

MUTUAL NON-DISCLOSURE AGREEMENT

THIS MUTUAL NON-DISCLOSURE AGREEMENT (the “Agreement”) is made and entered into effective as of the _____ day of _____, 20____ (“Effective Date”) between (i) _____ (full legal name of counterparty including, if not an individual, the entity designation of Inc./LLC/Corporation, etc.) having its principal place of business at _____ (the “[_____] and (ii) Indianapolis Power & Light Company d/b/a AES Indiana, having its principal place of business at One Monument Circle, Indianapolis, IN 46204 (the “Company”).

WITNESSETH:

WHEREAS, [_____] and Company are about to enter into discussions and to exchange information regarding a potential business relationship between the Parties related to _____ (the “Purpose”);

WHEREAS, in the course of such discussions, each Party expects to disclose certain confidential, proprietary and trade secret information to the other Party; and

WHEREAS, [_____] and Company seek to safeguard and protect their respective confidential, proprietary and trade secret information.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Definitions.

1.1 As used herein, the term “Disclosing Party” shall mean: (a) [_____], with respect to all Proprietary Information disclosed by [_____] to Company hereunder; or (b) Company, with respect to all Proprietary Information disclosed by Company to [_____] hereunder.

1.2 As used herein, the term “Receiving Party” shall mean: (a) Company with respect to all Proprietary Information disclosed by [_____] hereunder; or (b) [_____] with respect to all Proprietary Information disclosed by Company hereunder.

1.3 As used herein, the term “Party” shall mean [_____] or Company as the case may be. The term “Parties” shall mean [_____] and Company.

1.4 The term “Affiliate” shall mean any company, corporation, or other entity, which controls, is controlled by, or is under common control with a Party now and shall be considered an Affiliate only so long as the ownership or control, directly or indirectly, meets the conditions set forth herein; provided that any Proprietary Information provided by or about an Affiliate prior to its cessation as an Affiliate shall remain subject to the terms of this Agreement. For purposes of this definition, “control” shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or

policies of an entity, whether through the ability to exercise voting power, by contract or otherwise.

1.5 As used herein, the term “Proprietary Information” shall mean all confidential or proprietary information including, without limitation, trade secrets, names and expertise of employees and consultants, know-how, formulae, processes, ideas, inventions (whether or not patentable), schematics, and other technical, business, financial, company and product development information and data (whether or not reduced to writing), which is disclosed or made available by the Disclosing Party or its Affiliates to the Receiving Party or its Affiliates and (a) if disclosed orally, is orally identified at the time of disclosure or promptly thereafter in writing or electronically as confidential or proprietary, or (b) that, regardless of the form of disclosure, should reasonably have been understood by the Receiving Party because of legends or other markings, the circumstances of disclosure, or the nature of the information itself to be proprietary or confidential to the Disclosing Party, an Affiliate of the Disclosing Party or to a third party. Notwithstanding the foregoing, Proprietary Information shall not include information that: (i) is in the public domain on the date hereof or comes into the public domain other than through the fault or negligence of the Receiving Party; (ii) is lawfully obtained by the Receiving Party from a third party without breach of this Agreement and otherwise not in violation of the Disclosing Party’s rights; (iii) is known to the Receiving Party at the time of disclosure as shown by its written records in existence at the time of disclosure; or (iv) is independently developed by the Receiving Party, provided the Receiving Party can demonstrate that it did so without making any use of any Proprietary Information or other information that the Disclosing Party disclosed in confidence to any third party. If the Receiving Party is required to disclose Proprietary Information pursuant to the order of any court, governmental agency or stock exchange, the Receiving Party shall first notify the Disclosing Party of any such order and, if practicable, afford such Party the opportunity to seek a protective order relating to any such disclosure and, provided further, that the Receiving Party will furnish only that portion of the Proprietary Information that it is legally required to disclose and will exercise all reasonable efforts to obtain reliable assurances that confidential treatment will be accorded the remaining Proprietary Information.

2. Nondisclosure. In consideration of the Disclosing Party’s disclosure of Proprietary Information to the Receiving Party, the Receiving Party agrees that it: (i) shall treat all Proprietary Information as strictly confidential; (ii) shall not disclose or use any Proprietary Information except to evaluate the information disclosed by the Disclosing Party with respect to the Purpose; (iii) shall protect all Proprietary Information, whether in storage or in use, with the same degree of care as the Receiving Party uses to protect its own Proprietary Information against public disclosure, but in no case with less than reasonable care, which shall be deemed to include, but not be limited to, using a secure method or program with robust encryption protection meeting or exceeding FIPS 140-2 Level 1 requirements or such other secure method or program as agreed between the parties for all electronic transfers of Proprietary Information; provided that the Disclosing Party may choose to deliver certain Proprietary Information to the Receiving Party via unencrypted electronic mail, in which case the Receiving Party shall be deemed to be granted permission by the Disclosing Party to transfer the same Proprietary Information (but no other) in the

same manner and with the same document protection, if any, applied to the Proprietary Information by the Disclosing Party, subject to the terms of this Agreement; (iv) shall disclose Proprietary Information only to such officers, directors, employees, agents, consultants, and attorneys (collectively "Representatives") of the Receiving Party and its Affiliates who need to know such Proprietary Information for the Purpose, provided such Representatives are informed of the confidential nature of such Proprietary Information and the terms of this Agreement prior to disclosure and provided further that the Receiving Party shall be responsible in the event of such Representative's breach of this Agreement as if the Receiving Party had committed such breach; and (v) shall not reverse engineer any such Proprietary Information.

3. Return. The Receiving Party shall promptly return to the Disclosing Party all items containing or constituting Proprietary Information, including but not limited to all information, documents, extracts, summaries or other materials, whether provided by the Disclosing Party to the Receiving Party or created, generated, or produced by the Receiving Party in connection with the Purpose, and shall destroy all copies containing or constituting Proprietary Information (including without limitation the complete deletion of all electronic copies thereof) upon the earlier to occur of (a) the written request of the Disclosing Party or (b) the completion or termination of discussions regarding the Purpose; provided that if the Receiving Party's computer systems automatically back up Proprietary Information disclosed under this Agreement making specific deletion thereof impractical, the Receiving Party shall maintain the confidentiality of such back-up copies (if any) in accordance with Paragraph 2 above until such back-up copies are destroyed in the ordinary course of the Receiving Party's business. An officer of the Receiving Party shall provide written certification to the Disclosing Party of such destruction within five (5) business days of receipt of the Disclosing Party's written request or the completion or termination of discussions regarding the Purpose; provided that in the case of automatically backed up copies, the Receiving Party's obligations to maintain the Proprietary Information in accordance with Paragraph 2 above shall continue until an officer of the Receiving Party provides written certification to the Disclosing Party that such Proprietary Information has been destroyed. Notwithstanding the foregoing, the Receiving Party shall have the right to retain one archival copy of the Proprietary Information, so long as the Receiving Party maintains such Proprietary Information in accordance with Paragraph 2 above. Notwithstanding the return or destruction of Proprietary Information, the Receiving Party will continue to be bound by the terms and obligations of this Agreement.
4. Ownership. Nothing in this Agreement shall be construed as a transfer or sale to Receiving Party of any right whatsoever, by license or otherwise, in or to any Proprietary Information, and no title, ownership, intellectual property rights or licenses under any patent, copyright, trademark, or trade secret are granted, acquired or implied or are to be implied by this Agreement.
5. Injunctive Relief. [] and Company acknowledge that the extent of damages in the event of the breach of any provision of this Agreement would be difficult or impossible to ascertain, and that there will be available no adequate remedy at law in the event of any such breach. Each Party therefore agrees that in the event it breaches any provision of this

Agreement, the other Party will be entitled to specific performance and injunctive or other equitable relief, in addition to any other relief to which it may be entitled at law or in equity. Any such relief shall be in addition to and not in lieu of any appropriate relief in the way of monetary damages. In the event of litigation relating to this Agreement, if a court of competent jurisdiction determines in a final, non-appealable order that this Agreement has been breached by Receiving Party or any of its Representatives, Receiving Party shall reimburse Disclosing Party for any and all costs and expenses (including, without limitation, legal fees and expenses) incurred in connection with all such litigation. Notwithstanding anything to the contrary contained herein, neither Party shall be liable to the other for any indirect, incidental, special or consequential damages.

6. General.

6.1 The term of this Agreement shall continue for a period of two (2) years from the date hereof, provided that the non-disclosure and use restriction obligations under this Agreement shall survive with respect to the Proprietary Information for such longer period during which such Proprietary Information retains its status as a trade secret or qualifies as confidential under applicable law.

6.2 This Agreement shall be governed by and construed according to the laws of the State of Indiana, without regard to any conflict of laws principles. Any suit or action arising out of a dispute under this Agreement shall be brought only in a court of competent jurisdiction, state or federal, sitting in Marion County, Indiana. Both parties accept venue in such county.

6.3 In the event any provision of this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, the remaining provisions of this Agreement shall remain in full force and effect to the maximum extent possible.

6.4 This Agreement constitutes the entire agreement between the Parties hereto relating to the subject matter hereof and may not be amended or in any manner modified except by a written instrument signed by authorized representatives of both Parties. All prior or contemporaneous agreements or understandings between [] and Company relating to the subject matter hereof, whether oral or written, are superseded by and merged into this Agreement. This Agreement may be executed in any number of counterparts and may be delivered to the other Party by facsimile or electronic mail, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

6.5 The waiver, express or implied, by any Party of any of its rights arising under this Agreement shall not constitute or be deemed a waiver of any other right hereunder, whether of a similar or dissimilar nature.

6.6 This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns. This Agreement shall not be assigned without the prior written consent of the Parties, which consent shall not be unreasonably withheld. In the absence of the Disclosing Party's consent to an assignment of this Agreement, none of its Proprietary Information shall be transferred by Receiving Party or its Representatives to any proposed successor or assignee.

6.7 Except upon mutual written agreement, or as may be required by law, neither Party to this Agreement shall in any way or in any form disclose the discussions that gave rise to this Agreement or the fact that there have been, or will be, discussions or negotiations covered by this Agreement.

6.8 The Receiving Party acknowledges that the Disclosing Party has neither made any representations nor given any warranties as to the accuracy or completeness of the Proprietary Information for the Receiving Party's purposes. The Receiving Party agrees that the Disclosing Party shall not by virtue of this Agreement have any liability or responsibility for errors or omissions in, or any decisions made by the Receiving Party in reliance on, any Proprietary Information disclosed under this Agreement. PROPRIETARY INFORMATION IS PROVIDED ON AN "AS-IS" BASIS AND DISCLOSING PARTY EXPRESSLY DISCLAIMS ANY WARRANTIES WITH RESPECT TO ACCURACY, RELIABILITY, COMPLETENESS, MERCHANTABILITY OR FITNESS FOR ANY PURPOSE.

6.9 The Receiving Party will notify the Disclosing Party in writing promptly upon the occurrence of any unauthorized release of Proprietary Information or breach of this Agreement of which it is aware.

6.10 This Agreement is neither intended to create, nor shall it be construed as creating, (i) a joint venture, partnership or other form of business association between the Parties, (ii) an obligation to buy or sell products using or incorporating the Proprietary Information, (iii) an implied or express license grant from either Party to the other, (iv) any obligation to continue discussions or negotiations with respect to any potential agreement between the Parties or (v) an agreement to enter into any agreement.

IN WITNESS THEREOF, the Parties hereto, by their duly authorized representatives, have executed this Agreement as of the Effective Date above.

“[]”

“COMPANY”

(Full Legal Business Name)

Indianapolis Power & Light Company
d/b/a AES Indiana
(Full Legal Business Name)

☐ By its agent, AES US Services, LLC

By:_____

By:_____

Printed:_____

Printed:_____

Title:_____

Title:_____

Execution Date:_____

Execution Date:_____