section 13.7 Serial Defects 38](#_Toc134018618)

[Section 13.8 Latent Defects 38](#_Toc134018619)

[Section 13.9 Limitations on Warranties 39](#_Toc134018620)

[Article 14. Title; Risk of Loss 39](#_Toc134018621)

[Section 14.1 Title 39](#_Toc134018622)

[Section 14.2 Risk of Loss 39](#_Toc134018623)

[Article 15. Liquidated Damages 40](#_Toc134018624)

[Section 15.1 Delay Liquidated Damages 40](#_Toc134018625)

[Section 15.2 Initial Capacity Liquidated Damages 40](#_Toc134018626)

[Section 15.3 Capacity Test Cure Period 40](#_Toc134018627)

[Section 15.4 Final Capacity Liquidated Damages 40](#_Toc134018628)

[Section 15.5 Initial BESS RT Efficiency Liquidated Damages 41](#_Toc134018629)

[Section 15.6 BESS RT Efficiency Test Cure Period 41](#_Toc134018630)

[Section 15.7 Final BESS RT Efficiency Liquidated Damages 41](#_Toc134018631)

[Section 15.8 Sole Remedy; Liquidated Damages Not a Penalty 41](#_Toc134018632)

[Section 15.9 Enforceability 42](#_Toc134018633)

[Section 15.10 Setoff 42](#_Toc134018634)

[Article 16. Seller Credit Support 42](#_Toc134018635)

[Section 16.1 Seller Credit Support 42](#_Toc134018636)

[Section 16.2 Draws on Credit Support 42](#_Toc134018637)

[Section 16.3 Replacement Credit Support 43](#_Toc134018638)

[Section 16.4 Financial Statements 43](#_Toc134018639)

[Section 16.5 Security is Not a Limit on Liability 43](#_Toc134018640)

[Section 16.6 Release of Credit Support 43](#_Toc134018641)

[Article 17. Purchaser and Credit Support 44](#_Toc134018642)

[Section 17.1 Purchaser Guaranty 44](#_Toc134018643)

[Section 17.2 Draws on Credit Support 44](#_Toc134018644)

[Section 17.3 Replacement Credit Support 44](#_Toc134018645)

[Section 17.4 Financial Statements 44](#_Toc134018646)

[Section 17.5 Security is Not a Limit on Liability 45](#_Toc134018647)

[Section 17.6 Release of Credit Support 45](#_Toc134018648)

[Article 18. Representations and Warranties With Respect to Seller 45](#_Toc134018649)

[Section 18.1 Organization, Authority and Validity 45](#_Toc134018650)

[Section 18.2 No Adverse Orders 46](#_Toc134018651)

[Section 18.3 Solvency 46](#_Toc134018652)

[Section 18.4 Proceedings 46](#_Toc134018653)

[Section 18.5 ProjectCo Interests 46](#_Toc134018654)

[Section 18.6 No Conflicts 47](#_Toc134018655)

[Section 18.7 Third Party Consents 47](#_Toc134018656)

[Section 18.8 Legal Compliance 48](#_Toc134018657)

[Section 18.9 No Brokers 48](#_Toc134018658)

[Section 18.10 Financial Resources 48](#_Toc134018659)

[Section 18.11 Foreign Person 48](#_Toc134018660)

[Article 19. Representations and Warranties with Respect to ProjectCo and Project 48](#_Toc134018661)

[Section 19.1 Organization, Authority and Validity 48](#_Toc134018662)

[Section 19.2 No Adverse Orders 49](#_Toc134018663)

[Section 19.3 Solvency 49](#_Toc134018664)

[Section 19.4 Proceedings 49](#_Toc134018665)

[Section 19.5 Support and Affiliate Obligations 49](#_Toc134018666)

[Section 19.6 Books and Records 49](#_Toc134018667)

[Section 19.7 Project Assets 49](#_Toc134018668)

[Section 19.8 No Conflicts 50](#_Toc134018669)

[Section 19.9 Real Property Interests 50](#_Toc134018670)

[Section 19.10 Obligations; No Undisclosed Liabilities 52](#_Toc134018671)

[Section 19.11 Tax Matters 52](#_Toc134018672)

[Section 19.12 Environmental Laws 53](#_Toc134018673)

[Section 19.13 Permits 54](#_Toc134018674)

[Section 19.14 Contracts 54](#_Toc134018675)

[Section 19.15 Legal Compliance 55](#_Toc134018676)

[Section 19.16 Insurance 55](#_Toc134018677)

[Section 19.17 Conflicts of Interest 55](#_Toc134018678)

[Section 19.18 Sufficiency of Assets 56](#_Toc134018679)

[Section 19.19 Employee and ERISA Matters 56](#_Toc134018680)

[Section 19.20 Guarantees 56](#_Toc134018681)

[Section 19.21 Intellectual Property Rights 56](#_Toc134018682)

[Section 19.22 Bank Accounts; Powers of Attorney 56](#_Toc134018683)

[Section 19.23 Full Disclosure 56](#_Toc134018684)

[Section 19.24 No Brokers 57](#_Toc134018685)

[Section 19.25 No Material Adverse Effect 57](#_Toc134018686)

[Section 19.26 Financial Statements and Financial Data 57](#_Toc134018687)

[Section 19.27 Reports and Studies 57](#_Toc134018688)

[Section 19.28 No Other Representations 58](#_Toc134018689)

[Article 20. Representations and Warranties with Respect to Purchaser 58](#_Toc134018690)

[Section 20.1 Organization, Authority, Validity and Non-Contravention 58](#_Toc134018691)

[Section 20.2 Solvency 58](#_Toc134018692)

[Section 20.3 Sufficiency of Funds 59](#_Toc134018693)

[Section 20.4 Brokers 59](#_Toc134018694)

[Section 20.5 Acquisition Intent 59](#_Toc134018695)

[Article 21. Additional Covenants 59](#_Toc134018696)

[Section 21.1 Preserve Accuracy of Representations and Warranties; Notification 59](#_Toc134018697)

[Section 21.2 Material Adverse Effect 60](#_Toc134018698)

[Section 21.3 Consents and Regulatory Filings; Permits 60](#_Toc134018699)

[Section 21.4 Exclusivity 61](#_Toc134018700)

[Section 21.5 Further Assurances 61](#_Toc134018701)

[Section 21.6 Environmental Attributes 62](#_Toc134018702)

[Section 21.7 Title Policy Endorsement 62](#_Toc134018703)

[Section 21.8 Excluded Assets 62](#_Toc134018704)

[Section 21.9 Excluded Liabilities 62](#_Toc134018705)

[Article 22. Compliance Requirements 62](#_Toc134018706)

[Section 22.1 Compliance with Law 62](#_Toc134018707)

[Section 22.2 Payments 63](#_Toc134018708)

[Section 22.3 No Prohibited Transaction 64](#_Toc134018709)

[Section 22.4 Reporting 64](#_Toc134018710)

[Section 22.5 Investigation 64](#_Toc134018711)

[Section 22.6 Government Entity 64](#_Toc134018712)

[Section 22.7 Tariffs 64](#_Toc134018713)

[Section 22.8 No Sharing 64](#_Toc134018714)

[Section 22.9 Code of Conduct 64](#_Toc134018715)

[Section 22.10 Diligence 64](#_Toc134018716)

[Section 22.11 Compliance Certification 64](#_Toc134018717)

[Section 22.12 Education and Training Program 64](#_Toc134018718)

[Section 22.13 Reimbursement 65](#_Toc134018719)

[Section 22.14 Audits 65](#_Toc134018720)

[Section 22.15 Compliance Termination 65](#_Toc134018721)

[Article 23. Indemnification 65](#_Toc134018722)

[Section 23.1 Indemnity by Seller 65](#_Toc134018723)

[Section 23.2 Indemnity by Purchaser 66](#_Toc134018724)

[Section 23.3 Claims for Indemnification 67](#_Toc134018725)

[Section 23.4 Response Notice; Uncontested Claims 67](#_Toc134018726)

[Section 23.5 Setoff 67](#_Toc134018727)

[Section 23.6 Survival; Limitation of Liability 67](#_Toc134018728)

[Section 23.7 Third Party Claims 69](#_Toc134018729)

[Section 23.8 Amount of Losses 70](#_Toc134018730)

[Section 23.9 Mitigation 70](#_Toc134018731)

[Section 23.10 Exclusive Remedy 70](#_Toc134018732)

[Article 24. Tax Matters 70](#_Toc134018733)

[Section 24.1 Tax Returns Due Prior to Closing 70](#_Toc134018734)

[Section 24.2 Tax Returns Due After the Closing 71](#_Toc134018735)

[Section 24.3 Refunds 71](#_Toc134018736)

[Section 24.4 Cooperation 71](#_Toc134018737)

[Section 24.5 Further Assurances 71](#_Toc134018738)

[Section 24.6 Transfer Taxes 72](#_Toc134018739)

[Section 24.7 Notice of Tax Audits/Claims 72](#_Toc134018740)

[Section 24.8 Tax Setoff 72](#_Toc134018741)

[Section 24.9 Tax Treatment of Purchase and Sale 72](#_Toc134018742)

[Section 24.10 Tax Treatment of Certain Post-Closing Payments 73](#_Toc134018743)

[Section 24.11 Prevailing Wage and Apprenticeship Requirements 73](#_Toc134018744)

[Article 25. Default and Termination 73](#_Toc134018745)

[Section 25.1 Termination by Purchaser for Cause 73](#_Toc134018746)

[Section 25.2 Termination by Seller for Cause 75](#_Toc134018747)

[Section 25.3 Failure of Certain Conditions Precedent 76](#_Toc134018748)

[Section 25.4 Termination Under Article 2 76](#_Toc134018749)

[Article 26. Dispute Resolution 76](#_Toc134018750)

[Section 26.1 Arbitration 76](#_Toc134018751)

[Section 26.2 Tolling Applicable Time Limits 77](#_Toc134018752)

[Section 26.3 Expedited Relief 77](#_Toc134018753)

[Section 26.4 Continued Prosecution of Work 77](#_Toc134018754)

[Section 26.5 Settlement Discussions 77](#_Toc134018755)

[Section 26.6 Waiver of Jury Trial 77](#_Toc134018756)

[Section 26.7 Attorneys’ Fees 78](#_Toc134018757)

[Article 27. Miscellaneous 78](#_Toc134018758)

[Section 27.1 Notices 78](#_Toc134018759)

[Section 27.2 Applicable Laws 78](#_Toc134018760)

[Section 27.3 Fines and Penalties 78](#_Toc134018761)

[Section 27.4 Rate Changes 79](#_Toc134018762)

[Section 27.5 Disclaimer of Third Party Beneficiary Rights 79](#_Toc134018763)

[Section 27.6 Relationship of the Parties 79](#_Toc134018764)

[Section 27.7 Equal Employment Opportunity Compliance Certification 79](#_Toc134018765)

[Section 27.8 Survival of Obligations 79](#_Toc134018766)

[Section 27.9 Severability 80](#_Toc134018767)

[Section 27.10 Complete Agreement; Amendments 80](#_Toc134018768)

[Section 27.11 Successors and Assigns 80](#_Toc134018769)

[Section 27.12 Headings 80](#_Toc134018770)

[Section 27.13 Counterparts and Electronic Signatures 80](#_Toc134018771)

[Section 27.14 Governing Law 80](#_Toc134018772)

[Section 27.15 Press Releases and Media Contact 80](#_Toc134018773)

[Section 27.16 Exhibits 81](#_Toc134018774)

[Section 27.17 Confidential Information 81](#_Toc134018775)

[Section 27.18 Time is of the Essence 83](#_Toc134018776)

**Table of Exhibits**

Exhibit A – Definitions

Exhibit B – Milestones

Exhibit C – Layout of Project

Exhibit D – Final Drawings & Specifications

Exhibit E – AES Safety and Security Standards

Exhibit E-1 – Seller’s Security and Safety Procedures

Exhibit F – Form of Monthly Report

Exhibit G – Approved Subcontractors

Exhibit H – Insurance Requirements

Exhibit I – Commissioning

Exhibit J-1 – Performance Tests

Exhibit J-2 – Performance Test Procedures

Exhibit K – Warranty Requirements

Exhibit L – Notices

Exhibit M – Form of Assignment of ProjectCo Interests

Exhibit N – Reserved

Exhibit O – Critical Path Project Schedule

Exhibit P - Critical Milestones

Exhibit Q – Critical Path Project Schedule

Exhibit R – Milestones

Exhibit S – Reserved

Exhibit T – Project Site

Exhibit U –Purchaser Guaranty

Exhibit V – Seller Guaranty

Exhibit W – Seller Irrevocable Letter of Credit

Exhibit X– Tier I IFRs

Defined Terms

1

**1933 Act** 85

A

**Acceptable Credit Rating** 85

**Acceptable Guarantor** 85

**AES Safety and Security Standards** 18

**AESI** 1

**Affiliate** 85

**Agreed Amount** 67

**Agreement** 1

**Allocation Schedule** 73

**Applicable Laws and Regulations** 62

**Approval Deadline** 85

**As-Built Survey** 85

**Assets** 85

**Assignment of ProjectCo Interests** 86

**Assumed Liabilities** 86

B

**Base Purchase Price** 86

**Basket** 68

**Battery Capacity** 1, 86

**Battery Components Supplier** 86

**Battery Equipment** 21, 86

**Battery Equipment Agreement** 86

**Battery Equipment Agreements** 21

**BESS** 86

**BESS RT Efficiency** 86

**BESS RT Efficiency Test** 86

**BESS RT Efficiency Test Cure Period** 41

**BESS RT Efficiency Test Procedures** 86

**BESS Storage Capacity** 86

**BESS Storage Capacity Liquidated Damages Amount** 87

**BESS Storage Capacity Test** 87

**BESS Storage Capacity Test Procedures** 87

**Books and Records** 87

**Business Day** 87

C

**Cap** 68

**Capacity Test Cure Period** 40

**CEII** 83

**CFIUS** 87

**CFIUS/HSR Regulatory Approvals** 87

**Change in Tax Law** 87

**Change of Control** 88

**Change Order** 88

**Claim** 67

**Claim Notice** 67

**Claimed** **Amount** 67

**Closing** 5

**Closing Date** 6

**Code** 88

**Commercially Reasonable** 88

**Commercially Reasonable Efforts** 88

**Commissioning Plan** 89

**Complete Project Permits** 54

**Compliance Brach** 89

**Compliance** **Breach** 65

**Confidential Information** 82

**Consent** 89

**Contaminant** 89

**Contested Amount** 67

**Contract** 89

**Contract for Differences** 89

**Contract Price** 4

**Credit Rating** 89

**Credit Support** 89

**Critical Milestones** 89

**Critical Path Project Schedule** 89

D

**Daily Delay Liquidated Damages** 90

**Data Room** 90

**day** 90

**Day** 90

**Delay Liquidated Damages** 40

**Design Package** 15

**Design Schedule** 90

**Designated Person** 64

**Detect** 90

**Disclosure Schedules** 90

**Dispute** 76

**Diverse Supplier Spend** 90

**Draft Pro Forma Policy** 90

E

**Electrical Interconnection Point** 90

**Employee Benefit Plan** 90

**Environmental Attributes** 91

**Environmental Cap** 68

**Environmental Law** 91

**Environmental Representations** 91

**EPC Agreement** 21

**EPC Contractor** 91

**EPC Holdback** 91

**ERISA** 91

**ESA** 91

**Estimated Interconnection Costs** 92

**Excluded Assets** 92

**Excluded Assets Transfer, Assignment and Assumption Agreement** 9

**Excluded Liabilities** 92

**Excluded Liabilities Transfer, Assignment and Assumption Agreement** 9

**Excusable Event** 92

**Executives** 76

**Exempt Wholesale Generator** 92

**Expiration Date** 92

F

**FAA** 92

**Federal Power Act** 92

**Fee Property Agreements** 93

**FERC** 93

**FERC Regulatory Filing** 60

**Final BESS RT Efficiency Test** 93

**Final BESS Storage Capacity Liquidated Damages** 93

**Final BESS Storage Capacity Shortfall** 93

**Final BESS Storage Capacity Test** 93

**Final Completion** 36

**Final Completion Date** 36

**Final Completion Payment** 4

**Final Drawings & Specifications** 14

**Financial Statements** 57

**Force Majeure** 93

**Forced Labor** 63

**Forced Labor Laws** 94

**Fraud-Type Claims** 94

**Functional Test** 94

**Fundamental Representations** 94

G

**GAAP** 94

**Gen-Tie Line** 94

**Gen-Tie Line Agreements** 94

**Good Industry Practice** 94

**Government Official** 95

**Governmental Authority** 95

**Guaranteed BESS RT Efficiency** 95

**Guaranteed BESS Storage Capacity** 95

**Guaranteed Project Substantial Completion Date** 95

**Guarantor** 95

**Guaranty** 95

H

**Hazardous Material** 95

**HSR Act** 95

I

**IFR Design Package** 15

**IFR Drawings & Specifications** 96

**Indebtedness** 96

**Indemnified Party** 67

**Indemnifying Party** 67

**Independent Engineer** 29

**Independent Engineer’s Certificate** 96

**Initial BESS RT Efficiency Liquidated Damages** 96

**Initial BESS RT Efficiency Shortfall** 96

**Initial BESS RT Efficiency Test** 96

**Initial BESS Storage Capacity Liquidated Damages** 96

**Initial BESS Storage Capacity Shortfall** 97

**Initial BESS Storage Capacity Test** 97

**Insurance Policies** 55

**Intellectual Property Rights** 97

**Interconnection Agreement** 97

**Interconnection Facilities** 97

**Intervening Party** 81

**Investment Grade Rated Entity** 97

**Investment Grade Rating** 97

**ITC** 97

L

**Later-Acquired Project Real Property** 97

**Law** 97

**Lenders/Investors** 97

**Liability** 97

**Lien** 98

**Losses** 65

**LWA** 98

M

**Made Available** 98

**Material Adverse Effect** 98

**Material Project Contract** 99

**Mechanical Completion** 34

**Milestone** 99

**Minimum BESS RT Efficiency** 99

**Minimum BESS Storage Capacity** 99

**Minimum Performance Test Requirements** 99

**MISO** 99

**MISO Tariff** 99

**Modeled Capacity Rating** 99

**Moody’s** 99

**Mutual Closing Conditions Precedent** 11

**MW** 99

**MWh** 99

N

**NAR** 99

**NERC** 99

**Non-Acceleration Justification** 27

**Non-Compliance Comments** 15

**Non-Critical Deficiency** 99

**Notice** 78

**Notice of Project Substantial Completion** 35

**NTP Date** 100

O

**Order** 100

**Organizational Documents** 100

**OSHA Recordable Case** 100

**OSHA Recordable Cases** 100

P

**Parties** 1

**Party** 1

**Performance Standard** 100

**Performance Test** 100

**Performance Test Report** 33

**Performance Test Results** 33

**Permits** 100

**Permitted Liens** 100

**Person** 101

**Pre-Closing Tax Period** 101

**Preliminary Drawings & Specifications** 101

**Pro Forma Title Policy** 10

**Proceeding** 101

**Prohibited Payment** 63

**Prohibited Transaction** 63

**Project Activities** 101

**Project Assets** 101

**Project Closing Permits** 54

**Project Contracts** 21

**Project Easements** 102

**Project Facilities** 102

**Project Hardware** 102

**Project Improvement Property** 102

**Project Layout** 14

**Project Real Property** 102

**Project Required Property** 102

**Project Site** 102

**Project Substantial Completion** 102

**Project Substantial Completion Date** 36

**ProjectCo** 1

**ProjectCo Interests** 1

**ProjectCo Permits** 103

**Prudent Industry Practices** 103

**Punch List** 104

**Punch List Completion Deadline** 30

**Punch List Holdback** 31

**Purchase Price** 4

**Purchaser** 1

**Purchaser Closing Conditions Precedent** 9

**Purchaser Credit Support** 104

**Purchaser Default** 75

**Purchaser Guarantor** 104

**Purchaser Guaranty** 104

**Purchaser Indemnified Party** 65

**Purchaser Letter of Credit** 104

**Purchaser Pre-Closing Obligations** 3

**Purchaser Pre-Closing Termination Notice** 2

**Purchaser’s Representative** 28

Q

**Qualified Issuer** 104

**Qualified Operator** 105

R

**Real Property Agreement Counterparty** 105

**Real Property Agreements** 105

**Recovery Plan** 30

**Release** 105

**Remaining Permits** 54

**Renewable Energy Credits** 105

**Reports and Studies** 105

**Requirements** 12

**Response Notice** 67

S

**S&P** 105

**Scope of Work** 105

**Seller** 1

**Seller Default** 73

**Seller Guarantor** 105

**Seller Guaranty** 105

**Seller IA Facilities** 105

**Seller Indemnified Party** 66

**Seller Letter of Credit** 106

**Seller Pre-Closing Obligations** 2

**Seller Pre-Closing Termination Notice** 3

**Seller Punch List Items** 30

**Seller’s Closing Conditions Precedent** 11

**Seller’s Knowledge** 106

**Seller’s Representative** 18

**Serial Defect** 38

**Serial Injury** 106

**Signing Date** 1

**State Regulatory Agency** 106

**State Regulatory Approval** 106

**State Regulatory Target Filing Date** 28

**State Renewable Energy Incentives** 107

**Straddle Period** 107

**Subcontractor** 107

**Successfully Run** 107

**Support and Affiliate Obligations** 107

**Survey** 107

T

**Tariff** 107

**Tax** 107

**Tax Equity Date** 108

**Tax Equity Investment Documents** 20

**Tax Equity Investor** 108

**Tax Representations** 108

**Tax Return** 108

**Taxes** 107

**Technical Dispute** 108

**Testing Non-Compliance Comments** 33

**Testing Plan** 33

**Third Party Claim** 69

**Third Party Claim Response Period** 69

**Third Party Consents** 108

**Third Party Tax Claim** 72

**Tier I Drawings & Specifications** 108

**Tier I IFRs** 108

**Title Curative Actions** 108

**Title Insurer** 109

**Title Policy** 10

**Title Report** 13

**Total Recordable Incident Rate** 109

**Transaction Documents** 109

**Transactions** 109

**Transfer Tax** 109

**Transmission Owner** 109

**Transmission Owner Scope of Work** 109

**Transmission System** 109

**Treasury Regulations** 109

U

**Unforeseeable Conditions** 110

W

**Warranty Period** 37

**Warranty Service** 37

**Work** 110

Membership Interest Purchase, Project Development and Construction Management Agreement

This Membership Interest Purchase, Project Development and Construction Management Agreement (this “**Agreement**”) is effective as of [    ] [ ], [ ] (the “**Signing Date**”) by and between [AESI DevCo], [a Delaware/an Indiana] limited liability company (“**Purchaser**”), and [Seller], a [      ] limited liability company (“**Seller**”, and with Purchaser, each a “**Party**” and together the “**Parties**”).

**Recitals:**

1. Seller, through a special purpose entity, [ ], LLC, a [ ] limited liability company (“**ProjectCo**”), is developing a project powered by a battery energy storage system in [ ] County, [ ] (utilizing MISO interconnect request [ ]), which BESS will have a [ ] MW [ ] hour AC coupled storage system (the “**Battery Capacity**”) and is commonly referred to as the [ ] Project (the “**Project**”).
2. Seller owns, beneficially and of record, all of the issued and outstanding membership interests and other equity interests of any kind of ProjectCo (collectively, the “**ProjectCo Interests**”).
3. Following certain regulatory approvals, Seller shall sell the ProjectCo Interests to Purchaser, and Purchaser shall purchase the ProjectCo Interests from Seller, in each case, on the terms and subject to the conditions of this Agreement.
4. Following those regulatory approvals, ProjectCo will enter into the Contract for Differences with Indianapolis Power & Light Company d/b/a AES Indiana (“**AESI**”).
5. Following the Closing, Seller will perform the Work and develop the Project in accordance with this Agreement.
6. On the Signing Date, Purchaser is a wholly-owned subsidiary of AESI.
7. At Mechanical Completion of the Project, the Parties contemplate that ProjectCo Interests will be sold to a limited liability company, the members of which will be one or more Affiliates of AESI and one or more Tax Equity Investors.

**Agreement**

The Parties agree:

# Rules of Interpretation

## Interpretation

.

### Capitalized terms listed in this Agreement shall have the meanings set forth in Exhibit A or as otherwise defined in this Agreement, whether in the singular or the plural or in the present or past tense. Words not otherwise defined in this Agreement 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 Agreement except as the context may otherwise require; (3) all Exhibits are incorporated into this Agreement; provided, however, that in the event of any conflict with the terms of this Agreement, the Agreement shall control; (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 Agreement as a whole and not to any particular Exhibit, Article or Section

.

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

## Intent of Agreement Documents

. Seller acknowledges and agrees that, notwithstanding and without limiting any conveyance of the ProjectCo Interests hereunder and except for the Transmission Owner Scope of Work which (other than as provided in Section 5.2) the Transmission Owner shall perform the Work and the performance of its obligations herein and in the other Transaction Documents includes all items and services necessary for the proper development, execution and completion of the Project by Seller, including all such items and services which are specifically required by, consistent with, contemplated by, or reasonably inferable from this Agreement, whether or not such items and services are specifically mentioned therein. The documents comprising this Agreement are complementary, and what is required by one shall be as binding as if required by all.

## Priority of Agreement Documents

. In the event of a conflict or inconsistency among the documents comprising this Agreement, the following order of precedence shall govern the interpretation of the documents:

### amendments to the terms and provisions of the body of this Agreement, and the Disclosure Schedules (i.e., excluding the Exhibits);

### the terms and provisions of the body of this Agreement and the Disclosure Schedules (i.e., excluding the Exhibits);

### amendments to the Scope of Work;

### the Scope of Work;

### amendments to terms and provisions of any Exhibits (excluding the Scope of Work and the Final Drawings & Specifications);

### the terms and provisions of any Exhibits (excluding the Scope of Work and the Final Drawings & Specifications);

### amendments to the Final Drawings & Specifications; and

### the Final Drawings & Specifications

.

# Termination Prior to Closing

## Purchaser Termination Rights

. Purchaser’s obligations under this Agreement to purchase ProjectCo Interests and to consummate the Closing are conditioned upon the satisfaction or waiver by Purchaser, in Purchaser’s sole discretion, of the obligations set forth in Section 2.2 (the “**Seller Pre-Closing Obligations**”). If any Seller Pre-Closing Obligation is not achieved or waived by Purchaser on or before the Approval Deadline, Purchaser may terminate this Agreement by providing written notice of its intent to do so to Seller no later than ten (10) Business Days after that date (“**Purchaser Pre-Closing Termination Notice**”) and the provisions of Section 2.3 shall thereupon apply with respect to that termination. The notice shall identify any specific Seller Pre-Closing Obligation that has not, in Purchaser’s sole discretion, been satisfied or waived by Purchaser by the Approval Deadline.

## Seller Pre-Closing Obligations

. Purchaser’s obligations to purchase ProjectCo Interests and to consummate the Closing are conditioned upon the satisfaction or waiver in writing by Purchaser in its sole discretion, of the following Seller Pre-Closing Obligations on or before the Approval Deadline:

### issuance of State Regulatory Approval required under Section 7.1.

### no event shall have occurred that would reasonably be expected to have a material adverse effect on Seller’s ability to perform the Work or complete and deliver the Project as contemplated by this Agreement.

### there has not been a Change in Tax Law since the Signing Date that would reasonably be expected to cause the Project not to qualify for the ITC or would otherwise materially limit Purchaser’s (or an Affiliate of Purchaser’s) or any direct or indirect owner of the Project’s ability to claim such ITC at [ ]%.

## Failure to Achieve the Purchaser Pre-Closing Obligations

. If Purchaser issues a Purchaser Pre-Closing Termination Notice to Seller as provided in Section 2.1, then (i) this Agreement shall automatically terminate and (ii) except as provided in Section 27.8, and except for any Losses sustained or incurred by reason of a Seller Default and except for any Losses sustained or incurred in connection with any fraud, gross negligence, intentional misrepresentation or willful misconduct of either Party or any of its Affiliates in connection with this Agreement or the Transactions, no Party shall have any further liability or obligation to the other Party hereunder.

## Seller Termination Rights

. Seller’s obligations under this Agreement to sell ProjectCo Interests and to consummate the Closing are conditioned upon the satisfaction or waiver by Seller of the obligations set forth in Section 2.5 (the “**Purchaser Pre-Closing Obligations**”). If the Purchaser Pre-Closing Obligations are not achieved or waived by Seller on or before the Approval Deadline, Seller may terminate this Agreement by providing written notice of its intent to do so to Purchaser no later than ten (10) Business Days after that date (“**Seller Pre-Closing Termination Notice**”) and the provisions of Section 2.6 shall thereupon apply with respect to that termination. Any notice shall identify any specific Purchaser Pre-Closing Obligation that has not been satisfied or waived by Seller by the Approval Deadline.

## Purchaser Pre-Closing Obligations

. Seller’s obligations under this Agreement to sell ProjectCo Interests and to consummate the Closing are conditioned upon the satisfaction or waiver in writing by Seller in its sole discretion of the following Purchaser Pre-Closing Obligations on or before the Approval Deadline:

### issuance of State Regulatory Approval required under Section 7.1.

## Failure to Achieve Purchaser Pre-Closing Obligations

. If Seller issues a Seller Pre-Closing Termination Notice to Purchaser as provided in Section 2.4, then (i) this Agreement shall automatically terminate, (ii) the balance of any Credit Support granted by or on behalf of Seller shall be automatically released to Seller, and (iii) except for any Losses sustained or incurred in connection with any fraud, gross negligence, intentional misrepresentation or willful misconduct of Purchaser or its Affiliates in connection with this Agreement or the Transactions, no Party shall have any further liability or obligation to the other Party hereunder.

# Purchase & Sale and Contract Price

## Purchase and Sale of ProjectCo Interests

. If all of the Purchaser Closing Conditions Precedent and all of Seller’s Closing Conditions Precedent are satisfied or waived in writing in accordance with the terms and conditions of this Agreement, Seller shall sell and transfer ProjectCo Interests to Purchaser, and Purchaser shall purchase and accept ProjectCo Interests from Seller, for the Purchase Price on the Closing Date, free and clear of all Liens, except for Permitted Liens.

## Purchase Price

. The purchase price for ProjectCo Interests shall be equal to the Base Purchase Price (subject to adjustment as expressly provided herein, the “**Contract Price**”). The Purchase Price together with the remaining payments as provided in Section 3.3, constitutes the “Contract Price” which represents an “all-in” figure for the complete transfer of the ProjectCo Interests and performance of the Work and achievement of Project Final Completion and is inclusive of all sales, use and other Taxes related to or incurred in connection with the Transactions, all overhead, general and administrative, project management and similar fees and costs, and all other costs and expenses incurred or to be incurred by Seller, including on behalf of ProjectCo from and after the Closing Date, and, prior to the Closing Date, ProjectCo, in the development and completion of the Work (subject to any Change Order, including the cost of designing, engineering, constructing, and commissioning the Seller IA Facilities). The Contract Price shall be paid when due by wire transfer of immediately available funds to the account specified in writing by Seller for such purpose or, if so requested in writing by Seller, by such alternative means of delivery of immediately available funds or other method of payment as is reasonably acceptable to Purchaser.

## Purchase Price Installments

. The Contract Price shall be paid as follows:

### $[       ] on the Closing Date (the “**Purchase Price**”).

### $[        ] in the amounts and within ten (10) Business Days following the milestones listed on Exhibit B and as approved by the Independent Engineer pursuant to Section 7.5.

### $[        ] within ten (10) Business Days of Mechanical Completion and as approved by the Independent Engineer pursuant to Section 7.5.

### $[       ] less the Punch List Holdback within ten (10) Business Days of Substantial Completion and as approved by the Independent Engineer pursuant to Section 7.5.

### $[       ] within ten (10) Business Days of Final Completion (the “**Final Completion Payment**”) and as approved by the Independent Engineer pursuant to Section 7.5.

The Punch List Holdback shall be paid as provided in Section 9.4.

## Purchase Price Adjustments

. The Purchase Price shallbe increased or decreased, as applicable, to the extent provided in any Change Orders pursuant to Section 6.2 and Section 10.3. The changes shall be applied to the payment due at Mechanical Completion or, if that payment has been made, to the payment due at Project Substantial Completion. Additionally, the Purchase Price shall be increased or decreased, as applicable, to the extent the actual costs under the Interconnection Agreement exceed or fall short of the Estimated Interconnections Costs. This adjustment to the Purchase Price shall be due and payable by the applicable Party within two (2) Business Days of the actual costs under the Interconnection Agreement becoming determinable.

## Prorations

. Each item of income or expense that would typically be prorated as of the Closing Date for transactions of a type and size similar to the Transactions, including any rent payments under the Real Property Agreements, any property taxes under the Real Property Agreements or with respect to Project Real Property owned in fee by ProjectCo and any prepaid third party expenses (including insurance) shall be prorated between Purchaser and Seller as of the Closing Date, so that Seller is responsible for the prorated amounts accrued and/or incurred for the period of time prior to the Closing Date, and Purchaser is responsible for the prorated amounts accruing from and after the Closing Date.

## Fixed Contract Price

. Except as set forth in Section 6.2, Section 9.2 or Section 3.4 of this Agreement or unless otherwise expressly provided by the terms of this Agreement, there shall be no increase in the Contract Price or extension in the Guaranteed Project Substantial Completion Date except as agreed in writing by the Parties or otherwise expressly provided by this Agreement. In confirmation and furtherance thereof, Seller acknowledges and agrees that there shall be no adjustment in the Contract Price as a result of differing conditions at the Project Real Property than anticipated by Seller, the EPC Contractor, or any other counterparty to a Material Project Contract, or for any other reason related to risks related to the development, design, procurement and construction of the Project unless such events are an Excusable Event or a result of an Excusable Event.

## Liabilities

. The Parties acknowledge and agree that, from and after the Closing, ProjectCo shall be obligated to pay, perform, fulfill and discharge the Assumed Liabilities. In furtherance thereof, and notwithstanding anything to the contrary contained in this Agreement, none of Purchaser, ProjectCo or any of their Affiliates shall assume or otherwise be liable in respect of, or be deemed to have assumed or otherwise be liable in respect of, any Excluded Liabilities (the responsibility for which shall remain with Seller and which Seller shall, and shall cause each of its Affiliates, as applicable, to pay and satisfy in due course).

## Payments under this Agreement

. In connection with any payments made under Section 3.3, Seller agrees to provide, as reasonably requested, lien and bond claim releases from the EPC Contractor and Subcontractors and the provision of those lien and bond claim releases shall be a condition to Seller’s receipt of payment.

## Purchase Price Allocation

. For U.S. federal income tax purposes, the Parties shall treat the purchase and sale of the ProjectCo Interests under this Agreement as a purchase and sale of the Project Assets. The Parties acknowledge and agree that, for purposes of income Tax reporting, the Project Assets do not include any goodwill or going concern value. The Parties will report the transactions under this Agreement consistent with the intent of this Section 3.9 for all Tax reporting purposes, and neither Party will file Internal Revenue Service Form 8594 in connection with this Agreement.

# Closing

## Closing Date

. The closing of the purchase of the ProjectCo Interests (the “**Closing**”) will take place at the offices of Barnes & Thornburg, LLP, 11 S. Meridian Street, Indianapolis, Indiana, or, at the option of the Parties, by electronic exchange of Closing documents (except for documents to be recorded in the land records, which shall in each case be originals); on the fifteenth Business Day after all of the Purchaser Closing Conditions Precedent and all of Seller’s Closing Conditions Precedent are satisfied or waived in writing in accordance with the terms and conditions of this Agreement or such other date as may be mutually agreed to in writing by the Parties (the date on which the Closing actually occurs being referred to as the “**Closing Date**”). Any Closing shall be deemed effective as of 12:00:01 AM Eastern Time on the Closing Date. Each Party shall further deliver such other evidence, instruments, documents and certificates required to be delivered by such Parties pursuant to this Article 4.

## Purchaser’s Closing Deliveries

. At the Closing, Purchaser shall deliver, or cause to be delivered, to Seller all of the following:

### the Purchase Price in accordance with Section 3.3;

### a certificate, in form and substance reasonably acceptable to Seller, dated as of the Closing Date, executed by a duly authorized officer of Purchaser, certifying that attached thereto is: (i) a true and complete copy of a certificate issued by the [State] Secretary of State, dated as of a recent date prior to the Closing Date and certifying that Purchaser is validly existing under the laws of the State of [State];(ii) a true, accurate and complete excerpt of the resolutions of Purchaser duly authorizing the execution, delivery and performance by Purchaser of this Agreement, the other Transaction Documents to which Purchaser is a party, and the Transactions, and that such resolutions are in full force and effect as of the Closing Date; and (iii) the incumbency of Purchaser’s officers that executed this Agreement, any other agreement delivered on the Closing Date, and any certificate delivered in connection with the Closing;

### a certificate, in form and substance reasonably acceptable to Seller, dated as of the Closing Date, executed by a duly authorized officer of Purchaser, certifying as to the matters set forth in Section 4.6(a) and Section 4.6(b);

### a counterpart signature page to the Assignment of ProjectCo Interests, duly executed by Purchaser;

### a counterpart signature page to each other Transaction Document to which Purchaser is a party, duly executed by Purchaser;

### the Purchaser Guaranty;

### replacement Support and Affiliate Obligations with respect to ProjectCo or the Project to replace the existing Support and Affiliate Obligations of Seller set forth in Section 4.2(h) of the Disclosure Schedules; and

### such other documents and instruments required by Law or the Title Insurer or specifically contemplated under this Agreement to consummate the Transactions, as well as any such documents and instruments contemplated under Section 21.5.

## Seller’s Closing Deliveries

. At the Closing, Seller shall deliver, or cause to be delivered, to Purchaser all of the following:

### a certificate, in form and substance reasonably acceptable to Purchaser, dated as of the Closing Date, executed by a duly authorized officer of Seller, certifying as to (i) the matters set forth in Section 4.5(a) and Section 4.5(b); and (ii) (x) all intercompany transactions, including any intercompany Indebtedness among ProjectCo and Seller or any of Seller’s Affiliates, having been settled, fully performed and/or extinguished, and (y) except as disclosed on Section 4.3(a) of the Disclosure Schedules, all intercompany Contracts among ProjectCo and Seller or any of Seller’s Affiliates having been terminated in their entirety or fully performed without any further Liability to ProjectCo;

### a certificate, in form and substance reasonably acceptable to Purchaser, dated as of the Closing Date, executed by a duly authorized officer of Seller, certifying that attached thereto is: (i) a true and complete copy of a certificate issued by the [State] Secretary of State, dated as of a recent date prior to the Closing Date and certifying that Seller is validly existing [and in good standing] under the laws of the State of [State]; (ii) a true, accurate and complete excerpt of the resolutions of Seller duly authorizing the execution, delivery and performance by Seller of this Agreement, the other Transaction Documents to which Seller is a party and the Transactions, and that such resolutions are in full force and effect as of the Closing Date; and (iii) the incumbency of Seller’s officers that executed this Agreement, any other agreement delivered on the Closing Date, and any certificate delivered in connection with the Closing;

### a certificate, in form and substance reasonably acceptable to Purchaser, dated as of the Closing Date, executed by a duly authorized officer of Seller, as sole member of ProjectCo, certifying that attached thereto is: (i) a true and complete copy of the certificate issued by the Secretary of State of [State] and each other jurisdiction where ProjectCo’s business, operations or Assets require ProjectCo to be qualified to conduct business, dated as of a recent date prior to the Closing Date and certifying that ProjectCo is validly existing [and in good standing] under the laws of the State of [State] and, with respect to other jurisdictions is qualified to do business in such other jurisdictions; (ii) a true, accurate and complete copy of the certificate of formation of ProjectCo, as in effect on the Closing Date, certified by the Secretary of the State of [State] as of a recent date prior to the Closing Date; (iii) a true, accurate and complete copy of the limited liability company agreement of ProjectCo, as in effect on the Closing Date; and (iv) a true, accurate and complete copy of the resolutions of the sole member of ProjectCo duly authorizing the execution, delivery and performance by ProjectCo of any agreement, document or certificate to be delivered by ProjectCo hereunder on the Closing Date with respect to the Transactions, and that such resolutions are in full force and effect as of the Closing Date;

### a certificate of non-foreign status complying with Section 1.445-2(b)(2) of the Treasury Regulations promulgated under the Code certifying that Seller (or if Seller is a “disregarded entity” within the meaning of Section 1.1445-2(b)(2)(iii) of the Treasury Regulations, the Person treated as the “owner” of Seller (as defined in such Treasury Regulation)) is not a foreign person and a certificate complying with any similar Indiana Law;

### the resignations and releases of all managers, directors and officers of ProjectCo, in form and substance reasonably acceptable to Purchaser;

### a counterpart signature page to the Assignment of ProjectCo Interests, duly executed by Seller;

### copies of all Third Party Consents, in each case in form and substance reasonably acceptable to Purchaser;

### if applicable, payoff letters for each instrument of Indebtedness from the obligees thereunder setting forth the amounts necessary to pay off all Indebtedness under such instrument as of the Closing Date along with the per diem interest amount with respect thereto, and evidence reasonably satisfactory to Purchaser, and Title Insurer with respect to Liens on Project Real Property, of the release of all Liens other than Permitted Liens held by such obligees against any Assets of ProjectCo or against any ProjectCo Interests;

### copies (together with all amendments, attachments and modifications) of all Project Contracts, including Material Project Contracts;

### copies of ProjectCo Permits, including those listed on Section 19.13(a) of the Disclosure Schedules;

### estoppel certificates dated no earlier than the date that is sixty (60) Days prior to the Closing Date, in a form reasonably acceptable to Purchaser, including certifying a full and complete copy of the applicable Real Property Agreement and stating that there are no defaults or facts or circumstances that could give rise to a default, subject to minor modifications reasonably acceptable to Purchaser, from each Real Property Agreement Counterparty to each Real Property Agreement (excluding any land owned in fee by ProjectCo). No later than thirty (30) Days prior to the projected Closing Date, Seller shall provide Purchaser all available information concerning the circumstances of each missing estoppel certificate pertaining to a Real Property Agreement. Nothing contained in this Section 4.3(k) shall diminish any of Purchaser’s rights or remedies under any other Section of this Agreement with respect to a breach by Seller of any of representation or warranty made herein;

### a Form W-9 properly completed by Seller;

### all Books and Records;

### estoppel certificates substantially in the form reasonably approved by Purchaser from all counterparties to the Material Project Contracts (excluding the Real Property Agreements and the Interconnection Agreement), in each case dated no earlier than thirty (30) Days prior to the Closing;

### the Credit Support required pursuant to Section 16.1 herein;

### copies, certified by the Seller to be correct and complete, of all Reports and Studies, including the following with respect to the Project:

#### all Phase I Environmental Site Assessments for the Project Real Property in Seller’s possession, including the most recent Phase I Environmental Site Assessment which shall be (i) conducted in accordance with ASTM Standard Practice E1527-13 for Environmental Site Assessment’s, (ii) addressed to ProjectCo as the user and incorporating user provided information from ProjectCo, and (iii) updated within one hundred eighty (180) Days prior to Closing in accordance with the applicable ASTM Standard used with express reliance permitted by Purchaser;

#### a wetlands and stream field assessment report delineating the presence of wetlands, waters of the United States, and waters of the State (which includes consideration of state isolated wetlands), and confirmation of applicability of U.S. Army Corps of Engineers nationwide permits for unavoided impacts to waters of the United States at the time of impact to such waters, including whether the impacts require pre-construction notification under the terms of the applicable nationwide permit; and

#### any other habitats reports or historical, archeological or paleontological resources reports for the Project and possessed by Seller or ProjectCo;

#### a geotechnical report on Project Site reasonably satisfactory in Scope to Purchaser.

### a counterpart signature page to each other Transaction Document to which Seller or ProjectCo is a party, duly executed by Seller or ProjectCo (as appropriate);

### the Project Layout;

### [a duly executed copy of a transfer, assignment and assumption agreement (the “**Excluded Assets Transfer, Assignment and Assumption Agreement**”) entered into by and between ProjectCo, as transferor, and Seller or an Affiliate of Seller, as transferee, in a form reasonably acceptable to Seller and Purchaser, pursuant to which all of the rights, title and interests of ProjectCo in the Excluded Assets have been assigned on an “as is, where is” basis to, and assumed by, Seller or such Affiliate and, with respect to any agreements or contracts included in the Excluded Assets, ProjectCo has been released from liability therefor;]

### [a duly executed copy of a transfer, assignment and assumption agreement (the “**Excluded Liabilities Transfer, Assignment and Assumption Agreement**”) entered into by and between ProjectCo, as transferor, and Seller or an Affiliate of Seller, as transferee, in a form reasonably acceptable to Seller and Purchaser, pursuant to which all obligations of ProjectCo in the Excluded Liabilities have been assigned and assumed by, Seller or such Affiliate and ProjectCo has been released from liability therefor;] and

### such other documents and instruments required by Law or the Title Insurer or specifically contemplated under this Agreement to consummate the Transactions as well as any such documents and instruments contemplated under Section 21.5.

## Closing Conditions Precedent

. Purchaser’s obligation to consummate the Closing and the Transactions is subject to the satisfaction, or waiver in writing by Purchaser in its sole discretion, of each of the Purchaser Closing Conditions Precedent, and Seller’s obligation to consummate the Closing and the Transactions is subject to the satisfaction, or waiver in writing by Seller in its sole discretion, of each of Seller’s Closing Conditions Precedent.

## Purchaser Conditions Precedent to the Closing

. Unless and until the following conditions precedent (the “**Purchaser Closing Conditions Precedent**”) are satisfied, or waived in writing by Purchaser, Purchaser shall not be obligated to consummate the Closing and the Transactions hereunder:

### The representations and warranties made by Seller in this Agreement shall be true and accurate in all respects as of the Closing as if made on and as of the Closing Date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date).

### Seller shall have performed and complied (and shall have caused ProjectCo to perform and comply) in all material respects with the agreements, covenants and obligations required by this Agreement to be so performed or complied with by Seller and ProjectCo at or before the Closing.

### No Material Adverse Effect shall exist as of the Closing, and no events or circumstances exist that, individually or in the aggregate, with or without the lapse of time, would reasonably be expected to result in a Material Adverse Effect.

### Seller shall have delivered, or caused to be delivered, to Purchaser all items required to be delivered pursuant to Section 4.3.

### At least sixty (60) Days before the date on which Seller reasonably believes that the Closing will occur, Seller (A) shall cause all Title Curative Actions to have been completed with respect to the Project Real Property, and (B) shall cause the Title Insurer to deliver to Purchaser a proposed final Draft Pro Forma Policy insuring the Project Real Property, with such endorsements deemed necessary by Purchaser, for Purchaser’s review and approval in Purchaser’s reasonable discretion (as so approved or as approved by Purchaser after a modification as set forth below, the “**Pro Forma Title Policy**”). The Pro Forma Title Policy and final Title Policy shall include endorsements acceptable to Purchaser, in Purchaser’s sole discretion, providing that the assignment by Seller of the ProjectCo Interests to Purchaser or any entity in which Purchaser or an affiliate owns an interest will not cause the lapse or impairment of coverage under the final Title Policy after the assignment of the ProjectCo Interests. Any proposed changes by the Title Insurer to the Pro Forma Title Policy (including due to a downdate) shall be subject to the approval of the Purchaser in its reasonable discretion, provided that at no time shall Purchaser have fewer than three (3) Business Days from delivery of the proposed change, together with all related underlying documents, to review such proposed change, and further provided that no such change shall reflect Liens other than Permitted Liens.

### Seller shall have caused the Title Insurer to issue (or, provided that Seller has delivered the required premium and other fees to the Title Insurer, the Title Insurer to irrevocably commit to issue upon correcting minor, clerical errors such as inserting recording references) an ALTA owner’s extended coverage title insurance policy, inclusive of matters shown on the preliminary As-Built Survey, dated as of the Closing Date, and with a minimum liability amount equal to the Contract Price (the “**Title Policy**”), which Title Policy shall insure ProjectCo’s fee, leasehold, and/or easement interests, as applicable, in the Project Real Property, free and clear of all Liens other than Permitted Liens. The Title Policy shall be in form and substance reasonably acceptable to Purchaser and shall, in any event, be in substantially the same form and substance as the Pro Forma Title Policy; provided that if the Title Policy includes any Later-Acquired Project Real Property, the form and substance of the Title Policy relative to any and all Later-Acquired Project Real Property shall be reasonably acceptable to Purchaser.

### All Material Project Contracts shall be in full force and effect and no default has occurred which, with the passage of time or giving of notice or both, would constitute a default under any Material Project Contract.

### All ProjectCo Permits shall be in full force and effect, and in ProjectCo’s name (other than Permits that are ministerial in nature and can reasonably be expected to be obtained when needed in the ordinary course of business on Commercially Reasonable terms and conditions).

### Except for any mitigation requirements set forth on the Punch List, all other material mitigation requirements (other than requirements to be met after the Closing) for preservation of land, resources or habitat, if any, required in connection with obtaining, or as a condition of, any ProjectCo Permit have been met, including the complete funding of such requirements through the life of the Project.

### The Contract for Differences has not been terminated by AESI due to an Event of Default (as defined in the Contract for Differences) by ProjectCo.

### ProjectCo has issued Notice to Proceed to the EPC Contractor under and in accordance with the EPC Agreement.

### ProjectCo has executed all material Real Property Agreement necessary for development, construction, ownership and operation of the Project at the Project site.

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

### Specified permits and regulatory approvals required for the development, construction, ownership and operation of the Project have been obtained.

### Seller has provided and Purchaser has approved in writing the Preliminary Drawings & Specifications.

### Seller shall have filed a notice of self-certification that ProjectCo qualifies as an Exempt Wholesale Generator, and such self-certification is deemed granted by operation of law pursuant to 18 C.F.R. § 366.7(a), or Seller shall have otherwise received a final Order from FERC pursuant to 18 C.F.R. § 366.7(b) determining that ProjectCo qualifies as an Exempt Wholesale Generator.

### ProjectCo shall have received a final Order from FERC (or from FERC’s staff, pursuant to delegated authority) under Section 205 of the Federal Power Act authorizing ProjectCo to sell electricity at market-based rates and granting the exemptions and blanket approvals FERC ordinarily provides to Exempt Wholesale Generators that are granted market-based rate authority with terms and conditions reasonably acceptable to Seller and Purchaser.

## Seller’s Conditions Precedent to the Closing

. Unless and until the following conditions precedent (the “**Seller’s Closing Conditions Precedent**”) are satisfied, or waived in writing by Seller, Seller shall not be obligated to consummate the Closing and the Transactions hereunder:

### The representations and warranties made by Purchaser in this Agreement that are qualified with respect to materiality, Material Adverse Effect or similar qualifications or exceptions shall be true and accurate in all respects, and the representations and warranties made by Purchaser in this Agreement that are not so qualified shall be true and accurate in all material respects, in each case at and as of the Closing as if made on and as of the Closing Date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date).

### Purchaser shall have performed and complied in all material respects with the agreements, covenants and obligations required by this Agreement to be so performed or complied with by Purchaser at or before the Closing.

### Purchaser shall have delivered, or caused to be delivered, to Seller all items required to be delivered pursuant to Section 4.2.

### The Contract for Differences has not been terminated by ProjectCo due to an Event of Default (as defined in the Contract for Differences) by AESI thereunder.

## Mutual Conditions Precedent to the Closing

. Unless and until the following conditions precedent (the “**Mutual Closing Conditions Precedent**”) are satisfied, or waived in writing by both Seller and Purchaser, neither Seller nor Purchaser shall be obligated to consummate the Closing and the Transactions hereunder:

### All CFIUS/HSR Regulatory Approvals have been obtained.

### No Law shall have been enacted or proposed which prohibits or materially restricts the consummation of the Transactions or Purchaser’s purchase of ProjectCo Interests.

### No Order shall be in effect which restrains, hinders or prohibits, or threatens to restrain, hinder or prohibit, the consummation of the Transactions and there shall not have been threatened in writing, nor shall there be pending, any Proceedings by or before any Governmental Authority which is reasonably likely to materially restrain, hinder, prohibit, delay, or challenge the validity of, or seek damages or other relief in connection with, any of the Transactions.

### [ProjectCo shall have received all approvals by FERC that are necessary to consummate the Transactions under Section 203 of the Federal Power Act, if applicable, and a final Order from FERC under Section 205 of the Federal Power Act authorizing the affiliate transactions contemplated under the Contract for Differences.]

## Satisfaction of Conditions

. Subject to the terms and conditions of this Agreement, each of the Parties hereto shall, and shall cause its Affiliates as appropriate, to use Commercially Reasonable Efforts to take, or to cause to be taken, all actions and to do, or to cause to be done, all things necessary, proper or advisable to consummate, as promptly as practicable, the Transactions, including, but not limited to, the satisfaction of the conditions listed in Section 4.2 through Section 4.7, as applicable, that are within the control of such Party and the obtaining of all Consents required of it by this Agreement and the other Transaction Documents. Each Party shall, and shall cause its Affiliates as appropriate, to cooperate fully with the other Parties hereto in assisting such Parties to comply with this Article 4.

# Work And Services of Seller

## Performance of the Work

. The Parties hereby covenant and agree that they shall use Commercially Reasonable Efforts to pursue achievement and satisfaction of each Seller Pre-Closing Obligation (in the case of Seller) and Purchaser Pre-Closing Obligation (in the case of Purchaser) by the Approval Deadline or the State Regulatory Target Filing Date as applicable. Seller hereby covenants and agrees to use Commercially Reasonable Efforts to achieve Project Final Completion in accordance with the Scope of Work, the Final Drawings & Specifications, the Material Project Contracts, Laws, Prudent Industry Practices, and all other applicable terms and provisions of this Agreement (collectively, the “**Requirements**”). Except for the Transmission Owner Scope of Work, Seller further covenants and agrees that it shall provide and pay for (or cause the payment and provision of) all items and services necessary for the completion of the Project, including, but not limited to, all design, engineering, procurement, installation and construction services, all administration, management, training and coordination services, all labor, materials, office trailers, equipment, supplies, insurance, bonds, tests, inspections, tools, machinery, water, heat, utilities and transportation, obtaining all ProjectCo Permits and all other items, facilities and services necessary to perform the Work and achieve Project Final Completion.

## Assumption of Transmission Owner Scope of Work

. Additionally, if it becomes reasonably necessary to meet the Critical Path Project Schedule, Seller covenants and agrees that it shall cause ProjectCo as the interconnection customer to assume the relevant work under the Interconnection Agreement and Seller shall provide and pay for (or cause the payment and provision of) all items and services necessary for the completion of the Project with respect to the Transmission Owner Scope of Work and shall pay to Purchaser any incremental cost to complete the Transmission Owner Scope of Work, as reflected in the adjustment to Contract Price provided for in Section 3.4.

## General

. In accordance with and subject to the terms of this Agreement, Seller shall (i) diligently, duly, and properly perform and complete the Work and all of its other obligations set forth in this Agreement; (ii) procure, provide, and pay for all materials, equipment, machinery, tools, labor, transportation, administration, and other items and services necessary for the proper execution and completion of the Project, whether temporary or permanent and whether or not incorporated or to be incorporated into the Work, including all administration; management; training; coordination; labor; Project Hardware; licenses; inspections; storage; transportation; design, engineering, procurement, installation, construction, commissioning, and verification services; and all other items, goods, facilities, and services necessary to perform the Work; (iii) complete the design, engineering, construction, and installation of the Project pursuant to this Agreement, including providing all control equipment necessary for the construction, interconnection, and operation of the Project; all interconnections set forth in the Scope of Work; and all equipment not specifically described in the Scope of Work that is necessary to meet the requirements of the Scope of Work or complete the Project; (iv) deliver the Project Hardware to ProjectCo at the Project free of any Lien; and (v) achieve Mechanical Completion, Project Substantial Completion and Final Completion. Seller acknowledges and agrees that it is obligated to perform the Work on a “turnkey basis” which constitutes a fixed-price (subject to the terms hereof) obligation to engineer, design, procure, construct, test, and commission the Project in accordance with the terms and conditions of this Agreement. Where this Agreement describes a portion of the Work in general, but not in complete detail, the Parties acknowledge and agree that the Work includes any incidental work inferred or required to complete the Work in accordance with this Agreement. Seller is obligated to supply all of the equipment, Project Hardware, labor, and design services and to supply and perform all of the Work as may reasonably be required or necessary (whether or not specifically set forth in this Agreement) to complete the Work in accordance with and subject to the terms and conditions of this Agreement, including the guarantees of performance (and the remedies applicable thereto) as set forth herein, all for the Contract Price.

## Development Activities

. Seller shall be responsible for performing, or causing to be performed, all development activities required in connection with achieving Project Substantial Completion, including:

### securing all necessary real property interests in and to the Project Site (including any contiguous or non-contiguous property which is required for the operation and offtake of the Project or any other Project Activities) and entering into all Contracts necessary to memorialize such real property interests, whether deeds, easements, leases or other ownership, use or occupancy agreements or amendments thereto;

### causing Title Insurer to deliver, or otherwise make available, to Purchaser concurrently with delivery and/or availability to Seller an initial title commitment for each parcel of real property (whether owned in fee, leased, created by easement or otherwise to be used in connection with the Project) comprising the Project Site (each a “**Title Report**”), which Title Report shall (i) identify all applicable vesting information and encumbrances or restrictions on the subject real property together with all conditions and requirements of the Title Insurer, and (ii) include copies of, or active links to, all documents referenced therein, including vesting documents, and title exception documents;

### causing Title Insurer to deliver, or otherwise make available, to Purchaser concurrently with delivery and/or availability to Seller thereof, all updates to the Title Reports and each subsequent version of the Draft Pro Forma Policy, together with all new and additional documentation referenced therein or obtained by Title Insurer in connection therewith and with all endorsements to the Draft Pro Forma Policy requested by Purchaser;

### obtaining, and delivering, or causing to be made available, to Purchaser promptly after receipt by Seller thereof (i) drafts, and Seller subsequent reviewed and corrected versions, of Surveys reflecting the real property that is the subject of the Title Reports and the most current version of the Draft Pro Forma Policy, and (ii) updates to the Surveys if and to the extent needed to reflect new or corrected plottable items identified after the initial Title Reports;

### completing the full conceptual design of the Project, including all permanent structures (including but not limited to the permanent meteorological towers), the access roads, the electrical collector system, the substation, the generator lead line to the point of interconnection, and the communication lines, which layout will also show the location of existing roads, buildings, other structures and areas of environmental or other concern (if any). In furtherance of the preceding, attached hereto as Exhibit C is a layout of the Project which was prepared by Seller and reviewed by Purchaser (the “**Project Layout**”);

### pursuing and obtaining all necessary financing for Seller needed to achieve Project Final Completion;

### to the extent it becomes reasonably necessary to meet the Critical Path Project Schedule, performance of or payment of all items and services necessary for the completion of the Project with respect to the Transmission Owner Scope of Work; and

### performing other activities that are inherent to and customarily performed by a developer of a battery energy storage facility and necessary to complete all site control and development activities related to a battery energy storage project in accordance with Prudent Industry Practice.

## Design and Engineering Activities

. Seller shall be responsible for all design and engineering services necessary to develop and construct the Project, and achieve Project Final Completion. Those engineering and design activities shall include:

### Seller shall prepare “issued for construction” drawings and specifications setting forth in detail the requirements for the construction of the Project based on then-effective federal and state construction codes setting forth in detail the Requirements for the construction of the Project in accordance with this Agreement (the “**Final Drawings & Specifications**”)

. The Final Drawings & Specifications shall be consistent with (and develop in detail) the Scope of Work and the Requirements and shall include all drawings, specifications, schedules, diagrams and plans, and such content and detail, as is necessary to obtain all ProjectCo Permits and to properly achieve Project Substantial Completion, and shall provide information customarily necessary for the use of such documents by those in the battery energy business consistent with Prudent Industry Practice;

### Seller shall, in preparing the Issued for Review Drawings & Specifications, submit to Purchaser and the Independent Engineer the IFR Drawings & Specifications on or before the dates identified therefor in the Design Schedule (each such submittal being an “**IFR Design Package**”). As to the IFR Design Package:

#### as to any Tier I IFRs, Purchaser and the Independent Engineer may, within ten (10) Business Days after receipt of the corresponding IFR Design Package, provide written comments as to the same. If any comment indicates that any such Tier I IFR does not materially comply with the Requirements (“**Non-Compliance Comments**”), Seller shall revise and resubmit the same for Purchaser’s and the Independent Engineer’s review and comment as provided herein; provided that if Seller disagrees with any Non-Compliance Comments, the Parties will resolve such dispute following the dispute resolution procedures set forth in Section 26.1. As to any comments which are not Non-Compliance Comments, Seller shall, within ten (10) Days after their receipt of such comments, provide notice to Purchaser that either (A) Seller will incorporate such comments into the corresponding Tier I IFR (in which event, they shall resubmit the package for Purchaser’s review and comment as provided herein), or (B) Seller does not intend to incorporate the comments into the corresponding Tier I IFR (which notice shall state the reasons therefor);

#### any IFR Drawings & Specifications that are not Tier I IFRs shall be submitted to Purchaser solely for informational purposes; and

#### none of the comments from Purchaser or the Independent Engineer shall relieve Seller from its sole responsibility for the design, engineering, procurement and construction of the Work in accordance with the Requirements. If Purchaser or the Independent Engineer does not respond within the ten (10) Business Day period, then, Seller shall provide an additional notice and if Purchaser or the Independent Engineer fails to respond within two (2) Business Days after Seller’s redelivery of an IFR Design Package with any written comments, Seller shall proceed with the Work, provided that neither any comments from Purchaser nor the absence thereof shall be deemed any acceptance by Purchaser of the IFR Design Package or waive any right of Purchaser under this Agreement.

### Seller shall, in preparing the Final Drawings & Specifications, submit to Purchaser and the Independent Engineer the Tier I Drawings & Specifications and all other Final Drawings & Specifications on or before the dates identified therefor in the Design Schedule (each such submittal being a “**Design Package**”). As to the Design Package:

#### as to any Tier I Drawings & Specifications, Purchaser and the Independent Engineer may, within five (5) Business Days after receipt of the corresponding Design Package, provide written comments as to the same. As to any Non-Compliance Comments, Seller shall revise and resubmit the same for Purchaser’s review and comment as provided herein. If Seller disagrees with any Non-Compliance Comments, the Parties will resolve such dispute following the dispute resolution procedures set forth in Article 26. As to any comments which are not Non-Compliance Comments, Seller shall, within ten (10) Days after its receipt of the comments, provide notice to Purchaser and the Independent Engineer that either (A) Seller will incorporate the comments into the corresponding Tier I Drawing & Specification (in which event, Seller shall resubmit the same for review and comment as provided herein), or (B) Seller does not intend to incorporate such comments into the corresponding Tier I Drawing & Specification (which notice shall state the reasons therefor);

#### any Final Drawings & Specifications that are not Tier I Drawings & Specifications shall be submitted to Purchaser and the Independent Engineer solely for informational purposes;

#### none of the comments from Purchaser or the Independent Engineer shall relieve Seller from its sole responsibility for the design, engineering, procurement and construction of the Work in accordance with the Requirements. If Purchaser or the Independent Engineer does not respond within such ten (10) Business Day period then, Seller shall provide an additional notice and if Purchaser or the Independent Engineer fails to respond within two (2) Business Days after Seller’s redelivery of a Design Package with any written comments, Seller shall proceed with the Work, provided that neither any comments from Purchaser or the Independent Engineer nor the absence thereof shall be deemed any acceptance by Purchaser of the Design Package or waive any right of Purchaser under this Agreement; and

#### Seller shall not commence the construction of any part or portion of the Project unless and until the completed Final Drawings & Specifications relevant to that part or portion (and which are Tier I Drawings & Specifications) have been reviewed and commented on by Purchaser and the Independent Engineer as provided in Section 5.5(c) or the period for Purchaser to provide comments has expired, whichever is earlier. The Final Drawings & Specifications shall be deemed complete once they have been stamped “issued for permit” or “issued for construction” and, if applicable, have been reviewed and commented on by Purchaser as provided in Section 5.5(c) (or, if earlier, if they have been provided to Purchaser for review and comment, and the applicable comment period has expired). Upon completion of those matters, the Parties shall execute an amendment to this Agreement to attach those Final Drawings & Specifications as Exhibit D and, hence, part of this Agreement. Any further changes to the Final Drawings & Specifications that occur after the NTP Date (including any redline changes to those Final Drawings & Specifications), shall be submitted to Purchaser for informational purposes only.

### Seller agrees that the Final Drawings & Specification shall be prepared in accordance with the Requirements and shall be stamped by a professional engineer licensed by the State of [Indiana]; *provided, however,* the foregoing requirement that the Final Drawings & Specifications are stamped shall not apply to original equipment manufacturer drawings and specifications that comprise any portion thereof.

### Seller shall also provide to Purchaser electronic copies of all necessary plans, drawings (in AUTOCAD format), and specifications needed to apply for and obtain all internal, governmental, and regulatory approvals (including those from the State Regulatory Agency for the State Regulatory Approval).

### Seller shall perform all other design and engineering services that are customarily performed by a developer of a battery energy storage facility in accordance with the Requirements in order to properly complete all design and engineering activities related to a battery energy storage project.

## Construction and Procurement Activities

. Seller shall be responsible for performing all procurement and construction activities necessary to achieve Project Substantial Completion and those activities shall include:

### having responsibility for the Project engineering, procurement, construction, commissioning and testing activities and for coordinating all portions of the Work;

### constructing, commissioning and testing of the Project in accordance with the Scope of Work and the Final Drawings & Specifications, the Material Project Contracts, all Laws, and all other Requirements;

### developing, implementing and complying with all quality assurance and control plans (as approved by Purchaser and further described in the Scope of Work) across all areas of the Work and requiring adherence to the same by all Subcontractors;

### transferring all Project Assets to ProjectCo as the Project Assets are created and as Seller’s rights to any Project Assets develop;

### performing any and all other activities that are performed by a developer of a battery energy storage facility in accordance with Prudent Industry Practices in order to properly complete all construction, procurement, testing, and commissioning activities related to a battery energy storage project of similar scope, nature and complexity as the Project in accordance with the terms of this Agreement; and

### providing documentation demonstrating that all equipment has been installed at the Project, including providing corresponding serial numbers and other corroborative documentation.

## Payment and Performance Bond

. The Seller shall require the EPC Contractor to provide payment and performance bonds, in form and substance satisfactory to Purchaser in its sole discretion and issued by sureties satisfactory to Purchaser in its sole discretion, to be maintained with respect to full amount of the obligations of the EPC Contractor after taking into account all change orders. The payment and performance bonds shall be endorsed by the surety to recognize ProjectCo as an obligee under the bonds. Purchaser or, after Closing, ProjectCo may draw on such bonds at its sole determination if EPC Contractor fails to perform its obligations under the EPC Agreement.

## Licensing and Other Qualifications

. Seller covenants and agrees that all Persons who will perform or be in charge of professional design and engineering services in completing the Project shall have experience with the type of project being undertaken and shall be duly licensed (to the extent licensing is required pursuant to applicable Laws or Prudent Industry Practices). Similarly, all Work shall be undertaken and performed by qualified and licensed construction contractors, vendors and suppliers (to the extent such licensing is required pursuant to applicable Laws or Prudent Industry Practices).

## Sufficient Personnel and Oversight

. Seller shall, at all times, keep, or cause to be kept, sufficient personnel employed to perform its obligations under this Agreement. While performing such obligations, all such personnel shall comply in all respects with Seller’s safety and security standards for the Project, which shall, at a minimum, include the requirements set forth in the AES Safety and Security Standards set forth at Exhibit E and E-1 (collectively, the “**AES Safety and Security Standards**”). If at any time, in the discretion of Purchaser, any of Seller’s personnel performing Seller’s obligations under this Agreement, are not performing their obligations to the reasonable satisfaction of Purchaser, Seller shall replace the offending personnel within 10 days of Purchaser’s request. After Closing, Seller shall be responsible to Purchaser to the extent set forth in this Agreement for ProjectCo’s acts and omissions that occurred before Closing, its Affiliates, all Subcontractors, their respective agents and employees, and any other Persons performing any portions of the Work.

## Seller’s Representative

. Seller shall appoint a principal representative (“**Seller’s Representative**”), who shall be Seller’s authorized representative, and who shall receive and initiate all communications from and with Purchaser.

## Periodic Reports & Meetings

. Starting on the Signing Date, Seller will provide to Purchaser monthly reports, substantially in the form attached hereto as Exhibit F, on the following items:

### status of progress towards achievement of all Seller Pre-Closing Obligations, including updates on obtaining all necessary real property rights and ProjectCo Permits;

### an updated report as to Seller’s adherence to the Critical Path Project Schedule;

### update on any financing activities, if any, including providing to Purchaser copies of all active term sheets, letters of intent or other similar agreements, redacted to the extent necessary to maintain confidentiality of such documents;

### Project-related safety statistics, including an accounting of all incidents, worker injuries, or property damage (including LWAs, OSHA Recordable Cases, and Serious Injuries), and an up-to-date Total Recordable Incident Rate with a summary of each incident that occurred in the reporting period;

### status report of orders for critical equipment for the Project, as reasonably determined by Seller (including delivery status); and

### any other items of information reasonably requested in advance by Purchaser

.

In addition, starting on the Signing Date, Seller shall schedule and conduct monthly meetings among Seller, Purchaser, the Independent Engineer, the EPC Contractor and any other parties reasonably designated by Purchaser and agreed to by Seller for the purpose of discussing the status of the Project.

## Reports During Construction

. Starting the month that the NTP Date occurs, Seller shall prepare and submit to Purchaser and the Independent Engineer a monthly status report, which report shall be prepared in a manner and format reasonably satisfactory to Purchaser and shall include, but shall not be limited to, (i) an executive summary and a description of the progress of the Work, (ii) a statement of any significant Project issues which remain unresolved, and a list of Seller’s observations and suggested recommendations or resolutions as to the same, (iii) an updated report as to Seller’s adherence to the Critical Path Project Schedule, and specifically addressing whether the Project is on schedule or behind schedule and actions being taken to correct schedule delays, (iv) a list of future risks to the Project’s progress vis-à-vis the Work; and (v) a summary of any significant Project events which are scheduled to occur during the following thirty (30) Days. In addition, Seller shall schedule and conduct monthly meetings among Seller, Purchaser, the Independent Engineer, the EPC Contractor and any other parties reasonably designated by Purchaser and agreed to by Seller for the purpose of discussing the status of the Project. Seller shall prepare an agenda for each such meeting and shall (immediately after any such meeting) compile and distribute minutes to all participants. Those minutes shall be subject to Purchaser’s review and any corrections Purchaser may request. Purchaser’s Representative and the Independent Engineer shall be entitled to participate in periodic meetings among Seller, Seller’s Representative and each EPC Contractor for the purpose of discussing the status of the Project. Without altering, revising or otherwise changing the Guaranteed Project Substantial Completion Date, Seller shall, on a monthly basis submit an updated Critical Path Project Schedule to Purchaser and the Independent Engineer. The Critical Path Project Schedule shall be provided in native file format so that Purchaser and the Independent Engineer may review the underlying assumptions and logic.

## Cooperation and Access

. At all times after the Signing Date through Closing and until the end of Seller’s obligations under this Agreement so as to complete the Project, Seller shall reasonably cooperate with and assist Purchaser, its designated advisors (including any independent engineers engaged by or on behalf of Purchaser), consultants, attorneys, Lenders/Investors (including the Tax Equity Investor(s)), employees, agents and representatives, so as to achieve Project Substantial Completion in an efficient, timely and economical manner. Such cooperation and assistance shall include:

### cooperation or assistance required in connection with Purchaser’s efforts in performing all due diligence as to the Project;

### the provision of reasonably requested technical information (such as IFR, specifications, and other materials), as required hereunder;

### providing Purchaser, its representatives, the Independent Engineer and any other authorized personnel reasonable access during normal business hours and upon reasonable advance notice to the Project Real Property and any other areas where the Work is being performed in order to observe and take photographs of the progress of the Work and any commissioning and testing of the Project, provided Purchaser and Purchaser’s Representatives follow all safety rules and protocols of Seller and its Subcontractors and do not take any actions in violation of the Real Property Agreements;

### taking actions reasonably requested by Purchaser (and its consultants and advisors) in connection with the Project, including but not limited to cooperation concerning financing matters, preparation for construction, permitting activities, tax abatement and regulatory matters, landowner negotiations, community interactions, and Renewable Energy Credits;

### promptly providing any other information in Seller’s possession reasonably requested by the State Regulatory Agency;

### including Purchaser and its agents and representatives (at Purchaser’s option) in material meetings or teleconferences to discuss the progress of development of the Project;

### prior to the Tax Equity Date, negotiating in good faith the terms and conditions of such consents and acknowledgments to any assignment of the performance warranties and other rights of Purchaser or ProjectCo under this Agreement in form and substance reasonably requested by the Tax Equity Investor(s) and AESI in support of the tax equity investment by the Tax Equity Investor(s) (collectively, the “**Tax Equity Investment Documents**”); it being understood that if the terms and conditions of the Tax Equity Investment Documents (y) do not require any capital contribution obligations of Seller, and (z) do not materially increase the liabilities or indemnity obligations of Seller, then Seller and its Affiliates shall use Commercially Reasonable Efforts to negotiate and enter into all such agreements relating to such tax equity commitment with AESI and such Tax Equity Investor(s); and

### providing Purchaser, its representatives, and any other authorized personnel reasonable access during normal business hours to the Books and Records of Seller and the EPC Contractor in order to ensure that no compliance violations have occurred or are occurring.

## Signage and Publicity

. Seller shall not (and shall cause its Affiliates and Subcontractors not to) display, install, erect or maintain any advertising or other signage at the Project Real Property identifying Purchaser or any of its Affiliates without Purchaser’s prior written approval. Upon the reasonable request of Purchaser, Seller shall cooperate and assist Purchaser in connection with any public relations or publicity relating to the Project, the Project Real Property or the Work. Without the prior written consent of Purchaser, Seller shall not (and shall cause its Affiliates and Subcontractors not to) give any tours of the Project Real Property, except pursuant to the Requirements. Except as expressly permitted by this Agreement or the Contract for Differences, without the prior written consent of Purchaser, Seller shall not (and shall cause its Affiliates and Subcontractors not to) disclose details or information relating to the Work or the Project to the press, the public, any news-disseminating agency or any other Person, except to (i) those Persons performing portions of the Work (and then only to the extent required for the performance of the particular portion of the Work being performed), (ii) Seller’s agents, advisors, attorneys, accountants and consultants or others required pursuant to the Requirements, and (iii) other Persons as required by applicable Law or Prudent Industry Practice.

## Books and Records

. Seller shall (and shall, prior to Closing, cause ProjectCo to) keep and maintain, at all times full and detailed Books and Records and other accounts that will adequately substantiate work performed and costs incurred as may be reasonably necessary for proper financial and project management of the Project and the Work under this Agreement. Seller shall provide copies of, or make available for inspection and copying by Purchaser and its representatives, all such Books and Records for audit and review upon Purchaser’s request. Seller shall keep and maintain its accounts, and prior to Closing shall cause ProjectCo to keep and maintain, the accounts of ProjectCo in accordance with GAAP, consistently applied, and in a manner to ensure that original costs of the Project are sufficiently accounted. For a period of one (1) year after the Closing, as reasonably requested by Purchaser, Seller shall provide information and documentation in the possession of Seller or its Affiliates related to the original costs of ProjectCo to the extent that such costs are not sufficiently accounted for in ProjectCo’s Books and Records as of the Closing Date.

## Legal Requirements

. Seller shall comply, and shall cause ProjectCo and the Subcontractors to comply, in all material respects, with all Permits and Laws that are applicable to the Work, ProjectCo, the Project and/or the Project Real Property. Seller shall promptly deliver to Purchaser any material communications from any Governmental Authority relating to the Work, ProjectCo, the Project or the Project Real Property. Seller will give Purchaser a reasonable opportunity to review and comment on Seller’s proposed material communications with such Governmental Authority before submission to such Governmental Authority in response to such communications; provided that the foregoing shall not require Seller to (a) delay submission of such communications beyond the period of time established by applicable Laws for submission of the same, or (b) unreasonably delay in submitting any other response requested by a Governmental Authority. If Seller becomes aware that representatives of any Governmental Authority will visit (or have visited) the Project Real Property for any purpose related to the Work, the Project or ProjectCo, Seller shall promptly notify Purchaser.

## Permitting Obligations

. With the exception of the State Regulatory Approval and any FERC approvals under Section 4.5(q) and Section 4.7(d), Seller shall secure, or shall cause ProjectCo to secure, and Seller shall pay the expense, of securing any and all ProjectCo Permits (including those identified on Section 19.13(a) of the Disclosure Schedules), except for Permits that are ministerial in nature and can reasonably be expected to be obtained when needed in the ordinary course of business on Commercially Reasonable terms and conditions. At least ten (10) Days prior to submitting any application for a ProjectCo Permit (other than transportation permits or ProjectCo Permits which are of a type that are routinely granted on application without the exercise of judgment or deliberation other than determining whether the applicant has provided a complete application and necessary fee required for issuance of such ProjectCo Permit), Seller shall provide a copy of the same to Purchaser for Purchaser’s review and comment. Seller and, if applicable, ProjectCo will consider in good faith all comments Purchaser makes on all such Permit applications; provided, however, if Purchaser does not respond within the ten (10) Day period then, Seller shall provide an additional notice and if Purchaser fails to respond within two (2) Business Days after Seller’s redelivery of a Permit application with any comments, Seller may proceed with the Permit application. Purchaser’s exercise or lack of exercise of its review and comment rights pursuant to this Section 5.17 shall not waive any right of Purchaser or excuse Seller’s responsibility for the timely submission and application for all Permits in accordance with applicable Laws.

## Project Contracts and Subcontractors

. Except for the contracts identified in Section 5.19, Seller shall, on behalf of ProjectCo, be responsible for negotiating and documenting (i) all Contracts reasonably necessary to develop, construct, commission and own the Project, to operate the Project prior to Final Completion, and to otherwise perform the Work, as well as (ii) all Contracts which relate to, are associated with or concern the Project or the Project Assets or to which ProjectCo is otherwise a Party (“**Project Contracts**”). For the avoidance of doubt, Project Contracts do not include, and Seller makes no representation with respect to, any Contract that is negotiated by Purchaser pursuant to Section 5.19.

## Project Contracts

. Seller shall not, and shall not prior to Closing permit ProjectCo to, enter into any of the following Contracts after the Signing Date without Purchaser’s prior review and written approval as provided:

### any material Contract or Contracts for the sale, purchase, delivery and/or commissioning of the batteries (complete with containers and inverters) for the Project (those items, the “**Battery Equipment**”, those contracts, the “**Battery Equipment Agreements**”);

### any material Contract for service and/or maintenance of the Battery Equipment;

### the material Contract for the design, engineering and construction of the Project including any “balance of plant” (the “**EPC Agreement**”);

### any Contract for any interest in the Project Site or in any other real property in connection with Project Activities; provided that Purchaser hereby approves the following Real Property Agreements: [\_\_\_\_\_\_\_\_\_\_\_][[1]](#footnote-1)

### any proposed Contract under which an interest is acquired in any [                                                ]

.[[2]](#footnote-2)

### any amendment to the Interconnection Agreement;

### any material operations and maintenance or asset management agreement with respect to the Project which would remain in effect post-Closing;

### any Contract for the sale of Renewable Energy Credits;

### any escrow agreement in respect of Intellectual Property Rights relating to the Project; or

### any Contract with any material post-Closing obligations of, or annual revenue stream to, ProjectCo

.

## Sole Authority to Negotiate

. For the sake of clarity, after the Closing Date Purchaser shall have the sole authority to negotiate: (i) any Contract for the sale of Renewable Energy Credits or other Environmental Attributes in accordance with (and to the extent permitted by) the Contract for Differences and (ii) any other Contract that primarily relates to the ownership or operation of the Project other than service, operation and/or maintenance contracts relating to the Battery Equipment Agreements or similar contracts required for satisfaction of Seller’s obligations to complete the Work or complete installation of the Battery Capacity.

## Project Contract

. Seller represents and warrants that all of the Material Project Contracts listed on Section 19.9(a) of the Disclosure Schedules as of the Signing Date were fully executed by ProjectCo or Seller, as applicable, and each counterparty thereto prior to the Signing Date. With respect to Material Project Contracts that are not listed on Section 19.9(a) of the Disclosure Schedules, Seller shall keep Purchaser reasonably informed as to Seller’s, ProjectCo’s, and/or any of their Affiliate’s negotiations with any third parties with whom Seller or ProjectCo seeks to enter into a Material Project Contract and shall, (i) with respect to the Battery Equipment Agreements and EPC Agreement, provide Purchaser with a form or early-stage draft thereof, in native format, as early as practicable, but at least fifteen (15) Business Days in advance of execution thereof (and Seller shall consider in good faith any comments raised by Purchaser thereto) and (ii) with respect to other Material Project Contracts, provide Purchaser with a form or early-stage draft thereof in native format at least ten (10) Business Days in advance of execution thereof (and Seller shall consider in good faith any comments raised by the Purchaser thereto). At such time as a proposed Material Project Contract is in substantially final form, Seller shall provide a copy of the same to Purchaser for Purchaser’s review and approval (which approval shall not be unreasonably withheld). Within five (5) Business Days after Purchaser’s receipt of any such proposed Material Project Contract, Purchaser shall notify Seller either:

### that Purchaser has approved such proposed Material Project Contract (in which event, Seller or ProjectCo, as applicable, may thereafter execute the same with the relevant counterparty substantially in the form so approved by Purchaser); or

### that Purchaser has not approved such proposed Material Project Contract, and stating the reasons therefor.

### If Purchaser does not approve a proposed Material Project Contract pursuant to Section 5.21(b), Seller shall then consider in good faith Purchaser’s comments and, if Seller agrees with such comments, attempt to renegotiate with the respective Subcontractor (including on behalf of ProjectCo) such proposed Material Project Contract to account for Purchaser’s comments and then resubmit the same pursuant to this Section 5.21(b) for Purchaser’s review and approval (provided Purchaser must respond within five (5) Business Days in lieu of the aforementioned five (5) Business Day period). If Purchaser reasonably objects to the revised Material Project Contract within such five (5) Business Day period, such process shall be repeated until the proposed Material Project Contract has been approved by Purchaser. If Purchaser does not respond within the five (5) Business Day period, then, Seller shall provide an additional notice and if Purchaser fails to respond within two (2) Business Days after Seller’s redelivery of the proposed Material Project Contract with any written comments, Seller or ProjectCo shall be authorized to enter into such Material Project Contract, without prejudice to any right of Purchaser or obligation of Seller under this Agreement.

## Select Subcontractors

. Seller covenants and agrees as follows in connection with certain Subcontractors:

### the suppliers of the Battery Equipment and the EPC Contractor shall be one or more of the Persons identified on Exhibit G, as ultimately selected by Seller in its absolute discretion (it being further agreed by Seller that it shall notify Purchaser of the selected suppliers of the Battery Equipment and EPC Contractor promptly after so selecting such Persons);

### as to the specific equipment identified on Exhibit G, the Subcontractor that will ultimately manufacture and supply each such item of equipment shall be one of the suppliers or vendors identified on Exhibit G as being an approved supplier or vendor in connection with each such item of equipment, as ultimately selected by Seller in its absolute discretion (it being further agreed by Seller that it shall notify Purchaser of the selected supplier or vendor promptly after so selecting such Persons);

### in the event that Seller desires to use a different Subcontractor than those companies that are listed on Exhibit G, Seller shall submit such proposal to Purchaser along with the reasons for the proposed substitution. Purchaser shall reasonably consider such substitution and respond to Seller’s proposal within five (5) Business Days of receipt of the proposal, then, Seller shall provide an additional notice and if Purchaser fails to respond within two (2) Business Days after Seller’s redelivery of the proposed substitution, Seller may proceed with the substitution; and

### in any event, Seller shall have performed appropriate due diligence on each Subcontractor to ensure that each Subcontractor is capable of performing, and shall, perform its Contract in accordance with its terms and so as not to cause Seller to be in breach of this Agreement and to ensure that the Subcontractor will perform in accordance with Article 22.

## Ordinary Course

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### From the Signing Date and until Closing, Seller shall conduct its business with respect to ProjectCo, the Project and the Project Assets, and shall cause ProjectCo to conduct its business, in the ordinary course. Such obligation includes:

#### keeping in full force and effect ProjectCo’s legal existence as a [ ] limited liability company;

#### preserving and maintaining the Project Assets in all material respects in accordance with Prudent Industry Practices; including, without limitation:

##### maintaining all books and records (including, with respect to ProjectCo, the Books and Records) in accordance with this Agreement;

##### performing and complying in all material respects with the Project Contracts; and

##### performing and complying in all material respects with all applicable Laws and ProjectCo Permits.

### From the Closing Date through Final Completion, Seller shall conduct its business with respect to the Project and Project Assets in the ordinary course. Such obligation includes:

#### preserving and maintaining the Project Assets in all material respects in accordance with Prudent Industry Practices, including, without limitation:

##### maintaining all books and records in accordance with this Agreement;

##### performing and complying in all material respects with the Project Contracts; and

##### performing and complying in all material respects with all applicable Laws.

## Prohibited Acts

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### Seller shall not and, prior to Closing Seller shall not permit ProjectCo to, (i) modify or amend any Material Project Contracts (other than immaterial or other ministerial modifications or amendments, copies of which Seller shall promptly provide to the Purchaser), (ii) waive, release, or assign any rights or claims under any Material Project Contracts, or (iii) terminate any Material Project Contracts (except for the termination of any Real Property Agreements as provided in Section 5.24(c)).

### Notwithstanding the requirements of consent set forth in Section 5.24(a), Seller shall have the sole and exclusive right without the prior consent of the Purchaser to enter into change orders, amendments, settlement agreements or similar agreements with respect to the EPC Agreement and the Battery Equipment Agreements; provided that those change orders, amendments, settlement agreements or similar agreements (i) do not have a Material Adverse Effect on (A) the Purchaser; (B) the performance of the Project; or (C) the warranty obligations of the EPC Contractor and the Battery Component Suppliers under the EPC Agreement and the Battery Equipment Agreements, respectively (copies of which Seller shall promptly provide to the Purchaser) and (ii) do not substitute any batteries, panels, inverters or racking with models that are not approved and set forth on Exhibit G.

### Seller shall not, and prior to Closing shall not permit ProjectCo to, sell, lease, license, mortgage, pledge, encumber, or otherwise dispose of any of the Project Assets or Project Required Property, other than: (i) disposal of Project Assets that are not required for Project Activities or achieving Project Substantial Completion (including termination of any Real Property Agreements, a partial release of certain Project Real Property from the applicable Real Property Agreement(s), or the assignment or partial assignment of any Real Property Agreements, in any such case, so long as the subject real property is not Project Required Property or otherwise necessary for Project Activities), (ii) assignments as collateral in a construction financing transaction with a Lender/Investor in connection with the construction of the Project, where any associated Lien is released in full prior to Closing, or (iii) Project Assets that are worn out, obsolete, damaged or no longer necessary or useful for the Project Activities;

### Seller shall not and prior to Closing shall not permit ProjectCo to agree or consent in writing to any matter related to the Project, the Project Assets or ProjectCo in connection with any lawsuit, arbitration, mediation, audit or investigation by or before any Governmental Authority;

### Seller, and prior to Closing, ProjectCo and their Affiliates shall not take or fail to take any action that could (i) jeopardize the eligibility of all or any portion of the Project for the ITC at the [ ]% rate or (ii) otherwise adversely affect the Project, the Project Assets or ProjectCo in any material respect;

### Seller shall not and prior to Closing shall not permit ProjectCo to make any change in the accounting methods used for ProjectCo, except as required by GAAP;

### Seller shall not and prior to Closing shall not permit ProjectCo to merge or consolidate with any other entity;

### Seller shall not and prior to Closing shall not permit ProjectCo to incur any Indebtedness or any Liens on the Project, any Project Asset or ProjectCo Interests other than (i) that which will be satisfied, released or bonded over in full prior to the Closing and (ii) Permitted Liens;

### Seller shall not and prior to Closing shall not permit ProjectCo to redeem or repurchase, directly or indirectly, any ProjectCo Interests or declare, set aside or pay any dividends or make any other distributions with respect to any ProjectCo Interests;

### Seller shall not and prior to Closing shall not permit ProjectCo to issue, sell or transfer any ProjectCo Interest;

### Prior to Closing Seller shall not permit ProjectCo to acquire (by merger, consolidation or acquisition of stock or assets or otherwise) any corporation, partnership or other business organization or division thereof or collection of assets constituting all or substantially all of a business or business unit;

### Seller shall not and prior to Closing shall not permit ProjectCo to change any method of accounting with respect to Taxes of ProjectCo, make or change any income or other material Tax election of ProjectCo, file any amended Tax Return of ProjectCo, or enter into any closing or similar agreement, consent to any extension or waiver of the limitation period applicable to any Tax claim or assessment against ProjectCo;

### Seller shall not and prior to Closing shall not permit ProjectCo to make or authorize any change in the Organizational Documents of ProjectCo;

### Seller shall not and prior to Closing shall not permit ProjectCo to hire any employee for ProjectCo or adopt any Employee Benefit Plan of ProjectCo or incur any Liability under any Employee Benefit Plan;

### Seller shall not and prior to Closing shall not permit ProjectCo to undertake any recapitalization of ProjectCo or reorganization, liquidation, dissolution or winding up;

### Prior to Closing, Seller shall not permit ProjectCo to acquire any Asset that is not necessary for, or utilized consistent with Prudent Industry Practices in connection with, Project Activities;

### Prior to Closing, Seller shall not permit ProjectCo to engage in any line of business other than Project Activities;

### No Affiliate of Seller, other than, prior to Closing, ProjectCo, shall acquire any right or interest in or to the Project Assets;

### Seller shall not and prior to Closing shall not permit ProjectCo to capture energy from the Project except as contemplated under the Contract for Differences;

### Seller shall not and prior to Closing shall not permit ProjectCo to commit or agree to do any of the foregoing or permit any of the foregoing to occur;

### Seller, and prior to Closing, ProjectCo and their Affiliates shall not create or commit to any Support and Affiliate Obligations, other than (i) any Support and Affiliate Obligations arising under a Project Contract, and (ii) any other Support and Affiliate Obligations if the same have been approved in advance and in writing by Purchaser;

### Seller and its Affiliates shall not and prior to Closing shall not permit ProjectCo to breach any obligations set forth in the AES Safety and Security Standards; and

### Seller shall not permit ProjectCo to enter into any Real Property Agreement for a leasehold, easement or non-fee interest for fewer than [20] years from the Closing Date without Purchaser’s prior approval.

## Insurance

. From the Signing Date through the NTP Date, Seller shall (and, prior to Closing, shall cause ProjectCo to) obtain and continuously maintain (and pay the premiums and other applicable amounts for) any and all insurance coverages required of Seller or ProjectCo pursuant to Laws and any and all insurance coverages required in Section 19.16 of the Disclosure Schedules and otherwise comply with the associated insurance requirements provided in that Schedule. From the NTP Date through the Project Substantial Completion (or later if and as required by Exhibit H), Seller shall obtain and continuously maintain (and pay the premiums and other applicable amounts for) any and all insurance coverages required of Seller pursuant to Laws and any and all insurance coverages required in Exhibit H and otherwise comply with the associated insurance requirements provided in the Exhibit. Seller shall not change, modify, or otherwise amend or terminate any of the required insurance coverages set forth on Section 19.16 of the Disclosure Schedules or Exhibit H, other than to enhance cover or for immaterial administrative-type changes in the ordinary course of business, without first obtaining Purchaser’s prior written approval.

## Project Representations

. Seller acknowledges and agrees that, as of the Signing Date, all representations and warranties of Seller provided in Article 18 and Article 19 shall relate to the entire planned Project of the Battery Capacity and all Project Assets associated with the planned Project of the Battery Capacity as of the Signing Date, all without regard to whether Seller or ProjectCo owns any Project Assets at any such date.

## Impact of Purchaser Approval or Inspection of Work

. No inspection or review of, or failure to inspect or review, the Work by Purchaser, its agents, or representatives shall relieve Seller of its obligation to achieve Project Substantial Completion.

# Changes in the Work

## No Seller Changes

. Seller acknowledges and agrees that (i) other than as a result of Force Majeure or an Excusable Event, Seller shall have no right to any adjustment to the Critical Path Project Schedule as a result of any matter, event or circumstance; provided that in no event shall there be any extension of the Guaranteed Project Substantial Completion Date (except if extended as a result of a Force Majeure) and (ii) other than as a result of an Excusable Event or as otherwise expressly provided in this Agreement, Seller shall have no right to any increase in the Contract Price as a result of any matter, event, or circumstance.

## Purchaser Initiated Changes

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### Purchaser may request changes in the Work by submitting a change request to Seller in writing setting forth in detail the nature of the requested change. The request shall not require any Work that is prohibited under applicable Law, the applicable Real Property Agreement(s), or that requires an amendment to any Real Property Agreement (unless such amendment is procured).

### Upon receipt of a change request, Seller shall initiate discussions with the Battery Component Suppliers, the EPC Contractor and any other Subcontractors (as applicable) and, within fourteen (14) Days after Purchaser’s request (or such longer period, if reasonably requested by Seller, not to exceed 30 Days), return a proposal to Purchaser that includes:

#### the proposed increase, if any, in the Contract Price that would result from such a change, including any increase in the Contract Price required to accelerate the Work and avoid delaying any Milestone (including the Guaranteed Project Substantial Completion Date) if requested by Purchaser;

#### to the extent applicable, evidence reasonably satisfactory to Purchaser that the implementation of any requested change in the Work will impact Seller’s ability to achieve Project Substantial Completion by the Guaranteed Project Substantial Completion Date and that Seller is not physically able to accelerate the Work in order to avoid delaying any Milestone (a “**Non-Acceleration Justification**”); and

#### such other supporting data and documentation reasonably requested by Purchaser in its change request.

### Purchaser shall, within ten (10) Days (unless a shorter period is required in connection with a Non-Acceleration Justification) following its receipt of that proposal, notify Seller as to whether Purchaser agrees with that proposal under Section 6.2(a) and wishes to accept Seller’s proposal.

### if Purchaser agrees with the proposal and wishes to accept the proposal, Purchaser and Seller shall execute a Change Order reflecting the proposal. Upon at least five (5) Days’ prior written notice to Seller, Purchaser may terminate a Change Order to the extent Seller has not commenced any Work, refrained from commencing any Work or incurred any expenses thereunder.

### if Purchaser disagrees with Seller’s proposal, Purchaser shall have the right to withdraw its requested change by delivery of written notice to Seller of such withdrawal within ten (10) Days of receipt of Seller’s proposal.

### if Purchaser disagrees with Seller’s proposal but wishes to further negotiate the proposal with Seller, Purchaser shall provide comments to Seller’s proposal within ten (10) Days of receipt of Seller’s proposal.

### If Purchaser does not respond to Seller’s proposal within the preceding ten (10) Day time period (or such shorter time period as required in connection with a Non-Acceleration Justification), then, Seller shall provide an additional notice and if Purchaser fails to respond within two (2) Business Days after Seller’s redelivery of the proposal, Purchaser shall be deemed to have withdrawn its requested change.

## Waiver of Claims

. By executing a Change Order, Seller and Purchaser thereafter waive the right to assert any further claim based on the subject matter of, or the claim addressed by, the Change Order; it being acknowledged and agreed by Seller and Purchaser that any Change Order shall, completely address and act as full and final settlement of any impact to Seller or ProjectCo associated with the subject matter of, or the claim addressed by, such Change Order.

# Purchaser Obligations

## Pursuit of State Regulatory Approval

. Purchaser shall use commercially reasonable efforts to make any initial filing for State Regulatory Approval no later than twenty (20) Business Days after the Effective Date (the “**State Regulatory Target Filing Date**”). Seller shall act diligently and cooperate with Purchaser’s efforts to seek State Regulatory Approval and promptly provide any information, including the filing of testimony, reasonably requested by Purchaser or required for State Regulatory Approval and/or any regulatory proceedings or litigation that may arise relating to the State Regulatory Approval. Nothing in this Agreement shall require Purchaser to accept any condition to, limitation on, or other requirement concerning the State Regulatory Approval that, in Purchaser’s sole discretion, is unacceptable to Purchaser.

## Purchaser’s Representative

. Purchaser shall designate, from time to time, a principal representative of Purchaser (the “**Purchaser’s Representative**”), who shall be Purchaser’s authorized representative, and who shall receive and initiate all communications from and with Seller.

## Purchaser Approvals

. Other than changes to the Work pursuant to Section 6.2, Seller acknowledges and agrees that any review, approval, comment or evaluation by Purchaser of any plans, drawings, specifications or other documents prepared by or on behalf of Seller or any inspection of the Work, Project, or Project Real Property by Purchaser, its agents, or representatives shall be solely for Purchaser’s determining for Purchaser’s own satisfaction of the suitability of the Project for use as battery energy storage facility, and may not be relied upon by Seller, Subcontractors, or any other third party as a substantive review or acceptance thereof. Other than changes to the Work pursuant to Section 6.2, Purchaser, in reviewing, approving, commenting on or evaluating any plans, drawings, specifications or other documents, shall have no responsibility or liability for the accuracy or completeness of such documents, for any defects, deficiencies or inadequacies therein or for any failure of such documents to comply with the Requirements; the responsibility for all of the foregoing matters being the sole obligation of Seller. Other than changes to the Work pursuant to Section 6.2, in no event shall any review, approval, comment or evaluation by Purchaser relieve Seller of any liability or responsibility under this Agreement, it being understood that Purchaser is at all times ultimately relying upon Seller’s skill, knowledge and professional training and experience in preparing any plans, drawings, specifications or other documents.

## Safety; Compliance with Law

. In connection with Purchaser’s rights under this Agreement, Purchaser and Purchaser’s representatives shall, while present at the Project Site, (i) comply with all Laws and customary and reasonable safety rules of which Seller, or any Subcontractor of Seller, has made Purchaser or Purchaser’s representatives aware (including, but not limited to, any required safety briefings or training), and (ii) shall not interfere with Seller’s or any Subcontractors’ performance of the Work.

## Independent Engineer

. Promptly following the Signing Date, the Parties shall select and engage an independent professional engineer licensed in the State of [Indiana] from the list mutually agreed upon by the Parties to serve as the independent engineer in providing the support to Purchaser and Seller as is necessary for the construction of the Project and completion of the Transactions (the “**Independent Engineer**”). The Parties will cause ProjectCo to enter into an Independent Engineer Services Agreement prior to the Closing specifying the duties of the Independent Engineer. Among other things, the Independent Engineer will: (i) provide a neutral, third-party certification that the work performed by the EPC Contractor conforms with the requirements of the EPC Contract in connection with the achievement of Mechanical Completion, Project Substantial Completion and Final Completion, (ii) approve the final punch list of items of EPC Contractor’s work to be completed and the completion by the EPC Contractor of the punch list items, and (iii) approve the Punch List Holdback. The Independent Engineer will certify that all Milestones have been satisfied, including for the purposes of authorizing payment of installments of the Contract Price based on Milestones or the progress of the Work.

**Section 7.6. Access to the Project Site**. After the Closing, Purchaser shall provide Seller, its representatives, and any other authorized personnel reasonable access during normal business hours and upon reasonable advance notice to the Project Real Property and any other areas where the Work is being performed in order to observe and take photographs of the progress of the Work and any commissioning and testing of the Project, provided Seller and Seller’s representatives follow all safety rules and protocols of Purchaser and Subcontractors and do not take any actions in violation of the Real Property Agreements.

# Critical Path Project Schedule & Completion Criteria

## Critical Path Project Schedule

. Seller shall use Commercially Reasonable Efforts to perform the Work in accordance with the Critical Path Project Schedule. Except as a result of Force Majeure or an Excusable Event, the Critical Path Project Schedule shall not change without the prior written approval of Purchaser, which approval shall not be unreasonably withheld, conditioned or delayed. Purchaser has no obligation to consider, and may reject for any reason, or no reason, any request to extend the Guaranteed Project Substantial Completion Date for any reason other than Force Majeure or Excusable Event. Subject to Section 6.1 herein, Seller shall, by the Guaranteed Project Substantial Completion Date, achieve Project Substantial Completion, satisfy the conditions precedent contained in Section 12.7, and be capable of consummating Project Substantial Completion in accordance with the terms of Article 8.

## Recovery Plan

. If, at any time after Closing, Seller fails to achieve or Purchaser reasonably believes that Seller will fail to achieve one (1) or more Critical Milestones by the expected completion date for that Milestone(s) in the Critical Path Project Schedule and the failure to meet that Critical Milestone(s) is not a result of a Force Majeure or an Excusable Event, Purchaser may provide written notice of the failure to Seller and Seller shall, within ten (10) Days of receipt of the written notice from Purchaser, submit a proposed recovery schedule to Purchaser

. The proposed recovery schedule will, at a minimum, demonstrate the means by which Seller intends to recapture lost time, meet Critical Milestones and achieve Project Substantial Completion by the Guaranteed Project Substantial Completion Date. If Purchaser is satisfied with the proposed recovery schedule, it shall provide written notice of its satisfaction to Seller, and Seller shall implement the proposed recovery schedule promptly (that approved schedule, the “**Recovery Plan**”).

# Correction of Work

## Corrective Work

. Prior to Project Substantial Completion, Seller shall promptly correct, or cause to be corrected, at no additional cost to Purchaser, any Work which fails to comply with the Requirements.

## Non-Conforming Work

. If, as a result of any inspection, examination, or testing in accordance with this Agreement, Purchaser identifies any defective Work not in compliance with the requirements of this Agreement, and regardless of whether payment has been made therefor, then Purchaser may reject such portion of the Work prior to the Project Substantial Completion Date by prompt Notice to Seller. Such Notice shall describe such defect in reasonable detail. Seller shall, at its sole cost and expense, promptly correct any such defect (except if such defect is a Non-Critical Deficiency, in which case it shall be included on the Punch List) and promptly provide Notice to Purchaser that such corrective measures have been completed. Any Dispute regarding the existence or correction of any such defect shall be resolved pursuant to the Dispute resolution provisions hereof.

## Punch List Completion

. The Seller shall cause all items on the Punch List (the “**Seller Punch List Items**”) to be completed no later than ninety ( 90) Days after the achievement of Project Substantial Completion or as soon as reasonably practicable thereafter (the “**Punch List Completion Deadline**”).

## Punch List Reduction and Holdback

. The Purchaser shall withhold from the Contract Price an amount equal to  one hundred fifty percent (150%) of the estimated cost to complete all of the Seller Punch List Items as agreed between the Parties pursuant to Section 12.7 and as approved by the Independent Engineer pursuant to Section 7.5 (such amount, the “**Punch List Holdback**”). Upon completion of a Seller Punch List Item, Purchaser shall release the corresponding portion of the Punch List Holdback to Seller within five (5) Business Days.

## Completion by Purchaser

. If the Seller Punch List Items are not completed by the Punch List Completion Deadline, Purchaser may complete the Seller Punch List Items without further involvement by Seller or its Subcontractors upon prior written notice to Seller. All reasonably documented costs and expenses incurred by Purchaser in so completing the Seller Punch List Items shall be borne by Seller, and Purchaser shall be entitled to draw, first, on the Punch List Holdback and second, in the event the Punch List Holdback is insufficient, on the Credit Support, in order to reimburse itself for all such costs and expenses. To the extent the aggregate amount of the costs and expenses incurred by Purchaser to so complete the Seller Punch List Items is less than the amount of the Punch List Holdback, the remaining balance of such holdback shall be returned to Seller promptly after completion of the final Seller Punch List Item.

# Excusable Event

## Effect of Excusable Event

. Subject to the terms of this Article 10, Seller shall not be in default or in breach of its obligations under this Agreement or otherwise be liable to Purchaser for any delay or failure in the performance of any of its obligations under this Agreement if and to the extent such delay or failure is a result of an Excusable Event arising after the Signing Date. The protections afforded under this Article 10 to Seller shall be of no greater scope and no longer duration, than is required by the Excusable Event. Notwithstanding anything to the contrary contained herein, no Excusable Event shall relieve, suspend or otherwise excuse any Party from performing any obligation to make any payment owed to Purchaser or to indemnify, defend or hold harmless another Party pursuant to this Agreement.

## Notice of Excusable Event

. If Seller considers that any event of Excusable Event has occurred which may affect performance of its obligations under this Agreement, it shall promptly, but no more than ten (10) Days after Seller knows or reasonably should be aware of the Excusable Event, notify the Purchaser thereof stating the particulars, including the obligations that are potentially affected thereby and identifying any specific potential impact on the Critical Path Project Schedule (including the Milestones) and/or the Contract Price , 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, Seller shall provide Purchaser with an updated notice identifying the full particulars set forth above. The failure of Seller to comply with the notice requirements set forth in this Section 10.2 shall act as a waiver of Seller’s entitlement to a Change Order for the particular Excusable Event.

## Change Order for Excusable Event

. After Seller’s compliance with Section 10.2, the Parties shall execute a Change Order to (a) adjust the Critical Path Project Schedule (other than the Guaranteed Project Substantial Completion Date), to account for material delays to the Critical Path Project Schedule resulting from the Excusable Event and/or (b) adjust the Contract Price to account for the material increase in the cost of the performance of the Work resulting from the Excusable Event.

## Continued Performance to Mitigate Effect

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

# Force Majeure

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## Effect of Force Majeure

. Neither Party shall be in default or in breach of its obligations under this Agreement or otherwise be liable to the other Party for any delay or failure in the performance of any of its obligations under this Agreement if and to the extent the delay or failure is a result of Force Majeure arising after the Signing Date and is excused by this Article 11; *provided, however,* that extensions attributable to Force Majeure shall not exceed one hundred eighty (180) Days. The protections afforded under this Article 11 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 Agreement.

## Notice of Force Majeure

. If either Party considers that any event of Force Majeure has occurred which may prevent performance of its obligations under this Agreement, it shall promptly, but in any event no more than two (2) Business Days after its knowledge of the event of Force Majeure preventing the Party’s performance, notify the other Party thereof stating the particulars, including the obligations that are potentially prevented thereby and identifying any potential specific impact on the Critical Path Project Schedule, the actions taken to minimize the impact thereof, the estimated period during which performance may be 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 11.2 shall act as a waiver of the notifying Party’s entitlement to an adjustment to a Change Order for the particular Force Majeure event.

## Change Order for Force Majeure

. After the notifying Party’s compliance with Section 11.2, the Parties shall execute a Change Order to adjust the Critical Path Project Schedule to account for material delays to the Critical Path Project Schedule, resulting from the Force Majeure to the extent the Critical Path Project Schedule is negatively impacted by the Force Majeure event. For purposes of clarity, the Contract Price shall not be increased due to an event of Force Majeure.

## 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 Agreement within the shortest time practicable and continue to perform its obligations under this Agreement insofar as they are not affected by the Force Majeure.

# Commissioning and Testing

## Commissioning

. Seller shall perform its commissioning activities in accordance with Exhibit I.

## Performance Test

. Seller shall conduct the Performance Test for the Project in accordance with Exhibit J-1 to confirm that the Project complies with the Final Drawings & Specifications. For each Performance Test, Seller shall (i) prepare or cause to be prepared a complete final written report (the “**Performance Test Report**”) that documents, presents, analyzes, and explains the performance and final results of the relevant Performance Test in a logical, organized and professional manner (the “**Performance Test Results**”) and certifies the accuracy and completeness of the Performance Test Report, including the Performance Test Results, within five (5) Days after the conclusion of the relevant Performance Test and (ii) deliver or caused to be delivered the relevant Performance Test Report to Purchaser and Independent Engineer. If the Project does not meet the Minimum Performance Test Requirements, Seller shall take corrective action and repeat the Performance Test until the Performance Test is Successfully Run and the Minimum Performance Test Requirements are met. Seller shall perform such corrective action at Seller’s sole cost and expense. With respect to each Performance Test, if Seller achieves the Minimum Performance Test Requirements pursuant to such Successfully Run Performance Test but cannot achieve the Guaranteed BESS RT Efficiency, in the case of a BESS RT Efficiency Test, the Guaranteed BESS Storage Capacity, in the case of a BESS Storage Capacity Test, Seller shall pay to Purchaser the related liquidated damages as and when required under Article 15. Each of the Parties and its representatives, including the Independent Engineer, shall have the right to be present during and to observe any Performance Test under this Agreement.

## Completion Testing

. In conducting the Performance Test, the Functional Test, and all other testing required in this Agreement, at least thirty (30) Days prior to conducting the relevant test, Seller shall provide Purchaser and Independent Engineer a detailed test plan to confirm that the BESS conforms in all respects to the Final Drawings & Specifications (“**Testing Plan**”). Within ten (10) Business Days after receipt of the corresponding Testing Plan, Purchaser and Independent Engineer may provide written comments as to the same. If any comment indicates that a Testing Plan does not materially comply with the requirements contained in the Final Drawings & Specifications (“**Testing Non-Compliance Comments**”), Seller shall revise and resubmit the same for review and comment as provided herein; provided that if Seller disagrees with any Testing Non-Compliance Comments, the Parties will resolve such dispute following the dispute resolution procedures set forth in Section 26.1. As to any comments which are not Testing Non-Compliance Comments, Seller shall, within ten (10) Days after their receipt of such comments, provide notice to Purchaser and Independent Engineer that either (A) Seller will incorporate such comments into the corresponding Testing Plan (in which event, they shall resubmit the package for Purchaser’s and Independent Engineer’s review and comment as provided herein), or (B) Seller does not intend to incorporate the comments into the corresponding Testing Plan (which notice shall state the reasons therefor). None of the comments from Purchaser and Independent Engineer shall relieve Seller from its sole responsibility for the design, engineering, procurement and construction of the Work in accordance with the Requirements. If Purchaser does not respond within such ten (10) Business Day period then, Seller shall provide an additional notice and if Purchaser fails to respond within two (2) Business Days after Seller’s redelivery of a Testing Plan with any written comments, Seller shall proceed with the Testing Plan, provided that neither any comments from Purchaser nor the absence thereof shall be deemed any acceptance by Purchaser of the Testing Plan or waive any right of Purchaser under this Agreement.

## Performance Test Schedules

. Seller shall give Notice to Purchaser and Independent Engineer at least five (5) Business Days prior to commencing a Performance Test, provided that re-performance of tests shall require only two (2) Business Days’ Notice. Seller shall keep Purchaser’s Representative and Independent Engineer continuously apprised of the schedule for all testing and changes in the schedule, as well as the commencement and performance of any tests.

## Mechanical Completion

#### . Subject to Section 12.6, “**Mechanical Completion**” shall occur only if all the following have occurred:

### Purchaser has approved the final Commissioning Plan and final Performance Test procedure;

### the Project has been installed in accordance with the Final Drawings & Specifications (except that interconnection has not occurred and it has not been synchronized into the grid), is mechanically and electrically sound, and is ready for synchronization and initial start-up;

### all pre-operational testing not requiring energization has been successfully completed;

### the Project satisfies the requirements of, and is in compliance with, the Interconnection Agreement and all Laws and applicable Permits; and

### the Project is ready to be started-up and thereafter, following synchronization into the grid and satisfactory adjustment, operational testing and commissioning, will be ready to be continuously operated without damage to the Project or any other property and without injury to any Person and without voiding any third-party warranties.

## Notice of Mechanical Completion

. At least thirty (30) Days before the time that Seller reasonably believes it has achieved Mechanical Completion, Seller shall deliver to Purchaser and Independent Engineer a Notice of Mechanical Completion, together with reasonable supporting documentation evidencing the satisfaction of the conditions to Mechanical Completion set forth in the definition thereof and indicating the date that it estimates that Project Substantial Completion will occur. Within two (2) Business Days after receipt of the Notice of Mechanical Completion, Purchaser shall deliver its countersignature to the Notice of Mechanical Completion or, if Purchaser rejects Seller’s Notice, respond in writing, giving its reasons for such rejection. Thereafter, Seller shall take the appropriate corrective action. Upon completion of such corrective action, Seller shall provide to Purchaser and Independent Engineer a new Notice of Mechanical Completion for approval. This process shall be repeated on an iterative basis until Purchaser accepts the Notice of Mechanical Completion, as applicable, and delivers its countersignature to the Notice of Mechanical Completion.

## Project Substantial Completion

. Subject to Section 12.8, Project Substantial Completion shall occur only if the requirements described in the definition of “Project Substantial Completion” are met and all of the following have occurred:

### Mechanical Completion shall have been achieved and no event or circumstance has occurred and is continuing that would cause any of the criteria in Section 12.5 to cease to be true;

### all instruments and relays have been installed and are functional;

### all Functional Tests of the Project have been successfully completed;

### Purchaser has received all Seller deliverables required to be delivered by the Project Substantial Completion Date, including:

#### final Commissioning Plan;

#### draft as-builts for all drawings and documents submitted during the engineering and design phase and during Project construction as described above with final as-builts to be delivered as a condition to Final Completion;

#### all Project operation and maintenance manuals, including all OEM manuals and related documentation;

#### copies of all training manuals;

#### copies of all Permits; and

#### copies of all monthly reports.

### Punch List has been prepared and approved by Purchaser;

### the Project has successfully completed start up and commissioning pursuant to Exhibit I and in accordance with the Performance Standard;

### after the Project has achieved initial synchronization with the Transmission System and is available for normal and continuous operation and fully capable of reliably producing energy, capacity and capacity-related benefits;

### Seller and the Project shall have successfully performed and completed each Performance Test in accordance with the requirements of this Agreement and the Performance Test Results from that Performance Test show that the Project has achieved all of the Minimum Performance Test Requirements;

### Seller shall have delivered to Purchaser and Independent Engineer the Performance Test Report for each Performance Test setting forth the Performance Test Results and showing that all Minimum Performance Test Requirements were achieved and all other requirements for passing the applicable Performance Test were satisfied;

### the Initial BESS Storage Capacity Test has been Successfully Run and either: (i) the results reflect achievement of the Guaranteed BESS Storage Capacity, or (ii) Seller has paid to Purchaser the undisputed Initial BESS Storage Capacity Liquidated Damages, if any, for the failure or failures; and

### the Initial BESS RT Efficiency Test has been Successfully Run and either: (i) the results reflect achievement of the Guaranteed BESS RT Efficiency, or (ii) Seller has paid to Purchaser the undisputed Initial BESS RT Efficiency Liquidated Damages, if any, for the failure or failures.

## Notice of Project Substantial Completion

. At least thirty (30) Days before the time that Seller reasonably believes that it has satisfied the provisions of Section 12.7, Seller shall deliver to Purchaser and Independent Engineer written Notice of the same to Purchaser (“**Notice of Project Substantial Completion**”), together with reasonable supporting documentation evidencing the satisfaction of the provisions in Section 12.7, indicating the date that it estimates that Final Completion will occur and providing a proposed Punch List, which shall include the estimated cost to complete all of the Seller Punch List Items. Within two (2) Business Days after receipt of the Notice of Project Substantial Completion, Purchaser shall deliver its countersignature to the Notice of Project Substantial Completion or, if Purchaser rejects Seller’s Notice, respond in writing, giving its reasons for such rejection. Thereafter, Seller shall take the appropriate corrective action. Upon completion of such corrective action, Seller shall provide to Purchaser and Independent Engineer a new Notice of Project Substantial Completion for approval. This process shall be repeated on an iterative basis until Purchaser accepts the Notice of Project Substantial Completion, as applicable, and delivers its countersignature to the Notice of Project Substantial Completion. The “**Project Substantial Completion Date**” of the Project shall be [\_\_\_\_\_\_], 20[\_\_].

## Final Completion

. Subject to Section 12.10, “**Final Completion**” shall occur only if all of the following have occurred:

### Project Substantial Completion shall have been achieved.

### The Punch List items have been completed.

### The Final BESS Storage Capacity Test, if any, of the Project has been Successfully Run and such Final BESS Storage Capacity Test reflects achievement of the Guaranteed BESS Storage Capacity or Seller has paid to Purchaser any applicable Final BESS Storage Capacity Liquidated Damages pursuant to Section 15.4.

### The Final BESS RT Efficiency Test, if any, of the Project has been Successfully Run and such Final BESS RT Efficiency Test reflects achievement of the Guaranteed BESS RT Efficiency or Seller has paid to Purchaser any applicable Final BESS RT Efficiency Liquidated Damages pursuant to Section 15.7.

### All of Seller’s and Subcontractors’ personnel shall have left the Project, and all tools and waste materials and rubbish other than those to which Purchaser holds title shall have been removed from the Project (other than Seller’s personnel, supplies, tools, machinery, materials, and equipment required for the performance of its obligations under all operations and maintenance agreements executed between the Parties, if applicable).

### Seller shall have delivered to Purchaser all Seller deliverables in accordance with the requirements set forth in Exhibit M.

## Notice of Final Completion

. When Seller believes that it has satisfied the provisions of Section 12.9, Seller shall deliver to Purchaser and Independent Engineer a Notice of Final Completion, together with reasonable supporting documentation evidencing the satisfaction of the provisions in Section 12.9. Within ten (10) Business Days after receipt of the Notice of Final Completion, Purchaser shall deliver its countersignature to the Notice of Final Completion or, if Purchaser rejects Seller’s Notice, respond in writing, giving its reasons for rejection. Thereafter, Seller shall take the appropriate corrective action. Upon completion of such corrective action, Seller shall provide to Purchaser and Independent Engineer a new Notice of Final Completion for approval. This process shall be repeated on an iterative basis until Purchaser accepts the Notice of Final Completion, as applicable, and delivers its countersignature to the Notice of Final Completion. The “**Final Completion Date**” of the Project shall be the date on which Seller signed and dated the Notice of Final Completion, provided the Notice of Final Completion is accepted and agreed by Purchaser.

## Seller’s Access After Closing

. Following Closing, Purchaser shall, and shall cause ProjectCo to, provide Seller with reasonable and timely access to the Project to (a) complete all Work and (b) satisfy the other requirements with respect to the Project for Final Completion. Seller shall perform any Work after Project Substantial Completion with minimal interference with commercial operation of the Project or any portion thereof, and reductions in and shut-downs of all or part of the Project’s operations will be required only when necessary, taking into consideration the length of the proposed reduction or shut-down, and Purchaser’s obligations and liabilities under the Contract for Differences. Notwithstanding the foregoing, should a reduction in all or part of the Project’s operations be required to complete any items on the final Punch List, then such reduction or shut-down shall be scheduled by Purchaser, acting reasonably, and Seller shall complete such Work during the Purchaser-scheduled reduction or shut-down. Seller acknowledges that Purchaser may schedule the reduction or shut-down at any time, including off-peak hours, nights, weekends, and holiday. For the avoidance of doubt, during the Capacity Test Cure Period, if any, Purchaser shall have the right to operate the Project, including the right to maximize the economic benefits of the Project.

# Warranties Concerning the Work

## Warranty

. Seller warrants that (i) the Work and every component thereof will be performed in accordance with the Requirements, and (ii) each applicable item of Project Hardware shall conform to the applicable warranty requirement set forth on Exhibit K. For the avoidance of doubt, all “Work” includes all Work performed by Purchaser or its representative pursuant to Section 13.3.

## Warranty Term

. The warranty set forth in Section 13.1 above shall commence on the Project Substantial Completion Date and apply for a period equal to [two (2) years] after the Project Substantial Completion Date, as such period may be extended as provided below, (the “**Warranty Period**”). In the event any portion of the Work is covered by a warranty of a Subcontractor for a period greater than that stated in the preceding sentence, Seller shall assign that warranty to Purchaser prior to the end of the Warranty Period.

## Remedy

. If, during the Warranty Period, any of the Work supplied is found to not be in compliance with the warranty set forth in Section 13.1, Seller shall within five (5) Business Days of written notice by Purchaser, commence to make all necessary alterations, repairs, or replacements at no cost to the Purchaser (the “**Warranty Service**”). If the defect cannot be corrected, Seller shall replace the Work at no cost to Purchaser. The Warranty Service shall include, at no cost to Purchaser, all necessary disassembly, transportation, reassembly, and retesting, as well as reworking, repair, or replacement of the Work, disassembly, and reassembly of components, machinery, equipment, or other Work as necessary to give access to improper, defective, or non-conforming Work and correction, removal, or repair of any damage to other Work or property that arises from the defect. Whenever Warranty Service is required, Seller shall bear the risk of physical loss or damage to the Project as a result of Seller’s activities performing Warranty Service to the extent not covered by Purchaser’s insurance. In the event of any reimbursement by Purchaser’s insurance for that damage, Seller shall be responsible for associated deductibles or retention up to the maximum amount of permitted deductible. Any alterations, repairs, or replacements made pursuant to this Section 13.3 shall be further warranted for a period equal to the greater of (i) the remaining Warranty Period and (ii) twelve (12) months from the date of the reinstallation, alteration, repair, or replacement or, if applicable, such other period as specified on Exhibit K, *provided* that in no event shall the Warranty Period with respect to any Work exceed thirty-six (36) months after the Project Substantial Completion Date or, if applicable, such other period as specified on Exhibit K. If Seller believes the Warranty Service will prevent operation of all or a portion of the Project for more than ten (10) Business Days, Seller will notify Purchaser of the anticipated time and, within five (5) Business Days after receipt of the Notice, a Vice President (or equivalent) of each of the Parties shall meet, either in person or by telephonic conference, to mutually agree upon a plan to perform Warranty Service.

## Failure to Correct

. In the event that Seller fails to undertake and prosecute reasonable actions to correct defects after written notice from Purchaser, in accordance with Section 13.3 above, then Purchaser, after providing five (5) Business Days’ Notice to Seller, may correct the defect so that the defective component complies with the requirements of this Agreement, and Seller shall be liable for allLosses incurred by Purchaser in connection with the repair or replacement and shall forthwith pay to Purchaser an amount equal to those Losses upon receipt of invoices with supporting documentation certified by Purchaser.

## Conditions of Warranty

. The warranty set forth herein shall be exclusive of: normal wear and tear; normal degradation of the Work or the Project; misuse of the Work or the Project by Purchaser or negligence by Purchaser in its operation or maintenance, except to the extent the Seller or its Affiliate is the operator or administrator of the Project; defects in the Work performed by Purchaser or its representative; and operation or maintenance of the Work or the Project not in accordance with the written industry standards, except to the extent the Seller or its Affiliate is the operator or administrator of the Project.

## Warranty Administration

. Seller shall obtain all customary warranties available from Subcontractors and Battery Component Suppliers under this Agreement. Such warranties shall be obtained for the benefit of Purchaser, as well as for Seller, and, other than with respect to any subcontract in respect of any Project Hardware, shall be assignable to Purchaser or Purchaser’s designee upon Purchaser’s request, provided that Purchaser hereby agrees to allow Seller to call upon such warranties to the extent necessary to allow Seller to fulfill its warranty obligations hereunder.

## Serial Defects

. If fifteen percent (15%) or more of the same or substantially similar type of component comprising the Work contains a Defect (that Defect, a “**Serial Defect**”) then Seller shall perform, at its sole cost and expense, an industry-standard root cause analysis of that component failure to determine whether the failure constitutes a Serial Defect of either manufacture or design. If the Serial Defect is a manufacturing defect, then Seller shall require the manufacturer of the component or components to repair, replace or otherwise correct all such components, irrespective of whether or not the Defect has manifested itself. If the Serial Defect is a design defect, then Seller shall cause the manufacturer redesign, retrofit, repair, and replace the components, irrespective of whether or not the Defect has manifested itself, to eliminate the Serial Defect as quickly as possible. Any item repaired or replaced under this Section 13.7  shall be warranted for the time period set forth in Section 13.2.

## Latent Defects

. Seller will provide directly or from its Subcontractors or Battery Component Suppliers a 7-year latent defect warranty. If, following the end of the Warranty Period, Purchaser observes or discovers any error, omission, defect or deficiency in the Work that would not have been revealed to Purchaser during the Warranty Period despite Purchaser’s exercise of reasonable due diligence in operating and maintaining the Project Facilities, Seller shall effect (or cause the relevant Subcontractor or Battery Component Supplier to effect) the repair or replacement of the non-compliance with the Warranty (including any necessary uncovering and recovering) provided that notice of the error, omission, defect or deficiency shall have been given to Seller by Purchaser within seven (7) years following the Project Substantial Completion Date and provided further that Purchaser provides Seller with the required access to effect the repair or replacement.

## Limitations on Warranties

. THE PROVISIONS OF THIS Article 13 SET FORTH THE EXCLUSIVE REMEDIES FOR ALL WARRANTY CLAIMS UNDER THIS Article 13. THE FOREGOING WARRANTIES ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES WHETHER WRITTEN, ORAL, IMPLIED, OR STATUTORY. EXCEPT FOR THE EXPRESS WARRANTIES AND REPRESENTATIONS SET FORTH IN THIS Article 13, CONTRACTOR DOES NOT MAKE ANY OTHER EXPRESS WARRANTIES OR REPRESENTATIONS OR ANY IMPLIED WARRANTIES OR REPRESENTATIONS OF ANY KIND REGARDING ANY ASPECT OF THE WORK (INCLUDING ALL EQUIPMENT PROVIDED AS PART OF THE WORK HEREUNDER), INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

# Title; Risk of Loss

## Title

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### **Condition**

. Seller warrants good title, free and clear of all Liens, claims, charges, security interests, and encumbrances whatsoever, other than those that result from Purchaser’s failure to make payments hereunder, to all Work, Project Hardware, and other items furnished by Seller or any of the Subcontractors that become part of the Project or that are to be used for the operation, maintenance, or repair thereof, *provided, however*, that this Section 14.1(a) shall not be construed to limit Seller’s mechanics lien rights with respect to the Work provided hereunder.

### **Transfer**

. Subject to Section 14.2, title to the Project Hardware and other items that become part of the Project shall pass to ProjectCo upon the earlier of (i) the date that title passes pursuant to applicable laws; (ii) the date the Project Hardware and other items are incorporated into the Project; and (iii) the date of payment in full for the applicable components of the Project Hardware or other items at issue, it being understood that for purposes of this Section 14.1(b), any retainage in respect of the Project Hardware or other items shall be disregarded and be deemed paid when the non-retained portion of the Project Hardware or other items have been paid.

### **Custody During Performance**

. The transfer of title shall in no way affect Purchaser’s rights as set forth in any other provision of this Agreement. Seller shall have care, custody, and control of all Project Hardware and other items that become part of the Project, and exercise due care with respect thereto until the earlier of (a) the Project Substantial Completion Date and (b) the termination of this Agreement as contemplated in Article 25.

## Risk of Loss

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### **Risk of Loss Before Project Substantial Completion**

. Until the Project Substantial Completion Date, except to the extent otherwise provided herein upon the earlier termination of this Agreement as provided in Article 25, Seller assumes risk of loss and, without limitation of its right to make claims for relief pursuant to Section 9.2, responsibility for the cost of replacing or repairing any damage to the Work, the Project, or any portion thereof, including Project Hardware. Despite the passage of title, as set forth in Section 14.1, Seller shall bear risk of loss of; have the care, custody, and control of; and bear the responsibility of preserving, safeguarding, and maintaining any and all materials, equipment, spare parts, supplies, and other items of personal property provided by Seller as part of the Work, whether located at or away from the Project, or any other Work completed with respect to the Project until Project Substantial Completion. Any such materials, equipment, spare parts, supplies, and other items of personal property that are lost, damaged, stolen, or impaired before Project Substantial Completion shall be replaced promptly by Seller at its own expense, subject to any rights hereunder with regard to Excusable Event. Seller shall be responsible for payment of builder’s all-risk insurance policy deductible.

### **Risk of Loss After Project Substantial Completion Date**

. Risk of loss to the Project shall pass to Purchaser on the Project Substantial Completion Date or the earlier termination of this Agreement, unless such loss or damage is (i) caused by Seller, a Subcontractor, a party over whom Seller has control, or any Affiliate of Seller, in which case Seller shall solely be liable for Purchaser’s insurance deductible or (ii) covered by the warranties provided by Seller pursuant to Article 13.

# Liquidated Damages

## Delay Liquidated Damages

. Seller agrees that if Project Substantial Completion is not achieved by the Guaranteed Project Substantial Completion Date, then Seller shall pay the Daily Delay Liquidated Damages to Purchaser for each Day that Seller fails to achieve Project Substantial Completion after the Guaranteed Project Substantial Completion Date until Project Substantial Completion is achieved (the “**Delay Liquidated Damages**”).

## Initial Capacity Liquidated Damages

. Seller agrees that if, based on the Initial BESS Storage Capacity Test, the result of the Initial BESS Storage Capacity Test shall have failed to equal or exceed the Guaranteed BESS Storage Capacity, Seller shall pay an amount equal to the Initial BESS Storage Capacity Liquidated Damages to Purchaser upon Project Substantial Completion. Any Initial BESS Storage Capacity Liquidated Damages paid by Seller to Purchaser shall be either:

### returned to Seller within fifteen (15) Business Days following the Punch List Completion Deadline in the amount payable to Seller pursuant to Section 15.4, or

### retained by Purchaser in an amount equal to (i) the amount remaining, if any, after payment to Seller of the amount due to Seller pursuant to Section 15.3 or (ii) the amount paid by Seller pursuant to Section 15.4.

## Capacity Test Cure Period

. After achieving Project Substantial Completion, Seller may, at its option and sole cost and expense, continue to attempt to achieve the Guaranteed BESS Storage Capacity until the date that is ninety (90) Days after the Guaranteed Project Substantial Completion Date (such period, the “**Capacity Test Cure Period**”). Seller may terminate the Capacity Test Cure Period at any time prior to the end of the Capacity Test Cure Period by Notice to Purchaser.

## Final Capacity Liquidated Damages

. Upon completion of a Final BESS Storage Capacity Test, if any, if the Final BESS Storage Capacity Liquidated Damages differ from the Initial BESS Storage Capacity Liquidated Damages, either (i) Purchaser shall pay to Seller within fifteen (15) Business Days following the Punch List Completion Deadline the amount, if any, by which the Initial BESS Storage Capacity Liquidated Damages paid by Seller or set-off by Purchaser against unpaid portions of the Contract Price exceed the Final BESS Storage Capacity Liquidated Damages; or (ii) within fifteen (15) Business Days following the Punch List Completion Deadline, Seller shall pay to Purchaser the amount, if any, by which the Final BESS Storage Capacity Liquidated Damages exceed the Initial BESS Storage Capacity Liquidated Damages paid by Seller or set-off by Purchaser against unpaid portions of the Contract Price.

## Initial BESS RT Efficiency Liquidated Damages

. Seller agrees that if, based on the Initial BESS RT Efficiency Test, the result of the Initial BESS RT Efficiency Test shall have failed to equal or exceed the Guaranteed BESS RT Efficiency, Seller shall pay an amount equal to the Initial BESS RT Efficiency Liquidated Damages to Purchaser upon Project Substantial Completion. Any Initial BESS RT Efficiency Liquidated Damages paid by Seller to Purchaser shall be either:

### returned to Seller within fifteen (15) Business Days following the Punch List Completion Deadline in the amount payable to Seller pursuant to Section 15.7, or

### retained by Purchaser in an amount equal to (i) the amount remaining, if any, after payment to Seller of the amount due to Seller pursuant to Section 15.6 or (ii) the amount of Initial BESS RT Efficiency Liquidated Damages, plus the amount paid by Seller pursuant to Section 15.7.

## BESS RT Efficiency Test Cure Period

. After achieving Project Substantial Completion, Seller may, at its option and sole cost and expense, continue to attempt to achieve the Guaranteed BESS RT Efficiency until the date that is ninety (90) Days after the Guaranteed Project Substantial Completion Date (such period, the “**BESS RT Efficiency Test** **Cure Period**”). Seller may terminate the BESS RT Efficiency Test Cure Period at any time prior to the end of the BESS RT Efficiency Test Cure Period by Notice to Purchaser.

## Final BESS RT Efficiency Liquidated Damages

. Upon completion of a Final BESS RT Efficiency Test, if any, if the Final BESS RT Efficiency Liquidated Damages differ from the Initial BESS RT Efficiency Liquidated Damages, either (i) Purchaser shall pay to Seller within fifteen (15) Business Days following the Punch List Completion Deadline the amount, if any, by which the Initial BESS RT Efficiency Liquidated Damages paid by Seller or set-off by Purchaser against unpaid portions of the Contract Price exceed the Final BESS RT Efficiency Liquidated Damages; or (ii) within fifteen (15) Business Days following the Punch List Completion Deadline, Seller shall pay to Purchaser the amount, if any, by which the Final BESS RT Efficiency Liquidated Damages exceed the Initial BESS RT Efficiency Liquidated Damages paid by Seller or set-off by Purchaser against unpaid portions of the Contract Price.

## Sole Remedy; Liquidated Damages Not a Penalty

. The remedies provided for in this Article 15, shall be, in addition to Purchaser's rights to terminate this Contract, the sole and exclusive remedies of Purchaser for failure of Seller or the Project to achieve (a) Project Substantial Completion by the Guaranteed Project Substantial Completion Date, including the obligation to achieve commercial operation of the Project in accordance with the Project Schedule, (b) the Guaranteed BESS Storage Capacity, and (c) the Guaranteed BESS RT Efficiency. The Parties agree that Purchaser’s actual damages in the event of such delay or failure may be extremely difficult or impracticable to determine. After negotiation, the Parties have agreed that the Delay Liquidated Damages, Initial BESS RT Efficiency Liquidated Damages, and Final BESS RT Efficiency Liquidated Damages are in the nature of liquidated damages and are a reasonable and appropriate measure of the damages that Purchaser would incur as a result of such delays or failures, and do not represent a penalty.

## Enforceability

. The Parties explicitly agree and intend that the provisions of this Article 15 shall be fully enforceable by any tribunal exercising jurisdiction over any Dispute between the Parties arising under this Agreement. Each Party hereby irrevocably waives any defenses available to it under law or equity relating to the enforceability of the liquidated damages provisions set forth in this Article 15.

## Setoff

. In addition to all other remedies provided herein or available to Purchaser hereunder, Purchaser shall have the right to setoff any sum owed to it under this Article 15 against any Liability or other amount owed by it or its Affiliates to Seller or any of Seller’s Affiliates under this Agreement or any other Transaction Document. The deduction of any such sum shall operate for all purposes as a complete discharge (to the extent of such sum) of the obligation to pay the amount from which such sum was withheld and deducted and will not constitute a default under this Agreement or any other Transaction Document. Neither the exercise of, nor the failure to exercise, such right of setoff will constitute an election of remedies or limit Purchaser in any manner in the enforcement of any other remedies that may be available to it.

# Seller Credit Support

## Seller Credit Support

. No later than ten (10) Business Days after the Signing Date, Seller shall provide either: (a) a Seller Guaranty from an Acceptable Guarantor in form and substance reasonably satisfactory to Purchaser; (b) a Seller Letter of Credit in form and substance, and from an issuer, reasonably satisfactory to Purchaser; or (c) a cash escrow deposited with a financial institution reasonably acceptable to Purchaser and subject to the collateral security arrangements as are reasonably acceptable to Purchaser, in an amount equal to [ ]% of the Contract Price to secure the obligations of Seller under this Agreement. This amount shall be increased to the Contract Price as of the Closing Date stepping down (on a dollar-for-dollar basis) as the Contract Price is paid through the Final Completion Date. 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 16.1 so long as such security meets the requirements for such security set out in this Article 16. If Seller elects to provide a letter of credit, it shall be an irrevocable standby letter of credit, in form and substance acceptable to Purchaser, 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 Expiration 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, Purchaser 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 Agreement in the form of an irrevocable standby letter of credit.

## Draws on Credit Support

. The Credit Support will be maintained at the expense of Seller, and Purchaser shall be entitled to access the Credit Support as necessary to secure Seller’s performance pursuant to this Agreement, including for satisfaction of any amounts owed to Purchaser herein. Purchaser 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 Purchaser under Section 23.1, (iii) as to any Seller Letter of Credit, if Seller fails to timely renew or extend such 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 a qualified Seller Guarantor or provide alternate Credit Support as provided in Section 16.3. Notwithstanding the foregoing, solely with respect to Purchaser’s completion of the Seller Punch List Items pursuant to Section 9.5, Purchaser acknowledges and agrees that it shall not be entitled to access Credit Support until Purchaser has exhausted the Punch List Holdback. Amounts drawn pursuant to Section 16.2(iii) and (iv) may be applied to amounts owed under Section 16.2(i) and (ii) and shall otherwise be held in an interest bearing escrow account and returned to Seller upon Seller’s replacement of such Seller Letter of Credit or Seller Guaranty with a replacement Seller Letter of Credit or Seller Guaranty meeting the requirements of Section 16.1.

## 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 16, in each case, no later than ten (10) Business Days after such the Guarantor ceases to be an Acceptable Guarantor.

## Financial Statements

. If Seller provides a Seller Guaranty as Credit Support, Seller shall provide Purchaser with quarterly unaudited and annual audited financial statements as to the Seller Guarantor (unless the same are publicly available) within sixty (60) Days after the end of each applicable calendar quarter and within one hundred and twenty (120) Days after the end of each applicable calendar year until the Seller Guaranty is released in accordance with Section 16.6. If no Seller Guaranty is then in effect, Seller shall provide Purchaser with quarterly unaudited and annual audited financial statements as to the Seller (unless the same are publicly available) within sixty (60) Days after the end of each applicable calendar quarter and within one hundred and twenty (120) Days after the end of each applicable calendar year until the Credit Support is released or returned pursuant to Section 16.6.

## Security is Not a Limit on Liability

. Credit Support contemplated by this Article 16 constitutes security for, but is not a limitation of, Seller’s obligations hereunder, and shall not be Purchaser’s exclusive remedy for Seller’s failure to perform its obligations in accordance with this Agreement.

## Release of Credit Support

. The remaining balance of Credit Support required under Section 16.1, 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 16.3, (ii) if this Agreement is terminated prior to the Closing, within fifteen (15) Business Days of the termination, and (iii) the date the obligations of Seller under this Agreement have been fully satisfied; provided, however, in either case of the preceding clause (i) or clause (ii), the Credit Support required under Section 16.1 must remain in place in an amount equal to the aggregate value of the claims by Purchaser under this Agreement made in good faith and then pending, if any, but no more than the aggregate amount required under Section 16.1, which Credit Support shall be released once the pending claims are resolved and any monies due in connection therewith have been paid to Purchaser.

# Purchaser and Credit Support

## Purchaser Guaranty

. At Closing, Purchaser shall provide a Purchaser Guaranty from an Acceptable Guarantor in form and substance reasonably satisfactory to Seller in an amount equal to the Contract Price to secure the obligations of Purchaser under this Agreement. This amount will step down (on a dollar-for-dollar basis) as the Contract Price is paid through the Final Completion Date. Purchaser shall have the right in its sole discretion to post a Purchaser Letter of Credit or a Purchaser Guaranty (or a combination thereof) for its security posting obligations under this Section so long as such security meets the requirements for such security set out in this Article 17. The letter of credit must be issued for a minimum term of three hundred sixty (360) Days. Purchaser shall cause the renewal or extension of the letter of credit for additional consecutive terms of three hundred sixty (360) Days until the Expiration 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, Seller shall have the right to draw immediately upon the letter of credit and to place the amounts so drawn, at Purchaser’s cost and with Purchaser’s funds, in an interest bearing escrow account, until and unless Purchaser provides a substitute form of security meeting the requirements of this Agreement in the form of an irrevocable standby letter of credit.

## Draws on Credit Support

**.** The Credit Support will be maintained at the expense of Purchaser, and Seller shall be entitled to access the Credit Support as necessary to secure Purchaser’s performance pursuant to this Agreement, including for satisfaction of any amounts owed to Seller herein. Seller shall have the right to draw against the Purchaser Letter of Credit and/or claim against the Purchaser Guaranty (i) upon the occurrence of a Purchaser Default, (ii) to satisfy any Claim by Seller under Section 23.2, (iii) as to any Purchaser Letter of Credit, if Purchaser fails to timely renew or extend such Purchaser Letter of Credit or provide substitute Credit Support, or the issuer no longer qualifies as a Qualified Issuer, and (iv) as to any Purchaser Guaranty, if Purchaser fails to timely provide a replacement Purchaser Guaranty from a qualified Purchaser Guarantor or provide alternate Credit Support as provided in Section 17.3. Amounts drawn pursuant to Section 17.2(iii) and (iv) may be applied to amounts owed under Section 17.2(i) and (ii) and shall otherwise be held in an interest bearing escrow account and returned to Purchaser upon Purchaser’s replacement of such Purchaser Letter of Credit or Purchaser Guaranty with a replacement Purchaser Letter of Credit or Purchaser Guaranty meeting the requirements of Section 17.1.

## Replacement Credit Support

. If the Purchaser Guarantor ceases to be an Acceptable Guarantor, then Purchaser shall be required to either (i) provide a replacement Purchaser Guaranty from a different Acceptable Guarantor, or (ii) replace the Purchaser Guaranty provided by the unqualified Purchaser Guarantor with a Purchaser Letter of Credit meeting the criteria set forth in this Article 17, in each case, no later than ten (10) Business Days after such the Purchaser Guarantor ceases to be an Acceptable Guarantor.

## Financial Statements

. If Purchaser provides a Purchaser Guaranty as Credit Support, Purchaser shall, upon Seller’s request, provide Seller with quarterly unaudited and annual audited financial statements as to the Purchaser Guarantor (unless the same are publicly available) within sixty (60) Days after the end of each applicable calendar quarter and within one hundred and twenty (120) Days after the end of each applicable calendar year until the Purchaser Guaranty is released in accordance with Section 17.6. If no Purchaser Guaranty is then in effect, Purchaser shall, upon Seller’s request, provide Seller with quarterly unaudited and annual audited financial statements as to the Purchaser (unless the same are publicly available) within sixty (60) Days after the end of each applicable calendar quarter and within one hundred and twenty (120) Days after the end of each applicable calendar year until the Credit Support is released or returned pursuant to Section 17.6.

## Security is Not a Limit on Liability

. Credit Support contemplated by this Article 17 constitutes security for, but is not a limitation of, Purchaser’s obligations hereunder, and shall not be Seller’s exclusive remedy for Purchaser’s failure to perform its obligations in accordance with this Agreement.

## Release of Credit Support

. Notwithstanding anything to the contrary in this Agreement, the remaining balance of Credit Support required under Section 17.1, if any, shall be returned (if a Purchaser Letter of Credit) or released (if a Purchaser Guaranty) to Purchaser at the earlier of (i) replacement by a Purchaser Letter of Credit or Purchaser Guaranty in accordance with Section 17.3, (ii) if this Agreement is terminated prior to the Closing, within fifteen (15) Business Days of the termination, and (iii) Project Substantial Completion Date; *provided, however*, in the case of any of the preceding clause (i), (ii) or (iii), the Credit Support required under Section 17.1 must remain in place in an amount equal to the aggregate value of (A) the claims by Seller under this Agreement made in good faith and then pending, (B) any known claims as of the date of such return or release of the Credit Support under any of the preceding clauses (i), (ii) or (iii), as applicable, and (C) any claims made in good faith related to the underlying reason(s) for termination of this Agreement, if any, but no more than the aggregate amount required under Section 17.1, which Credit Support shall be released once the pending claims are resolved and any monies due in connection therewith have been paid to Seller.

# Representations and Warranties With Respect to Seller

Seller represents and warrants to Purchaser that all of the following are true and correct as of the Signing Date, the Closing Date, Mechanical Completion, Project Substantial Completion and Final Completion (except for those representations and warranties made as of a specified date, which shall be true and correct as of that date):

## Organization, Authority and Validity

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### Seller is a limited liability company[[3]](#footnote-3) duly organized, validly existing and in good standing under the laws of the State of [ ]. Seller has all requisite limited liability company power and authority to carry on its business as it is currently conducted and to own, lease and operate its assets and properties where such assets and properties are now owned, leased or operated.

### Seller has all requisite limited liability company power and authority to execute and deliver this Agreement and the other Transaction Documents to which it is a party, to perform its obligations hereunder and thereunder and to consummate the Transactions. The execution, delivery and performance by Seller of this Agreement and the other Transaction Documents to which Seller is a party and the consummation of the Transactions have been duly authorized by all necessary limited liability company action on the part of Seller.

### This Agreement has been duly executed and delivered by Seller and constitutes the legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting the enforcement of creditors’ rights and subject to general equitable principles. Upon execution and delivery of the other Transaction Documents to which Seller is a party, each such Transaction Document will constitute the legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, moratorium, reorganization or other similar Laws affecting the enforcement of creditors’ rights and subject to general equitable principles.

## No Adverse Orders

. Seller is not (a) subject to any Order which (i) would prevent or materially adversely affect the execution, delivery or performance of this Agreement or the Transactions or any applicable Transaction Documents by Seller or (ii) materially adversely affect or could reasonably be expected to materially adversely affect Seller or (b) a party to, subject to or bound by any Contract, which would prevent or adversely affect the execution, delivery or performance of this Agreement or the Transactions or any applicable Transaction Documents by Seller.

## Solvency

. No petition or notice has been presented, no order has been made and no resolution has been passed for the bankruptcy, liquidation, winding-up or dissolution of Seller. No receiver, trustee, custodian or similar fiduciary has been appointed over the whole or any part of Seller’s assets or the income of Seller. Seller does not have any plan or intention of, or has received any notice that any other Person has any plan or intention of, filing, making or obtaining any such petition, notice, order or resolution or of seeking the appointment of a receiver, trustee, custodian or similar fiduciary. Seller is solvent and is able to pay its debts as they become due and has adequate capital to carry on its business.

## Proceedings

. There are no Proceedings pending or, to Seller’s Knowledge, threatened against or affecting Seller (with respect to the Transactions), or that seeks to restrain or prohibit or to obtain damages or other relief in connection with the Transactions. Except as set forth in Section 18.4 of the Disclosure Schedules, Seller has not received any Order affecting Seller (with respect to the Transactions).

## ProjectCo Interests

. As of the Signing Date and the Closing Date:

### Seller is the sole member of ProjectCo

. ProjectCo Interests represent one hundred percent (100%) of the issued and outstanding membership interests of ProjectCo. Seller owns and is the sole beneficial and record owner of one hundred percent (100%) of ProjectCo Interests free and clear of all Liens. Since the Day of the formation of ProjectCo and continuously thereafter through the Closing, Seller has been the sole beneficial and record owner of all of the issued and outstanding membership interests of ProjectCo. All of ProjectCo Interests (i) have been duly authorized, validly issued and were not issued in violation of any Person’s preemptive or other purchase rights, (ii) have no requirements for the owner thereof to make additional contributions to ProjectCo, and (iii) were issued in compliance with all applicable Law. At Closing, Purchaser will hold of record and own beneficially good and valid title to all of ProjectCo Interests free and clear of any and all Liens. ProjectCo Interests are not certificated.

### Except for the Transactions contemplated under this Agreement and any Tax Equity Investment Documents (when executed), no other Person owns or has any interest in, or option or other right (contingent or otherwise), including any right of first refusal or right of first offer, to acquire ProjectCo Interests or any equity or other ownership interest in ProjectCo. Except for this Agreement, and any Tax Equity Investment Documents, there is no (i) voting trust or agreement, membership agreement, pledge agreement, buy-sell agreement, right of first refusal, preemptive right, “drag-along” or “tag-along” right, membership interest appreciation right, redemption or repurchase right, anti-dilutive right or proxy relating to ProjectCo Interests or ProjectCo, (ii) Contract restricting the transfer of, or requiring the registration for sale of, ProjectCo Interests, or (iii) option, warrant, call, right or other Contract to issue, transfer, deliver, grant, convert, exchange, sell, subscribe for, purchase, redeem or acquire any membership, equity or other ownership interest in ProjectCo or agreement to enter into any Contract with respect thereto.

### ProjectCo (i) has no subsidiaries and does not own, of record or beneficially, or control, directly or indirectly, any equity or other ownership interest in any Person (or any option, warrant, security or other right convertible, exchangeable or exercisable therefor), and (ii) is not, directly or indirectly, a participant in any joint venture, partnership, limited liability company, trust, association or other limited liability entity or Person

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## No Conflicts

. None of the execution and delivery by Seller of this Agreement or any of the other Transaction Documents to which Seller is a party, the performance of the obligations of Seller hereunder or thereunder, nor the consummation of the Transactions by Seller will:

### conflict with or result in any violation or breach of or default under (or constitute an event that, with notice or lapse of time or both, would constitute a default under), or give rise to a right of termination, cancellation, modification or acceleration of any obligation, or to any put or call or similar rights, or to loss of a benefit under, any provision of the Organizational Documents or resolutions of Seller;

### conflict with or result in a violation or breach of any term or provision of any applicable Law or Order;

### conflict with or result in a violation or breach of or default (or constitute an event that, with notice or lapse of time or both, would constitute a default under) any term or provision of any Contract or Permit to which Seller is a party or by which any of Seller’s assets are bound; or

### result in the creation or imposition of any Lien, other than Permitted Liens, upon the Project, any Project Asset or ProjectCo Interests

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## Third Party Consents

. Section 18.7 of the Disclosure Schedules sets forth a true, correct and complete list of all Consents required from any Governmental Authority or other Person necessary or required for the execution and delivery by Seller, of each Transaction Document to which Seller is a party and for the consummation of the Transactions by Seller and ProjectCo (but, as to ProjectCo, only as of the Signing Date and the Closing Date) , except that Section 18.7 of the Disclosure Schedules does not list the Project Closing Permits which are set forth on Section 19.13(a) of the Disclosure Schedules and Section 19.13(b) of the Disclosure Schedules as hereafter described. As of the Closing Date, all such Consents are in full force and effect and are free of any term, condition, restriction or imposition of Liability on ProjectCo, Purchaser or any such Project Asset.

## Legal Compliance

. Seller has complied with, and is in compliance with, all applicable Laws in all material respects relating to its business and operations and has not received any notification indicating a material violation of, non-compliance with, or other issue concerning any applicable Law or the Transactions, nor to Seller’s knowledge are there any facts, events, circumstances or occurrences that would reasonably be expected to give rise to, or serve as a basis for, any such notification.

## No Brokers

. Neither Seller nor any of its Affiliates has retained any broker or finder, agreed to pay or made any statement or representation to any Person that would entitle such Person to, any broker’s, finder’s or similar fees or commissions in connection with the Transactions. No broker’s, finder’s or similar fees or commissions are payable to any Person in connection with any of the Real Property Agreements or any assignment to ProjectCo thereof.

## Financial Resources

. Seller has the financial resources, assets, operating capital, credit and other resources and means necessary to fulfill its obligations under or related to this Agreement, the Project Contracts and any Transaction Documents to which it is or will be a party on a timely basis.

## Foreign Person

. Seller is not a foreign person as defined in Treasury Regulations Section 1.1445-2(b)(2).

# Representations and Warranties with Respect to ProjectCo and Project

Except as set forth in Seller’s Disclosure Schedule (as the same may be updated pursuant to Section 21.1), Seller represents and warrants to Purchaser that all of the following are true and correct as of the Signing Date and the Closing Date (except for those representations and warranties made as of a specified date, which shall be true and correct as of that date):

## Organization, Authority and Validity

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### ProjectCo is a limited liability company duly organized, validly existing and in good standing under the laws of the State of [ ] and authorized and registered to conduct business in the State of Indiana. ProjectCo has all requisite limited liability company power and authority to carry on its business as it is currently conducted and to own, lease and operate its assets and properties in the State of Indiana or wherever else such assets and properties are now owned, leased or operated.

### ProjectCo has all requisite limited liability company power and authority to execute and deliver the Transaction Documents to which it is a party, to perform its obligations thereunder and to consummate the Transactions. The execution, delivery and performance by ProjectCo of the Transaction Documents to which ProjectCo is a party and the consummation of the Transactions have been duly authorized by all necessary limited liability company action on the part of ProjectCo.

### Upon execution and delivery of the Transaction Documents to which ProjectCo is a party, each such Transaction Document will constitute the legal, valid and binding obligation of ProjectCo, enforceable against ProjectCo in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, moratorium, reorganization or other similar Laws affecting the enforcement of creditors’ rights and subject to general equitable principles

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## No Adverse Orders

. ProjectCo is not (a) subject to any Order which (i) would prevent or adversely affect the execution, delivery or performance of this Agreement or the Transactions or any applicable Transaction Documents by ProjectCo or (ii) would adversely affect or could reasonably be expected to adversely affect ProjectCo, the Project, any Project Asset or ProjectCo Interests or (b) a party to, subject to or bound by any Contract, which would prevent or adversely affect the execution, delivery or performance of this Agreement or the Transactions or any applicable Transaction Documents by ProjectCo.

## Solvency

. No petition or notice has been presented, no order has been made and no resolution has been passed for the bankruptcy, liquidation, winding-up or dissolution of ProjectCo. No receiver, trustee, custodian or similar fiduciary has been appointed over the whole or any part of ProjectCo’s assets or the income of ProjectCo. ProjectCo does not have any plan or intention of, or has received any notice that any other Person has any plan or intention of, filing, making or obtaining any such petition, notice, order or resolution or of seeking the appointment of a receiver, trustee, custodian or similar fiduciary. ProjectCo is solvent and is able to pay its debts as they become due and has adequate capital to carry on its business.

## Proceedings

. There are no Proceedings pending or, to Seller’s Knowledge, threatened against or affecting ProjectCo or against Seller or its other Affiliates relating to the Project Company or the Project. Except as set forth in Section 19.4 of the Disclosure Schedules, ProjectCo has not received any Order affecting ProjectCo, the Project, any Project Assets or ProjectCo Interests.

## Support and Affiliate Obligations

. Section 19.5 of the Disclosure Schedules includes a complete list of all Support and Affiliate Obligations; provided that Section 19.5 of the Disclosure Schedules may be updated to include any additional Support and Affiliate Obligations arising under a Project Contract approved by Purchaser pursuant to Section 5.18 (but only if the associated Support and Affiliate Obligation is specifically identified to, and approved in writing by, Purchaser).

## Books and Records

. Seller has delivered to Purchaser true, correct and complete copies of the Organizational Documents of ProjectCo and all other Books and Records. The Books and Records have been kept and maintained as required by applicable Laws.

## Project Assets

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### As of the Closing Date, no Affiliate of Seller (other than ProjectCo) has (or has had) a fee, leasehold, easement, license, ownership or other right or interest in or to the Project Assets

. As of the Closing Date, all of the material Project Assets are listed on Section 19.7 of the Disclosure Schedules except that Section 19.7 of the Disclosure Schedules does not list the Project Real Property, which is listed in the Sections of the Disclosure Schedules referred to in Section 19.9.

### As of the Closing Date, ProjectCo, has good and valid fee title, ownership or leasehold or easement interests (as applicable) to all Project Assets (and as to leasehold, easement or non-fee interests, ProjectCo shall have such interests for no fewer than [20] years from the Closing Date), and no Person other than ProjectCo owns or has any interest in, or option for or other right to (contingent or otherwise), including a right of first refusal or a right of first offer, or has any Lien (other than Permitted Liens) on, any Project Assets

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### As of the Closing Date, all Project Assets are in compliance with applicable Laws in all material respects

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## No Conflicts

. The execution and delivery by ProjectCo of any Transaction Documents to which it is a party, the performance of its obligations thereunder, and the consummation of the Transactions by it will not:

### conflict with or result in any violation or breach of or default under (or constitute an event that, with notice or lapse of time or both, would constitute a default under), or give rise to a right of termination, cancellation, modification or acceleration of any obligation, or to any put or call or similar rights, or to loss of a benefit under, any provision of the Organizational Documents or resolutions of ProjectCo, as applicable;

### result in any conflict with or violation or breach of or default under (or constitute an event that, with notice or lapse of time or both, would constitute a default under), or give rise to a right of termination, cancellation, modification or acceleration of any obligation, or to any put or call or similar rights, or to loss of a benefit under, any Contract or Permit (including any Material Project Contracts) to which it is a party or by which the Project or any of the Project Assets are or will be bound;

### conflict with or result in a violation or breach of any term or provision of any applicable Law or Order; or

### result in the creation or imposition of any Lien upon the Project, any Project Asset or ProjectCo Interests, other than Permitted Liens in the case of the Project and Project Assets and Liens in favor of Purchaser or AESI pursuant to the Transaction Documents in the case of the Project, Project Assets, and ProjectCo Interests

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## Real Property Interests

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### As of (i) the Signing Date and (ii) the Closing Date, Section 19.9(a) of the Disclosure Schedules, contains a true, correct and complete list of all Real Property Agreements. As of the Closing Date, ProjectCo is party to each Real Property Agreement and holds all of the real property or other interests granted thereunder. Except for Permitted Liens, the Project Real Property is not subject to any Liens or other rights of third-parties and other than the Real Property Agreements and Permitted Liens, there are no Liens, deeds, leases, easements, licenses or other use or occupancy agreements or any tenancies or subtenancies, licenses, occupancies, options, rights of first offer, rights of first refusal or other rights of ownership, use, occupancy or possession in effect, oral or written, related to, associated with or concerning the Project Real Property. ProjectCo holds good and insurable fee title or valid leasehold or easement interests or other rights in and to the Project Real Property under the Real Property Agreements. True, complete and correct copies of each Real Property Agreement have been delivered to Purchaser. The Real Property Agreements are in full force and effect and constitute the valid and binding legal obligations of ProjectCo and, to Seller’s Knowledge, the Real Property Agreement Counterparties, enforceable against ProjectCo and, to Seller’s Knowledge, enforceable against each applicable Real Property Agreement Counterparty in accordance with each Real Property Agreement’s terms, and will not be rendered invalid or unenforceable as a result of the Transactions, except, in each case, as such enforceability may be limited by applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting the enforcement of creditors’ rights and subject to general equitable principles. Neither ProjectCo nor any Real Property Agreement Counterparty is in material breach of or in default under any Real Property Agreement, and to Seller’s Knowledge, no event has occurred which with the passage of time or giving of notice or both would constitute such a default, result in a loss of rights or permit termination, modification or acceleration under, or result in the creation of any Lien under any such Real Property Agreement other than a Permitted Lien. The copies of the Real Property Agreements delivered to Purchaser by Seller are true, accurate, and complete, contain all exhibits and have not been modified or amended except as shown therein, and to Seller’s Knowledge, there are no understandings, oral or written, between any of the current or former parties to the Real Property Agreements which in any manner varies the obligations or rights of the parties thereunder. There is no change in control or other restriction on the transfer of any Real Property Agreement that limits or prohibits the transfer of the Real Property Agreement and the transfer shall not require the consent or approval of any counterparties thereunder or other Person in a manner necessary to consummate the Transactions. Memoranda or other appropriate evidence of the Real Property Agreements other than licenses have been recorded in the appropriate land records applicable to the Project Real Property.

### The Project Real Property is in compliance in all material respects with all conditions, restrictions, or requirements contained in the zoning ordinances and amendments thereto applicable to the Project and the ProjectCo Permits, including, but not limited to, any applicable Permits as a prerequisite to use the Project Real Property for the Project.

### The use proposed to be made of the Project Real Property in connection with the Project is authorized under applicable Law and permitted under all applicable Real Property Agreements. There are no zoning or other land use Proceedings (including condemnation proceedings), either instituted or, to Seller’s Knowledge, planned or threatened to be instituted, that would detrimentally affect the use and/or operation of the Project Real Property for the Project.

### Neither ProjectCo nor Seller has received any notice of any of the following, and, to Seller’s Knowledge, none of the following events or conditions have occurred or currently exist: (i) any existing or threatened special Tax or special assessment to be levied against the Project Real Property; or (ii) any claims from any Governmental Authority having jurisdiction over Seller, ProjectCo, or the Project Real Property or from any other Person who will provide utility service to the Project Real Property, that there are sufficient easements and rights-of-way required for the operation of the Project in the ordinary course or to provide ingress and egress to and from the Project Real Property.

### None of ProjectCo, Seller or, to the Seller’s Knowledge, the Real Property Agreement Counterparties, has received any notice that the Project Real Property is or has been in violation of any applicable Law.

### Except as set forth in the Real Property Agreements, there are no rents, royalties, fees or other amounts incurred, payable or receivable by Seller or ProjectCo in connection with the Project Real Property.

### As of Mechanical Completion, Project Substantial Completion and Final Completion, the Project Real Property constitutes all of the Project Site and the real property interests held under the Real Property Agreements are sufficient in all respects to undertake and complete the Project Activities without interruption or interference, including the sale of electricity and Environmental Attributes generated by or associated with the Project.

### As of Mechanical Completion, Project Substantial Completion and Final Completion, there are sufficient easements and rights-of-way required for the operation in the ordinary course and to provide ingress and egress to and from the Project Real Property.

## Obligations; No Undisclosed Liabilities

. As of the Closing Date, there are no Liabilities of ProjectCo or otherwise related to the Project or the Project Assets of any kind whatsoever (whether absolute or contingent, accrued or fixed, matured or unmatured, determined or determinable or otherwise), whether known or unknown, and there is no existing condition, situation or set of circumstances that could reasonably be expected to result in any such Liability, except for (i) as of the Closing Date, those Liabilities identified in Section 19.10 of the Disclosure Schedules and those arising under the Project Contracts (excluding any liabilities or obligations of ProjectCo in respect of a breach of or default under such Project Contracts arising or occurring prior to the Closing and described in Section 19.10 of the Disclosure Schedules), (ii) liabilities and obligations of ProjectCo which are required to be performed and which accrue under ProjectCo Permits and (iii) Excluded Liabilities.

## Tax Matters

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### ProjectCo has filed all Tax Returns that were required to be filed by it on or before the Closing Date for taxable periods or portions thereof ending on or before the Closing Date. Each such Tax Return is true and correct in all material respects. ProjectCo has paid in full all Taxes for periods ending on or prior to the Closing Date (whether or not shown to be due on any Tax Return). Any unpaid Taxes that were accrued prior to but are not required to be paid on or before the Closing Date by ProjectCo are reflect on Section 19.11(a) of the Disclosure Schedules.

### ProjectCo is in compliance with all Applicable Laws relating to withholding of Taxes and the payment thereof, for taxable periods or portions thereof ending on or before the Closing Date, in connection with amounts owing to any employee, independent contractor, creditor, partner or similar third party, has duly and timely withheld and paid over to the appropriate Governmental Authority all amounts required to be so withheld and has complied with all reporting obligations with respect to such amounts.

### There are no outstanding Contracts extending or waiving the statutory period of limitations applicable to any claim for, or the period for the collection or assessment or reassessment of, Taxes due from ProjectCo for any taxable period, and no written request for any such waiver or extension is currently pending.

### No audit or other proceeding by any Governmental Authority is pending, and no Governmental Authority has given written notice of any intention to commence an audit or other proceeding, or assert any deficiency or claim for additional Taxes against ProjectCo. To Seller’s Knowledge, there is no threatened audit or proposed deficiency for unpaid Taxes with respect to ProjectCo. No claim has been made in writing by a Governmental Authority in a jurisdiction where ProjectCo does not file a Tax Return that ProjectCo is or may be subject to taxation by that jurisdiction.

### ProjectCo has not elected under Treasury Regulations Section 301.7701-3(c) (or any comparable provision of law) to be classified as a corporation for U.S. federal income Tax purposes (or under any comparable or similar provision of state or local law). ProjectCo is properly classified as a “disregarded entity” for federal income Tax purposes under Treasury Regulations Section 301.7701-3(b)(1)(ii). Neither Seller nor ProjectCo has (i) filed any Tax Returns or (ii) taken any action (or failed to take any action) that would cause ProjectCo to be treated as an entity other than a “disregarded entity” for federal income Tax purposes.

### Except as provided for in any Material Project Contract, neither Seller nor ProjectCo has received any written notice of any special assessments, levies or Taxes imposed or to be imposed affecting the Project Assets, or any written notice of any action regarding potential audits, deficiencies, adjustments or other claims by any other Governmental Authority empowered to so assess a Tax or levy. To Seller’s Knowledge, no such special assessments, levies or Taxes have been threatened by any Governmental Authority.

### There are no Liens for Taxes upon the Project Assets, other than Liens for real estate taxes not yet due and payable.

### ProjectCo is not a party to, is not bound by, and does not have any obligation under, any allocation or sharing agreement the primary purpose of which relates to Tax. ProjectCo has no liability for Taxes of any other Person as a transferee or successor, by contract or otherwise.

### No Tax ruling has been requested of or received from any Governmental Authority with respect to any Tax matter relating to ProjectCo or any of the Project Assets.

### No ITC or other tax credit or any grant under state Applicable Law, has been or will be claimed by Seller or any of its Affiliates or direct or indirect partners, shareholders or members with respect to the Project or the Project Assets. Neither the Project nor any Project Asset has been “placed in service” prior to the Closing Date for the purposes of Sections 48, 167, or 168 of the Code.

### None of the Project Assets consist of used property for purposes of Section 48 of the Code.

### No Project Asset (i) is tax-exempt bond financed property within the meaning of Section 168(g)(5) of the Code or subject to an election under Section 168(g)(7) of the Code; (ii) is treated as leased to, or used by, a tax-exempt entity, a Governmental Authority or a foreign Person (within the meaning of Sections 50(b)(3), 50(b)(4) and 168(h)(2) of the Code); (iii) is described or otherwise includible in the categories of property listed in Section 50(b) of the Code; and (iv) is property that is primarily used in a trade or business described in Section 163(j)(7)(A)(iv) or Section 168(k)(9)(A) of the Code. Section 168(g)(1)(D) of the Code does not apply to any Project Asset, and none of the property comprising a part of the Project is imported property of the kind described in Section 168(g)(6) of the Code.

### The Project Assets will be eligible for the [ ]% ITC.[[4]](#footnote-4)

## Environmental Laws

. Except as set forth on Section 19.12 of the Disclosure Schedules, ProjectCo has complied and is in compliance, in all material respects, with all Environmental Laws affecting it or its Assets, including the Project Assets, and no material action has been filed or commenced or, to Seller’s Knowledge threatened against, ProjectCo alleging any failure of ProjectCo to comply with any applicable Environmental Law.

### Seller has Made Available a copy of the Phase I Environmental Site Assessment(s) referenced in Section 4.3, which constitute all material documents and records in its possession or control concerning the potential for Releases or threatened Releases of Hazardous Materials at, in, on, under, to or from the Project Real Property, and all other reports, studies or other documents concerning other environmental conditions of the Project Real Property or concerning the permitting or development of the Project.

### To Seller’s Knowledge, no Hazardous Materials exist at, in, on or under, or have been released or are in imminent threat of Release at, on, in under, to or from the Project Real Property.

## Permits

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### All Permits related to, associated with or concerning the Project or the Project Real Property that have been obtained by ProjectCo as of the Closing Date are set forth on Section 19.13(a) of the Disclosure Schedules (the “**Project Closing Permits**”) and electronic copies of all Project Closing Permits have been provided to Purchaser. ProjectCo owns or validly holds and is in compliance with all the Project Closing Permits, and each Project Closing Permit is valid, binding and in full force and effect, has not been appealed, terminated, revoked or modified, and all rights of third parties to appeal any Project Closing Permit have expired. No notice of noncompliance or default has been received by Seller or ProjectCo, and ProjectCo is not in material default (or with the giving of notice or lapse of time or both, would be in material default), under any Project Closing Permit.

### All Permits that are necessary for ProjectCo to develop, construct, operate and maintain the Project or for the sale of power and Environmental Attributes generated by or associated with the Project pursuant to the Contract for Differences, including, without limitation, ownership, maintenance and operation of the Project Assets (other than the Project Closing Permits set forth on Section 19.13(a) of the Disclosure Schedules) are set forth on Section 19.13(b) of the Disclosure Schedules (the “**Remaining Permits**” and with Project Closing Permits, the “**Complete Project Permits**”). As of the Closing Date, Seller has provided electronic copies of each Complete Project Permit to Purchaser. ProjectCo owns or validly holds and is in compliance with all the Complete Project Permits, and each Complete Project Permit is valid, binding and in full force and effect, has not been appealed, terminated, revoked or modified, and all rights of third parties to appeal any Complete Project Permit have expired. No notice of noncompliance or default has been received by Seller or ProjectCo, and ProjectCo is not in material default (or with the giving of notice or lapse of time or both, would be in material default), under any Complete Project Permit. As each Permit was obtained, Seller has Made Available a true and correct copy of (i) each Complete Project Permit, (ii) all material documents, reports and correspondence provided by Seller on behalf of ProjectCo to any Governmental Authority with respect to any Permit, and (iii) all material documents, reports and correspondence received by ProjectCo from any Governmental Authority with respect to any Permit.

### All Permits disclosed on Section 19.13(a) and Section 19.13(b) of the Disclosure Schedules are in the name of ProjectCo.

(d) Notwithstanding anything herein to the contrary, in the event a Permit is not listed in the Project Closing Permits but is nonetheless necessary for the design, engineering, procurement, construction, commissioning or related activities of the Project, such Permits shall be solely Seller’s responsibility to procure at its cost.

## Contracts

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### As of the Closing Date, Section 19.14(a) of the Disclosure Schedules contains a true, complete and correct list of all Project Contracts. As of the Closing Date, each Project Contract is in the name of ProjectCo.

### As of the Closing Date, each Project Contract has been duly authorized and executed, is in full force and effect, and constitutes a legal, valid, binding and enforceable agreement as to ProjectCo and, to Seller’s Knowledge, to all other parties thereto, and will not be rendered invalid or unenforceable as a result of the Transactions, except, in each case, as such enforceability may be limited by applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting the enforcement of creditors’ rights and subject to general equitable principles.

### As of the Closing Date, neither ProjectCo or Seller, nor to Seller’s Knowledge, any other Person (i) is in breach of or in default under any Project Contract, (ii) has indicated its intention to amend, extend or terminate any Project Contract, or (iii) has made any claims against or sought any indemnification as to any matter arising under or with respect to any Project Contract. To Seller’s Knowledge, no event has occurred which, with the passage of time or giving of notice or both, would constitute such a default, result in a loss of rights or permit termination, modification or acceleration under, or result in the creation of any Lien under any Project Contract other than Permitted Liens.

### As of the Closing Date, ProjectCo and Seller have timely paid in full all amounts due and payable by each such party pursuant to any Project Contract.

### As of the Closing Date, ProjectCo has delivered to Purchaser true, correct and complete copies of all Project Contracts and any amendments thereto.

## Legal Compliance

. ProjectCo is and has at all times complied with, all applicable Laws in all material respects relating to its business and operations, including with respect to the Project Real Property, ProjectCo Interests, the Project and the Project Assets, as applicable. Except as set forth on Section 19.15 of the Disclosure Schedules, ProjectCo has not received any notification indicating the violation of, non-compliance with, or other issue concerning any applicable Law, as such would apply to ProjectCo, the Project, any Project Assets or the Transactions, nor are there any facts, events, circumstances or occurrences that would reasonably be expected to give rise to, or serve as a basis for, any such notification.

## Insurance

. Section 19.16 of the Disclosure Schedules includes a list of all types of insurance (including policies providing property, vehicle, casualty, liability, and workers' compensation coverage and bond and surety arrangements and insurance certificates) maintained by the Seller on behalf of the Project and ProjectCo (the “**Insurance Policies**”), indicating in each case the type of coverage, name of the insured, the insurer, the premium, the expiration date of each Insurance Policy and the amount of coverage. The Insurance Policies are in full force and effect and have not been amended or modified. There are no pending claims under any Insurance Policies against or relating to the Project or ProjectCo. Neither Seller nor ProjectCo has received (i) any notice from any insurer of a denial of coverage under any of the Insurance Policies, or (ii) any notice of cancellation or termination of the Insurance Policies. All premiums with respect to the Insurance Policies have been paid in full with respect to the period through the Closing Date.

## Conflicts of Interest

. Except as set forth on Section 19.17 of the Disclosure Schedules, neither Seller nor ProjectCo, nor any of its respective members, officers or directors (a) is an officer, employee or member of any Governmental Authority with jurisdiction over the Project, or (b) has, either directly or indirectly, (i) an equity or debt interest in any corporation, partnership, joint venture, association, organization or other Person that furnishes or sells services or products to ProjectCo, or purchases from ProjectCo any goods or services, or otherwise does business with ProjectCo; (ii) a beneficial or contractual interest in or will derive any financial gain from any Contract to which ProjectCo is a party or under which ProjectCo is obligated or bound or to which any of its Assets may be subject, except for the Transaction Documents; or (iii) any contractual interest of any form in any Contract with ProjectCo.

## Sufficiency of Assets

. On the Closing Date, the Project Assets are sufficient to own and operate the Project in accordance with the Requirements.

## Employee and ERISA Matters

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### ProjectCo does not employ and has never employed any employees. ProjectCo has no Liabilities with respect to any employees of Seller or any of its Affiliates or any other individuals (including independent contractors, contract workers, leased employees or temporary employees) that have performed work at or in connection with the Project or in connection with the business of ProjectCo. Neither Seller nor ProjectCo or any of their respective Affiliates have made any commitments or representations to any Person regarding (a) potential employment by Purchaser or ProjectCo or any Affiliate of Purchaser at the Project after the Closing Date, or (b) any terms and conditions of such potential employment by Purchaser, ProjectCo, or any Affiliate thereof following the Closing Date.

### ProjectCo does not sponsor, maintain, contribute to or have any obligation to contribute to, and since the date of its creation has never sponsored, maintained, contributed to or had any obligation to contribute to, any Employee Benefit Plan. There does not now exist, nor do any circumstances exist that could result in, any Liability or potential Liability (contingent or otherwise) to ProjectCo under or with respect to any Employee Benefit Plan that is, or was at any time within the past six (6) years, sponsored, maintained, contributed to or required to be contributed to by any person which is or was required to be treated as a single employer with ProjectCo under Section 414 of the Code.

## Guarantees

. ProjectCo has not guaranteed or otherwise agreed to become responsible for any Indebtedness of any other Person.

## Intellectual Property Rights

. ProjectCo does not own any patents, trademarks, copyrights or other Intellectual Property Rights. As of the Closing Date, Section 19.21 of the Disclosure Schedules sets forth all patents, trademarks, copyrights or other Intellectual Property Rights used or licensed by ProjectCo or otherwise necessary for the Project (or the ownership, operations or use thereof). ProjectCo has not infringed nor has there been any claim against ProjectCo that it has infringed the patent, trademark, copyright or other Intellectual Property Rights of any Person.

## Bank Accounts; Powers of Attorney

. Except as set forth on Section 19.22 of the Disclosure Schedules, ProjectCo has no bank accounts, safe deposit boxes, or related outstanding powers of attorney. Neither Seller nor any other Person have any outstanding powers of attorney for banking or other purposes related to the Project or ProjectCo.

## Full Disclosure

. Neither this Agreement nor any agreement, attachment, schedule, exhibit, certificate or other statement delivered pursuant to this Agreement or in connection with the transactions contemplated hereby omits to state a material fact necessary in order to make the statements and information contained herein or therein, not misleading. Seller is not aware of any information necessary to enable a prospective purchaser of ProjectCo Interests or the Project to make an informed decision with respect to the purchase of such ProjectCo Interests or Project that has not been expressly disclosed herein or in connection herewith. Purchaser has been provided full and complete copies of all documents referred to on the Disclosure Schedule.

## No Brokers

. Neither ProjectCo nor any of its Affiliates has engaged any broker, finder or agent in connection with the Transactions that would result in any claim against Purchaser or any of its Affiliates for any brokerage or finder’s commission, fee or similar compensation or that could result in the imposition of any Lien upon the Project, any of the Project Assets or ProjectCo Interests.

## No Material Adverse Effect

. Since the Signing Date, no event, change, fact, condition or circumstance has occurred which has had, or would reasonably be expected to result in, individually or in the aggregate, a Material Adverse Effect.

## Financial Statements and Financial Data

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### Set forth in Section 19.26(a) of the Disclosure Schedules are copies of the audited consolidated annual financial statements of Seller with fiscal years ending [December 31, 20●] and [December 31, 20●], including a balance sheet, statement of equity, and statement of income, expenses and cash flow.

### As of the Closing Date, Seller has provided Purchaser with copies of the unaudited annual balance sheet and profit and loss financial statements of ProjectCo for the fiscal year ending [December 31, 20●] and the unaudited balance sheet and profit and loss financial statements as of [ ] for the [ ( )] month period then ended (the financial statements referenced in Section 19.26(a) and Section 19.26(b) being collectively, the “**Financial Statements**”).

### The Financial Statements (including the notes thereto) (i) have been prepared in accordance with GAAP consistently applied throughout the periods covered thereby, (ii) present fairly the Assets, Liabilities and financial condition of Seller and ProjectCo, as applicable, as of such dates and the results of operations of ProjectCo for such periods, and (iii) are true, correct and complete in all material respects, and are consistent with the books and records of ProjectCo (which books and records are true, correct and complete in all material respects).

### All notes and accounts receivable of Seller and ProjectCo, as applicable, are reflected properly on its Books and Records in accordance with GAAP, are valid receivables subject to no counterclaims or claims for setoffs, chargebacks, deductions, credits or other offset, and are current and collectible. The accounts payable and accruals of ProjectCo have arisen in bona fide arm’s-length transactions in the ordinary course of business, and ProjectCo has been paying its accounts payable as and when due.

## Reports and Studies

. As of the Closing Date, Section 19.27 of the Disclosure Schedules contains a correct and complete list of any and all final studies, final reports, draft studies and reports where final studies and reports have not been issued, surveys, plans, test results, analyses, environmental monitoring and other reports prepared by Seller, ProjectCo or their Affiliate (or on their behalf) in connection with the Project, the Project Assets or the Project Real Property. The Reports and Studies have not been amended except as set forth on Section 19.27 of the Disclosure Schedules. ProjectCo and Seller have made available true, correct and complete copies of the Reports and Studies.

## No Other Representations

. Except as otherwise set forth in this Agreement or any other Transaction Document, neither ProjectCo or any Affiliate or representative of Seller makes any representation or warranty, express or implied, as to ProjectCo Interests, ProjectCo, the Project or the business, Assets, operations, condition (financial or otherwise) or prospects of ProjectCo, or the transactions contemplated by this Agreement.

# Representations and Warranties with Respect to Purchaser

Purchaser represents and warrants to Seller that all of the following are true and correct as of the Signing Date and the Closing Date:

## Organization, Authority, Validity and Non-Contravention

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### Purchaser is a limited liability company duly organized, validly existing and in good standing under the laws of the State of [Delaware/Indiana].

### Purchaser has all requisite limited liability company power and authority to execute and deliver this Agreement and the other Transaction Documents to which it is a party, to perform its obligations hereunder and thereunder and to consummate the Transactions. The execution, delivery and performance by Purchaser of this Agreement and the other Transaction Documents to which it is a party and the consummation of the Transactions have been duly authorized by all necessary corporate action on the part of Purchaser.

### This Agreement has been duly executed and delivered by Purchaser and constitutes the legal, valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting the enforcement of creditors’ rights and subject to general equitable principles. Upon execution and delivery of the Transaction Documents to which Purchaser is a party, each of the Transaction Documents will constitute the legal, valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting the enforcement of creditors’ rights and subject to general equitable principles.

### None of the execution and delivery by Purchaser of this Agreement or any of the Transaction Documents to which it is a party, the performance of the obligations of Purchaser hereunder or thereunder, nor the consummation of the Transactions by Purchaser will (a) conflict with or result in any violation or breach of or default under (or constitute an event that, with notice or lapse of time or both, would constitute a default under) any provision of the Organizational Documents or resolutions of Purchaser, or (b) except as set forth in Section 20.1 of the Disclosure Schedules, conflict with or result in the violation of any applicable Law or of any Order, to which Purchaser is subject.

## Solvency

. No petition or notice has been presented, no order has been made and no resolution has been passed for the bankruptcy, liquidation, winding-up or dissolution of Purchaser. No receiver, trustee, custodian or similar fiduciary has been appointed over the whole or any part of Purchaser’s assets or the income of Purchaser.

## Sufficiency of Funds

. Upon satisfaction of all Purchaser Closing Conditions Precedent, Purchaser will have sufficient cash on hand or other sources of, or access to, immediately available funds to enable it to pay the Contract Price , including making the Final Completion Payment and consummating the Transactions.

## Brokers

. Neither Purchaser nor any of its Affiliates has engaged any broker, finder or agent in connection with the Transactions.

## Acquisition Intent

. Purchaser is acquiring ProjectCo Interests for its or its Affiliate’s own account as an investment without the present intent to sell, transfer or otherwise distribute the same to any other Person other than as contemplated in the Transactions and any Tax Equity Investment Documents. Purchaser acknowledges that ProjectCo Interests are not registered pursuant to the 1933 Act and that none of ProjectCo Interests may be transferred, except pursuant to an effective registration statement under, or an applicable exception from registration under, the 1933 Act. Purchaser is an “accredited investor” as defined under Rule 501 promulgated under the 1933 Act.

# Additional Covenants

## Preserve Accuracy of Representations and Warranties; Notification

. Each of Purchaser and Seller shall promptly notify the other of any Proceeding that is instituted or threatened against such Party (or, in the case of Seller, against Seller, ProjectCo, the Project or the Project Assets) to restrain, prohibit or otherwise challenge the legality of any of the Transactions. In addition, each Party shall promptly notify the other Party of any event, development, matter, circumstance or other occurrence which makes or could reasonably be expected to make any false, incorrect or misleading representation or warranty. Prior to Closing, Seller may provide periodic updates to Purchaser of changes in the Disclosure Schedules to this Agreement with respect to any matter arising after the Signing Date, in which case the following provisions shall apply:

### Seller shall be permitted to add, update, amend or supplement any Disclosure Schedule to the extent necessary to correct immaterial facts or matters in any of the representations or warranties made by Seller on the Signing Date (except with respect to Fundamental Representations). Seller shall not be permitted to add, update, amend or supplement any Disclosure Schedule with respect to Fundamental Representations. For clarity, this Section applies only to representations and warranties made on the Signing Date. All Schedules related to the representations and warranties that are to be made on the Closing Date or Final Completion may be added to, updated, amended or supplemented until those dates, subject to the terms and conditions set out in Section 21.1(c).

### Notwithstanding anything to the contrary contained in Section 21.1(c), if any new Disclosure Schedule or any update to a Disclosure Schedule is approved by Purchaser in writing pursuant to the express terms of this Agreement or is otherwise expressly accepted by Purchaser pursuant to Section 21.1(a) and Section 21.1(c), the update to a Disclosure Schedule or new Disclosure Schedule shall be deemed to have amended this Agreement (including the appropriate Disclosure Schedule) and cured any misrepresentation or breach of the Seller’s representations or warranties that otherwise might have existed hereunder by reason of any fact, event or circumstance addressed in any update and the update shall not be subject to any offset against the Contract Price or indemnity regardless of whether such update causes Purchaser or ProjectCo to suffer a Loss.

### Subject to Section 21.1(a) and Section 21.1(b), up until Closing, Seller may update any Disclosure Schedule or propose a new Disclosure Schedule to reflect representations and warranties required to be made on the Closing Date, including to reflect Contracts, Permits, Reports and Studies, insurance, and Consents entered into or received by ProjectCo prior to that dates in connection with the Work; provided that Seller shall not be permitted to add, update, amend or supplement any Disclosure Schedule without Purchaser’s prior written consent (i) with respect to any matter caused by a breach or default by Seller or, prior to Closing, ProjectCo of any covenant or agreement in this Agreement or any other Transaction Document or applicable Law; (ii) with respect to Fundamental Representations or Tax Representations; or (iii) if such updated or new Disclosure Schedule (together with all prior updates, amendments and supplements) (A) would be likely to result in Losses reasonably likely to exceed the Basket, (B) would cause or result in the inability of Seller to achieve Project Substantial Completion, or (C) would constitute a Material Adverse Effect. Any update to a Disclosure Schedule or new Disclosure Schedule permitted in accordance with the preceding sentence shall be deemed to have amended this Agreement (including the appropriate Disclosure Schedule) and cured any misrepresentation or breach of the Seller’s representations or warranties that otherwise might have existed hereunder by reason of such fact, event or circumstance.

## Material Adverse Effect

. From the Signing Date until Final Completion, Seller shall promptly inform Purchaser, and Purchaser shall promptly inform Seller, in writing of any event, occurrence, change, result, development, fact, or circumstance of which it is aware and that may materially adversely affect the ownership or operation of the Project.

## Consents and Regulatory Filings; Permits

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### As promptly as practicable after the Signing Date (or by the date specified herein), Seller and Purchaser shall each make, or cause to be made, all filings and submissions required by applicable Law to be made by it, and obtain or cause to be obtained all Consents and approvals applicable to it, in order to consummate the Transactions in accordance with the terms hereof. Each Party shall act diligently and reasonably cooperate with each other Party with respect to all the filings, submissions, Consents and approvals, as requested by the Party seeking the same. Copies of all such filings, submissions, Consents and approvals received by a Party shall promptly be delivered to the other Parties hereto.

### Seller and Purchaser shall file, when reasonably determined by Purchaser and Seller, any regulatory filing(s) required to be made to FERC requesting approval under Sections 203 and 205 of the Federal Power Act with respect to the Transactions (the “**FERC Regulatory Filing**”). Purchaser shall be primarily responsible for the preparation and filing of any joint FERC Regulatory Filing. Seller shall act diligently and reasonably cooperate with Purchaser in the preparation and submittal of such filing and/or any regulatory proceedings or litigation that may arise relating to the FERC Regulatory Filing. Seller shall provide any information, including the filing of testimony, reasonably requested by Purchaser. Nothing in this Agreement shall require Purchaser to accept any condition to, limitation on, or other requirement concerning the grant of approval or authorization by the State Regulatory Agency or FERC that, in Purchaser’s sole discretion, is unacceptable to Purchaser.

### Each Party shall fully cooperate with the other in connection with any filing to be made with CFIUS with regard to the transactions contemplated herein. Each Party hereby agrees to provide the other Party on a prompt basis all necessary information and otherwise to use Commercially Reasonable Efforts to allow the Party that the Parties agree will make any such filing to promptly complete the preparation and submission of such filing and to respond to any inquiries from CFIUS or any other interested Governmental Authority and upon such Party’s request, make appropriate representatives and senior management available to attend any in-person meetings or conference calls with CFIUS officials. Seller and Purchaser will consult and cooperate with one another, and will consider in good faith the views of one another, in connection with any analysis, appearance, presentation, memorandum, brief, argument, opinion or proposal made or submitted in connection with any legal proceeding under or relating to CFIUS.

### Prior to the Closing Date, Seller and Purchaser shall, and shall cause their respective Affiliates to, cooperate fully to cause the expiration of any applicable notice or waiting periods under the HSR Act with respect to the Transactions contemplated by this Agreement as promptly as is reasonably practicable and shall comply, promptly as is reasonably practicable, with any requests received by such Party or any of its Affiliates from a Governmental Authority under the HSR Act for additional information, documents or other materials. In connection with filings to be made and actions taken under the HSR Act, if any, Purchaser and Seller shall share equally all administrative fees or expenses in connection therewith, including filing fees; however, each Party shall bear its own fees and expenses incurred as a result of any investigation or litigation initiated by the Department of Justice Antitrust Division or the Federal Trade Commission.

### Prior to the storage or sale of any test energy by the Project, Purchaser shall register the Project as a “Generation Resource” (as defined in the MISO Tariff) in the MISO market and take other steps necessary for MISO to recognize the Project. The Parties shall cooperate (at Purchaser’s expense) to facilitate the registration of the Project as an asset of Purchaser (or if at the time of such registration Purchaser does not believe the Project should be registered as an asset of Purchaser, then such other asset owner that the Parties agree would be most applicable for the Project) for inclusion in any commercial model maintained by MISO, sufficiently in advance of Closing, for purposes of placing the Project in commercial operation after the Closing.

### Each Party shall promptly notify the other of any communication that it receives from a Governmental Authority relating to the Transactions (including providing copies of written communication or advising of the contents of oral communication) and permit the other Party to review and discuss in advance (and to consider in good faith any comments made by the other Party in relation thereto) any proposed communication to such Governmental Authority in response thereto; provided that materials may be redacted as necessary to comply with legal and contractual requirements and as necessary to address reasonable attorney-client or other privilege or confidentiality concerns.

## Exclusivity

. Until such time, if any, as this Agreement is terminated pursuant to Article 25, Seller and its Affiliates shall not, and will cause either of their respective representatives not to, directly or indirectly pursue, solicit, encourage or communicate or negotiate with any Person (other than Purchaser), or enter into any agreement with any third party, relating to any transaction involving the sale of the Project, any energy from, or Environmental Attributes associated with the Project, and/or ProjectCo Interests.

## Further Assurances

. Prior to the Closing and from time to time following the Closing, each Party agrees to, at the other Party’s expense, (a) furnish upon request to the other Party such further information, (b) execute and deliver to the other Party such other documents, and (c) do such other acts and things, in each case as each Party may reasonably request for the purpose of more fully effectuating the Transactions consistent with the allocation of primary responsibility set forth in the Agreement.

## Environmental Attributes

. Prior to the Project Substantial Completion Date, Purchaser shall, at its own cost and expense, establish a NAR account in Purchaser’s name and take all such other actions that are necessary to receive and transfer the Environmental Attributes from the Project. Purchaser may, at its own cost, require registration of the Environmental Attributes in registration programs other than NAR.

## Title Policy Endorsement

. Not later than 60 Days after the date of “Final Completion” (or such similar term under the EPC Agreement that refers to the date of completion of construction with respect to the Project, including required restoration activities), Seller shall have caused (i) a final As-Built Survey in form and substance reasonably acceptable to Purchaser to be delivered to Purchaser and Title Insurer, and (ii) the Title Insurer to issue an endorsement to the Title Policy substituting the final As-Built Survey for the preliminary As-Built Survey, and updating the Title Policy to the extent necessary to include matters included in the final As-Built Survey; provided that such updated Title Policy shall be acceptable to Purchaser.

## Excluded Assets

. [Nothing in this Agreement will be construed as conferring on Purchaser, and Purchaser is not acquiring pursuant to this Agreement, any right, title or interest in, to or under any of the Excluded Assets. At or prior to the Closing, ProjectCo will convey to Seller or to one or more Affiliates of Seller all of ProjectCo’s rights, title and interest, if any, in the Excluded Assets pursuant to the Excluded Assets Transfer, Assignment and Assumption Agreement and any other required transfer documentation reasonably satisfactory to the Parties. Purchaser agrees that any payment received by Purchaser or ProjectCo after Closing with respect to an Excluded Asset will be promptly remitted to Seller.]

## Excluded Liabilities

. [Nothing in this Agreement will be construed as conferring on Purchaser, and Purchaser is not acquiring pursuant to this Agreement, any obligations in or under any of the Excluded Liabilities. At or prior to the Closing, ProjectCo will convey to Seller or to one or more Affiliates of Seller all of ProjectCo’s obligations, if any, in the Excluded Liabilities pursuant to the Excluded Liabilities Transfer, Assignment and Assumption Agreement and any other required transfer documentation reasonably satisfactory to the Parties.]

# Compliance Requirements

## Compliance with Law

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### **Applicable Laws and Regulations**.Seller and its owners, controlling shareholders, directors, managers, officers, employees and any Persons working on its behalf (including any of its subsidiaries, Affiliates, Subcontractors, consultants, representatives or agents) have in development of the Project to date complied with, and Seller shall comply with, all applicable anti-corruption, anti-money laundering, anti-terrorism and economic sanction and anti-boycott laws, including Forced Labor Laws and the United States Foreign Corrupt Practices Act (15 U.S.C. §§ 78dd-1, et seq.) (the “**Applicable Laws and Regulations**”). Seller is in compliance with the requirements of Executive Order No. 13224, 66 Fed. Reg. 49079 (September 25, 2001) and other similar requirements contained in the rules and regulations of the Office of Foreign Asset Control, Department of the Treasury and in any enabling legislation or other executive orders in respect thereof.

### **Forced Labor**. Seller represents and warrants that no portion of the Project (including any of its components and materials) will be extracted, mined, produced, manufactured, assembled or processed using any form of convict, indentured or forced labor, including indentured or forced child labor (“**Forced Labor**”). Seller represents and warrants that it shall comply, at a minimum, with all Forced Labor Laws. Without limiting any other obligation of Seller hereunder, Seller shall not, and shall ensure that its affiliates, suppliers, subcontractors, and other business partners involved in any tier of the extraction, mining, production, processing, assembly or manufacturing of the materials and components used in the Project, within the United States or globally, do not (i) use any form of Forced Labor at any stage of extraction, mining, production, manufacturing, assembly or processing of any components or materials or (ii) cause or permit the Project (including any of its components and materials) to originate from, or be extracted, mined, produced, manufactured, assembled or processed in any place or region known or suspected to use Forced Labor. Seller shall maintain effective procedures, internal controls and audit procedures necessary to comply with this Section 22.1(b).

## Payments

. Seller represents and warrants that none of it or any of its directors, managers, officers or employees has, and that it has no evidence of any kind that any of its owners, controlling shareholders or any other Person working on its behalf (including, without limitation any of its subsidiaries, including ProjectCo, affiliates, subcontractors, consultants, representatives or agents) has, either directly or indirectly:

### Made a “**Prohibited Payment**,” with respect to the Project, which is defined to mean any offer, gift, payment, promise to pay or authorization of the payment of any money or anything of value, directly or indirectly, to a Government Official or any other Person, including for the use or benefit of another, to the extent that one knows or has reasonable grounds to believe that all or a portion of the money or thing of value that was given or is to be given to such other Person will be paid, offered, promised, given or authorized to be paid, directly or indirectly, to a Government Official or any other Person, for the purpose of (a) improperly influencing any act or decision of a Government Official or Person, (b) inducing a Government Official or Person to do or omit to do any act in violation of his or her lawful duty, (c) securing any improper advantage or (d) improperly inducing a Government Official or Person to affect or influence any act or decision in order to obtain or retain business.

### Engaged in a “**Prohibited Transaction**” with respect to the Project which is defined to mean:

#### Receiving, transferring, transporting, retaining, using, structuring, diverting, or hiding the proceeds of any criminal activity whatsoever, including drug trafficking, fraud, and bribery of a Government Official;

#### Engaging or becoming involved in, financing, or supporting financially or otherwise, sponsoring, facilitating, or giving aid to any terrorist person, activity or organization; or

#### Participating in any transaction or otherwise conducting business with a “designated person,” namely a Person that appears on any list issued by the United States, the European Union, the World Bank Debarred List, the United Nations or other international organization with respect to money laundering, corruption, terrorism financing, drug trafficking, economic or arms embargoes or other related illicit activity (a “**Designated Person**”).

## No Prohibited Transaction

. Seller will not, and shall take all reasonable steps to ensure that none of its owners, controlling shareholders, directors, managers, officers, employees and other Persons working for it on the Project (including, without limitation, its subsidiaries, including ProjectCo, and Affiliates, subcontractors, consultants, representatives and agents), directly or indirectly, make, promise or authorize the making, of a Prohibited Payment or engage in a Prohibited Transaction with respect to the Project.

## Reporting

. Seller shall promptly report to Purchaser any Prohibited Payment or Prohibited Transaction of which it obtains knowledge, or has reasonable grounds to believe occurred in respect of the Project.

## Investigation

. Seller agrees that, if Purchaser has any reasonable grounds to believe that a Prohibited Payment has been made, promised or authorized, directly or indirectly, to a Government Official in connection with the Project, or that a Prohibited Transaction has taken place in connection with the Project, it shall cooperate in good faith with Purchaser in determining whether such a violation occurred.

## Government Entity

. Each of Seller and ProjectCo is not a government entity and does not employ either directly, or, to Seller’s Knowledge, indirectly, a Government Official who shall perform services with respect to the Project.

## Tariffs

. To Seller’s Knowledge, (i) the Project is in compliance with (a) all applicable Tariffs; or (ii) Seller has provided Purchaser with other information and/or documentation regarding the Project’s compliance with Tariffs reasonably satisfactory to Purchaser.

## No Sharing

. Seller has not and will not, either directly or indirectly, share or promise to share its fees or any other funds it receives from Purchaser or in respect of the Project with any Government Official.

## Code of Conduct

. Seller acknowledges receipt of a copy of the AES Code of Business Conduct and Ethics and agrees, if it does not already have its own code of business conduct and ethics, to establish and implement an effective code of business conduct and ethics.

## Diligence

. Seller shall perform due diligence on any Subcontractors or agents it or, prior to Closing, ProjectCo employs in the performance of work on the Project or to provide services to the Project to ensure compliance with this Article 22.

## Compliance Certification

. Seller shall provide Purchaser annually, or, if requested in writing by Purchaser more frequently than once per year, at Purchaser’s request, a written certification that Seller is in compliance with the representations, warranties and covenants contained in this Article 22.

## Education and Training Program

. Seller shall provide an effective education and training program concerning the requirements and prohibitions of applicable anti-corruption laws and the representations, warranties and covenants contained in this Article 22 for its employees and its Subcontractors and agents who perform services on the Project Site and/or who interact with Government Officials in connection to the Project.

## Reimbursement

. If applicable, Seller agrees that it shall be reimbursed by Purchaser only for reasonable lodging, meals, travel and other expenses for its employees or for such expenses incurred on behalf of third parties when supported by actual, accurate and reasonably detailed third-party invoices. Where Government Officials are involved, the request for reimbursement shall be accompanied by a written statement of the details of the expenses and an explanation of the purpose of the expenses, the reason that the participation of such officials was necessary, and the names of those in attendance and their employment or business affiliation.

## Audits

. For the purpose of detecting potential violations of Applicable Laws and Regulations, Seller shall perform periodic internal or independent audits, of (i) its respective financial books, accounts and records and (ii) the origin of the funds and the source of assets sent by Seller to Purchaser in connection with the Project. With respect to Forced Labor, upon written notice to Seller, Purchaser or its representative may conduct a supply chain audit of Seller’s and its subcontractors’ and suppliers’ facilities and records in order to confirm Seller’s compliance with Section 22.1. As part of the audit, Seller shall coordinate with its suppliers or subcontractors to provide necessary documents or proofs showing the origin of their materials.

## Compliance Termination

. The Seller agrees that a material breach of one or more of the covenants or representations of the Seller (“**Compliance** **Breach**”) of this Article 22 shall be sufficient cause for Purchaser, acting in good faith, and not without reasonable prior written notice, to terminate the Seller’s agreements with Purchaser in respect of the Project, in whole or in part, and to declare them null and void, in which case the Seller agrees that it shall forfeit any claim to any additional payments due to it under such agreements, other than payments for services previously rendered under such agreements, in addition to being liable for any damages or remedies available to Purchaser under applicable law. Seller shall indemnify and hold harmless Purchaser from any claims, costs, liabilities, obligations, and damages Purchaser incurs (including, without limitation, for the fees of any legal counsel Purchaser may retain or engage) as a result of the Compliance Breach.

# Indemnification

## Indemnity by Seller

. From and after the Closing Date, Seller shall indemnify, defend, reimburse and hold harmless Purchaser and Purchaser’s Affiliates, together with their respective members, shareholders, managers, directors, officers, employees and agents (each a “**Purchaser Indemnified Party**”) from and against any and all claims, damages, penalties, awards, settlement payments, losses, Liabilities, costs, deficiencies and expenses (including reduced, forfeited, or disallowed Environmental Attributes and ITC, and including reasonable investigative costs, settlement costs, court costs and any reasonable outside legal, accounting or other expenses for investigating or defending any actions or threatened actions) (collectively, the “**Losses**”) to which any Purchaser Indemnified Party sustained or incurred, which Losses arise out of or are incurred in connection with any of the following and whether arising before, on or after the Closing Date:

### any inaccuracy in or breach of any representation or warranty made by Seller in this Agreement, in any other Transaction Document or in any Material Project Contract;

### any breach of, or failure to perform or fulfill, any covenant, agreement or obligation of Seller contained in this Agreement, any other Transaction Document or in any Material Project Contract;

### any fraud, gross negligence, intentional misrepresentation or willful misconduct by Seller in connection with this Agreement or the Transactions;

### (i) any and all liability for Taxes to which the Project Assets or ProjectCo may be subject, assessed or otherwise encumbered with respect to any Pre-Closing Tax Period, (ii) any and all liability for Taxes of Seller or any of its respective Affiliates (other than ProjectCo) or direct or indirect partners, shareholders or members, (iii) Taxes of any Person arising as a result of ProjectCo having been a member of any consolidated, combined, unitary or affiliated Tax group prior to the Closing pursuant to Treasury Regulations Section 1.1502-6 or any other provision of federal, state, local or foreign Law, and (iv) Taxes of any Person (other than ProjectCo) imposed on ProjectCo as a transferee or successor or by contract, which Taxes relate to an event or transaction occurring before the Closing;

### any Transfer Taxes payable to, or imposed or assessed by, any Governmental Authority with respect to the Transaction which are the liability of Seller under Section 24.6;

### any Excluded Liabilities (it being acknowledged and agreed that this indemnity is separate and distinct from any indemnity associated with the breach of the representations and warranties in Section 19.10);

### any ITC as a result of any breach of, or failure to perform or fulfill, any covenant, agreement or obligation of Seller contained in this Agreement, any other Transactional Document or any Material Project Contract. to the extent Purchaser Indemnified Parties’ Losses related thereto are not otherwise indemnified by Seller under this Agreement; and

### any Losses for property damage or personal injury to the extent arising out of the construction or development of the Project, except to the extent resulting from the gross negligence or willful misconduct of any Purchaser Indemnified Party

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## Indemnity by Purchaser

. From and after the Closing Date, Purchaser shall indemnify, defend, reimburse and hold harmless Seller and its Affiliates, together with their respective members, shareholders, managers, directors, officers, employees and agents (each a “**Seller Indemnified Party**”) from and against any and all Losses to which any Seller Indemnified Party sustained or incurred, which Losses arise out of or are incurred in connection with the following before, on or after the Closing Date:

### any inaccuracy in or breach of any representation or warranty made by Purchaser in this Agreement or any other Transaction Document;

### any breach of, or failure to perform or fulfill, any covenant, agreement or obligation of Purchaser contained in this Agreement or any other Transaction Document;

### any fraud, gross negligence, intentional misrepresentation or willful misconduct by Purchaser in connection with this Agreement or the Transactions;

### any and all liability for Taxes to which the Project Assets or ProjectCo may be subject, assessed or otherwise encumbered with respect to the Tax periods beginning after the Closing, or the portion of a Straddle Period that is not a Pre-Closing Tax Period;

### any Transfer Taxes payable to, or imposed or assessed by, any Governmental Authority with respect to the Transaction which are the liability of Purchaser under Section 24.6; and

### any Assumed Liability

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## Claims for Indemnification

. If Purchaser or Seller seeks indemnification under this Article 23 (in either case, the “**Indemnified Party**”), the Indemnified Party shall give written notice (a “**Claim Notice**”) to the Party from which it seeks the indemnity (the “**Indemnifying Party**”) as soon as practicable after the Indemnified Party becomes aware of any fact, condition or event which may give rise to Losses for which indemnification may be sought under this Article 23 (a “**Claim**”). The failure of the Indemnified Party to give a Claim Notice to the Indemnifying Party hereunder shall not affect such Indemnified Party’s rights to indemnification hereunder, except to the extent that the Indemnifying Party is materially prejudiced by such failure. Each Claim Notice shall state that such Indemnified Party believes that such Indemnified Party is entitled to indemnification, compensation or reimbursement under Section 23.1 or Section 23.2, as applicable, and contain a brief description of the circumstances supporting such belief that such Indemnified Party is so entitled to indemnification, compensation or reimbursement and shall, to the extent possible, contain a good faith, nonbinding, preliminary estimate of the amount of Losses such Indemnified Party claims to have so incurred or suffered (the “**Claimed** **Amount**”).

## Response Notice; Uncontested Claims

. Within ten (10) Business Days after receipt by the Indemnifying Party of a Claim Notice, such Indemnifying Party may deliver to the Indemnified Party a written response (the “**Response Notice**”) in which such Indemnifying Party:(a) agrees that the Indemnified Party is entitled to the full Claimed Amount, (b) agrees that the Indemnified Party is entitled to part, but not all, of the Claimed Amount (such amount agreed to under (a) or (b), the “**Agreed Amount**”), or (c) indicates that the Indemnifying Party disputes the entire Claimed Amount. Any part of the Claimed Amount that is not agreed to pursuant to the Response Notice shall be the “**Contested Amount**”. If a Response Notice is not received within such ten (10) Business Day period, then the Indemnifying Party shall be conclusively deemed to have agreed that the Indemnified Party is entitled to the full Claimed Amount (such amount, also an “Agreed Amount” as defined above). To resolve any dispute related to any Contested Amount, the Parties will resolve such dispute following the dispute resolution procedures set forth in Article 26.

## Setoff

. In addition to all other remedies provided herein or available to a Party hereunder, each Party shall have the right to setoff any Agreed Amount or other sum owed to it and any Purchaser Indemnified Party or Seller Indemnified Party (as appropriate) under this Article 23 against any Liability or other amount owed by it or its Affiliates to any Purchaser Indemnified Party or Seller Indemnified Party (as appropriate) under this Agreement or any other Transaction Document. The deduction of any such sum shall operate for all purposes as a complete discharge (to the extent of such sum) of the obligation to pay the amount from which such sum was withheld and deducted and will not constitute a default under this Agreement or any other Transaction Document. Neither the exercise of, nor the failure to exercise, such right of setoff will constitute an election of remedies or limit a Party in any manner in the enforcement of any other remedies that may be available to it.

## Survival; Limitation of Liability

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### Subject to the terms of this Section 23.6, (i) the representations, warranties, indemnities and covenants of Seller, ProjectCo and Purchaser contained in this Agreement are material, were relied upon by such Parties in entering into this Agreement and shall survive the Closing, (ii) covenants of Seller, ProjectCo and Purchaser in this Agreement shall survive the Closing until their satisfaction or waiver in writing by the Party for whom the covenant was intended to benefit, and (iii) Section 23.1 and Section 23.2 shall survive either Closing or termination of this Agreement, whichever occurs.

### Notwithstanding anything in this Agreement to the contrary:

#### the representations and warranties contained in this Agreement shall survive until the Expiration Date, except that (A) the Fundamental Representations shall survive indefinitely; (B) the Tax Representations and Environmental Representations shall survive until sixty (60) Days following the expiration of the applicable statute of limitations; (C) the indemnity pursuant to Section 23.1(g) shall survive until sixty (60) Days following the expiration of the applicable statute of limitations; and (D) claims based on Fraud-Type Claims shall survive indefinitely.

#### No Party shall have any liability pursuant to Section 23.1(a) or Section 23.2(a), as applicable, until the aggregate Losses incurred by Purchaser Indemnified Parties or Seller Indemnified Parties, as the case may be, equals or exceeds [ ] of the Contract Price (the “**Basket**”), whereupon the Purchaser Indemnified Parties or Seller Indemnified Parties, as applicable, shall be entitled to indemnification from the first dollar thereof; *provided, however*, that the Basket will not apply to: (i) claims for breaches of any Fundamental Representation, (ii) claims for breaches of any Tax Representation, (iii) claims for breaches of any Environmental Representations, (iv) Fraud-Type Claims, or (v) claims for Compliance Breaches. The amount of the Basket shall be reduced by any Losses resulting from the amendment of the Disclosure Schedules pursuant to Section 21.1(c).

#### The Parties’ respective aggregate maximum liability arising out of claims under Section 23.1(a) or Section 23.2(a), as applicable, will not exceed [ ] ( %) of the Contract Price (the “**Cap**”); *provided, however*, that the Cap will not apply to: (i) claims for breaches of any Fundamental Representation which are not subject to any limit; (ii) claims for breaches of any Tax Representations which are not subject to any limit; (iii) claims for breaches of any Environmental Representations (which shall be subject to the separate limit in Section 23.6(b)(iv)); or (iv) Fraud-Type Claims which are not subject to any limit; or (v) claims for Compliance Breaches which are not subject to any limit.

#### Solely with respect to Sellers’ liability arising out of claims for breaches of Environmental Representations, Sellers’ aggregate maximum liability will not exceed [ ] percent ( %) of the Contract Price (the “**Environmental Cap**”).

#### NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY, THE PURCHASER INDEMNIFIED PARTIES OR THE SELLER INDEMNIFIED PARTIES (AS APPROPRIATE) FOR ANY EXEMPLARY, PUNITIVE, SPECIAL, INDIRECT, CONSEQUENTIAL, REMOTE, OR SPECULATIVE DAMAGES; including loss of profit or revenues, PROVIDED, HOWEVER, THAT SUCH LIMITATION OF LIABILITY SHALL NOT APPLY (A) TO FRAUD OR THE INTENTIONAL MISREPRESENTATION OR WILLFUL MISCONDUCT OF A PARTY, OR (B) WITH RESPECT TO ANY THIRD-PARTY CLAIM THAT INCLUDES SUCH DAMAGES AND WHICH IS SUBJECT TO A PARTY’S INDEMNIFICATION OBLIGATION HEREUNDER; OR (C) BREACH OF ARTICLE 22; PROVIDED THAT NEITHER (X) DAMAGES FOR LOSS OR REDUCTION OF THE ITC AS A RESULT OF A VIOLATION OF THE TAX REPRESENTATIONS OR ANY COVENANT HEREIN, nor (Y) any liquidated damages, AS APPLICABLE, SHALL BE CONSIDERED INDIRECT, CONSEQUENTIAL OR SIMILAR DAMAGES.

## Third Party Claims

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### If any claim or demand in respect of which an Indemnified Party might seek indemnity under this Article 23 is asserted against the Indemnified Party by a Person other than a Party hereto (a “**Third Party Claim**”), the Indemnified Party shall promptly give a Claim Notice, including copies of all relevant pleadings, documents and information, to the Indemnifying Party but no later than ten (10) Business Days following the receipt of notice of the Third Party Claim by the Indemnified Party; provided, that, the failure to so notify the Indemnifying Party shall not relieve the Indemnifying Party of its obligations hereunder except to the extent that the Indemnifying Party is materially prejudiced by such failure. The Indemnifying Party shall have ten (10) Business Days, or any other earlier period as requested by law for the Indemnified Party to respond to the Third Party Claim, after its receipt of such Claim Notice (the “**Third Party Claim Response Period**”), within which to give notice to the Indemnified Party, in writing, either denying its obligations to, or agreeing to fully, indemnify and defend the Third Party Claim under this Article 23.

### Upon the Indemnifying Party’s receipt of such Third Party Claim, the Indemnifying Party may assume the conduct and control of the defense of such Third Party Claim and shall at its expense defend such Third Party Claim by all appropriate proceedings, which proceedings will be diligently prosecuted to a final conclusion or will be settled; provided, that, unless consented to by the Indemnified Party (which consent shall not be unreasonably withheld), the Indemnifying Party shall not enter into any settlement without prior written consent of Indemnified Party. If the Indemnifying Party assumes the defense of such Third Party Claim, the Indemnifying Party shall be responsible for posting any bonds or other security required in connection with such Third Party Claim. The Indemnified Party will reasonably cooperate in such defense, including making available to the Indemnifying Party all records and documents reasonably requested in writing by the Indemnifying Party that are within the Indemnified Party’s control or that the Indemnified Party can reasonably obtain relating to the Third Party Claim, and all costs or expenses incurred or accrued and paid by the Indemnified Party at the request of the Indemnifying Party shall be paid by the Indemnifying Party promptly as statements are received. An Indemnified Party, at its expense, may participate in, but not control, any defense or settlement of any Third Party Claim conducted by the Indemnifying Party pursuant to this Section 23.7(b) or take any other actions it reasonably believes to be necessary or appropriate to protect its interests.

### If (i) the Indemnifying Party fails to assume the defense of a Third Party Claim in accordance with Section 23.7(b) within the Third Party Claim Response Period, (ii) an Indemnified Party determines in good faith that an adverse determination with respect to the proceeding giving rise to such claim for indemnification would be materially detrimental to or injure the Indemnified Party or its Affiliates, (iii) the Claim for indemnification relates to or arises in connection with any criminal proceeding, action, indictment, allegation or investigation alleged against the Indemnified Party, (iv) the Third Party Claim seeks an injunction or equitable relief against the Indemnified Party, (v) under applicable standards of professional conduct, a conflict of interest on any significant issue related to such proceeding exists between the Indemnifying Party, on the one hand, and an Indemnified Party, on the other hand, (vi) the Indemnifying Party is failing to vigorously prosecute or defend such Third Party Claim, or (vii) the Third Party Claim could reasonably be expected to affect all or any portion of the ITC, then, in each case, upon notice to the Indemnifying Party, the Indemnified Party may, in its sole discretion, retain counsel satisfactory to it to assume such defense on behalf of and for the sole account and risk of the Indemnifying Party, and in the case of clauses (i) through (vii) the Indemnifying Party shall pay all reasonable fees and expenses of such counsel for the Indemnified Party, and the Indemnifying Party and the Indemnified Party shall cooperate in the defense of any such matter. In the event that the Indemnified Party assumes the conduct and control of the defense of a Third Party Claim, with the exceptions of clauses (i), (v) and (vii), then the Indemnifying Party shall not be liable for any settlement effected without its prior written consent (which consent shall not be unreasonably withheld).

### If the Indemnifying Party notifies the Indemnified Party that it acknowledges its obligation to indemnify and defend the Indemnified Party with respect to a Third Party Claim, or it is otherwise determined that the Indemnifying Party is obligated to indemnify and defend the Indemnified Party with respect to a Third Party Claim, the Losses of the Indemnified Party incurred or accrued and paid and resulting from or arising out of such Third Party Claim in the amount finally determined will be conclusively deemed a Loss under this Article 23, and the Indemnifying Party shall pay the full amount of such Losses to the Indemnified Party on demand.

## Amount of Losses

. For purposes of determining the amount of Losses resulting from any misrepresentation or breach of a representation or warranty (but not for purposes of determining whether there has been a breach), the amount of any Loss shall be determined without regard to any materiality or Material Adverse Effect qualifiers in Article 18, Article 19, Article 20 and Article 21, it being the understanding of the Parties that for purposes of determining the amount of Losses under this Article 23, the representations and warranties of the Parties contained in this Agreement shall be read as if such terms and phrases were not included there.

## Mitigation

. Notwithstanding anything to the contrary contained herein, each Indemnified Party will act in good faith to take Commercially Reasonable Efforts to mitigate all Losses that may be subject to indemnity hereunder.

## Exclusive Remedy

. The Parties acknowledge and agree that from and after the Closing, the indemnification provisions in this Article 23 shall be the sole and exclusive remedy of any Party with respect to any and all Losses arising out of or in connection with the Transactions contemplated by this Agreement.

# Tax Matters

For purposes of this Article 24, the term Seller shall mean Seller and its Affiliates, and the term “Party”, when used in reference to Seller, shall mean Seller and, as applicable, ProjectCo and any Affiliates of the foregoing.

## Tax Returns Due Prior to Closing

. Seller shall prepare and timely file (including any applicable extensions) all Tax Returns required to be filed by ProjectCo, or relating to the Project Assets or activities of the Project that are due in respect of any Pre-Closing Tax Periods (other than any Straddle Period). Seller shall be liable for all Taxes related to any Pre-Closing Tax Period.

## Tax Returns Due After the Closing

. Purchaser shall prepare or cause to be prepared and timely file or cause to be filed all Tax Returns required to be filed by ProjectCo, or relating to the Project Assets or activities of the Project that are due in respect of any Straddle Period or any taxable periods beginning on or after the Closing Date. Seller shall pay to Purchaser, upon receipt of written notice, within fifteen (15) Days of any request, all Taxes related to any Pre- Closing Tax Period that are payable with respect to any Tax Return required to be filed by Purchaser under this Section 24.2 or any Taxes that are otherwise Seller’s responsibility.

## Refunds

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### Seller will be entitled to any credits and refunds (including interest received thereon), and all other revenue, but net of any fees, Taxes and other expenses incurred or payable by Purchaser in connection therewith, of Taxes paid by Seller in respect of the Project Assets for any Pre-Closing Tax Periods. Notwithstanding the foregoing, none of Seller or any of their respective Affiliates or direct or indirect partners, shareholders or members shall be entitled to (a) any ITC and (b) any credits or refunds attributable to, or resulting from, any such matters that are generated after the Closing Date (other than the Purchaser).

### Except as provided in Section 24.3(a), Purchaser will be entitled to all refunds (including any interest received thereon) of Taxes in respect of ProjectCo or the Project Assets arising after the Closing Date, all of the ITC, State Renewable Energy Incentives and Renewable Energy Credits arising after the Closing Date.

## Cooperation

. Purchaser and Seller shall cooperate fully (at the expenses of the requesting Party), as and to the extent reasonably requested by the other Party, in connection with (i) the filing of Tax Returns pursuant to this Article 24, (ii) any audit, examination, litigation or other proceeding with respect to Taxes regarding the Project Assets or activities of the Project and (iii) qualification of the Project for any ITC, State Renewable Energy Incentives or Renewable Energy Credits. Such cooperation shall include the retention and (upon the other Party’s request) the provision of records and information which are reasonably relevant to any such audit, litigation or other proceeding and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. Purchaser and Seller agree (a) to retain all Books and Records with respect to Tax matters pertinent to the Project Assets relating to any taxable period beginning before the Closing Date, and to abide by all record retention agreements entered into with any taxing authority, and (b) to give the other Party reasonable written notice prior to transferring, destroying or discarding any such Books and Records and, if the other Party so requests, Purchaser or Seller, as the case may be, shall allow the other Party to take possession of such Books and Records.

## Further Assurances

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### Neither Seller nor ProjectCo, or any other direct or indirect owner of ProjectCo before the Closing Date, will engage in any action, fail to take any action, or cause or permit any other Person to take any action (excluding any action taken or requested to be taken by Purchaser or its Affiliates) that would jeopardize the receipt by Purchaser or any of its Affiliates of the ITC, State Renewable Energy Incentives or Renewable Energy Credits or the eligibility of the Project Assets to qualify for the ITC, State Renewable Energy Incentives or Renewable Energy Credits

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### Purchaser and Seller shall, upon request and at the requesting Party’s expense, use their Commercially Reasonable Efforts to obtain any certificate or other document from any Governmental Authority or any other person as may be necessary to mitigate, reduce or eliminate any Tax that could be imposed (including, but not limited to, with respect to the Transactions)

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### Purchaser and Seller shall, upon request and at the requesting Party’s expense, provide the other Party with all reasonable information that either Party may require with respect to any Tax reporting obligations of such Party in connection with the Transactions

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## Transfer Taxes

. All Transfer Taxes incurred in connection with the Transactions, if any, shall be borne equally by Purchaser and Seller. Purchaser will pay such Transfer Taxes, and file all necessary Tax Returns and other documentation with respect to all such Transfer Taxes, and Seller or ProjectCo, as applicable, will join in the execution of any such Tax Returns and other documentation. Seller shall remit to Purchaser its share of such Transfer Taxes ten (10) Days prior to the due date thereof and Purchaser shall provide the information and notice for Seller to meet this obligation.

## Notice of Tax Audits/Claims

. If any third-party notifies Seller of the existence of any audit, litigation or other proceeding relating to Taxes of the Project Assets (a “**Third Party Tax Claim**”), Seller shall give notice to Purchaser within a reasonable period of time, but no later than thirty (30) Days of the notice of the Third Party Tax Claim. Purchaser shall be entitled to participate in any such Third Party Tax Claim (at its own cost and expense) and Seller covenants not to settle or otherwise dispose of any Third Party Tax Claim, if such claim shall have or could reasonably be expected to have adverse Tax consequences to the Project Assets or Purchaser, without first obtaining written consent from Purchaser of such settlement or disposition.

## Tax Setoff

. To the extent not paid to Purchaser by Seller pursuant to the requirements set forth in this Article 24, Purchaser shall have the right to withhold and deduct any Taxes or Losses attributable to Pre-Closing Tax Periods that are undisputed by the Parties, to be owed to Purchaser from Seller under this Article 24, from any amount otherwise payable by Purchaser to Seller hereunder, including the Contract Price. The withholding and deduction of any such sums shall operate for all purposes as a complete discharge (to the extent of such sum) of the obligation by Purchaser to pay the amount from which such sum was withheld and deducted, provided Purchaser receives written consent from Seller (consent not to be unreasonably withheld).

## Tax Treatment of Purchase and Sale

. The Parties acknowledge that ProjectCo is an entity that is disregarded as an entity separate from its owner for Tax purposes under Treasury Regulations Section 301.7701-3(b)(1)(ii). Accordingly, the Parties intend for the purchase and sale of ProjectCo Interests to be treated as a purchase and sale of all the assets and liabilities of ProjectCo as of the Closing for federal income Tax purposes in accordance with the requirements under Section 1060 of the Code and the Treasury Regulations thereunder. As such, the Parties intend, and otherwise agree, that (i) the Project is being constructed by Seller for the purpose of transferring those assets to Purchaser on the Closing Date, (ii) the Project is not being constructed for the purpose of Seller or its Affiliates holding such assets in its trade or business once operational nor for the production of income, and Seller, including its regarded parent for federal income tax purposes, is holding the Project as an asset described in Section 1221(a)(1) of the Code, and (iii) Purchaser is the intended purchaser of the Project and will hold the Project in its trade or business and for the production of income once control of the Project is passed to Purchaser on the Closing Date. Purchaser and Seller shall prepare and file, and shall cause their respective Affiliates to prepare and file, all Tax Returns in a manner consistent with such intended treatment, except as otherwise required by applicable Law. The Parties agree to allocate the Contract Price among the Project Assets in accordance with an allocation schedule to be agreed upon on or before the Closing and attached hereto as Section 24.9 of the Disclosure Schedules (the “**Allocation Schedule**”). The Parties acknowledge and agree that for purposes of income Tax reporting, the Project Assets do not include any goodwill or going concern value. Purchaser and Seller shall file all Tax Returns in a manner consistent with the Allocation Schedule and shall take no position contrary thereto, except as otherwise required by applicable Law.

## Tax Treatment of Certain Post-Closing Payments

. Except as otherwise required by applicable Law, Seller and Purchaser and their respective Affiliates shall treat any and all payments under Article 22 and this Article 24 as an adjustment to the Contract Price for all Tax purposes.

## Prevailing Wage and Apprenticeship Requirements

.

### Seller and EPC Contractor shall cause its Subcontractors to, comply with all prevailing wage and apprenticeship requirements set forth in Sections 45(b)(7) – (8) of the Code and Section 48(a)(10) – (11) of the Code, and any regulations or other Treasury Department guidance thereunder, including by complying with any required record-keeping, reporting and certification requirements as set forth in IRS Notice 2022-61 and related Treasury Department guidance. Seller and EPC Contractor shall cause its Subcontractors to, maintain and promptly provide to owner or its agents, successors, or assigns upon request, the following information and documentation (and any and all additional information and documentation reasonably requested by owner or its agents, successors, or assigns regarding compliance) including, but not limited, to:

#### Name, address, and social security number of each work;

#### The workers’ labor classification and/or classifications of work performed;

#### The hourly rate of wages paid for that classification;

#### The number of daily and weekly hours worked by each worker;

#### Any deductions made; and

#### The total wages paid.

### If Seller or EPC Contractor, fails to satisfy any of its obligations set forth in this Section 24.11 and the applicable facility fails to qualify for the five-times multiplier set forth in Section 45(b)(6) of the Code or Section 48(a)(9) of the Code, as applicable, Seller or EPC Contractor shall pay to owner, or as directed by owner, promptly upon demand an amount equal to the correction and penalty amounts described in Section 45(b)(7)(B) or Section 48(b)(10)(B) of the Code, as applicable, with respect to the applicable facility pursuant to this Agreement.

# Default and Termination

## Termination by Purchaser for Cause

.

### The occurrence of any one or more of the following matters constitutes a default by Seller under this Agreement (a “**Seller Default**”):

#### Seller or ProjectCo before Closing becomes insolvent or generally fails to pay, or admits in writing its inability or unwillingness to pay, its debts as they become due (other than for any amounts disputed by Seller hereunder in good faith and in accordance with Article 26);

#### Seller or ProjectCo before Closing makes a general assignment for the benefit of its creditors;

#### Seller or ProjectCo before Closing shall commence or consent to any case, proceeding or other action (i) seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of Seller or ProjectCo or Seller’s or ProjectCo’s debts under any Law relating to bankruptcy, insolvency, reorganization or relief of debts, or (ii) seeking appointment of a receiver, trustee or similar official for Seller or ProjectCo for all or any part of Seller’s or ProjectCo’s property;

#### any case, proceeding or other action against Seller or ProjectCo before Closing shall be commenced (i) seeking to have an order for relief entered against Seller or ProjectCo as debtor, (ii) seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of Seller or ProjectCo or Seller’s or ProjectCo’s debts under any Law relating to bankruptcy, insolvency, reorganization or relief of debtors, or (iii) seeking appointment of a receiver, trustee, or similar official for Seller or ProjectCo for all or any part of Seller’s or ProjectCo’s property, in any case, which has not been dismissed within ninety (90) Days of commencement;

#### any representation or warranty made by Seller was materially false or misleading when made;

#### Seller attempts to assign, convey or transfer this Agreement or any interest herein without Purchaser’s prior written consent, except for assignments authorized by this Agreement;

#### Seller does not satisfy the Purchaser Closing Conditions Precedent by the Approval Deadline and Purchaser does not waive its right to have such condition precedent satisfied in writing;

#### Seller fails to post Credit Support in accordance with Article 16;

#### the occurrence of a Change of Control of Seller or ProjectCo before Closing;

#### the occurrence of a Compliance Breach;

#### Seller fails to maintain any insurance coverages required of it hereunder, and Seller fails to remedy such breach within twenty (20) Days after the date on which Seller becomes aware of such failure;

#### Seller fails to perform any provision of this Agreement providing for the payment of money to Purchaser, except for any amounts disputed by Seller in good faith, and such failure continues for fifteen (15) Business Days after Seller has received a Notice of such payment default from Purchaser; or

#### Seller fails to observe or perform any other material covenant, agreement, obligation, duty or provision of this Agreement or any other Transaction Document or Material Project Contract beyond any applicable cure period herein or therein (through no fault of Purchaser), and such failure continues for thirty (30) Days after Seller’s receipt of written notice thereof from Purchaser or such longer period not to exceed ninety (90) Days to the extent such failure is capable of being remedied and Seller is diligently pursuing a cure.

### Upon the occurrence of a Seller Default, Purchaser may terminate this Agreement and the other Transaction Documents it is a party to by providing written notice of such termination to Seller, and within ten (10) Business Days thereafter, Seller shall pay Purchaser an amount equal to damages and reasonable costs incurred by Purchaser, AESI or any Affiliates of Purchaser due to the Seller Default and resulting termination.

## Termination by Seller for Cause

.

### The occurrence of any one or more of the following matters prior to the Closing constitutes a default by Purchaser under this Agreement (a “**Purchaser Default**”):

#### Purchaser becomes insolvent or generally fails to pay, or admits in writing its inability or unwillingness to pay, its debts as they become due;

#### Purchaser makes a general assignment for the benefit of its creditors;

#### Purchaser shall commence or consent to any case, proceeding or other action (i) seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of Purchaser or of Purchaser’s debts under any Law relating to bankruptcy, insolvency, reorganization or relief of debts, or (ii) seeking appointment of a receiver, trustee or similar official for Purchaser or for all or any part of Purchaser’s property;

#### any case, proceeding or other action against Purchaser shall be commenced (A) seeking to have an order for relief entered against Purchaser as debtor, (B) seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of Purchaser or Purchaser’s debts under any Law relating to bankruptcy, insolvency, reorganization or relief of debtors, or (C) seeking appointment of a receiver, trustee, or similar official for Purchaser or for all or any part of Purchaser’s property, in any case, which has not been dismissed within ninety (90) Days of commencement;

#### the material breach of any representation or warranty made by Purchaser herein on or as of the Signing Date, Closing Date and/or Final Completion, when applicable, and such failure continues for thirty (30) Days after Purchaser’s receipt of written notice thereof from Seller (or such longer period not to exceed ninety (90) Days to the extent Purchaser is diligently pursuing a cure);

#### Purchaser attempts to assign, convey or transfer this Agreement or any interest herein without Seller’s prior written consent, except for assignments, conveyances and transfers authorized by this Agreement;

#### Purchaser fails to post Credit Support in accordance with Article 17;

#### Purchaser does not satisfy the Seller’s Closing Conditions Precedent by the Approval Deadline; or

#### Purchaser fails to observe or perform any other material covenant, agreement, obligation, duty or provision of this Agreement or any other Transaction Document (through no fault of Seller, ProjectCo (prior to Closing) or their Affiliates), and such failure continues for thirty (30) Days after Purchaser’s receipt of written notice thereof from Seller or such longer period not to exceed ninety (90) Days to the extent such failure is capable of being remedied and Purchaser is diligently pursuing a cure; *provided that* the cure period for any failure of Purchaser to make a State Regulatory Approval filing pursuant to Section 7.1 shall be fifteen (15) Days.

### Upon the occurrence of a Purchaser Default, Seller may terminate this Agreement and the other Transaction Documents it is a party to by providing written notice of such termination to Purchaser, and within ten (10) Days thereafter, Purchaser shall pay Seller an amount equal to damages and reasonable costs incurred by Seller, ProjectCo or any Affiliates of Seller due to the Purchaser Default and resulting termination

.

## Failure of Certain Conditions Precedent

. Notwithstanding anything to the contrary contained herein, if the Mutual Closing Conditions Precedent provided in Section 4.7 are not satisfied as of the Closing Date, then this Agreement shall automatically terminate and, except as otherwise expressly provided in this Agreement, no Party shall have any further liability or obligation to the other Party hereunder.

## Termination Under Article 2

. Notwithstanding anything to the contrary contained herein, if either Party terminates this Agreement as expressly provided in Article 2, then the rights and remedies and obligations of the Parties, upon any such termination, shall be as expressly provided by the terms of Article 2 (and this Article 25 shall not apply).

# Dispute Resolution

## Arbitration

. The Parties shall attempt in good faith to resolve all disputes arising out of, related to or in connection with this Agreement (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 Project 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 panel of three arbitrators and pursuant to the CPR Institute for Dispute Resolution Rules for Administered Arbitration then in-effect, including any appellate provisions in those rules. The Parties waive any judicial challenges to or judicial appeals from the arbitrators’ order. The panel of three arbitrators shall be selected in the following manner: one arbitrator shall be selected by each respective Party and the third arbitrator shall be selected by the first two arbitrators. The panel of arbitrators may apportion the fees, costs, and other expenses of arbitration between the Parties in such manner as it deems reasonable, taking into account the circumstances of the case, the conduct of the Parties and their counsel during the proceeding, and the result of the arbitration. 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 arbitrators to facilitate and permit discovery from third parties and/or witnesses, including from entities, persons, and witnesses outside the State of Indiana.

## 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 Agreement 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 Agreement are hereby tolled for a period of sixty (60) Days. 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 applicable milestone.

## Expedited Relief

### . Nothing in this Article 26 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 Purchaser shall continue to prosecute their obligations under this Agreement and maintain their progress and/or deliveries 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 Agreement. Nothing in this Section 26.4 shall limit any Party’s legal or equitable rights and remedies set forth in this Agreement.

## Settlement Discussions

. No statements of position or offers of settlement made in the course of the negotiation described in Section 26.1 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 AGREEMENT 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 AGREEMENT. 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 AGREEMENT 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 Agreement, each Party shall bear their own costs.

# Miscellaneous

## Notices

. Notices required by this Agreement (each, a “**Notice**“) shall be in writing and addressed to the other Party, including the other Party’s representative, at the addresses noted in Exhibit L 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 27.1.

## Applicable Laws

. Each Party shall at all times comply with all applicable Laws, except for any non-compliance that, individually or in the aggregate, could not reasonably be expected to have a material effect on the business or financial condition of the Party or its ability to fulfill its commitments hereunder.

## 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 Agreement, 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 Purchaser 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 Purchaser, its Affiliates, and its and their employees, subcontractors and representatives.

### If fees, fines, penalties, or costs are claimed or assessed against Purchaser by any Governmental Authority due to noncompliance by Seller, its employees, or subcontractors with any provision of this Agreement, 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 Agreement, or any contractual obligation, Permit or requirements of applicable Law, Seller shall reimburse (to the extent of Purchaser’s payments) and/or hold Purchaser harmless against any the costs incurred by Purchaser, including claims for indemnity or contribution made by third parties against Purchaser in accordance with Article 22.

## Rate Changes

.

### The terms and conditions and the rates for service specified in this Agreement shall remain in effect for the term of this Agreement.

### Absent the written agreement of both Parties to a proposed change, this Agreement 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 Agreement 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 Agreement, Purchaser 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. Other than ProjectCo, the Seller Indemnified Parties and the Purchaser Indemnified Parties which are intended to be third party beneficiaries of this Agreement, nothing in this Agreement 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 Agreement.

## Relationship of the Parties

.

### This Agreement 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 Agreement 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 the Purchaser, 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 Purchaser for any purpose; nor shall Seller represent to any person that he or she is or shall become a Purchaser employee.

## Equal Employment Opportunity Compliance Certification

. Seller acknowledges that as a government contractor Purchaser 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 Purchaser. 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 Agreement 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 Agreement, 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 Agreement and their application not adversely affected thereby shall remain in force and effect; *provided, however*, that Purchaser and Seller shall negotiate in good faith to attempt to implement an equitable adjustment in the provisions of this Agreement with a view toward effecting the purposes of this Agreement 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 Agreement constitute the entire agreement between Purchaser and Seller with respect to the Project and shall supersede all previous communications, representations, or agreements, either verbal or written, between Purchaser and Seller with respect to the sale of any output from the Project. This Agreement, including exhibits, may be amended, changed, modified, or altered in accordance with the terms of this Agreement; *provided, however*, that the amendment, change, modification, or alteration shall be in writing and executed by both Parties.

## Successors and Assigns

. This Agreement is binding upon and shall inure to the benefit of the Parties hereto and their respective permitted successors, legal representatives, and assigns. Except as otherwise set forth below and in other parts in this Agreement, no Party may assign any or all of its rights or obligations under this Agreement, in whole or in part, to any other Person without obtaining the written consent or approval of the other Parties. Purchaser may assign, in whole or in part, its rights or obligations pursuant to this Agreement, without Seller’s consent (i) to ProjectCo or one or more of its Affiliates and/or (ii) for collateral security purposes to any Purchaser financing sources, and ProjectCo, any Affiliate or any Purchaser financing source to which those rights or obligations are assigned may exercise all of the rights and remedies of Purchaser assigned to it against Seller.

## Headings

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

## Counterparts and Electronic Signatures

.This Agreement may be executed in counterparts, and each executed counterpart shall have the same force and effect as an original instrument.  The signature pages to this Agreement may be delivered via electronic mail (including .pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, e.g., [www.docusign.com](http://www.docusign.com)) or other transmission method and any signature page so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

## Governing Law

. The interpretation and performance of this Agreement 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 Agreement 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 Project 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 Project, the long-term nature of this Agreement, 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 Agreement, either Party is contacted by the media concerning this Agreement or the Project, 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 L (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 Agreement or with the mutual consent of both Parties.

## Confidential Information

.

### 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 Agreement 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 (A) with the prior written consent of the non-disclosing Party or (B) (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 ProjectCo 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 of the exceptions enumerated in this subsection (B) : (y) the Confidential Information is submitted under any applicable provisions for confidential treatment by the government, judicial or regulatory authority; and (z) 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 27.17(a).

### The Parties acknowledge and agree that during the course of the performance of their respective obligations under this Agreement, 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 Agreement 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 Project 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 Project 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 Agreement, 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 27.17, to use it for work necessary to the performance of this Agreement, 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 27.17 or Section 27.15, 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 Agreement by the receiving Party; or

##### Which is disclosed by a Party, in connection with the Party’s performance of its obligations under this Agreement, 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 Agreement.

### If necessary or appropriate, the Parties will cooperate to prepare a “public version” of this Agreement for inclusion in the public record at the IURC. The Parties agree that the public version of this Agreement will redact only that information that properly constitutes confidential, competitively sensitive, proprietary, and/or “trade secret” information as that term is construed by the State Regulatory Authority.

### The Parties acknowledge that certain information concerning the Project 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 Agreement, the other Transaction Documents and of every part, term and provision hereof and thereof, and each and every obligation hereunder and thereunder.

[Signature Page Follows]

In Witness Whereof, the Parties hereto have executed this Agreement as of the day and year first above written.

|  |  |
| --- | --- |
|  | Seller  [                                                                  ]  By:  Printed:  Title: |
|  | Purchaser  [                                                                  ]  By:  Printed:  Title: |

**Exhibit A**

**Definitions**

The following terms shall have the meanings set forth herein:

“**1933 Act**” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“**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 “**Baa**3” from Moody’s.

“**Acceptable Guarantor**” means (a) 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)), (b) with respect to a Purchaser Guaranty, (i) AESI 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 (c) another Person that has an Acceptable Credit Rating or a tangible net worth of at least One Billion Dollars ($1,000,000,000).

“**AES Safety and Security Standards**” has the meaning set forth in Section 5.9.

“**AESI**” has the meaning set forth in the Recitals.

“**Affiliate**” means, with respect to any Person, any other Person directly or indirectly controlling, controlled by or under common control with such Person. For purposes of the immediately preceding sentence, the term “**control**” (including, with correlative meanings, the terms “**controlling**”, “**controlled by**” and “un**der common control with**”), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities, by contract or otherwise. Notwithstanding the foregoing, for purposes of the representations and warranties in Article 19, ProjectCo shall not be deemed an Affiliate of Seller.

“**Agreed Amount**” has the meaning set forth in Section 23.4.

“**Agreement**” has the meaning set forth in the first paragraph of this Agreement.

“**Allocation Schedule**” has the meaning set forth in Section 24.9.

“**Applicable Laws and Regulations**” has the meaning set forth in Section 22.1.

“**Approval Deadline**” means twelve months after the State Regulatory Target Filing Date.

“**As-Built Survey**” means an as-built Survey of all of the Project Real Property.

“**Assets**” means all assets and rights of any kind, whether tangible or intangible, real or personal, including land and properties (or interests therein, including rights of way, leaseholds and easements), buildings, equipment, machinery, improvements, fixtures, Contracts, Environmental Attributes, Reports and Studies (including those related to interconnection, environmental, cultural, resource and market matters), Permits, Intellectual Property Rights, inventory, Books and Records, proprietary rights, return and other rights under or pursuant to all warranties, representations and guarantees, cash, accounts receivable, deposits and prepaid expenses.

“**Assignment of ProjectCo Interests**” means the Assignment of ProjectCo Interests, in the form attached hereto as Exhibit M.

“**Assumed Liabilities**” means Liabilities of ProjectCo that are required to be performed after the Closing; provided that, without in any way broadening the scope of Assumed Liabilities, Assumed Liabilities shall not include any Excluded Liabilities.

“**Base Purchase Price**” means $[X].

“**Basket**” has the meaning set forth in Section 23.6(b)(ii).

“**Battery Capacity**” has the meaning set forth in the first paragraph of the Recitals to this Agreement.

“**Battery Components Supplier**” means the Subcontractor identified pursuant to Section 5.22 herein responsible for the design, manufacture, transportation and testing of the BESS for the Project pursuant to the Battery Equipment Agreements.

“**Battery Equipment**” has the meaning set forth in Section 5.19(a).

“**Battery Equipment Agreement**” has the meaning set forth in Section 5.19(a).

“**BESS**” means the DC-connected battery energy storage system to be located and constructed in accordance with this Agreement on the Project 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, “BESS” includes any common facilities between the battery energy storage system (and related assets and properties). A general description of the BESS is provided in Exhibit C.

“**BESS RT Efficiency**” means the percentage equal to (i) the aggregate net energy output (AC) of the BESS at the Electrical 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 J and the other applicable provisions of this Agreement pursuant to a Performance Test.

“**BESS RT Efficiency Test**” means a Performance Test to be performed to determine the BESS RT Efficiency in accordance with the requirements, standards and procedures set forth in this Agreement, Exhibits J-1 and J-2, and the Performance Standard.

“**BESS RT Efficiency Test Procedures**” means the written test procedures, standards, protective settings and testing programs for the BESS RT Efficiency Test set forth in Exhibit J-2.

“**BESS Storage Capacity**” means the aggregate net energy storage capacity (AC) of the BESS at the Electrical 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 Exhibit J-1 and the other applicable provisions of this Agreement pursuant to a Performance Test.

“**BESS Storage Capacity Liquidated Damages Amount**” means [$ •] per kW ([$ •,000 ]per MW).

“**BESS Storage Capacity Test**” means a Performance Test to be performed to determine the BESS Storage Capacity in accordance with the requirements, standards and procedures set forth in this Agreement, Exhibits J-1 and J-2, and the Performance Standard.

“**BESS Storage Capacity Test Procedures**” means the written test procedures, standards, protective settings and testing programs for the BESS Storage Capacity Test set forth in Exhibit J-2.

“**Books and Records**” means any and all data, operating records, manuals, files, reports, external material correspondence (excluding correspondence with counsel with respect to negotiations related to this Transaction), maps, surveys, books, logs, certificates, invoices, payment records and other financial records, financial statements, Tax Returns (and other documents related to Taxes, including the Project’s eligibility for ITC), the Organizational Documents of ProjectCo, and other similar documents and records relating to the Project, the Project Assets, ProjectCo Interests or ProjectCo, whether in hard copy or electronic form.

“**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.

“**Cap**” has the meaning set forth in Section 23.6(b)(iii).

“**Capacity Test Cure Period**” has the meaning set forth in Section 15.3.

“**CEII**” has the meaning set forth in Section 27.17(d).

“**CFIUS**” means the Committee on Foreign Investment in the United States.

“**CFIUS/HSR Regulatory Approvals**” means (i) any required written notification issued by CFIUS indicating that it has concluded a review of any notification voluntarily provided pursuant to section 721 of the Defense Production Act of 1950, as amended, and determined not to conduct an investigation or, if an investigation is deemed to be required, notification that the U.S. Government will not take action to prevent the transactions contemplated by this Agreement from being consummated and (ii) all applicable waiting periods (and any extensions thereof) under the HSR Act shall have expired or been terminated.

“**Change in Tax Law**” means (a) any change in or amendment to the Code or another applicable federal income tax statute, (b) any change in, or issuance of, or promulgation of any temporary or final Treasury Regulations promulgated thereunder that results in any change to the interpretation of the Code or existing Treasury Regulations, (c) any published Internal Revenue Service guidance, notice, announcement, revenue ruling or revenue procedure, any technical advice memorandum, examination, directive or similar authority issued by the Internal Revenue Service Large Business and International division, and any published advice, advisory, or legal memorandum issued by Internal Revenue Service Chief Counsel, that applies, advances or articulates a new or different interpretation or analysis of any provision of the Code, any other applicable federal tax statute, any temporary or final Treasury Regulations promulgated thereunder, or any proposed Treasury Regulation promulgated thereunder if the interpretation or analysis of such proposed Treasury Regulation would apply prior to the issuance of the related final Treasury Regulation, (d) any change in the interpretation of the Code or Treasury Regulations by a decision of the U.S. Tax Court, the U.S. Court of Federal Claims, a U.S. District Court, a U.S. Court of Appeals or the U.S. Supreme Court, that applies, advances or articulates a new or different interpretation or analysis of federal income tax Law, (e) any written ruling, examination or guidance of the Internal Revenue Service issued to Purchaser or its Affiliate (other than the IRS Ruling), or (f) any federal income tax legislation that is either (i) enacted or passed by either house in Congress or (ii) included in a bill reported out of the House Ways and Means Committee or Senate Finance Committee and, in each case, that is reasonably likely to be enacted into Law.

“**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:

1. fifty percent (50%) or more of the equity, capital or profits interest of such entity; or
2. control of such entity through the ownership of voting securities with the power to direct the day-to-day management policies of such entity or otherwise; and as a result of a consummation of any transaction or series of transactions (including any merger or consolidation), such 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 such sale, (x) either (1) the purchaser or transferee of such 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) the Credit Support remains in place or is replaced as required by Article 16.

“**Change Order**” means a written instrument signed by Purchaser and Seller authorizing a change in the Work.

“**Claim**” has the meaning set forth in Section 23.3.

“**Claim Notice**” has the meaning set forth in Section 23.3.

“**Claimed Amount**” has the meaning set forth in Section 23.3.

“**Closing**” has the meaning set forth in Section 4.1.

“**Closing Date**” has the meaning set forth in Section 4.1.

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

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

“**Commissioning Plan**” means the commissioning plan and process Seller shall develop to ensure all Project components meet the requirements of this Agreement and the Performance Standard, including BESS RT Efficiency and BESS Storage Capacity.

“**Complete Project Permits**” has the meaning set forth in Section 19.13(b).

“**Compliance Breach**” has the meaning set forth in Section 22.15.

“**Confidential Information**” has the meaning set forth in Section 27.17(b).

“**Consent**” means a consent, waiver, approval, assent, order, requirement, allowance, novation, authorization, permit, license, declaration, filing or registration of or to Persons, including Governmental Authorities, which is given in writing to a Party to this Agreement.

“**Contaminant**” includes any material, substance, chemical, gas, liquid, waste, effluent, pollutant or contaminant which, whether on its own or admixed with another, is identified or defined in or regulated by or pursuant to any Environmental Law or which upon Release into the environment presents a danger to the environment or to the health or safety or welfare of any Person.

“**Contested Amount**” has the meaning set forth in Section 23.4.

“**Contract**” means, with respect to any Person, all powers of attorney, instruments, licenses, leases, agreements, contracts, obligations, offers, sale orders, purchase orders, deeds, easements, undertakings, understandings and commitments (whether written or oral and whether express or implied) (a) to which such Person is a party, (b) under which such Person has any rights, (c) under which such Person has any Liability or (d) by which such Person, or any of the assets or properties owned or used by such Person, is bound or affected, including, in each case, all amendments, modifications, extensions and supplements thereto and waivers and consents thereunder.

“**Contract for Differences**” means the Contract for Differences between AESI and ProjectCo entered into as of the Closing Date.

“**Contract Price**” has the meaning set forth in Section 3.2.

“**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 16.

“**Critical Milestones**” means the Milestones designated as “**Critical Milestones**” on Exhibit P.

“**Critical Path Project Schedule**” means the schedule set forth in Exhibit Q, as adjusted pursuant to Section 7.5.

“**Daily Delay Liquidated Damages**” means $[\_\_\_] per MW per day.

“**Data Room**” means all documents and materials posted to [\_\_\_\_\_\_] to which Purchaser and its representatives have been provided access.

“**Day**” or “**day**” means a calendar day.

“**Defect**” means any of (i) with respect to Work of Seller performed by EPC Contractor under the EPC Agreement, any such Work that is materially defective or otherwise not performed in accordance with the terms of this Agreement and the EPC Agreement, (ii) with respect to materials, equipment, components, and all other items and services supplied under the Battery Equipment Agreements, any such Work of Seller that is materially defective or otherwise not performed in accordance with the terms of this Agreement and the Battery Equipment Agreements in any material respect, (iii) with respect to any portion of the Work which is not provided under any of the Battery Equipment Agreements or the EPC Agreement, the material failure of such portion of the Work to be free from defects or otherwise designed, engineered, constructed and performed in accordance with this Agreement or the applicable Contracts for such Work and the Requirements, or (iv) Work performed by or for Seller under this Agreement.

“**Delay Liquidated Damages**” has the meaning set forth in Section 15.1.

“**Design Package**” has the meaning set forth in Section 5.5(c).

“**Design Schedule**” means the schedule set forth in the section of the Critical Path Project Schedule labeled “Design & Engineering.”

“**Designated Person**” has the meaning set forth in Section 22.2(b)(iii).

“**Disclosure Schedules**” means the schedules referred to in this Agreement, as updated from time to time in accordance with the terms hereof, and delivered by Seller to Purchaser in connection with the Transactions.

“**Dispute**”has the meaning set forth in Section 26.1.

“**Diverse Supplier Spend**” means the actual or projected compensation paid (or to be paid) to any Person that is recognized by the State of Indiana as a Minority Business Enterprise, a Women Business Enterprise, or a Disadvantaged Business Enterprise.

“**Draft Pro Forma Policy**” means a pro forma title policy, together with all endorsements attached thereto, in form and substance reasonably satisfactory to Purchaser, issued by the Title Insurer and showing, unless specifically stated to the contrary herein, all Project Real Property, subject only to Permitted Liens.

“**Electrical Interconnection Point**” means the point of electrical interconnection between the Project and the transmission system, as set forth in the Interconnection Agreement.

“**Employee Benefit Plan**” means an “employee benefit plan” within the meaning of Section 3(3) of ERISA, any specified fringe benefit plan as defined in Section 6039D of the Code, and any other bonus, incentive compensation, deferred compensation, profit-sharing, stock-option, stock-appreciation right, stock-bonus, stock-purchase, employee-stock-ownership, savings, severance, change in control, supplemental unemployment, layoff, salary-continuation, retirement, pension, health, life-insurance, disability, accident, group-insurance, vacation, holiday, sick-leave, fringe-benefit, or welfare plan, and any other employee compensation or benefit plan, Contract (including any collective bargaining agreement), policy, practice, commitment or understanding (whether qualified or non-qualified, currently effective or terminated, written or unwritten) and any trust, escrow or other agreement related thereto.

“**Environmental Attributes**” means any and all fuel, emissions, air quality (including carbon, SOx and NOx) and other environmental characteristics, credits, benefits, reductions, offsets, allowances, certificates, green tags and attributes resulting from the storage of energy by the Project or the avoidance of the emission of any gas, chemical or other substance to the air, soil or water attributable to such storage or arising out of any requirements of Law (whether now existing or enacted in the future and including any benefit under Clean Air Act as amended, 42 U.S.C. Section 7401 et seq. ), including any existing or future credits or allowances for the reduction of sulfur dioxide, sulfur compounds, acid rain precursors, methane, carbon monoxide, chlorinated hydrocarbons, carbon compounds, nitrogen-oxygen compounds, greenhouse gases, ozone precursors, particulate matter, metals and toxic air pollutants. For the sake of clarity, Environmental Attributes shall include Renewable Energy Credits and shall exclude tax benefits, incentives, credits, and investment tax credits.

“**Environmental Cap**” has the meaning set forth in Section 23.6(b)(iv).

“**Environmental Law**” means any Law which relates to environmental quality, safety, or the protection of human health, ambient air, waters (including ground waters), land, wildlife or any endangered, threatened, candidate or special status species or to the manufacture, formulation, processing, treatment, storage, containment, labeling, handling, transportation, distribution, recycling, reuse, Release, disposal, removal, remediation, abatement or clean-up of any Hazardous Material, including the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. Section 9601 et seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901 et seq.; the Toxic Substances Control Act, as amended, 15 U.S.C. Section 2601 et seq.; the Clean Air Act, as amended, 42 U.S.C. Section 7401 et seq.; the Clean Water Act, as amended, 33 U.S.C. Section 1251 et seq.; the Occupational Safety and Health Act, as amended, 29 U.S.C. Section 651 et seq.; and Title 13 of the Indiana Code.

“**Environmental Representations**” means the representations and warranties of Seller set forth in Section 19.12.

“**EPC Agreement**” has the meaning set forth in Section 5.19(c).

“**EPC Contractor**” means the Subcontractor selected by ProjectCo in accordance with Section 5.22(a).

“**EPC Holdback**” means the amount withheld from payment to the EPC Contractor under the EPC Agreement to complete the unfinished work and services of the EPC Contractor identified on the Punch List as of the Closing Date.

“**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended.

“**ESA**” means the federal Endangered Species Act.

“**Estimated Interconnection Costs**” means [$\_\_\_\_\_\_].

“**Excluded Assets**” means (i) all rights, privileges, refunds, adjustments and claims relating or pertaining to the Project arising under the Project Contracts prior to the Closing Date, including any letters of credit or other deposits made by ProjectCo or any Affiliate of Seller to secure obligations thereunder, and (ii) all rights and recourse against any party (other than ProjectCo) to a Project Contract for indemnification or otherwise (including but not limited to any rights to liquidated damages or any statutory or common law rights of contribution or indemnity) arising in connection with any breach of such party’s representations, warranties, covenants or agreements made in such Project Contract or arising from any other contractual indemnification from such party included in such Project Contract if and to the extent that any liability of Seller or any of its Affiliates with respect thereto is included among the Excluded Liabilities.

“**Excluded Assets Transfer, Assignment and Assumption Agreement**” is defined in Section 4.3(s).

“**Excluded Liabilities**” means (a) all Liabilities of ProjectCo or otherwise related to the Project or the Project Assets (whether absolute, accrued, contingent, determined, determinable or otherwise), whether known or unknown, except for the Assumed Liabilities and Liabilities related to the Project or the Project Assets which first arise after the Closing Date; (b) any Liability associated with obtaining the Interconnection Agreement prior to the Closing Date and subject to the adjustment to the Contract Price set forth in Section 3.4; (c) any obligations or Liability prorated to Seller under Section 3.5; (d) any Liability of ProjectCo under the Project Contracts (including any payment obligations thereunder whether such payments are due prior to or after Closing but related to activities executed prior to the Closing) other than nonmonetary covenants and agreements of ProjectCo thereunder to be performed after the Closing that are incidental to the ownership of the Project and approved by Purchaser prior to the Closing Date by virtue of its review and approval of the Project Contracts; and (e) all Liabilities of Seller or any of its Affiliates to the extent arising in connection with or related to the Excluded Assets.

“**Excluded Liabilities Transfer, Assignment and Assumption Agreement**” is defined in Section 4.3(t).

“**Excusable Event**” means Purchaser’s failure to perform its material obligations under this Agreement.

“**Executives**” has the meaning set forth in Section 26.1.

“**Exempt Wholesale Generator**” has the meaning set forth for such term in PUHCA and 18 C.F.R. § 366.1.

“**Expiration Date**” means two (2) years after the Final Completion Date.

“**FAA**” means the Federal Aviation Administration.

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

[“**Fee Property Agreements**” means all Contracts to acquire fee interests in real property for the Project’s substation and operation and maintenance facility.][[5]](#footnote-5)

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

“**FERC Regulatory Filing**” has the meaning set forth in Section 21.3(b).

“**Final BESS RT Efficiency Test**” means, if undertaken, the results of the final BESS RT Efficiency Test calculations performed on measured BESS data in accordance with the methods in Exhibit J-1.

“**Final BESS Storage Capacity Liquidated Damages**” means the BESS Storage Capacity Liquidated Damages Amount multiplied by the Final BESS Storage Capacity Shortfall.

“**Final BESS Storage Capacity Shortfall**” means the absolute value of the result of the Final BESS Storage Capacity Test, if any, minus the Guaranteed BESS Storage Capacity.

“**Final BESS Storage Capacity Test**” means, if undertaken, the results of the final BESS Storage Capacity Test calculations performed on measured BESS data in accordance with the methods in Exhibit J-1.

“**Final Completion**” has the meaning set forth in Section 12.9.

“**Final Completion Date**” has the meaning set forth in Section 12.10.

“**Final Completion Payment**” has the meaning set forth in Section 3.3(e).

“**Final Drawings & Specifications**” has the meaning set forth in Section 5.5(a).

“**Financial Statements**” has the meaning set forth in Section 19.26(b).

“**Force Majeure**” means any event or circumstance that prevents a Party from performing its obligations under this Agreement, which event or circumstance (i) occurred after and was not anticipated as of the Signing Date, (ii) is not within the reasonable 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 by the Party claiming its occurrence, 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 Agreement, unless the acts or omissions are themselves excused by reason of Force Majeure; (b) acts or omissions of a third party (including any Affiliate of Seller or any subcontractor); (c) mechanical failure or other breakdown, flaw, defect, or failure of parts, machinery, equipment, facilities, systems, or other items or inability to operate, attributable to circumstances which would not themselves be considered a Force Majeure; (d) changes in market conditions (including a change in commodity prices or increased inflation); (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 Project or Work; (f) Seller’s ability to sell, or Purchaser’s ability to purchase the products and any services contemplated by this Agreement, at a more advantageous price than is provided hereunder (due to, for example, delays in shipping or transportation); (g) economic hardship, including lack of money; (h) sabotage by any employee, agent, contractor, or subcontractor (including vendor) of any tier, or representative of the Party claiming Force Majeure; (i) any delay in obtaining, inability to obtain, or revocation of any Permit; or (j) events that affect the cost of services, equipment, or materials (including without limitation, additional or changes to Taxes, tariffs, fees, or other charges or costs imposed by Governmental Authorities) or other costs of designing, engineering, procuring equipment for, constructing, installing, commissioning, testing, owning, possessing, using, operating, operating, maintaining, studying, repairing, or replacing the Project. Force Majeure includes, without limitation, pandemics (including Covid-19 and any variation thereof) 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, but only to the extent actual impacts of the pandemic are materially and unexpectedly different from the conditions as they exist as of the Signing Date and otherwise satisfy the conditions set forth in (i) through (iii) above.

“**Forced Labor**” has the meaning set forth in Section 22.1(b).

“**Forced Labor Laws**” means the requirements and standards prescribed in 29 CFR 570 of the United States Code of Federal Regulations, unless there are national or local laws or regulations applicable that prescribe a more stringent standard, in which case the most stringent standard shall control.

“**Fraud-Type Claims**” means claims based on fraud, criminal acts or willful or intentional breach.

“**Functional Test**” means the test to determine the functionality of the Project, equipment, and components incorporated therein.

“**Fundamental Representations**” means (a) as to Seller, the representations and warranties of Seller set forth in Section 18.1, Section 18.3, Section 18.5, Section 18.8 solely with respect to applicable anti-corruption, anti-money laundering, anti-terrorism, economic sanction and anti-boycott laws of the United States including without limitation, the United States Foreign Corrupt Practices Act, Section 18.9, Section 18.10, Section 18.11, Section 19.1, Section 19.3, Section 19.7, Section 19.15 solely with respect to applicable anti-corruption, anti-money laundering, anti-terrorism, economic sanction and anti-boycott laws of the United States including without limitation, the United States Foreign Corrupt Practices Act, Section 19.18, Section 19.19, and Section 19.24, and (b) as to Purchaser, the representations and warranties of Purchaser set forth in Section 20.1(a), Section 20.1(b), Section 20.1(c), Section 20.2, Section 20.3 and Section 20.4.

“**GAAP**” means generally accepted accounting principles in the United States of America as in effect from time to time.

[“**Gen-Tie Line**” means that generation-intertie overhead electric line which will connect the Project substation to the utility substation to be owned by the Transmission Owner.]

[“**Gen-Tie Line Agreements**” means [\_\_\_\_\_\_\_\_\_\_].]

“**Good Industry Practice**” means those practices, methods, and acts engaged in or approved by a significant portion of the battery energy storage system industry in MISO with respect to assets and properties of a type and size similar to those constituting the Project during the relevant time period that, in the exercise of reasonable judgment in light of the facts known at the time the decision is made, would have been expected to accomplish a desired result consistent with good business practices, reliability, and safety and in compliance with all Laws and applicable Permits. Good Industry Practices are not limited to the optimum practices, methods, or acts to the exclusion of others, but rather in the range of practices, methods, and acts that meet the requirements of the immediately preceding sentence.

“**Government Official**” means any officer or employee of a government, or of any department (whether executive, legislative, judicial or administrative), agency or instrumentality of any government, including any government-owned business, or a public international organization, or any person acting in an official capacity for or on behalf of such government, or any candidate for public office or representative of a political party.

“**Governmental Authority**” means any (a) government, political subdivision, quasi-government or regulatory authority, whether federal, state, local, foreign or international, or any branch, agency, instrumentality, official or entity of any such government, political subdivision, quasi-government or regulatory authority, (b) federal, state, local, foreign or international court, arbitrator or tribunal, or (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.

“**Guaranteed BESS RT Efficiency**” means a BESS RT Efficiency of [98]%.

“**Guaranteed BESS Storage Capacity**” means the BESS maintains a [●] MW discharge power capacity for a [●] ([●]) hour discharge duration as such discharge power capacity is set forth in Exhibit J-1.

“**Guaranteed Project Substantial Completion Date**” means [insert date].

“**Guarantor**” means a Seller Guarantor or a Purchaser Guarantor, as the case may be.

“**Guaranty**” means a Seller Guaranty or a Purchaser Guaranty, as the case may be.

“**Hazardous Material**” means any: (a) hazardous waste, hazardous substance, toxic pollutant, hazardous air pollutant or hazardous chemical (as any of such terms may be defined under, or for the purpose of, any Environmental Law); (b) asbestos; (c) polychlorinated biphenyl; petroleum or petroleum product; (d) substance the presence of which on the property in question is prohibited under any Environmental Law; (e) substance defined as a pollutant, Contaminant or words of similar import under any Environmental Law; or (f) other substance that under any Environmental Law requires special handling or notification of or reporting to any Governmental Authority in its generation, use, handling, collection, treatment, storage, recycling, treatment, transportation, recovery, removal, discharge or disposal.

**“HSR Act**” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder.

“**IFR Design Package**” has the meaning set forth in Section 5.5(b).

“**IFR Drawings & Specifications**” means, collectively, each drawing and specification for the Project when it is seventy-five percent (75%) complete.

“**Indebtedness**” of any Person means: (a) all obligations of such Person for borrowed money or with respect to deposits, overdrafts or advances of any kind, and all accrued but unpaid redemption or prepayment premiums or penalties and any other fees and expenses paid to satisfy such obligations; (b) all obligations of such Person evidenced by bonds, debentures, notes, mortgages, deeds of trust, assignments of rents, or similar instruments; (c) all obligations of such Person in respect of the deferred purchase price of property or services; (d) any obligations of others secured by (or for which the secured party has an existing right, contingent or otherwise, to be secured by) any Lien on any real or personal property owned or acquired by such Person; (e) all obligations of such Person guaranteeing any indebtedness or other obligation of any other Person in any manner, whether directly or indirectly; (f) all obligations of such Person under capital or synthetic leases, conditional sales contracts and other similar title retention instruments; (g) all reimbursement obligations of such Person for letters of credit and other similar instruments (whether or not drawn); (h) all obligations of such Person under any interest rate protection agreement, swap or collar agreement or other similar agreement designed to protect a Person against fluctuations in interest rates or other currency fluctuation or commodity hedging transaction; and (i) all obligations of such Person in respect of any amount properly characterized as indebtedness in accordance with GAAP. The Indebtedness of any Person shall include all accrued but unpaid interest and the Indebtedness of any other Person to the extent such Person is liable therefor as a result of such Person’s ownership interest in or other relationship with such Person.

“**Indemnified Party**” has the meaning set forth in Section 23.3.

“**Indemnifying Party**” has the meaning set forth in Section 23.3.

“**Independent Engineer**” has the meaning set forth in Section 7.5.

“**Independent Engineer’s Certificate**” means a certificate to be delivered by the Independent Engineer in a form reasonably acceptable to Seller and Purchaser.

“**Initial BESS RT Efficiency Liquidated Damages**” means the BESS RT Efficiency Liquidated Damages Amount multiplied by the Initial BESS RT Efficiency Shortfall.

“**Initial BESS RT Efficiency Shortfall**” means the absolute value of the result of the Initial BESS RT Efficiency Test minus the Guaranteed BESS RT Efficiency.

“**Initial BESS RT Efficiency Test**” means the results of the initial BESS RT Efficiency Test calculations performed on measured BESS data in accordance with the methods in Exhibit J.

“**Initial BESS Storage Capacity Liquidated Damages**” means the BESS Storage Capacity Liquidated Damages Amount multiplied by the Initial BESS Storage Capacity Shortfall.

“**Initial BESS Storage Capacity Shortfall**” means the absolute value of the result of the Initial BESS Storage Capacity Test minus the Guaranteed BESS Storage Capacity.

“**Initial BESS Storage Capacity Test**” means the results of the initial BESS Storage Capacity Test calculations performed on measured BESS data in accordance with the methods in Exhibit J.

“**Insurance Policies**” has the meaning set forth in Section 19.16.

“**Intellectual Property Rights**” means all patents, copyrights, trademarks, service marks, trade secrets and all similar and related intellectual property rights protected under any Law.

“**Interconnection Agreement**” means that certain Generator Interconnection Agreement dated as of [\_\_\_\_\_\_\_] by and among ProjectCo, Transmission Owner and MISO.

“**Interconnection Facilities**” has the meaning set forth in the Interconnection Agreement.

“**Intervening Party**” has the meaning set forth in Section 27.17(a).

“**Investment Grade Rated Entity**” means an entity having an Investment Grade Rating.

“**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.

“**ITC**” means the investment tax credit allowable pursuant to Sections 38(b)(1), 46 and 48(a)(3)(A)(i) of the Code, and, where applicable, the energy community bonus credit under Sections 45, 45Y, 48 and 48E of the Code, and the domestic content bonus under Section 45(b)(9) of the Code.[[6]](#footnote-6)

“**Later-Acquired Project Real Property**” means any real property interests that are not identified on the Draft Pro Forma Policy delivered pursuant to Section 4.5(e) and that are acquired by ProjectCo or by the Seller with respect to ProjectCo after the date of issuance of such Draft Pro Forma Policy.

“**Law**” means any law, statute, constitution, treaty, policy, standard, directive, decree, regulation, ordinance, code, order, Permit, common law, rule, judgment, writ, decree, stipulation, determination, arbitration award, injunction or other restriction or ruling of any Governmental Authority.

“**Lenders/Investors**” means the potential and actual third party lenders and/or equity investors (including any trustee or agent on behalf of such lenders and/or equity investors) of any Party or any of its Affiliates (including ProjectCo) providing development, bridge, construction and/or long-term equity or other credit support, tax equity and/or debt financing or refinancing of the development, construction, ownership, leasing, operation or maintenance (including working capital) of the Project, whether that financing or refinancing takes the form of private or public debt or equity or any other form.

“**Liability**” means any and all claims, debts, liabilities, Indebtedness, obligations and commitments of whatever nature, whether known or unknown, asserted or unasserted, fixed, absolute or contingent, matured or unmatured, accrued or unaccrued, liquidated or unliquidated or due or to become due, and whenever or however arising (including those arising out of any Law, Contract or tort, whether based on negligence, strict liability or otherwise) and whether or not the same would be required by GAAP to be specifically identified as a liability in financial statements or disclosed in the notes thereto.

“**Lien**” means any mortgage, pledge, hypothecation, assessment, security interest, encumbrance, charge, claim, easement, restrictive covenant or other encumbrance of any nature which, in substance, secures payment or performance of an obligation, condition, lease, assignment, conditional sale or other title retention agreement or arrangement, conditional sale, deemed or statutory trust, exception to or defect in title, equitable interest, community property interest, option, proxy, right of first refusal, right of first offer or other lien or restriction of any kind or nature (whether arising by contract or by operation of law), including any restriction on use, voting, transfer, receipt of income or exercise of any other attribute of ownership.

“**Losses**” has the meaning set forth in Section 23.1.

“**LWA**” means an injury that results in one or more Days away from work, as defined by 29 CFR 1904.

“**Made Available**” means the documents and materials that were posted to (and not removed from) the Data Room and were readily and freely accessible by Purchaser and its representatives at 5:00 pm eastern time on the date that is [three (3) Business Days] prior to the Closing Date.

“**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 ProjectCo to consummate the Transactions and to satisfy all of their respective obligations contemplated by this Agreement and the other Transaction Documents, (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 ProjectCo, (c) has or could reasonably be expected to have a material and adverse effect on the Project or Project Assets, including the condition thereof, (d) has or could reasonably be expected to have a material and adverse effect on the ability to develop the Project or on the design, development, interconnection, construction, start-up, testing or commissioning of the Project or any other Project Activity, (e) has or could reasonably be expected to have a material and adverse effect on the validity or enforceability of this Agreement or any of the Material Project Contracts or the transactions contemplated hereby and thereby, or (f) has or could reasonably be expected to have a material and adverse effect on the ability of any party to a Material Project Contract to perform any material obligations thereunder. For the avoidance of doubt, the following will not be considered when determining whether a Material Adverse Effect has occurred: any change, event, effect or occurrence (or changes, events, effects or occurrences taken together) resulting from (i) any change generally affecting the international, national or regional storage, transmission or distribution industry; (ii) any change generally affecting the international, national or regional wholesale or retail markets for electric power; (iii) any change generally affecting the battery energy storage business; (iv) any change in general regulatory or political conditions, including any engagements of hostilities, acts of war or terrorist activities or changes imposed by a Governmental Authority associated with additional security; (v) any change in GAAP or other applicable accounting or auditing standards or industry standards; (vi) any change in the financial, banking, or securities markets (including any suspension of trading in, or limitation on prices for, securities on the New York Stock Exchange, American Stock Exchange, or Nasdaq Stock Market) or any change in the general national or regional economic financial conditions; or (vii) any actions required to be taken by Seller at the written request of Purchaser pursuant to this Agreement, unless, in the case of (i) – (vi), such change, event, effect or occurrence has a materially disproportionate impact on ProjectCo or Project as compared to other battery development projects of similar size, scope and geographic region.

“**Material Project Contract**” means (i) the Battery Equipment Agreements, (ii) the EPC Agreement, (iii) each Real Property Agreement, (iv) the Interconnection Agreement, and each other Contract that requires Purchaser’s prior written approval to execute pursuant to Section 5.21.

“**Mechanical Completion**” has the meaning set forth in Section 12.5.

“**Milestone**” means each Project milestone set forth on Exhibit R.

“**Minimum BESS RT Efficiency**” means a BESS RT Efficiency of [95]%.

“**Minimum BESS Storage Capacity**” means a BESS Storage Capacity of [[ %] of the Guaranteed BESS Storage Capacity].

“**Minimum Performance Test Requirements**” means that the BESS provides the Minimum BESS RT Efficiency and Minimum BESS Storage Capacity as determined by the related Performance Test in accordance with Exhibits J-1 and J-2.

“**MISO**” means 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 Tariff**” means the Open Access Transmission, Energy and Operating Reserve Markets Tariff of MISO, including all schedules or attachments thereto, as amended from time to time and any successor tariff or rate schedule approved by FERC.

“**Modeled Capacity Rating**”has the meaning set forth in Exhibit J-2.

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

“**Mutual Closing Conditions Precedent**” has the meaning set forth in Section 4.7.

“**MW**” means megawatt.

“**MWh**” means megawatt hour.

“**NAR**” means the North American Renewables Registry or its successor.

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

“**Non-Acceleration Justification**” has the meaning set forth in Section 6.2(b)(ii).

“**Non-Compliance Comments**” has the meaning set forth in Section 5.5(b)(i).

“**Non-Critical Deficiency**” means each item of Work that (a) Purchaser or Seller identifies as requiring completion or containing defects; (b) does not impede the safe operation of the Project or any portion thereof in accordance with industry standards, Permits, applicable Laws, and, in any case, manufacturers’ warranties; and (c) does not materially affect the capacity, efficiency, reliability, operability, safety, or mechanical or electrical integrity of the Project.

“**Notice of Project Substantial Completion**” has the meaning set forth in Section 12.8.

“**Notices**” has the meaning set forth in Section 27.1.

“**NTP Date**” means the “Full Notice to Proceed Date” (or any such similar term as defined in the EPC Agreement).

“**Order**” means any award, decision, injunction, judgment, order, ruling, subpoena or verdict entered, issued, made or rendered by any court, administrative agency or other Governmental Authority or by any arbitrator (in each case, whether preliminary or final).

“**Organizational Documents**” means with respect to any Person, the certificate or articles of incorporation, organization or formation and by-laws, the limited partnership agreement, the partnership agreement, the limited liability company agreement or the trust agreement, or such other similar organizational documents of such Person, including all resolutions, written consents, or other authorizations or minutes of such Person.

“**OSHA Recordable Case**” and “**OSHA Recordable Cases**” means an injury or illness that, per 29 CFR 1904, meets the general recording criteria.

“**Party**” or “**Parties**” has the meaning set forth in the first paragraph of this Agreement.

“**Performance Standard**” means (a) Good Industry Practices, (b) all applicable manufacturer’s recommendations, standards, and warranties, (c) all applicable requirements of Seller’s insurance policies in respect of the Work, (d) all Laws and applicable Permits, including all Laws and applicable Permits pertaining to development, design, engineering, procurement, financing, construction, commissioning, testing, ownership, possession, use, operation, health, safety, MISO Rules, NERC requirements, applicable codes and standards, Taxes, land use, or labor, employment, or benefits (including employment compensation and benefits Laws and Laws regarding equal opportunity employment, non-segregated facilities, affirmative action, employment of the disabled, and utilization of small business concerns), (e) the Project Contracts, (f) engineering materials approved by Purchaser, and (g) all other applicable requirements of this Agreement and any Transaction Document.

“**Performance Test**” means, with respect to the Project, the test or tests described in Exhibit J-1, including the BESS RT Efficiency Test and the BESS Storage Capacity Test.

“**Performance Test Report**” has the meaning set forth in Section 12.2.

“**Performance Test Results**” has the meaning set forth in Section 12.2.

“**Permits**” means all permits, exemptions, variances, registrations, licenses, certifications, authorizations, inspections, approvals, and Consents required from any Governmental Authorities.

“**Permitted Liens**” means: (i) any Liens for real property Taxes not yet due or delinquent or being contested in good faith by appropriate proceedings for which adequate accruals have been made as required by GAAP; (ii) any fee mortgage (other than where the applicable Project Real Property is a fee) or ground lease or similar Lien that is superior to the interest granted under the applicable Real Property Agreement(s) but is subject to a fully executed and recorded non- disturbance agreement reasonably acceptable to Purchaser; (iii) exceptions to title listed in (A) the Pro Forma Title Policy and (B) the Title Policy; (iv) any mechanics’ liens associated with the EPC Holdback provided cash reserves are earmarked and available to pay for any work for which mechanics’ liens have been filed; (v) the Liens listed, or deemed listed, on (A) from the Signing Date through but not including the Closing Date, Section 19.9(a) of the Disclosure Schedules, (B) from the Closing Date through Substantial Completion, Section 19.9(a) of the Disclosure Schedules, and (C) as of Final Completion, Section 19.9(a) of the Disclosure Schedules; (vi) inchoate or statutory Liens of contractors, subcontractors, mechanics, workers, suppliers, materialmen, carriers and others in respect of the construction, maintenance, repair or operation of the Project Assets, provided that such Liens are related to obligations not yet due or delinquent or are being contested in good faith by appropriate proceedings for which adequate accruals have been made as required by GAAP, are not registered against title to any Project Asset and in respect of which adequate holdbacks are being maintained as required by applicable Law; (vii) any obligation arising under any material Contract to provide performance security to any Governmental Authority; and (viii) Liens arising in favor of a Governmental Authority or under any license or Permit held by Seller or ProjectCo under any applicable Laws for which adequate accruals have been made as required by GAAP.

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

“**Pre-Closing Tax Period**” means any Tax period or portion thereof ending on or before the Closing Date and the portion of any Straddle Period ending on the Closing Date.

“**Preliminary Drawings & Specifications**” means the drawings and specifications providing reasonably detailed descriptions and specifications for the BESS.

“**Pro Forma Title Policy**” has the meaning set forth in Section 4.5(e).

“**Proceeding**” means any suit, action, proceeding, arbitration, mediation, claim, investigation, hearing, or audit (other than an audit performed at the request of a counterparty to a Real Property Agreement and unrelated to any existing, or claimed default thereunder).

“**Prohibited Payment**” has the meaning set forth in Section 22.2(a).

“**Prohibited Transaction**” has the meaning set forth in Section 22.2(b).

“**Project**” has the meaning set forth in the Recitals.

“**Project Activities**” means the development, construction, ownership, operation, repair, replacement and/or maintenance of the Project.

“**Project Assets**” means all personal property and other Assets (tangible and intangible) acquired, related to, or necessary or appropriate to execute and achieve Project Substantial Completion in accordance with this Agreement, including the following Assets:

* 1. all equipment, machinery, buildings, fixtures and improvements;
  2. all Project Contracts;
  3. all ProjectCo Permits;
  4. all Books and Records;
  5. all Project Real Property;
  6. all Intellectual Property Rights identified on Section 19.21 of the Disclosure Schedules;
  7. all Reports and Studies;
  8. all warranties, guarantees, licenses and indemnification rights with respect to any of the Project Assets; and

j) all emissions allowances or credits, Renewable Energy Credits or other environmental or financial attributes of the Project, if any.

“**Project Contracts**” has the meaning set forth in Section 5.18.

“**Project Easements**” means all Real Property Agreements for ownership, use or occupancy with respect to transmission, collection and distribution lines, ingress and egress rights, utility facilities, equipment travel paths, telecommunications and fiber facilities, conduit protection rights for the Project and the construction of any of the same.

“**Project Facilities**” means all racks, underground and/or overhead collection, distribution and transmission lines, junction boxes, foundations, footings and/or poles, overhead and/or underground communication and radio relay systems and telecommunications equipment, access roads and all equipment and improvements related to any of the foregoing for the Project.

“**Project Hardware**” means all materials, supplies, apparatus, devices, equipment, machinery, tools, parts, components, instruments, and appliances that are to be incorporated into the Project, whether provided by Seller or any Subcontractor.

“**Project Improvement Property**” means those portions of the Project Real Property on which all or any part of Project Facilities and/or Project Easements are located.

“**Project Layout**” has the meaning set forth in Section 5.4(e).

“**Project Real Property**” means all real property interests of any type, including without limitation, fee simple, leasehold, easement and other interests, held by ProjectCo under the Real Property Agreements.

“**Project Required Property**” means all Project Improvement Property and all other portions of the Project Site that, if excluded from Project Real Property, would cause the Project or ProjectCo to fail to be in compliance with all applicable Laws and permits or cause ProjectCo to be in default of or unable to perform under any Material Project Contracts to which it is a party.

“**Project Site**” means all of the real property required for Project Activities. The proposed Project Site as of the Signing Date is described in Exhibit T.

“**Project Substantial Completion**” means:

* 1. the Project is mechanically, structurally and electrically sound and free of any Defects (other than Punch List items);
  2. all Interconnection Facilities have been constructed and ProjectCo has been authorized under the Interconnection Agreement to operate in parallel with the Transmission System, and the Project has been energized and synchronized with the Transmission System pursuant to the terms of the Interconnection Agreement; *provided that*, for purposes of determining whether Delay Liquidated Damages are due, in lieu of the foregoing requirement enumerated in this subsection (b) or any other applicable subsections in this definition, the Project shall be able to energize and synchronize with the Transmission System sufficiently to conduct all required Performance Tests necessary to achieve Project Substantial Completion;
  3. “Substantial Completion” (or such similar defined term, as defined in the EPC Agreement) with respect to the Project has been achieved and a certificate has been executed by ProjectCo and the EPC Contractor certifying the same;
  4. Seller has delivered to Purchaser all certificates required under the Battery Equipment Agreements, Interconnection Agreement and EPC Agreement to certify the achievement of Project Substantial Completion or the equivalent term under each of those agreements;
  5. the Project is capable of safe, reliable and continuous commercial operation and delivering electric power up to the full rated capacity of the Project to the Electrical Interconnection Point, in each case, in compliance with applicable Laws and Prudent Industry Practices;
  6. ProjectCo (in its capacity as owner of the Project) is a party to all Material Project Contracts;
  7. all ProjectCo Permits that are necessary for the development, construction and operation of the Project have been obtained (other than Permits that are ministerial in nature and can reasonably be expected to be obtained when needed in the ordinary course of business on Commercially Reasonable terms and conditions);
  8. the Project has passed any additional tests that may be required for the commencement of operations of the Project by the State Regulatory Agency or other applicable Governmental Authority;
  9. the Independent Engineer has provided the Independent Engineer’s Certificate, certifying to Purchaser that the criteria in the preceding clauses [(a)] through (h) have been completed; and
  10. Seller has submitted and Purchaser has accepted a Notice of Project Substantial Completion.

For the sake of clarity, the Project shall not be deemed to have achieved Project Substantial Completion unless and until it has done so at the Minimum BESS Storage Capacity.

“**Project Substantial Completion Date**” has the meaning set forth in Section 12.8.

“**ProjectCo**” has the meaning set forth in the Recitals.

“**ProjectCo Interests**” has the meaning set forth in the Recitals.

“**ProjectCo Permits**” means all Permits necessary to (i) develop, design, engineer, construct, test and/or commission the Project, and/or (ii) own and/or operate the Project at the time of Project Substantial Completion, as the case may be. For the avoidance of doubt, ProjectCo Permits does not include (x) the State Regulatory Approval.

“**Prudent Industry Practices**” means the implementation and exercise of those practices, methods, standards, and the performance of the Work, in accordance with the degree of judgment and skill that is ordinarily possessed and exercised by (and generally accepted as being appropriate for) nationally recognized design, engineering, procurement, construction, operation and maintenance professionals of good standing and who are performing work for battery energy storage systems which are of similar scope, nature and complexity as the Project; which shall include those practices, methods and standards as are commonly used in performing work and services of a nature similar to the Work (including without limitation with practices, methods and standards applicable to the geographic region of the Project), which in the exercise of reasonable judgment by those experienced in the battery power storage 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.

“**Punch List**” means a list of those minor details of construction and mechanical adjustment that require repair, completion, correction or re-execution, the non-completion of which does not (a) interfere with ProjectCo’s occupancy, use and commercial operation of the Project, (b) result in or give rise to any default by ProjectCo under any Real Property Agreement, or (c) prevent the safe, reliable and continuous operation of the Project in accordance with Prudent Industry Practices and applicable Laws. However, the Punch List shall not include any items that could reasonably be expected to prevent the operation of the Project in accordance with the Requirements.

“**Punch List Completion Deadline**” has the meaning set forth in Section 9.3.

“**Punch List Holdback**” has the meaning set forth in Section 9.4.

“**Purchaser**” has the meaning set forth in the first paragraph of this Agreement.

“**Purchaser Closing Conditions Precedent**” has the meaning set forth in Section 4.5.

“**Purchaser Credit Support**” means [\_\_\_\_\_].

“**Purchaser Default**” has the meaning set forth in Section 25.2(a).

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

“**Purchaser Guaranty**” means a guaranty of payment issued by a Purchaser Guarantor at Closing substantially in the form attached to this Agreement as Exhibit U or in such other form as may be agreed between the Seller and Purchaser acting reasonably.

“**Purchaser Indemnified Party**” has the meaning set forth in Section 23.1.

“**Purchaser Letter of Credit**” means an unconditional, irrevocable letter of credit issued by a Qualified Issuer on behalf of Purchaser in form and substance satisfactory to Seller in Seller’s reasonable discretion.

“**Purchaser Pre-Closing Obligations**” has the meaning set forth in Section 2.4.

“**Purchaser Pre-Closing Termination Notice**” has the meaning set forth in Section 2.1.

“**Purchaser’s Representative**” has the meaning set forth in Section 7.2.

“**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 or through its Affiliates, has operated and maintained battery energy storage systems of at least an aggregate of 1000 megawatt-hours of battery storage capacity for at least five (5) years.

“**Real Property Agreement Counterparty**” means each party to any Real Property Agreement other than ProjectCo or Seller.

“**Real Property Agreements**” means all Contracts that grant a fee, leasehold, easement, license or other ownership, use or occupancy interest, or an option for any of the foregoing, in the Project Site, including, without limitation, any access and turn-out agreements, Gen-Tie Line Agreements, and Fee Property Agreements.

“**Recovery Plan**” has the meaning set forth in Section 8.2.

“**Release**” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing, and includes the abandonment or discarding of barrels, containers, and other closed receptacles.

“**Remaining Permits**” has the meaning set forth in Section 19.13(b).

“**Renewable Energy Credits**” means a certificate, credit, allowance, green tag, or other transferable indicia, howsoever entitled, allocated, assigned or otherwise awarded or certified by any Governmental Authority, program administrator, certification board or similar entity in connection with the production or storage of each MWh of energy from the Project. For the avoidance of doubt, “Renewable Energy Credits” shall not include any ITC, State Renewable Energy Incentives or other tax benefits, credits, or incentives.

“**Reports and Studies**” means the reports and studies set forth in Section 19.27 of the Disclosure Schedules.

“**Requirements**” has the meaning set forth in Section 5.1.

“**Response Notice**” has the meaning set forth in Section 23.4.

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

“**Scope of Work**” means all of the Work set forth in Article 5.

“**Seller**” has the meaning set forth in the first paragraph of this Agreement.

“**Seller Default**” has the meaning set forth in Section 25.1(a).

“**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 Agreement as Exhibit V or in such other form as may be acceptable to Purchaser acting reasonably.

“**Seller IA Facilities**” means all interconnection facilities and upgrades necessary for the Project, including all Interconnection Facilities.

“**Seller Indemnified Party**” has the meaning set forth in Section 23.2.

“**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 W or (b) otherwise in form and substance satisfactory to Purchaser in Purchaser’s reasonable discretion.

“**Seller Pre-Closing Obligations**” has the meaning set forth in Section 2.1.

“**Seller Pre-Closing Termination Notice**” has the meaning set forth in Section 2.4.

“**Seller Punch List Items**” has the meaning set forth in Section 9.2.

“**Seller’s Closing Conditions Precedent**” has the meaning set forth in Section 4.6.

“**Seller’s Knowledge**” means the actual knowledge, after reasonable inquiry, of any of one or more of the following persons (and any successor person holding the same title or the functional equivalent and having responsibility for the Project or Transactions): [ XX, YY, ZZ ]. For purposes of this definition, “reasonable inquiry” shall take into account the scope of the individual’s duties and includes reasonable inquiry of the employees of Seller or any of its Affiliates who are responsible for, or have direct involvement in, the subject matter of the representation and warranty or other matter involved.

“**Seller’s Representative**” has the meaning set forth in Section 5.10.

“**Serial Defect**” has the meaning set forth in Section 13.7.

“**Serious Injury**” means a work-related injury resulting in an amputation, in-patient hospitalization, or loss of an eye.

“**Signing Date**” has the meaning set forth in the first paragraph to this Agreement.

“**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: (i) making the affirmative determination that the execution of the Contract for Differences by AESI is reasonable, in the public interest, and all costs incurred under the Contract for Differences for the life of the agreement are recoverable from the retail customers pursuant to applicable Law, subject only to the requirement that the State Regulatory Agency retains ongoing prudency review of AESI’s performance and administration of the Contract for Differences; and (ii) that (a) authorizes the construction of the Project pursuant to this Agreement and all of the transactions and obligations set forth in this Agreement of both Parties; (b) issues to the Purchaser or AESI such approvals and certificates related hereto that AESI deems reasonably necessary and advisable; (c) does not contain any conditions or requirements that (I) in Purchaser’s or AESI’s Commercially Reasonable discretion are unacceptable to it, or (II) in the case of the Commercially Reasonable discretion of ProjectCo under the Contract for Differences or Seller, impose additional material costs or obligations on either of the ProjectCo or the Seller or the Project, or potentially affect Seller’s ability to timely achieve Substantial Completion by the Guaranteed Project Substantial Completion Date or the ability of ProjectCo to timely achieve the Commercial Operation Milestone (as defined in the Contract for Differences) under the Contract for Differences.

“**State Regulatory Target Filing Date**” has the meaning set forth in Section 7.1.

“**State Renewable Energy Incentives**” means state or local Tax credits, Tax abatements, grants, rebates, subsidized financing or other state or local payments, benefits or subsidies relating to operation or ownership of the Project, the property of the Project, the characteristics of equipment used in the Project, the sale or production of electricity from (or output of) the Project or the emissions avoided by the Project; provided, however, State Renewable Energy Incentives shall not include state or local property Tax incentives arising prior to or during the construction period and not related to ownership of the Project during operation.

“**Straddle Period**” means any Tax period that begins before and ends after the Closing Date. In the case of any Straddle Period, the amount of any Taxes for the Pre-Closing Tax Period based on net income, gross income, gross receipts, margin or any similar basis shall be the amount of such Taxes that would have been due had the relevant Straddle Period ended immediately prior to the Closing Date. In the case of any Straddle Period, the amount of any Taxes (other than Taxes described in the immediately foregoing sentence and Transfer Taxes) for the Pre-Closing Tax Period based solely on a periodic basis with respect to the assets or capital shall be multiplied by a fraction, the numerator of which is the number of Days in the portion of the Straddle Period ending immediately prior to the Closing Date and the denominator of which is the number of Days in the entire Straddle Period.

“**Subcontractor**” means any Person who has a direct contract, agreement or other arrangement with ProjectCo, Seller, or any Affiliate of any such party to perform a portion of the Work or to supply materials, equipment or other items in relation to the Work, as well as any subcontractors, suppliers or vendors of any such Person of any tier. Subcontractor includes the EPC Contractor.

“**Successfully Run**” means, the Performance Test was completed in accordance with the procedures, conditions, and requirements for the proper performance of such test as set forth in Exhibit J-2.

“**Support and Affiliate Obligations**” means any and all obligations relating to deposits, guaranties, letters of credit, bonds, indemnities, or other credit assurances of a comparable nature (including cash posted as credit support) made or issued by or on behalf of Seller or any of its Affiliates solely for the benefit of ProjectCo and which are intended to remain in effect after the Closing Date.

“**Survey**” means an ALTA/NSPS land title survey of the Project Required Property that meets the 2016 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys; is certified to ProjectCo, Title Insurer and Purchaser; (c) and includes the following “Table A” optional items: 1, 3, 4, 6(a), 8, 11, 13, 15, 16, 18, 19 (but only to the extent such easements and servitudes are reasonably necessary for Project Activities) and 20.

“**Tariff**” means the utility tariff or any other agreement pursuant to which the ProjectCo sells energy produced by a Project, such as alternative on-bill credits attributable to the energy produced by a Project.

“**Tax” and “Taxes**” means (a) any and all federal, state, local or foreign taxes, fees, levies, duties, tariffs, imposts and other charges of any kind (whether or not imposed on Seller or on any of its Affiliates), imposed by any Governmental Authority or taxing authority, including taxes or other charges on, measured by, or with respect to income, franchise, windfall or other profits, gross receipts, property, sales, use, capital stock, payroll, employment, social security, workers’ compensation, unemployment compensation or net worth; taxes or other charges in the nature of excise, withholding, ad valorem, stamp, transfer, unclaimed property, value-added or gains taxes; license, registration and documentation fees; and customs duties, tariffs and similar charges; and (b) any and all interest, penalties, additions to tax and additional amounts imposed in connection with or with respect to any amounts described in (a), whether disputed or not.

“**Tax Equity Date**” means [\_\_\_\_\_\_].

“**Tax Equity Investment Documents**” has the meaning set forth in Section 5.13(g).

“**Tax Equity Investor**” means the Person or Persons that agree to provide tax equity in the Purchaser or its Affiliate pursuant to the Tax Equity Investment Documents.

“**Tax Representations**” means the representations and warranties of Seller set forth in Section 19.11.

“**Tax Return**” means any return, claim for refund, report, statement, form, declaration, information returns or other documentation (including any additional or supporting material, schedules, attachments, statements and any amendments or supplements) filed, supplied or maintained, or required to be filed, supplied or maintained, with respect to or in connection with the calculation, determination, assessment or collection of any Taxes.

“**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.

“**Testing Non-Compliance Comments**” has the meaning set forth in Section 12.3.

“**Testing Plan**” has the meaning set forth in Section 12.3.

“**Third Party Claim**” has the meaning set forth in Section 23.7(a).

“**Third Party Claim Response Period**” has the meaning set forth in Section 23.7(a).

“**Third Party Consents**” means the Consents set forth in Section 18.7 of the Disclosure Schedules.

“**Third Party Tax Claim**” has the meaning set forth in Section 24.7.

“**Tier I Drawings & Specifications**” means those portions of the Final Drawings & Specifications identified in Exhibit D attached hereto.

“**Tier I IFRs”** means those portions of the IFR Drawings & Specifications identified in Exhibit X attached hereto.

“**Title Curative Actions**” means obtaining all of the following documentation, in each case in form and substance reasonably satisfactory to Purchaser: (a) ratifications and joinders by all fee owners of Project Real Property at Closing, other than ProjectCo, that are not Real Property Agreement Counterparties on the applicable Real Property Agreement(s); (b) releases of record of any monetary Liens (other than Permitted Liens) affecting Project Real Property; (c) subordination and/or non-disturbance agreements to resolve any Liens (other than utility and access easements and substantially similar easements and non-possessory use rights that do not secure any payment or performance obligations, will not prohibit or interfere with any Project Activities and do not otherwise require curative action under this Agreement) that are superior to ProjectCo’s interests in the Project Required Property where ProjectCo’s interest is not a fee; (d) crossing and/or encroachment agreements as necessary to permit the crossing of or encroachment upon existing easements and similar Liens by Project Facilities; (e) documentation necessary to ensure the Project Facilities and ProjectCo’s surface rights with respect to the Project Real Property will not be disturbed or impaired by the owner(s) of any oil, gas and/or mineral rights, or title insurance in form and substance reasonably acceptable to Purchaser that covers such risk; (f) documentation necessary to resolve title vesting issues; and (g) any documentation required from Seller by the Title Insurer for issuance of the Title Policy.

“**Title Insurer**” means [                                 ].

“**Title Policy**” has the meaning set forth in Section 4.5.

“**Title Report**” has the meaning set forth in Section 5.4(b).

“**Total Recordable Incident Rate**” means the safety performance metric calculated by multiplying the total number of OSHA Recordable Cases by 200,000 and then dividing the production by the total number of field hours worked by all workers (employees plus contractors).

“**Transaction Documents**” means this Agreement, the Contract for Differences, the Assignment of ProjectCo Interests, the Seller Guaranty, the Purchaser Guaranty, all supporting deliverables, and all other instruments, certificates and documents to be delivered or required to be delivered by Purchaser, Seller, ProjectCo or any Affiliate of any of the foregoing pursuant to this Agreement, including all items to be delivered at Closing pursuant to Article 4.

“**Transactions**” means all of the transactions provided for in, or contemplated by, this Agreement and the other Transaction Documents, including the Closing, and the rights and obligations of the Parties from and after the Closing, and the execution, delivery and performance of each Party’s obligations under this Agreement and the other Transaction Documents.

“**Transfer Tax**” means any and all transfer, documentary, excise, sales, use, value added, stamp, duty, registration, filing, real property transfer, recording, securities transaction or other similar Taxes and fees (including penalties and interest) if any, arising out of or in connection with the Transactions, including the sale of ProjectCo Interests to Purchaser pursuant to this Agreement.

“**Transmission Owner**” means [         ].

“**Transmission Owner Scope of Work**” means the Transmission Owner’s Interconnection Facilities (as defined in the Interconnection Agreement) to be constructed by Transmission Owner and the Network Upgrades (as defined in the Interconnection Agreement) to be installed by Transmission Owner, in each case pursuant to Appendix A to the Interconnection Agreement.

“**Transmission System**” has the meaning set forth in the Interconnection Agreement.

“**Treasury Regulations**” means the United States Treasury Regulations promulgated under the Code.

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

“**Work**” means all development, design, engineering, inspection, procurement, construction, testing and other services and items that are necessary or appropriate to execute and achieve Project Substantial Completion in accordance with the terms of this Agreement, other than the Transmission Owner Scope of Work.

**Exhibit B**

**Milestones**

**Exhibit C**

**Layout of Project**

**Exhibit D**

**Final Drawing & Specifications**

**Exhibit E**

**AES Safety and Security Standards**

Made Available in Data Room folder [•]

**Exhibit E-1**

**Seller’s Security and Safety Procedures**

Made Available in Data Room folder [•]

**Exhibit F**

**Form of Monthly Report**

**General**

Capitalized terms used and not defined in this Exhibit F shall have the meaning ascribed to those terms in the Membership Interest Purchase, Project Development and Construction Management Agreement between [AESI DevCo], an Indiana limited liability company (“**Purchaser**”), and [Seller], a [      ] [limited liability company] (“**Seller**”) (the “**Agreement**”).

**Monthly Report Specifications**

*Seller will prepare a written report each month that includes, at a minimum, all the items set forth below regarding its progress relative to the development construction and startup of the Project and the Milestone Schedule. Seller must send the report via e-mail in the form of a single Adobe Acrobat file to Purchaser’s contact listed in Exhibit L of the Agreement by the tenth (10th) Business Day after the end of each month. The first monthly progress report will be due by the 10th Business Day after the end of the first full month after the Effective Date. The last monthly progress report will be due by the 10th Business Day after the end of the month in which the commercial operation date (COD) occurs.*

*Each written progress report must include the following items:*

1. Cover page.
2. An executive summary.
3. Safety statistics.
4. GANTT chart showing critical path schedule of major Milestones and permits, dependency relationships between activities and current schedule status.
5. Updated cumulative and monthly planned vs. actual physical progress s-curve (physical percent complete).
6. Updated schedule narrative including descriptions of the following:
   1. Progress narrative
   2. Monthly planned activity adherence (planned vs. actual)
   3. Narrative of any duration change
   4. Narrative of any schedule variance
   5. Recovery plan as required
   6. Procurement plan
7. Summary of activities during the prior month.
   1. Health, safety, and environmental;
   2. Engineering;
   3. Procurement;
   4. Permitting – an updated table of key permits including jurisdiction, application date, updated anticipated date (month and year) for receipt of each permit and a description of any issues that may affect the Project’s permitting schedule, overall Project schedule and ability of Project to meet COD;
   5. Major construction activities in the prior month;
   6. Testing;
   7. Electrical Interconnection status; and
   8. Any other required interconnections.
8. Forecast of activities scheduled for the current month.
9. Written description of any planned changes to the IFR Design Package, or Project Layout and Project Site depicted in Exhibits C and U of the Agreement respectively.
10. Enumeration and schedule of any support or actions requested of Purchaser.
11. Progress and schedule of all agreements, contracts, Permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.
12. Written description of any events with the potential for negative publicity, public perception or uncontrollable events that may have an adverse impact on the Project or Purchaser’s reputation, that occurred in the prior month and discussions with or submissions to applicable stakeholders in the prior month, including a list of issues that could potentially negatively impact the Milestone schedule.
13. A status report of start-up activities including a forecast of activities ongoing and after start-up, a report on Project performance including performance projections for the next twelve (12) months.
14. Pictures, in sufficient quantity and of appropriate detail to document construction and startup progress of the Project, Transmission Owner’s electric system and all other interconnection utility services.
15. Seller must notify Purchaser in writing of its receipt of any additional documents, which fall into the categories, listed (in a. – f.) below, and make such documents available to Purchaser with two (2) Business Days of such receipt:
    1. All material written commitments regard construction work for the Project that could impact completion schedule or COD;
    2. Executed work orders for construction of the Project;
    3. Construction agreements;
    4. Letters of intent;
    5. Precedent agreements; and
    6. Engineering assessments of the Project.
16. Copies of communications with governmental entities and reports submitted thereto.

**Exhibit G**

**Approved Subcontractors**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Batteries** | **Inverters** | **Inverter Step Up** | **GSU** | **High Voltage** |
| Samsung SDI | TMEIC | ABB / Hitachi | ABB | Blattner |
| Fluence | GPTech | Sunbelt Transformer | Siemens | Ikea |
| CATL | SMA | Siemens | Hyundai | Kiewit |
| BYD | Sungrow | GE Prolec | Virginia Transformer | RES |
|  | EPC Power Corp | Eaton/Cooper | GE Prolec | Dashiell |
|  |  | Schneider/Square D | WEG (Washington, | Beta Engineering |
|  |  | Virginia Transformer |  | Mortenson |
|  |  | WEG |  | Wanzek |
|  |  |  |  | Cupertino electric |
|  |  |  |  | Black & Veatch / Overland Contracting, Inc. |
|  |  |  |  | Henkels & McCoy |
|  |  |  |  | Engil Power Solutions |
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**Exhibit H[[7]](#footnote-7)**

**Insurance Requirements**

**General**

Capitalized terms used and not defined in this Exhibit H shall have the meaning ascribed to those terms in the Membership Interest Purchase, Project Development and Construction Management Agreement between [IPL DEVCO], an Indiana limited liability company (“**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 Provided Insurance**

For the longer of (a) from the NTP Date through the Project Substantial Completion and (b) such period of time otherwise required in this Exhibit H, 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. Notwithstanding any deductibles or self-insured retentions, Seller shall be responsible for the first dollar of loss.

1. A. Builder’s Risk Insurance. Effective the earlier of (1) the date of groundbreaking at the Project Site or (2) the date of the first shipment of any major equipment, Seller shall obtain and thereafter at all times during performance of the Work maintain, builder’s risk insurance in accordance with the terms hereof. Coverage shall remain in effect until Project Substantial Completion or until coverage is replaced by the operational all risk insurance as may be agreed to by Purchaser in writing. Such builder’s risk insurance shall name as insureds Purchaser, Lenders/Investors of ProjectCo and Purchaser and its Affiliates as requested by Purchaser from time to time, Supplier, Interconnect Utilities, Power Purchasers, Contractor, Subcontractors of any tier, and shall cover all property in the course of construction, including the Work, materials and equipment, miscellaneous equipment and furnishings to be permanently incorporated into the Work from all risks of physical loss or damage, subject to standard insurance market exclusions only for the type of applicable project. Such insurance shall include mechanical and electrical breakdown coverage. Such insurance shall exclude all property owned by or rented/ leased to or in the control of the Contractor or any Subcontractors which will not be incorporated into the Work. The limit of liability shall be the full replacement cost of the Project. The required deductible for all such insurance shall not exceed Two Hundred and Fifty Thousand Dollars ($250,000) per occurrence, except as may be approved in writing by Purchaser. The builder’s risk shall include coverage for resultant damage caused by faulty workmanship, design, specifications or materials. Such insurance shall provide for a waiver of the underwriters’ right to subrogation against Seller, Purchaser, Lenders/Investors of ProjectCo and Purchaser and its Affiliates, Suppliers, Interconnect Utilities, Power Purchasers, Contractors and Subcontractors of any tier. Prior to obtaining any builder’s risk insurance policy, Seller shall provide Purchaser a summary of the builder’s risk policy and any other information reasonably requested by Purchaser about the policy and, at the request of Purchaser, use commercially reasonable efforts to include delay in start-up coverage (with ProjectCo and Lenders/Investors of ProjectCo and Purchaser and its Affiliates as requested by Purchaser from time to time at all times being the beneficiaries and named insured parties) in the builder’s risk policy on terms reasonably acceptable to Purchaser, which terms shall not be modified without the Purchaser’s prior written consent. Other than incremental amounts of premium for additional delay in start-up coverage requested by Purchaser, Seller shall pay for the builder’s risk insurance and the Seller or its Contractor shall be responsible for all deductibles per occurrence.

Specific minimum requirements include the following:

(a) Transit coverage on an “all risks” basis including, if applicable, ocean and air transit if any equipment is to be moved by vessel or aircraft, with any one conveyance limits sufficient to insure full replacement value for any one shipment or conveyance; a separate marine cargo coverage is permissible to include coverage for ocean and air shipments and both policies shall contain a 50/50 hidden damage provision. In the event a separate project marine cargo policy is required for ocean or air transits, Seller shall, prior to obtaining any such policy, provide Purchaser a summary of the marine cargo policy and any other information reasonably requested by Purchaser about the policy and, at the request of Purchaser, use commercially reasonable efforts to include delay in start-up coverage (with ProjectCo and Lenders/Investors of ProjectCo and Purchaser and its Affiliates as requested by Purchaser from time to time at all times being the beneficiaries and named insured parties) in the marine cargo policy on terms reasonably acceptable to Purchaser, which terms shall not be modified without the Purchaser’s prior written consent

(b) Flood, Earthquake and Named Windstorm perils may be subject to project specific aggregate limits, sub limits and deductibles subject to industry standard for the type of applicable project and available in the general insurance market.

(c) Removal of Debris: 5% of limit each and every occurrence

(d) Architects, Surveyors and Other Fees: 5% of limit each and every occurrence

(e) Expediting Expense: 5% of limit each and every occurrence

(f) Offsite Property: 5% of limit each and every occurrence

(g) Documents and Computer Records: 5% of limit each and every occurrence

(h) Pollutant Cleanup and Removal: 5% of limit each and every occurrence

(i) Demolition / ICC: 5% of limit each and every occurrence

(j) Accountants’/Professional Services and Legal Costs: 5% of the Limit of Liability each and every occurrence

(k) Leased Equipment Rental Costs: 5% of the Limit of Liability each and every occurrence.

(l) Loss Payable: Losses, if any, covered by builder’s risk insurance shall be payable in accordance with the issued builder’s risk insurance policy.

(m) Insurer shall waive any rights of subrogation against Seller, Purchaser, Lenders/Investors of ProjectCo and Purchaser and its Affiliates, Contractor and its Subcontractors and shall waive any setoff or counterclaim or any other deduction whether by attachment or otherwise as applicable to such parties.

2. A. Commercial General Liability Insurance. For the longer of (a) from the NTP Date through Project Substantial Completion and (b) the applicable statute of repose, Commercial General Liability Insurance, written on an occurrence form at least as broad as the ISO Form CG 00 01 04 13 or other form acceptable to Seller 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 per project aggregate.

B. Automobile Liability Insurance. Automobile liability insurance, written on an ISO Form CA 00 01 or other form acceptable to Seller, covering all owned, non-owned, and hired automobiles used in connection with the Work 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 where the Work is performed.

C. 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, which shall cover all of Seller’s employees engaged at the Project Site. Coverage shall also include claims for disability benefits and other state or federal required benefits which are applicable to the Work being performed.

D. Umbrella/Excess Insurance. For the longer of (a) from the NTP Date through Project Substantial Completion and (b) the applicable statute of repose, 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 A, B and C (excluding the Workers Compensation Coverage) with $25,000,000 per occurrence and $25,000,000 annual aggregate.

E. Pollution Liability. Pollution Liability insurance for sudden and accidental pollution, as well as gradual pollution, of $3,000,000 per claim. Such coverage to remain in effect for not less than three (3) years following Final Completion. Alternatively, this coverage can be included in the Commercial General Liability, Auto Liability, and Umbrella/Excess Liability coverage by endorsement.

F. Watercraft/Aircraft. Not Applicable

G. Professional Liability. Professional Liability insurance with limits of $5,000,000 per claim. Such coverage shall remain in effect for not less than three (3) years following Final Completion.

H. Contractor’s Equipment. Seller or its Subcontractors shall provide all risk property insurance for all property and mobile equipment owned by or rented/ leased to or in their control which is not to be permanently incorporated into the Work, including without limitation, cranes (coverage must be free of any boom, jib or weight load exclusions or limitations), tools, mobile equipment not licensed for road use, materials, and temporary structures.

I. Other Insurance Provisions. Seller shall procure and continuously maintain, or cause to be procured and continuously maintained, the following insurance provisions for all coverages, other than otherwise specifically provided herein:

(a) Provide that in the event of any loss payment under such policy, the insurer(s) shall waive any rights of subrogation against Purchaser, Lenders/Investors of ProjectCo and Purchaser and its Affiliates, Landowners, Purchaser Indemnitees, 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) Except with respect to Professional Liability and Workers’ Compensation Insurance, include Purchaser, Lenders/Investors of ProjectCo and Purchaser and its Affiliates as requested by Purchaser from time to time, Landowners, Seller Indemnitees, successors, assigns and their directors, officers, members, employees and agents, as additional insureds. With regards to the commercial general liability such additional insured coverage shall be written on form ISO CG 2010 11 85, or CG 20 33 04 13 and CG 20 37 04 13, or CG 20 10 04 13 and CG 20 37 04 13, or other form(s) acceptable to Purchaser.

(c) 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) 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) Prior to commencing Work, annually at each policy renewal, and upon 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 granting such coverage, shall be provided to Purchaser evidencing the coverages required herein.

(h) Without the prior written approval of Purchaser, Seller shall not exceed $1 million deductible on any one program and shall consider current market availability.

(i) Each of Purchaser and ProjectCo shall be included as additional insureds where its interests may appear.

(j) Should policies allow, thirty (30) days’ notice to be given to Purchaser, ProjectCo and Lenders/Investors of ProjectCo and Purchaser and its Affiliates prior to any cancellation, non-renewal or reduction of limits of liability with respect to any policies and ten (10) days’ advance written notice for non-payment of premium and for reduction in coverage as a result of claim payments, expenses or both. If policies do not allow, Seller is required to provide notice to Purchaser and ProjectCo within ten (10) days of receiving a notice of cancellation.

(k) The insurance coverage described in this Exhibit H 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 coverage or limits will necessarily be adequate to protect Seller or ProjectCo.

(l) If Seller fails to comply with its obligations as specified in this Exhibit H, Purchaser or any of its Affiliates or agents shall have the right, but not the obligation, to procure the required insurance coverage at Seller’s expense without in any way compromising or waiving any right or remedy at law or in equity, and Seller shall not be relieved of or excused from the obligation to obtain and maintain those insurance amounts and coverages. All such costs incurred shall be promptly reimbursed by Seller and/or may be withheld from any payment due Seller.

(m) Seller shall furnish Purchaser with accident report(s) covering material accidents occurring in connection with or as a result of the performance of the Work within five (5) Days after the occurrence of an accident (or earlier if otherwise required pursuant to the Agreement).

(n) Insurance coverage provided by Seller under this Exhibit H shall not include any endorsement limiting coverage to Purchaser, ProjectCo or Lenders/Investors of ProjectCo and Purchaser and its Affiliates which is otherwise required by this Exhibit H.

(o) Failure of Seller to provide insurance as herein required or failure of Purchaser to require evidence of insurance or to notify Seller of any breach by Seller of the requirements of this Exhibit H shall not be deemed to be a waiver by Purchaser of any of the terms and conditions of the Agreement, nor shall it be deemed to be a waiver of the obligation of Seller to indemnify, defend and hold harmless Purchaser and ProjectCo as required in the Agreement.

(p) Failure to comply with the terms of this Exhibit H as required shall be considered a material breach of the Agreement.

(q) Seller shall use its best efforts to include any and all endorsements that may be required by the lenders or other financing sources of Purchaser or its Affiliates.

**Section 19.17 of the Disclosure Schedules**[[8]](#footnote-8)

The following provisions shall be included in Schedule 19.17 of the Disclosure Schedules

Standard coverages for the type of applicable project, but not less than the following:

General Liability

$ 2,000,000 General Aggregate

$ 2,000,000 Products/Completed Operations Aggregate

$ 1,000,000 Each Occurrence

$ 1,000,000 Personal & Advertising Injury

$ 1,000,000 Damage to Rented Premises

$ 10,000 Medical Payments

Umbrella Liability

Policy Limits: $ 5,000,000 General Aggregate

$ 5,000,000 Each Occurrence

Workers Compensation and Employers’ Liability

$ 1,000,000 Disease (Each Employee)

$ 1,000,000 Disease (Policy Limit)

Auto Liability

Policy Limits: $ 1,000,000

**Exhibit I**

**Commissioning**

**General**

Capitalized terms used and not defined in this Exhibit I shall have the meaning ascribed to those terms in the Membership Interest Purchase, Project Development and Construction Management Agreement between [AESI DevCo], an Indiana limited liability company (“**Purchaser**”), and [Seller], a [      ] [limited liability company] (“**Seller**”, and with Purchaser, each a “**Party**” and together the “**Parties**”) (the “**Agreement**”).

**Definitions**

For purposes of this Exhibit I, the following words shall have the following definitions:

1. “**Consumables**” means any and all items that may need to be replaced, consumed, or otherwise used (and the replacement thereof) in the performance of the Work (including in achieving Mechanical Completion and testing the Project and, during the period from and after the Closing until Final Completion, maintaining the Project), including: lubricants, chemicals, fluids, oils, filters, fittings, connectors, seals, gaskets, hardware, wire, safety equipment, replacement parts and other similar materials; maintenance, shop, and office supplies; fuel supplies, if any, on hand and stored at, or in transit to, the Project Site as of the Closing; and all other materials, supplies, and other items replaced, consumed, or otherwise used (and the replacement thereof) in the performance of the Work.
2. “**PCU**” means each DC to AC inverter (or power conversion unit) in the Project.

**Commissioning**

Seller shall develop the Commissioning Plan, which shall outline the tasks, processes, procedures, and deliverables required to commission the Project, conduct the Performance Tests, and prove the function and performance of the Project, including its components. The Commissioning Plan shall designate the tests and processes required to be completed and performed prior to Mechanical Completion and Project Substantial Completion in accordance with the Agreement, including completion of all quality assurance and quality control (QA/QC) tests prior to Mechanical Completion and completion of all Performance Tests prior to Project Substantial Completion.

Seller shall provide the Commissioning Plan to Purchaser reasonably prior (in any event, at least sixty (60) days prior) to the commencement of Seller’s commissioning activities. Purchaser shall provide comments, if any, in good faith on such Commissioning Plan to Seller within ten (10) Business Days after Purchaser’s receipt of the Commissioning Plan. If Purchaser provides comments, Seller, within five (5) Business Days after Seller’s receipt of Purchaser’s comments, shall revise the Commissioning Plan to address Purchaser’s comments and resubmit the revised Commissioning Plan to Purchaser for review and approval. This procedure shall be repeated until the Commissioning Plan, as modified, is approved by Purchaser. Purchaser shall promptly notify Seller in writing if and when it has approved the Commissioning Plan.

Seller shall give Purchaser reasonable advance notice of and a reasonable opportunity to review, monitor, and witness all commissioning and testing activities performed as part of the Work. Seller shall provide Purchaser a schedule of all factory and Project tests, inspections, and performance tests within ninety (90) days after the NTP Date and any update to the applicable schedule promptly after the update is made.

Purchaser and its contractors and Purchaser’s Representatives shall be permitted access to the Project Site at all times and shall be permitted to visit factories during the manufacturing of equipment, materials, and components for the Project and to witness factory tests and inspections. Purchaser may contract with one or more third parties to conduct individual inspections and tests at any time to confirm test results and to verify that the Project has been installed and constructed in accordance with the requirements of the Agreement and the Performance Standard.

Where manufacturing or finishing is performed at the Project Site, reviews, inspections, studies, and tests shall be conducted in accordance with Article 12 of the Agreement and the Performance Standard as a replacement for an appropriate workshop test. The preliminary check-out and test runs, the reliability test run, and the Performance Tests shall be carried out by Seller under the witnessing of and review by Purchaser and its contractors and Purchaser’s Representatives.

These tests shall demonstrate, among other things:

* Completeness of the mechanical and electrical construction works
* Correctness of the assembly and installation
* Safety and reliability of the Project under all operating conditions
* Proper functioning of the components and system under all operating conditions.

**Commissioning Documentation**

The minimum required information for commissioning shall be documented and checked, if appropriate, during the commissioning period, including as listed below:

* Basic system information
* Project location and installation date
* Rated system capacity (DC and AC)
* Inverter – manufacturer, model, and quantity
* Commissioning date
* System designers’ information
* System installer/contractor information
* Detailed single-line diagram of the Project
* Array general specifications
* Number of strings
* String cable type, size, and length
* Specification (current and voltage rating) of overvoltage protection device
* Array electrical characteristics
* Array junction box location
* Array main cable specification
* Location, type, and rating of over voltage protective devices
* Earthing and over voltage protections
* Single-line diagram(s) showing the details of all earthing, lightning protection, and surge protection systems
* A single-line diagram showing AC isolator location, type, and rating and similar information for AC over-current protection device
* Technical data sheet for all major components
* Warranty documentations for PCUs with the information of starting date of warranty and period of warranty
* Mechanical design information/data sheet of array mounting structure (static report)
* Documentation of all required Permits
* Documentation and stock of spare parts and Consumables
* Commissioning test reports
* Equipment calibration certificates
* Operation and maintenance information, including:
  + Procedures for verifying correct system operation and minimum guaranteed performance parameters
  + Preventive and corrective maintenance procedures
  + Scheduling of routine maintenance
  + A checklist of what to do in case of system failure
  + Emergency shutdown/isolation procedures

In accordance with NERC reliability standards, Seller shall provide the following documentation to Purchaser thirty (30) days prior to initial synchronization of the Project, along with any other documentation reasonably requested by Purchaser or required by NERC or the Performance Standard:

* BAL-005 – One-line diagram that displays the Electrical Interconnection Point (and includes unique line identifiers/names ensuring that the Project Site
* COM-002 – Network diagram of voice and data links by Seller
* FAC-008 – Identification of most limiting equipment factor based on application of Facility Rating Methodology by Seller
* MOD-032 – Data for Power System Modeling and Analysis, as applicable, by Seller
* VAR-002 - Transformer information, including the following, as applicable, by Seller and Purchaser (or its Affiliate), and as obtained by Seller from an approved vendor of the Generator Step-up (GSU):
  + Tap Settings
  + Available fixed tap ranges
  + Impedance data
  + The + / - voltage range with step-change in % for load-tap changing transformers.
  1. **Factory Acceptance Tests**

All equipment, materials, and components specified in this section shall be factory tested to ensure the items are suitable for use at the Project and will be able to satisfy the requirements of the Agreement, including the other elements of Article 12 of the Agreement and the Performance Standards. Quality check lists and test protocols for all equipment, materials, and individual components shall be submitted by Seller prior to and during the factory tests.

All equipment, materials, and components shall be “routine” or “type”-tested in the factory in accordance with the applicable standards in keeping with Prudent Industry Practice. The frequency of testing shall be as agreed between Seller and Purchaser prior to the NTP Date. Type tests shall not be repeated if type test certificates of identical equipment designed and fabricated to a specification identical to that of the Project are available. Any proposed type test certificates must be submitted to Purchaser for review and approval.

The following sequence shall be included in Seller’s QA/QC Plan provided in accordance with Article 5 of the Agreement:

1. Seller shall keep a “Three-Month Look Ahead Inspection Schedule,” which shall be updated on a regular basis as part of the monthly report to be delivered under Section 5.11 of the main body of the Agreement.
2. Seller shall provide Purchaser notice of its intent to inspect prior to any inspection as detailed in the Agreement.
3. Prior to notifying Purchaser of its intent to inspect, Seller shall have issued and obtained Purchaser’s approval of the relevant inspection test plan (ITP) and all other technical documentation relevant to the inspection.
4. Purchaser will notify Seller of Purchaser’s intent to attend the inspection. Purchaser may contract with third party inspectors to attend the inspection with, or on behalf of, Purchaser.
5. Upon completion of the inspection, Seller shall issue an inspection test report summarizing the results of the inspection, including any reports generated by the manufacturer, for review and approval by Purchaser.

Seller should expect Purchaser to attend the inspections of at least the following equipment:

* Inverters
* Battery Modules
* Step-Up transformers
* Inverter power transformers
* High voltage (HV) switchgear, if applicable
* Medium voltage (MV) switchgear
* Local control system (LCS)

**Performance Tests**

Seller shall conduct all Performance Tests after the Closing and synchronization of the Project to the interconnected electric grid. Performance Tests may be run simultaneously when possible.

Exhibit J-1 and Exhibit J-2 set forth certain requirements, standards, and procedures for the performance of the Performance Tests, which shall be conducted in accordance with the Commissioning Plan and include a Performance Test Report.

The Performance Test Report shall include the following information with respect to the Performance Test Results:

* Summary
* Test protocols
* Instrument calibration certificates
* Test data (manual and data acquisition)
* Field notes
* Calculations
* Conclusions

**Exhibit J-1**

**Performance Tests**

**General**

Capitalized terms used and not defined in this Exhibit J-1 shall have the meaning ascribed to those terms in the Membership Interest Purchase, Project Development and Construction Management Agreement between [AESI DevCo], an Indiana limited liability company (“**Purchaser**”), and [Seller], a [      ] [limited liability company] (“**Seller**”) (the “**Agreement**”).

**Battery Energy Storage System Performance Tests**

Seller shall cause a Performance Test to be performed to determine the BESS Storage Capacity in accordance with the requirements, standards, and procedures set forth in Article 12 of the main body of the Agreement, Exhibit J-2, and the Performance Standard. These Performance Tests may be run simultaneously or separately. The BESS Storage Capacity shall be measured at the Electrical Interconnection Point. Among other things, and without limiting the other terms of the Agreement, the BESS must have operated and performed as designed during the Performance Test in order for the Performance Test to be considered valid for purposes of determining the BESS Storage Capacity.

In order to achieve Project Substantial Completion, pursuant to Section 12.7(h) of the Agreement the BESS Storage Capacity as determined by a Successfully Run BESS Storage Capacity Test must equal or exceed the Minimum BESS Storage Capacity.

In addition, if pursuant to Successfully Run BESS Storage Capacity Tests, Seller achieves the Minimum BESS Storage Capacity but fails to achieve the Guaranteed BESS Storage Capacity, subject to any retest procedures and other remedies set forth in the Agreement, then Seller shall pay, as set forth in the Agreement, the Initial BESS Storage Capacity Liquidated Damages, if any, and the Final BESS Storage Capacity Liquidated Damages, if any.

**BESS Round Trip (RT) Efficiency Test**

Seller shall cause a Performance Test to be performed to determine the BESS RT Efficiency (“**BESS RT Efficiency Test**”) in accordance with the requirements, standards, and procedures set forth in Article 12 of the main body of the Agreement, Exhibit J-2, and the Performance Standard. The BESS RT Efficiency shall be measured at the input/output meter(s) to the BESS. Among other things, and without limiting the other terms of the Agreement, (i) the BESS must have operated and performed as designed (and must have achieved the Minimum BESS Storage Capacity) during the Performance Test in order for the Performance Test to be considered valid for purposes of determining the BESS Storage RT Efficiency, and (ii) the BESS must have operated and performed as designed (and must have achieved the Minimum BESS Storage Capacity) during the Performance Test in order for such Performance Test to be considered valid for purposes of determining the BESS RT Efficiency Test.

**Exhibit J-2**

**Performance Test Procedures**

**General**

Capitalized terms used and not defined in this Exhibit J-2 shall have the meaning ascribed to those terms in the Membership Interest Purchase, Project Development and Construction Management Agreement between [AESI DevCo], an Indiana limited liability company (“**Purchaser**”), and [Seller], a [      ] [limited liability company] (“**Seller**”) (the “**Agreement**”).

**BESS Storage Capacity Test Procedure**

|  |  |  |  |
| --- | --- | --- | --- |
| **Performance Guarantee** | **Minimum performance Threshold for Substantial Completion** | **Guaranteed Performance Threshold** | **Performance Liquidated Damages** |
| Capacity Guarantee (Discharge) | \_\_\_kW/\_\_\_kWh | \_\_\_ kW (plus or minus metering system accuracy 0.3%) and \_\_\_kWh | LD = $\_\_\_\_\_(USD) x (minimum kW)-Capacity (\*)) |

(\*) Capacity is the POI Main Meter Energy Delivered per Capacity Test below divided by the Rated Discharge Duration.

Part A: Inputs and Criteria

The inputs to the BESS Storage Capacity Test shall be:

* The measured plant performance data, collected and processed in accordance with Part B below.

The outputs of the BESS Storage Capacity Test shall be:

* MWAC Energy Output Revenue Meter
* MWAC Power Meter
* Time of discharge
* Ambient Air temperature

The liquidated damages calculation is as described in Section 5.4 of Part B below.

The BESS Storage Capacity Test may not be interrupted or suspended and then resumed without Purchaser’s prior written approval. Among other things, and without limiting the other terms of the Agreement, the BESS must have operated and performed as designed during the Performance Test in order for the Performance Test to be considered valid for purposes of determining the BESS Storage Capacity.

Part B: BESS Storage Capacity Testing Procedures

1. **general**

The following is an overview of the procedures to be utilized in connection with the execution of the BESS Storage Capacity Test. The BESS Storage Capacity Tests will be conducted by Seller consistent with this Part B.

* 1. **Objective**

BESS Storage Capacity Test: Prior to Project Substantial Completion, the Project shall successfully complete a BESS Storage Capacity Test pursuant to the terms of the Agreement. The power output for the BESS Storage Capacity Test shall be measured at the [Electrical Interconnection Point Meter]. The BESS Storage Capacity Tests are intended to be performed following completion of the equipment commissioning tests for the purposes of gathering the required data for performance analysis. As a result, provisions must exist to accommodate test anomalies that do not impact the data collection. Such provisions shall be subject to Purchaser approval, which approval shall not be unreasonably withheld, conditioned or delayed.

* 1. **Testing Protocols**

The BESS Storage Capacity Test will be conducted consistent with the protocols defined in Section 3, Section 4 and Section 5 of this Part B and [ASTM-E2848-13].

**Test Reporting**

Seller shall submit to Purchaser a detailed test report within 15 Business Days of the test’s completion. The test report shall consist of the following:

* Test procedures (as executed)
* Instrument calibration sheets/certificates
* Test data (manual and data acquisition)
* Field notes
* Calculations
* Conclusions

1. **Definitions** 
   1. **PRIMARY MEASUREMENT DEVICE**

An instrument which provides a measurement or reading that is used in calculating charge and discharge. Note that secondary measurement devices may be used for field verification or other purposes but will not form a basis for calculations for the BESS Storage Capacity Tests.

1. **Pre-Test Activities** 
   1. **Seller/Purchaser Representatives**

Purchaser and Seller shall define lead representatives for the testing.

* 1. **Pre-Test Meeting**

An on-site meeting shall be conducted and recorded by Seller. The objective of the meeting is to review test preparedness and conduct a test site walk thru and for the Seller to present a summary of its procedure and presentation plans for the test period. Safety and schedule requirements shall also be reviewed. During this meeting Seller shall submit an instrumentation location map and calibration sheets for field verification by the Purchaser Representative. Lead test representatives for the Seller and the Purchaser shall be present.

* 1. **Test Deliverables**

In connection with the BESS Storage Capacity Tests, the Seller will deliver the following items:

* Specification “cut-sheets” for all Primary Measurement Devices;
* Manuals of equipment being tested, wherever applicable;
* Calibration certificates for all Primary Measurement Devices;
* Applicable transformer factory test certificates and field testing reports;
* Inverter factory test certificates;
* Inverter commissioning reports;
* SCADA System commissioning reports (as applicable for the portion(s) of the BESS being tested);
* Switchgear factory test certificates and field testing reports;
* Instrumentation location map; and
* Calculations, methodology, equations and procedures.

The Seller shall submit the above documentation to Purchaser for Purchaser review at least thirty (30) Business Days prior to commencing the BESS Storage Capacity Tests. Purchaser will respond back with comments or acceptance within fifteen (15) Business Days of the receipt of these items.

* 1. **Test Conditions**

BESS Storage Capacity Tests will be performed when the following conditions are met:

* The site equipment completed commissioning, and system is in automatic operation.
* Utility grid voltage is stable and within +/- 5% of design voltage, confirmed by Purchaser.
* Systems are commissioned in automatic operation
* There is grid connectivity provided by Purchaser at each Inverter such that the BESS Storage Capacity Tests can be accomplished under load.

To the extent that AC grid power is unavailable and the measured capacity test is unable to be performed, Project Substantial Completion will be extended on a day-for-day basis until such time grid power is available and the measured capacity test can be performed.

1. **Field Testing** 
   1. **Pre-Test Runs**

The Seller may, at its discretion (and cost), perform preliminary test runs prior to the official BESS Storage Capacity Tests in order to validate instrument readings, data acquisition operation and stable system operation. The Purchaser will be notified in advance of scheduled preliminary test runs and shall be allowed to observe testing results.

* 1. **Test Measurements**

All test measurement devices shall be fully defined for their make/model, accuracy, calibration and location. The following tables summarize the minimum requirements as necessary for the BESS Storage Capacity Tests. In no case shall the total number of test measurement instruments be less than quantities shown in table below.

**Test Measurements (Minimum)**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Measurement** | **Quantity** | **Location** | **Primary Measurement Device** | **Range** | **Accuracy** |
| MWAc Input | 1 | Control House | Primary revenue meter | 100 MWh | [\_\_\_\_\_\_] |
| MWAC Output | 1 | Control House | Primary revenue meter | 100 MWh | [\_\_\_\_\_\_] |
| Time | 2 | Control House | Clock | 6 hours | 1 second resolution |
| Temperature | 2 | Field | Met station RTD | TBD | 1.5% |

* 1. **Instrument Calibration**

All measurement devices will be calibrated by a qualified technician reasonably acceptable to Purchaser with appropriate supporting documentation. All measurement devices shall be valid and traceable to NIST or equivalent calibration certificates. All calibration certificates shall be submitted to Purchaser for review within six (6) months of the commencement of the BESS Storage Capacity Tests.

* 1. **Data Collection**

Data shall be recorded by the Supervisory Control and Data Acquisition System for the BESS (SCADA).

* 1. **Adjustments**

Any adjustments made to the BESS or test measurement devices during any BESS Storage Capacity Test shall be fully documented and shall be allowed only with Purchaser approval.

* 1. **Test Data**

Within five (5) days of data collection, Seller shall provide Purchaser the electronic file of the data set from the SCADA. The data shall be provided in Excel or CSV format and may be provided the morning following the test day. Purchaser and Seller shall work to review data prior to finalization.

1. **Capacity Test**
   1. **Capacity Test Steps**

The following steps will be used to test the BESS’ power output with respect to the BESS Storage Capacity Tests:

* Field testing
* Data compilation and reduction
* Calculation of capacity rating
* Determination of pass / fail
  1. **Field Testing**

Testing duration and data frequency shall be as follows:

Procedure:

Ensure the Array is at 100% state of charge (SoC) after a full CPCV charge as seen on the HMI

1. Select “Manual Control (Real + Reactive)” in the HMI.

2. Set the Ramp Rate parameter to 0 in order to disable the ramp rate. Power will change as a step response. If a ramp rate is required, this will need to be taken into account in the evaluation of the test results.

3. Discharge the Array at Rated Power until 0% SoC, or until the one-minute average power output has dropped below the Rated Power.

4. AC Power, AC Energy Output out of the BESS during discharging, and the time until the BESS begins to limit discharge below the specified power rating should be measured and recorded. The discharge should be in accordance with the batteries’ supplier operation manual.

5. If Array will not dispatch again within two hours, return the SoC to the range of 20% to 80%.

Clarifications:

1. The power discharged shall be observed at the POI Main Meter Energy Delivered.

2. Average power shall be calculated for the period starting when output power reaches 2% of Rated Power and ending when discharge capability drops below the Rated Power.

3. Documentation to be provided: trend plot of discharge power; results matrix.

* 1. **Submission of Results**

Seller shall submit the test results within 15 Business Days of the completion of the test.

The reported results shall include:

* Executive summary of testing
* Instrument calibration certificate
* Field notes including alarm log
* Capacity calculations
* Conclusions
  1. **Calculation of BESS Storage Capacity Liquidated Damages**

Initial BESS Storage Capacity Liquidated Damages

Acceptance Criteria:

1. Energy output meets or exceeds the **Minimum Performance Threshold for Substantial Completion** for this test.

2. Average power meets or exceeds the **Minimum** **Performance Threshold for Substantial Completion** for this test.

Acceptance Criteria for Substantial Completion and avoidance of Performance Liquidated Damage:

1. Energy output meets or exceeds the **Guaranteed Performance Threshold** for this test.

2. Average power meets or exceeds the **Guaranteed Performance Threshold** for this test.

LD = $\_\_\_\_\_(USD) x (minimum kW)-Capacity (\*))

(\*) Capacity is the POI Main Meter Energy Delivered per Capacity Test below divided by the Rated Discharge Duration.

Final BESS Storage Capacity Liquidated Damages

The Final BESS Storage Capacity Liquidated Damages are calculated in the same manner as the Initial BESS Storage Capacity Liquidated Damages as determined above, *mutatis mutandis*, adjusting for the capacity rating of the measured performance data as determined by the Final BESS Storage Capacity Test.

**BESS RT Efficiency Test Procedure**

|  |  |  |  |
| --- | --- | --- | --- |
| **Performance Requirement** | **Minimum BESS RT Efficiency for Project Substantial Completion** | **Guaranteed BESS RT Efficiency** | **Initial BESS RT Efficiency Liquidated Damages** |
| BESS RT Efficiency  Guarantee  **(inclusive of auxiliary**  **loads)** | **[95]%** | **[98]%** | **$[\_\_\_\_] per MW of BESS Storage Capacity per 1% (pro-rated for partial percentages) below the Minimum BESS RT Efficiency** |

In order to determine the BESS RT Trip Efficiency of the BESS, Seller will perform the BESS RT Trip Efficiency Test described below.

The BESS RT Efficiency Test will be performed and measured as follows:

1. Select “Manual Mode (Real + Reactive)” in the HMI.

2. Set the ramp rate parameter to 0 in order to disable the ramp rate. Power will change as a step response. If a ramp rate is required, this will need to be taken into account in the evaluation of the test results.

3. Discharge the BESS at rated power until the one-minute average power output has dropped below the rated power.

4. Charge the BESS at rated power until the one-minute average power output has dropped below the rated power.

5. Discharge the BESS at rated power until the one-minute average power output has dropped below the rated power.

Clarifications:

1. For the calculation of the BESS RT Efficiency the charged and discharged energy of Step 4 and 5 will be used

2. The BESS RT Efficiency for the BESS, including auxiliary load, shall be calculated as:

RTE = MainDischarged /MainCharged where:

MainDischarged = BESS Main Meter at POI Active Energy Delivered

MainCharged = BESS Main Meter at POI Active Energy Received

3. Documentation to be provided: trend plot of meter power; results matrix.

Acceptance criteria for Project Substantial Completion: The BESS RT Efficiency, including auxiliary consumption, shall be greater than or equal to the **Minimum BESS RT Efficiency for Project Substantial Completion** for this test.

Acceptance criteria for Project Substantial Completion and avoidance of Initial BESS RT Efficiency Liquidated Damage: The BESS RT Efficiency, excluding auxiliary consumption, shall be greater than or equal to the **Guaranteed BESS RT Efficiency** for this test.

4. Final BESS RT Efficiency Liquidated Damages

The Final BESS RT Efficiency Liquidated Damages are calculated in the same manner as the Initial BESS RT Efficiency Liquidated Damages as determined above, *mutatis mutandis*, adjusting for the BESS RT Efficiency of the measured performance data as determined by the Final BESS RT Efficiency Test.

**Operating Mode Confirmation Tests:**

Manual Control (Active + Reactive) Test Procedure:

1. Select “Manual Control (Real + Reactive)” in the HMI.

2. For each of the following, P represents the rated power

3. Set Power to P MW and 0 MVAR.

4. Set Power to P MW and -Q MVAR. (where Q is determined by P and Design Power Factor)

5. Set Power to P MW and + Q MVAR. (where Q is determined by P and Design Power Factor)

6. Set Power to 0 MW and 0 MVAR.

7. Repeat steps 3 through 6 for negative P. (Charging)

Clarifications:

1. Documentation to be provided: screenshots from HMI; results matrix.

Pass Criteria:

1. The real and reactive power output at each setpoint equals what was requested.

**Automatic Resource Control Mode Test (AGC),** Procedure:

1. Select “AGC” in the HMI.

2. For each of the following, P represents the Equipment Power Output Rating as defined in [\_\_\_\_\_] I and Q represents the BESS nameplate reactive power capability.

3. Coordinator (System Operator) with AGC signal:

a. Set Power to P MW and 0 MVAR.

b. Set Power to P MW and -Q MVAR. (where Q is determined by P and Design Power Factor)

c. Set Power to P MW and +Q MVAR. (where Q is determined by P and Design Power Factor)

d. Set Power to 0 MW and 0 MVAR.

e. Repeat steps 3 through 6 for negative P. (Charging)

f. Documentation to be provided: screenshots from HMI; results matrix.

Pass Criteria:

The real and reactive power output at each setpoint equals what was requested

**Exhibit K**

**Warranty Requirements**

**Exhibit L**

**Notices**

|  |  |
| --- | --- |
| **Purchaser** | **Seller** |
| **Notices:**  Indianapolis Power & Light Company  d/b/a AES Indiana  Attention: [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]  Email: [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]  *With a required copy to*  Indianapolis Power & Light Company  d/b/a AES Indiana  Attention: [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]  Email: [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] | **Notices:**  **[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]**  **[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]**  **[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]**  **[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]**  *With a required copy to*  **[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]**  **[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]**  **[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]**  **[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]** |
| **Real-Time Contact Information:**  To be provided by Purchaser from time to time. | **Real-Time Contact Information:**  To be provided by Seller from time to time. |

**Exhibit M**

Form of Assignment of ProjectCo Interests

This Assignment of ProjectCo Interests (this “**Assignment**”), effective as of \_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_, is entered into by and among [Seller], a [      ] [limited liability company] (“**Assignor**”), [AESI DevCo], [an Indiana/a Delaware] limited liability company (“**Assignee**”, and with Assignor, each a “**Party**” and together the “**Parties**”) and [ ], LLC, a [ ] limited liability company (the **“Limited Liability Company”).**

**Recitals**

1. Assignor and Assignee entered into that certain Membership Interest Purchase, Project Development and Construction Management Agreement, dated as of [ ], [ ] (the “**Purchase Agreement**”), pursuant to which, among other things, Assignor has agreed to transfer to Assignee 100% of the membership interests (the “**Membership Interests**”) in the Limited Liability Company.
2. Assignor, as the owner of the Membership Interests, desires to transfer, sell, assign and convey to Assignee all of Assignor’s right, title and interest in and to the Membership Interests and Assignee desires to purchase, accept and assume the Membership Interests and to become the sole member of the Limited Liability Company, on the terms and subject to the conditions set forth the Purchase Agreement.
3. To effect the sale and purchase of the Membership Interests, the parties are executing and delivering this Assignment as required by the terms of the Purchase Agreement.

**Agreement**

The Parties agree:

Section 1. Definitions and Interpretation

. Any capitalized term not otherwise defined herein shall have the meaning ascribed to the term in the Purchase Agreement. To the extent any of the provisions of this Assignment are duplicative of or conflict with the Purchase Agreement, the Purchase Agreement shall control.

Section 2. Assignor hereby sells, assigns, transfers, conveys and delivers, free and clear of all Liens, unto Assignee, effective as of the Closing, (a) all of Assignor’s right, title and interest in and to the Membership Interests, to have and hold the Membership Interests, together with all rights and appurtenances thereto, and (b) all of Assignor’s rights, obligations and liabilities under the Limited Liability Company’s limited liability company agreement (as the same has been amended and modified to date, the “**LLC Agreement**”).

Section 3. Assumption of Assignee

. Effective as of the Closing, Assignee hereby accepts the sale, assignment, transfer, conveyance and delivery of the Membership Interests, and assumes (a) all of Assignor’s right, title and interest in and to the Membership Interests to have and hold said Membership Interests, and (b) all rights, obligations and liabilities of the Assignor under the LLC Agreement.

Section 4. Withdrawal of Assignor

. Notwithstanding any provision in the LLC Agreement to the contrary, as of the Closing, (a) Assignor shall be deemed to have automatically withdrawn as a member of the Limited Liability Company and ceased to be a member thereof and shall have no further rights, obligations or liabilities as a member under the LLC Agreement, and (b) Assignee shall automatically be admitted as a member of the Limited Liability Company and succeed to all rights, obligations and liabilities of Assignor thereunder. The withdrawal of Assignor and the admission of Assignee shall be deemed to occur simultaneously.

Section 5. Continuation of the Limited Liability Company

. The parties hereto agree that the LLC Agreement shall continue in full force and effect, subject to Assignee’s unconditional ability to amend or restate the LLC Agreement following the Closing, and the assignment of the Membership Interests and the withdrawal of Assignor as a member of the Limited Liability Company shall not dissolve, or require the dissolution of, the Limited Liability Company. The Limited Liability Company hereby approves, consents, and agrees to the transactions contemplated by this Assignment, including the admission of Assignee as a member of the Limited Liability Company and the withdrawal of Assignor as a member of the Limited Liability Company.

Section 6. **Counterparts**

. This Assignment may be executed and delivered (including by facsimile or electronically mailed .pdf transmission) in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties, it being understood that the parties need not sign the same counterpart. Signatures of the parties transmitted by facsimile or electronic mail shall be deemed to be their original signatures for all purposes.

Section 7. Further Assurances

. The parties hereto agree to take all further actions and execute, acknowledge and deliver all further documents that are necessary or useful in carrying out the purposes of this Assignment. Without limiting the foregoing, (a) Assignor agrees to execute, acknowledge and deliver to Assignee all other additional instruments, notices, and other documents and to do all other and further acts and things as may be reasonably necessary to more fully and effectively sell, assign, transfer and deliver to Assignee the Membership Interests, and (b) Assignee agrees to execute, acknowledge and deliver to Assignor all other additional instruments, notices, and other documents and to do all other and further acts and things as may be reasonably necessary to more fully and effectively accept and assume the Membership Interests.

Section 8. Governing Law

. This Assignment, and any instrument or agreement required hereunder (to the extent not otherwise expressly provided for therein), shall be governed by, construed and enforced in accordance with the laws of the State of Indiana without giving effect to the choice of law principles thereof.

Section 9. Successors and Assigns

. This Assignment shall be binding upon and inure to the benefit of Assignor, Assignee and the Limited Liability Company and their respective successors and permitted assigns.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have caused this Assignment to be duly executed and delivered as of the date first set forth above.

**Assignor:**

**[Seller]**

By:

Name:

Title:

**Assignee:**

**[AESI DevCo]**

By:

Name:

Title:

**Limited Liability Company:**

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

By:

Name:

Title:

**Exhibit N**

**Reserved**

**Exhibit O**

**Critical Path Project Schedule**

**Exhibit P**

**Critical Milestones**

**Exhibit Q**

**Critical Path Project Schedule**

**Exhibit R**

**Milestones**

**Exhibit S**

**[Reserved]**

**Exhibit T**

**Project Site**

**Exhibit U**

**Purchaser Guaranty**

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, including, without limitation, the entering into by [AESI DevCo], [an Indiana/a Delaware] limited liability company (“**Purchaser**”) with [Seller], a [\_\_\_\_\_\_\_\_\_\_] [limited liability company] (“**Seller**”), of the Membership Interest Purchase, Project Development and Construction Management 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 “**BTA/MIPA**”), the undersigned guarantor (“**Guarantor**”), hereby unconditionally and irrevocably guarantees to Seller the prompt and complete payment of all amounts that Purchaser now or hereafter owes, and the performance of all other obligations of the Purchaser, under the terms and conditions of the BTA/MIPA, any agreements entered into by Purchaser under, pursuant to, or in connection with the BTA/MIPA 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 BTA/MIPA, any and all agreements entered into by Purchaser under, pursuant to or in connection with the BTA/MIPA, and any and all agreements to which the 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 Purchaser 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 Purchaser’s obligations under all of the Agreements. This Guaranty may be satisfied by Guarantor paying and/or performing (as appropriate) Purchaser’s Liabilities or by the Guarantor causing Purchaser’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 Purchaser 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 Seller (or any other person) first attempt to collect payment from Purchaser 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 Purchaser; and (iii) the amount of the obligations under the Agreements at any time outstanding. Seller 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 Purchaser and a separate action or actions may be brought and prosecuted against Guarantor whether action is brought against Purchaser 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 Seller, 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 Seller (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 Purchaser, 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 Purchaser 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 Seller (or any other person), or any exercise or non-exercise by Seller (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 Purchaser 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 Purchaser’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 Purchaser’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 Seller (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 Seller 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 Purchaser 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 Purchaser under any or all of the Agreements; (vii) any merger, amalgamation or consolidation of Purchaser into or with any other entity, or any sale, lease, transfer or other disposition of any or all of Purchaser’s assets or any sale, transfer or other disposition of any or all of the shares of capital stock or other securities of Purchaser to any other person or entity; or (viii) any change in the financial condition of Purchaser or (as applicable) of any subsidiary, affiliate, partner or controlling shareholder thereof, or Purchaser’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 Purchaser’s insolvency, bankruptcy, reorganization, dissolution, liquidation or any similar action by or occurrence with respect to Purchaser.
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 Seller (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 Purchaser 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 Purchaser to enforce any of the provisions of any of the Agreements; (vi) any requirement that Guarantor be involved in any dispute resolution procedures involving the Purchaser to enforce any of its obligations under any of the Agreements (including the dispute resolution procedures set forth in the BTA/MIPA); (vii) any requirement that Seller (or any other person) mitigate or attempt to mitigate damages resulting from a default by Guarantor hereunder or from a default by Purchaser 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 Purchaser, 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 Seller (or any other person) to (i) proceed against Purchaser; (ii) proceed against or exhaust any security held from Purchaser; 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 Purchaser arising as a result of payment by Guarantor hereunder, by way of subrogation or otherwise, and will not prove any claim in competition with Seller (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 Purchaser in respect of any liability of Guarantor to Purchaser and Guarantor waives any benefit of any right to participate in any collateral which may be held by Seller (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 Purchaser), 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 Purchaser by virtue of any payment, court order or any Federal, state or local law.
8. Any indebtedness of Purchaser now or hereafter held by Guarantor is hereby subordinated to the Liabilities and any indebtedness of Purchaser under any of the Agreements; and such indebtedness of Purchaser to Guarantor shall be collected, enforced and received by Guarantor as trustee for Seller and be paid over to Seller 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 Seller, as an inducement to Seller to make the credit advances to Purchaser, 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) Purchaser 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 Seller, 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 Seller 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 Seller to terminate the Agreements with Purchaser.
11. Guarantor agrees to pay on demand reasonable attorneys’ fees and all other costs and expenses which Seller, 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 Seller’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. Seller 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 Seller’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 Purchaser’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 Seller shall be brought only in Indiana or the United States Federal courts sitting in Indiana. Nothing herein shall affect the right of Seller 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 Seller 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 Seller of any sum adjudged to be due in the Judgment Currency, Seller 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 Seller in U.S. dollars, Guarantor agrees, as a separate obligation and notwithstanding such judgment, to indemnify Seller 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 BTA/MIPA 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 V**

**Seller Guaranty**

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, including, without limitation, the entering into by [IPL DevCo], [an Indiana/a Delaware] limited liability company (“**Purchaser**”) with [Seller], a [\_\_\_\_\_\_\_\_\_\_] [limited liability company] (“**Seller**”), of the Membership Interest Purchase, Project Development and Construction Management 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 “**BTA/MIPA**”), the undersigned guarantor (“**Guarantor**”), hereby unconditionally and irrevocably guarantees to Purchaser and all Purchaser’s Affiliates (as defined in the BTA/MIPA) the prompt and complete payment of all amounts that Seller now or hereafter owes, and the performance of all other obligations of the Seller, under the terms and conditions of the BTA/MIPA, any agreements entered into by Seller under, pursuant to, or in connection with the BTA/MIPA 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 BTA/MIPA, any and all agreements entered into by Seller under, pursuant to or in connection with the BTA/MIPA, and any and all agreements to which the 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 the Seller to enforce any of its obligations under any of the Agreements (including the dispute resolution procedures set forth in the BTA/MIPA); (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 BTA/MIPA 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 W**

**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 [DevCo], [an Indiana/a Delaware] limited liability company (“**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 [DevCo], [an Indiana/a Delaware] limited liability company (“**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: Membership Interest Purchase, Project Development and Construction Management Agreement, as may be amended and supplemented from time to time, together with all schedules and attachments thereto and any replacements or substitutes (the “**BTA/MIPA**”), any and all agreements entered into by Account Party under, pursuant to, or in connection with the BTA/MIPA and any and all agreements to which Account Party and Beneficiary are parties, each as it may be amended from time to time and whether it currently exists or is entered into any time in the future (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 Calendar 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 W—Seller Irrevocable Letter of Credit**

**Project Site**

**Certificate of Nonreinstatement**

**of Amounts Available Under Irrevocable**

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

The undersigned, a duly authorized officer of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “**Bank**”), hereby certifies to [AESI DevCo], [an Indiana/a Delaware] limited liability company (“**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 X**

**Tier 1 IFRs**

1. **Note to Draft**: To list existing Real Property Agreements. [↑](#footnote-ref-1)
2. **Note to Draft:** To list any area in which Seller has no discretion. [↑](#footnote-ref-2)
3. **Note to Draft**: If Seller is not a limited liability company, several of the provisions in this Agreement will need to be revised appropriately. [↑](#footnote-ref-3)
4. **Note to Draft**: Please note that this percentage should, where applicable, reflect bonus credits where the Project is in an “energy community” and/or qualifies for the “domestic content bonus”. Further, please note that the Prevailing Wage and Apprenticeship requirements as per Section 24.11 of this Agreement should be satisfied to achieve the full 30% credit. [↑](#footnote-ref-4)
5. **Note to Draft**: May not be needed. [↑](#footnote-ref-5)
6. **Note to Draft**: Please note that this Agreement assumes that both of the bonus credits are available although the parties may revise to the extent certain bonus credits are not applicable. [↑](#footnote-ref-6)
7. **Note to Draft**: Subject to Purchaser review and edit based on project bid. [↑](#footnote-ref-7)
8. **Note to Draft**: Subject to Purchaser review and edit based on project bid. [↑](#footnote-ref-8)