

WIND ENERGY PURCHASE AGREEMENT

BETWEEN

BASIN ELECTRIC POWER COOPERATIVE

(“BUYER”)

AND

_____,

(“SELLER”)

_____ [____], 20__

[PLEASE NOTE: 1.) This is a draft PPA for a wind project, and the same concept terms and conditions would apply if this were for a solar project. Any wind references would need to change to solar along with all other references as appropriate. 2.) All definitions as drafted refer to SPP. If a project were in MISO, changes would be made as appropriate.]

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1 - RULES OF INTERPRETATION.....	1
1.1 Interpretation.....	1
1.2 Interpretation With Other Agreements	2
1.3 Good Faith and Fair Dealing.....	2
1.4 Waiver.....	2
ARTICLE 2 - TERM AND TERMINATION.....	2
2.1 Term.....	2
ARTICLE 3 - FACILITY DESCRIPTION	3
3.1 Description; Selection of Wind Turbines and Aggregate Facility Nameplate Capacity	3
3.2 General Design of the Facility	3
ARTICLE 4 - IMPLEMENTATION.....	4
4.1 Facility Development.....	4
4.2 Commercial Operation.....	4
4.3 Test Energy	5
ARTICLE 5 - DELIVERY	6
5.1 Electric Delivery Arrangements	6
5.2 Electric Metering Devices.....	6
ARTICLE 6 - SALE AND PURCHASE.....	8
6.1 General Obligation.....	8
6.2 Mechanical Availability.....	8
6.3 Curtailment of the Facility	8
6.4 Scheduling of Renewable Energy	9
6.5 Market Participant and Scheduling.....	9
6.6 Forecasts	10
6.7 Access to Data.....	10
6.8 Ownership of RECs, Generation Benefits and Ancillary Services.....	10
ARTICLE 7 - PAYMENT CALCULATIONS	11
7.1 Renewable Energy Payment Rate.....	11
7.2 Curtailment Energy Payment Rate.....	12
ARTICLE 8 - BILLING AND PAYMENT	13
8.1 Billing	13
8.2 Payment.....	14
8.3 Billing Disputes	14
8.4 Adjustments	14

ARTICLE 9 - OPERATIONS AND MAINTENANCE	15
9.1 Operation and Administration.....	15
9.2 Facility Maintenance.....	15
9.3 Books and Records	16
9.4 Operating Committee and Operating Procedures	16
9.5 Access to Facility	17
ARTICLE 10 - SECURITY FOR PERFORMANCE	17
10.1 Security Fund.....	17
10.2 Buyer Security	20
ARTICLE 11 - DEFAULT AND REMEDIES	21
11.1 Events of Default	21
11.2 Remedies.....	22
11.3 Limitation on Damages.....	23
11.4 Duty to Mitigate.....	24
ARTICLE 12 - DISPUTE RESOLUTION.....	24
12.1 Dispute Resolution.....	24
ARTICLE 13 - FORCE MAJEURE.....	25
13.1 Applicability of Force Majeure.....	25
13.2 Limitations on Effect of Force Majeure.....	25
13.3 Delays Attributable to Buyer	26
ARTICLE 14 - REPRESENTATIONS AND WARRANTIES	26
14.1 General Representations and Warranties	26
ARTICLE 15 - INSURANCE	27
15.1 Evidence of Insurance.....	27
15.2 Term and Modification of Insurance	27
ARTICLE 16 - INDEMNITY.....	27
16.1 Indemnification.....	27
16.2 Notice of Claim.....	28
16.3 Settlement of Claim	28
16.4 Amounts Owed	28
ARTICLE 17 - LENDER PROVISIONS	28
17.1 Accommodation of Facility Lender	28
17.2 Facility Lender Notice and Right to Cure.....	29
17.3 Notice of Facility Lender Action	29
17.4 Officer Certificates.....	29
ARTICLE 18 - ASSIGNMENT AND OTHER TRANSFER RESTRICTIONS.....	29
18.1 Transfer Without Consent Is Null and Void.....	29
18.2 Subcontracting	30

ARTICLE 19 - MISCELLANEOUS	30
19.1 Notices	30
19.2 Taxes and Change of Law.....	30
19.3 Applicable Laws	31
19.4 Fines and Penalties.....	31
19.5 Rate Changes	32
19.6 Disclaimer of Third Party Beneficiary Rights	32
19.7 Relationship of the Parties	32
19.8 Equal Employment Opportunity Compliance Certification	32
19.9 Survival of Obligations	32
19.10 Severability	32
19.11 Complete Agreement; Amendments.....	33
19.12 Binding Effect.....	33
19.13 Headings	33
19.14 Counterparts.....	33
19.15 Governing Law	33
19.16 Press Releases and Media Contact.....	33
19.17 Exhibits	34
19.18 Confidentiality	34

EXHIBIT A - DEFINITIONS

EXHIBIT B - CONSTRUCTION MILESTONES

EXHIBIT C - FACILITY DESCRIPTION AND SITE MAPS

EXHIBIT D - NOTICES AND CONTACT INFORMATION

EXHIBIT E - INSURANCE COVERAGE

EXHIBIT F - REQUIRED DATA POINTS

EXHIBIT G - OPERATING PROTOCOLS

EXHIBIT H - LENDER CONSENT PROVISIONS

EXHIBIT I - MECHANICAL AVAILABILITY

EXHIBIT J - SELLER'S FORM OF LETTER OF CREDIT

EXHIBIT K - BUYER'S FORM OF LETTER OF CREDIT

WIND ENERGY PURCHASE AGREEMENT

This Wind Energy Purchase Agreement (“PPA”) has been entered into and is made effective as of this ____ day of _____, 20__ (the “Effective Date”), by and between (i) Basin Electric Power Cooperative, a North Dakota cooperative corporation with a principal place of business at 1717 East Interstate Ave, Bismarck, North Dakota 58503 (“Buyer”), and (ii) _____, (“Seller”). Buyer and Seller are hereinafter referred to individually as a “Party” and collectively as the “Parties”.

WHEREAS, Seller desires to develop, design, construct, interconnect, own, operate and maintain the _____ electric generating facility to be comprised of Wind Turbines with an aggregate nameplate capacity of approximately _____ MW (subject to adjustment as provided herein), all as more specifically described herein (“Facility”); and

WHEREAS, Seller desires to sell and deliver and Buyer desires to purchase and to accept delivery of all of the output of the Facility (all electric power and energy, capacity and all associated Environmental and Renewable Energy Credits) at the Point of Delivery at the prices and on the terms and conditions set forth in this PPA.

NOW THEREFORE, in consideration of the mutual covenants herein contained, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following:

ARTICLE 1 - RULES OF INTERPRETATION

1.1 Interpretation.

(A) Capitalized terms listed in this PPA shall have the meanings set forth in Exhibit A-Definitions or as otherwise defined in this PPA, whether in the singular or the plural or in the present or past tense. Words not otherwise defined in this PPA shall (i) have meanings as commonly used in the English language and (ii) be given their generally accepted meaning in the utility industry.

(B) The following rules of interpretation shall apply: (1) The masculine shall include the feminine and neuter; (2) references to “Articles,” “Sections,” or “Exhibits” shall be to articles, sections, or exhibits of this PPA except as the context may otherwise require; (3) all Exhibits are incorporated into this PPA; *provided, however*, that in the event of an actual or perceived conflict with the terms of this PPA, the PPA shall control; and (4) use of the words “include” or “including” or similar words shall be interpreted as “include without limitation” or “including, without limitation.”

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

(D) Unless specifically designated as DC, each reference to MW or kW contained herein, including any reference to Nameplate Capacity, shall be AC MW or AC kW, as applicable.

1.2 Interpretation With Other Agreements.

(A) This PPA does not provide Seller authorization to interconnect the Facility or to inject power into any electric delivery system, nor does it constitute an agreement to provide transmission services of any kind to Seller. Seller shall contract for interconnection services in accordance with the applicable Transmission Tariff. Seller acknowledges that the Interconnection Agreement shall be a separate contract and that (i) this PPA shall not be binding on the Transmission Authority, (ii) this PPA shall not create any rights between Seller and the Transmission Authority, and (iii) the Interconnection Agreement shall not modify the Parties' rights and obligations under this PPA. Seller agrees that any applicable Transmission Authority shall be deemed to be a separate and unaffiliated contracting party regardless of whether such Transmission Authority is Buyer or an Affiliate of Buyer.

(B) This PPA does not provide for the supply of House Power. Seller shall contract with the Local Provider for the supply of House Power. Seller acknowledges that obtaining House Power shall be a separate contract and that (i) this PPA shall not be binding on the Local Provider, (ii) this PPA shall not create any rights between Seller and the Local Provider, and (iii) the House Power contract shall not modify the Parties' rights and obligations under this PPA. Seller agrees that the Local Provider shall be deemed to be a separate and unaffiliated contracting party regardless of whether the Local Provider is Buyer or an Affiliate of Buyer. Subject to Seller's right to self-generate and consume energy concurrently generated by the Facility or as otherwise allowed by Applicable Law, Seller shall obtain House Power exclusively from the Local Provider.

1.3 Good Faith and Fair Dealing. The Parties shall act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this PPA. Unless expressly provided otherwise in this PPA, (a) when this PPA requires the consent, approval, or similar action by a Party, such consent or approval shall not be unreasonably withheld, conditioned or delayed, and (b) wherever this PPA gives a Party a right to determine, require, specify or take similar action with respect to a matter, such determination, requirement, specification or similar action shall be Commercially Reasonable.

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

ARTICLE 2 - TERM AND TERMINATION

2.1 Term. This PPA shall become effective as of the Effective Date as stated above and shall remain in full force and effect until the Scheduled Termination Date, subject to early termination as provided in this PPA or otherwise agreed to by the Parties. Applicable provisions of this PPA shall continue in effect after termination to the extent necessary to (i) provide for final billings, payments and adjustments, (ii) enforce or complete the duties, obligations or responsibilities of the Parties, and (iii) address any remedies or indemnifications, arising prior to termination.

ARTICLE 3 - FACILITY DESCRIPTION

3.1 Description; Selection of Wind Turbines and Aggregate Facility Nameplate Capacity. Seller shall develop, design, construct, interconnect, own, operate, and maintain the Facility, as further described in Exhibit C-Facility Description and Site Maps. A scaled map that identifies the Site, the location of the Facility, Interconnection Point, Interconnection Facilities, the Point of Delivery, and other important facilities, is included in Exhibit C. The aggregate Nameplate Capacity of the Facility is anticipated to be up to _____ MW, subject to a reduction at the reasonable discretion of Seller of no more than ten percent (10%). The Parties acknowledge that as of the Execution Date:

(A) Within thirty (30) days of the execution and delivery by Seller and the Transmission Authority of the Interconnection Agreement, Seller shall give Buyer Notice of the maximum amount of Renewable Energy generated by the Facility that can be injected at the Interconnection Point in accordance with the Interconnection Agreement, and prior to or concurrently with the giving by Seller of a full notice to proceed with the construction of the Facility, Seller shall give Buyer Notice of the manufacturer and model of the Wind Turbines selected by Seller for installation at the Facility and the planned aggregate Nameplate Capacity of the Facility based on the Wind Turbines identified in such Notice, which Notice shall be accompanied by a revised Exhibit C describing such Wind Turbines and the resulting planned aggregate Nameplate Capacity of the Facility, which revised Exhibit C shall replace Exhibit C attached hereto as of the Effective Date. Such revisions to the Exhibit shall reflect only revisions to appropriately reflect the final nameplate rating of the Facility and the Wind Turbine information described above and shall not in any fashion change or modify any other substantive provision of this PPA.

3.2 General Design of the Facility.

(A) Seller at its sole expense shall use Commercially Reasonable Efforts to design, construct, operate, maintain, repair and replace the Facility in accordance with all Applicable Laws and permit conditions, Good Utility Practice, the terms of this PPA and the Interconnection Agreement.

(B) The Facility shall include all equipment necessary to successfully interconnect with the Transmission Authority's System for the delivery of the Facility's output to the Point of Delivery.

(C) The Facility shall include all equipment and telecommunications capabilities necessary to communicate with Buyer's SCADA System.

(D) Seller currently contemplates the Facility shall include all of the equipment specified in Exhibit C (as such Exhibit C will be replaced upon Seller's selection of the Wind Turbines to be installed at the Facility as provided in Article 3.1 above) or otherwise necessary to fulfill Seller's obligations under this PPA. Seller shall notify Buyer of any change in the make or model of the Wind Turbines. After completion of construction of the Facility, Seller shall deliver to Buyer the As-built Supplement to Exhibit C (as such Exhibit C is replaced pursuant to Article 3.1 above).

ARTICLE 4 - IMPLEMENTATION

4.1 Facility Development.

(A) At the times provided in this Article 4.1(A), Seller shall (i) submit quarterly or monthly (as applicable) progress reports to Buyer advising Buyer of the current status of each Construction Milestone, any significant developments or delays along with an action plan for making up delays, and Seller's best estimate of the Commercial Operation Date; and (ii) invite Buyer to participate in quarterly or monthly (as applicable) meetings to discuss the progress reports, answer questions, and assess the schedule. Commencing on the first day of the calendar quarter next following the Effective Date and continuing until Seller is required to provide monthly reports under this Article 4.1(A), Seller shall provide Buyer with the quarterly reports required under this Article. Commencing on the first day of the month next following the month in which Seller gives a full notice to proceed with the construction of the Facility and continuing until the Commercial Operation Date, Seller shall provide Buyer with the monthly reports required under this Article.

(B) Upon written request delivered reasonably in advance, Buyer shall have the right to monitor the construction, start-up, testing, and operation of the Facility at the Facility for compliance with this PPA, not more than five (5) times per calendar year, *provided, however*, that Buyer, any of its Affiliates, and any of their officers, directors, employees, contractors and agents shall comply with all of Seller's applicable safety and health rules and requirements. Buyer's monitoring of the Facility shall not be construed as inspections or endorsing the design thereof nor as any express or implied warranties including performance, safety, durability, or reliability of the Facility.

(C) Seller shall notify Buyer (i) sufficiently in advance of any known upcoming significant inspections by any Governmental Authority at the Facility to allow Buyer the opportunity to attend; provided, however, that Seller shall not be required to re-schedule or postpone any such inspections in the event that Buyer is not able to attend, and (ii) promptly after any unscheduled or impromptu inspection with a description of the nature and outcome of such inspection. While at the Facility, any of Buyer's representatives attending any such inspections shall comply with all of Seller's applicable safety and health rules and requirements and shall conduct themselves in a manner that will not interfere with the operation of the Facility.

4.2 Commercial Operation. Subject to extension as authorized in this PPA, the Facility shall achieve Commercial Operation no later than the Commercial Operation Milestone.

(A) Seller shall provide Buyer a Notice of the date Seller believes the Facility has achieved Commercial Operation along with all supporting documentation of the satisfaction or occurrence. This notification shall contain evidence of the satisfaction or occurrence of all of the conditions set forth in this Article 4.2 (the "COD Conditions"), and the Commercial Operation Date shall not have occurred unless and until all of the COD Conditions have been satisfied (or waived by Buyer). The COD Conditions are:

1. Seller has successfully completed all testing of the Facility required by the Facility's governmental permits, Seller's operating agreements, Seller's construction

agreement, Wind Turbine supply and warranty agreements and other material Construction Contracts;

2. at least ninety percent (90%) of the Wind Turbines of the entire Facility and associated equipment sufficient to allow such Wind Turbines to generate and deliver Renewable Energy to the Point of Delivery have been completed. For the avoidance of doubt, Seller shall be entitled to, and must use Commercially Reasonable Efforts to, complete and commence the generation and delivery of Renewable Energy for any Wind Turbines that are not operational on the Commercial Operation Date;

3. the Facility has achieved initial synchronization with the Transmission Authority's System on which the Interconnection Point is located;

4. certification of a professional engineer has been obtained by Seller stating that the Facility has been completed in all material respects (excepting punch list items that do not materially and adversely affect the ability of the Facility to operate as intended hereunder) in accordance with this PPA;

5. the interconnection of the Facility to the Transmission Authority's System on which the Interconnection Point is located has been completed in accordance with the Interconnection Agreement;

6. the security arrangements meeting the requirements of Article 10 have been established;

7. certificates of insurance evidencing the coverages required by Article 15 have been obtained and submitted to Buyer; and

8. Seller has submitted to Buyer a certificate of an officer of Seller familiar with the Facility after due inquiry stating that all permits, consents, licenses, approvals, and authorizations required to be obtained by Seller from any Governmental Authority to construct and/or operate the Facility in compliance with Applicable Law and this PPA have been obtained and are in full force and effect, and that Seller is in compliance with the terms and conditions of this PPA in all material respects.

The Parties understand and agree that the COD Conditions described above are not conditions precedent to the effectiveness of this PPA.

4.3 Test Energy.

(A) Seller shall provide Buyer with the information necessary to have the Facility registered with the Transmission Authority for inclusion in any generation modeling maintained by the Transmission Authority, sufficiently in advance to allow the Facility to be registered in such model prior to generating any Test Energy. Buyer will cooperate reasonably to assist in the registration of the Facility to allow generation of Test Energy.

(B) Prior to the COD, Seller shall coordinate the production and delivery of Test Energy with Buyer, with not less than five (5) Days' Notice, or such other Commercially

Reasonable prior Notice as Buyer may reasonably request. The Parties shall cooperate to facilitate Seller's testing of the Facility necessary to satisfy the COD Conditions. Buyer shall pay the Test Energy Rate for all Test Energy delivered prior to COD.

ARTICLE 5 - DELIVERY

5.1 Electric Delivery Arrangements. Seller shall be responsible for making, maintaining and paying all costs associated with the interconnection of the Facility to the Transmission Authority's System. Seller shall comply in all material respects with the Transmission Authority's requirements for the interconnection and shall comply in all material respects with all requirements set forth in the applicable Transmission Tariff. If Buyer desires to claim the Facility as a Network Resource, then (a) Seller shall cooperate reasonably in any request by Buyer to assist in Buyer's efforts to have the Facility approved as a Network Resource (as defined in the Transmission Tariff) or equivalent classification pursuant to the applicable Transmission Tariff and (b) Buyer shall be responsible for all of Seller's fees, costs and expenses in respect thereof, and shall promptly reimburse Seller (or if requested by Seller, promptly pay on Seller's behalf) any such fees, costs and expenses.

(A) Seller authorizes Buyer to contact and obtain information concerning the Facility and Interconnection Facilities directly from any applicable Transmission Authority and, upon request, Seller shall confirm such authorization in writing to such Transmission Authority or any applicable transmission owners in such form as requested by Buyer or the Transmission Authority.

(B) Seller shall be responsible for all interconnection, electric losses, transmission and ancillary service arrangements and costs required to deliver Renewable Energy from the Facility to the Point of Delivery, and Buyer shall not be responsible for any of the foregoing.

(C) Buyer shall be responsible for all electric losses, transmission and ancillary service arrangements and costs required to receive the output of the Facility at the Point of Delivery and to transmit the output therefrom. Buyer shall arrange and be responsible for scheduling and transmission services at and beyond the Point of Delivery with respect to the output of the Facility. To the extent applicable, Buyer shall be the market participant with respect to the output of the Facility, as defined by the Transmission Authority.

5.2 Electric Metering Devices. Seller will comply with the terms and conditions of the Interconnection Agreement. The following provisions on Electric Metering Devices shall apply only to the extent they do not conflict with the applicable provisions of the Interconnection Agreement or the Transmission Tariff, as applicable.

(A) The primary Electric Metering Device used to measure Renewable Energy made available to the Buyer by Seller under this PPA. and to monitor and coordinate operation of the Facility, together with any Back-Up Metering installed by Buyer (which Buyer may install pursuant to this Article 5.2), shall be owned, installed, and maintained as provided in the Interconnection Agreement. Seller shall provide Buyer access to the primary Electric Metering Device data. The primary Electric Metering Device shall be compliant to MV90 standards and

configured to measure 5-minute intervals. The Parties intention is that such primary Electric Metering Device shall be located at the Point of Delivery or as otherwise provided in the Interconnection Agreement. If the primary Electric Metering Device is not installed at the Point of Delivery, the meter or meter readings will be adjusted to reflect losses from the primary Electric Metering Device to the Point of Delivery, as such losses are determined by the Operating Committee. The primary Electric Metering Device used to provide data for the computation of payments shall be sealed and only the installing Party may break the seal when such Electric Metering Device is to be inspected and tested or adjusted in accordance with this Article 5. Each Back-up Metering shall be sealed and only the installing Party may break the seal when such Back-up Metering is to be inspected and tested or adjusted in accordance with this Article 5. The Party installing the primary Electric Metering Device or any Back-up Metering (as applicable) shall give the other Party at least five (5) days' Notice of the date and time at which such Electric Metering Device or Back-up Metering is to be inspected and tested or adjusted in accordance with this Article 5 and such other Party shall have the right to be present when the seal is broken and any such inspection, test or adjustment is being conducted.

(B) Either Party may elect to install and maintain, at its own expense, one or more backup metering devices ("Back-Up Metering") in addition to the primary Electric Metering Device, *provided, however*, that the specifications, installation and testing of any such Back-Up Metering shall be consistent with the requirements for the primary Electric Metering Device. Upon written request, the Party installing any Back-Up Metering shall conduct retests of such Back-Up Metering requested by the other Party. The actual cost of any retest of such Back-Up Metering shall be borne by the Party requesting the test, unless, upon such retest, Back-Up Metering is inaccurate by more than one percent, in which case the cost of the retest shall be borne by the installing Party. If requested in writing, the installing Party shall provide copies of any inspection or testing reports for such Back-Up Metering to the requesting Party.

(C) If the primary Electric Metering Device fails to register, or if the measurement is inaccurate by more than one percent (1%) (or the Transmission Authority's requirements in the event that the Transmission Authority's requirements are more stringent), an adjustment shall be made correcting all measurements as follows:

1. If the primary Electric Metering Device is found to be defective or inaccurate, the Parties shall use Back-up Metering, if installed, to determine the amount of such inaccuracy, *provided, however*, that Back-Up Metering has been tested and maintained and adjusted for losses on the same basis as the primary Electric Metering Device. If Back-Up Metering is not installed, or Back-Up Metering is also found to be inaccurate by more than one percent (1%) (or the Transmission Authority's requirements in the event that the Transmission Authority's requirements are more stringent), the Parties shall use the best available information for the period of inaccuracy, adjusted as agreed by the Parties for losses to the Point of Delivery.

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

3. To the extent that the adjustment period covers a period of deliveries for which payment has already been made by Buyer, Buyer shall use the corrected measurements as determined in accordance with this Article to re-compute the amount due for the period of the inaccuracy and shall give Seller Notice of the results of such re-computation and the data upon which the same is based. If such re-computation shows that Buyer overpaid, Buyer shall receive a credit in the amount of such overpayment against the amounts owing under the next monthly invoice submitted by Seller pursuant to Article 8.1, and if such re-computation shows that Buyer underpaid, the amount of such underpayment shall be added to the amounts owing by Buyer on the next monthly invoice submitted by Seller pursuant to Article 8.1.

ARTICLE 6 - SALE AND PURCHASE

6.1 General Obligation. Beginning on the Commercial Operation Date, Seller shall sell and deliver to the Point of Delivery, and Buyer shall receive and purchase at the Point of Delivery, the entire output of the Facility (net of station load and line losses to the Point of Delivery). Title and risk of loss relating to electric energy sold and delivered hereunder shall transfer from Seller to Buyer at the Point of Delivery.

6.2 Mechanical Availability. Seller guarantees that the Facility shall be available to produce Renewable Energy in accordance with the provisions of Exhibit I, which includes billing provisions for non-compliance with such guaranteed availability.

6.3 Curtailement of the Facility.

(A) Buyer's Right to Curtail. Buyer shall notify Seller, through use of the AGC Set-Point, to curtail the production and delivery of all or a portion of the Renewable Energy from the Facility to the Point of Delivery. If AGC dispatch is unavailable, Buyer may notify Seller through telephonic communication to Real-Time Contact as identified in Exhibit D, confirmed in writing within a reasonable time and specifying that the curtailment is pursuant to this Article 6.3 for any reason and in its sole discretion, which curtailment shall be for such period of time as Buyer shall specify in such Notice (which period of time may be left indefinite as to duration, in which case deliveries of the Renewable Energy shall not recommence until Buyer has notified Seller, by telephonic communication confirmed in writing within a reasonable time, to recommence such deliveries).

(B) Other Curtailments. Seller shall at all times during the Term comply with the directives of the Transmission Authority given pursuant to the Transmission Tariff or the Interconnection Agreement regarding the curtailment of the delivery of all or a portion of the Renewable Energy from the Facility to the Point of Delivery.

(C) If Seller receives a curtailment notice or directive pursuant to Article 6.3(A) or 6.3(B) above, Seller shall reduce the net Renewable Energy delivered by the Facility to the Point of Delivery as soon as practical after receiving notice of such curtailment but in any event within fifteen (15) minutes or if AGC is being used as required by Transmission Operator; *provided, however*, that under all circumstances Seller will reduce production in a controlled manner in accordance with the applicable protocols, limitations and requirements of the Transmission Authority and the turbine manufacturers' guidelines. Personnel capable of starting, operating, and

stopping the Facility shall be available, either at the Facility, or capable of remotely starting, operating, and stopping the Facility within fifteen (15) minutes. In all cases personnel capable of starting, operating and stopping the Facility shall be continuously reachable by phone or text message. If Buyer receives any curtailment directive from the Transmission Authority pursuant to Article 6.3(B) above, Buyer shall promptly notify Seller of the maximum amount of Renewable Energy, if any, during the period of such curtailment that Seller may continue to deliver and the duration of such period, and Seller shall ensure that the amount of net Energy delivered by the Facility at the Point of Delivery does not exceed such amount for such duration. If Seller receives any curtailment directive from the Transmission Authority pursuant to Article 6.3(B) above, Seller shall (i) promptly (and in any event within thirty (30) minutes) notify Buyer by phone (followed by electronic mail) of the maximum amount of Renewable Energy, if any, during such curtailment that Seller may continue to deliver and the duration of such period, (ii) promptly (and in any event within thirty (30) minutes) notify Buyer of any change to such amount or duration, if any, and (iii) ensure that the amount of net Renewable Energy delivered by the Facility to the Point of Delivery does not exceed any such amount for any such duration.

6.4 Scheduling of Renewable Energy.

(A) Seller shall be solely responsible for arranging and delivering Renewable Energy to be purchased hereunder to the Point of Delivery. As between the Parties, Seller shall be solely responsible for any and all costs and charges incurred in connection with the delivery of such Renewable Energy to the Point of Delivery, whether imposed pursuant to standards or provisions established by FERC, any other Governmental Authority, any RTO, Regional Reliability Entity, or any Transmission Authority.

(B) Buyer, or its designee, shall be solely responsible for arranging, scheduling, and delivering Renewable Energy to be purchased hereunder from and beyond the Point of Delivery. As between the Parties, Buyer shall be solely responsible for any and all costs and charges incurred in connection with the delivery of such Renewable Energy from and beyond the Point of Delivery after its receipt from Seller in accordance with this PPA, whether imposed pursuant to standards or provisions established by FERC, any other Governmental Authority, any RTO, Regional Reliability Entity, or any Transmission Authority.

6.5 Market Participant and Scheduling. Buyer or its designee shall be the Market Participant for the Facility, and Buyer (or its designee) shall be responsible for all costs and obligations associated with such designation as a Market Participant. In connection with Seller's giving of the full notice to proceed with construction of the Facility, the Parties shall agree on a schedule by which Buyer (or its designee) shall be designated the Market Participant, which designation shall be effective not later than the first date on which Seller estimates that it will be delivering Test Energy hereunder to Buyer. The Market Participant shall be responsible for scheduling all Energy in compliance with the applicable intermittent resources standards and criteria, including all necessary Open Access Same Time Information System (OASIS) tagging and other procedures or protocols established by the RTO. As between the Parties, Buyer shall be responsible for all scheduling costs, imbalance costs, congestion costs, and marginal loss costs, except to the extent that such costs or penalties relate to Seller's negligence or a breach by Seller of its obligations set forth in this PPA, including, but not limited to, Seller's obligations to curtail, to operate the Facility in accordance with this PPA or the Interconnection Agreement, and to

deliver generation forecasts. Penalties or similar charges assessed by the Transmission Authority and caused by a Party's noncompliance with its scheduling or forecasting obligations set forth in this PPA shall be the responsibility of the Party whose action or inaction caused the penalty.

6.6 Forecasts. Seller shall provide, or cause to be provided, to Buyer and the Market Participant (if any) a rolling one hundred-twenty (120) hour generation forecast to include the projected number of MW's available for operation by hour for the next operating day. Seller shall provide Buyer with such forecast by 8:30 PM Central Prevailing Time each day through email communication identified in Exhibit D under the Real-Time Contact. Any prediction model or service shall use weather forecasts at and in the vicinity of the Facility, and shall also take into account the expected availability of Wind Turbines during the forecast period.

6.7 Access to Data. Beginning when available after the start of the deliveries of Renewable Energy hereunder, Seller shall provide to Buyer real-time SCADA system data with respect to the Wind Turbines of the Facility in accordance with the communications protocols developed as part of the Operating Procedures and the data set forth in Schedule 6.7 attached hereto (the "Data"), in a form reasonably acceptable to Buyer, on either a real-time basis or in accordance with the communications protocols developed as part of the Operating Procedures. If Buyer reasonably determines that the Data are inadequate for the forecast of output from the Facility to facilitate compliance with new scheduling requirements issued by the Transmission Authority, Seller shall use commercially reasonable efforts to make changes to any of the Data delivery provisions below to facilitate compliance with such new scheduling requirements. Buyer may validate the Data provided by Seller with information publicly available from nearby weather stations and substitute such Data for its scheduling purposes if the Data is missing. Seller shall maintain at least one hundred twenty (120) days' historical data for all Data required pursuant to this Article 6.7, which shall be available on a minimum time interval of a one-hour basis or an hourly average basis, except with respect to the meteorological measurements which shall be available on a minimum time interval of ten (10) minute basis, and shall make such Data available to Buyer upon Buyer's written request. Buyer shall have the right to disclose data gathered through Buyer's PI system publicly *provided, however*, that such data is (i) masked to obscure the origin of the data and (ii) aggregated so that the data cannot be correlated and used by competitors of Seller and the supplier of the Wind Turbines.

6.8 Ownership of RECs, Generation Benefits and Ancillary Services.

(A) The Parties acknowledge that existing Laws may create value in the ownership, use or allocation of Renewable Energy Credits (RECs), Generation Benefits and Ancillary Services. Seller hereby sells, transfers and conveys to, Buyer all RECs, Generation Benefits and Ancillary Services associated with Test Energy, and Renewable Energy produced and delivered to Buyer from the Facility under this PPA. With respect to RECs, Generation Benefits and Ancillary Services, the following apply:

1. Until the Scheduled Termination Date, subject to early termination as provided in this PPA or otherwise agreed to by the Parties, Seller hereby automatically and irrevocably assigns to Buyer all rights, title and authority for Buyer to register the Facility as an Eligible Energy Resource and to own, hold and manage such RECs in Buyer's own name and for Buyer's account, including all rights associated with any renewable energy information or tracking

system that exists or may be established (including but not limited to participants in any applicable REC Registration Program and the United States) with regard to monitoring, registering, tracking, certifying, or trading such credits. Seller hereby authorizes Buyer to act as its agent for the purposes of registering the Eligible Energy Resource, tracking and certifying RECs and Buyer has full authority to hold, retire, sell or trade such RECs within its own account of said renewable energy information or tracking systems. Upon the request of Buyer, at no cost to Buyer (except as otherwise provided herein), (i) Seller shall deliver or cause to be delivered to Buyer such attestations/certifications of RECs, and (ii) Seller shall cooperate with Buyer's registration and certification of RECs. At Buyer's request, Seller shall take Commercially Reasonable steps to register itself or the RECs with tracking or accounting systems and Buyer shall reimburse Seller for its third-party out-of-pocket unreimbursed costs in connection with such registrations.

2. Full compensation for this conveyance by Seller to Buyer of all RECs, Generation Benefits and Ancillary Services associated with the Facility is included in the calculation of the Renewable Energy Payment Rate and Test Energy Rate and therefore is at no additional charge under this PPA (except as otherwise provided herein). Any compensation Seller actually receives under the Interconnection Agreement or otherwise for Generation Benefits or Ancillary Services associated with the Facility and its output shall be provided to Buyer at no additional cost under this PPA (except as otherwise provided herein). Seller shall credit Buyer, as a reduction to Seller's monthly invoice or other mutually- agreed upon mechanism, for any compensation that Seller receives for Generation Benefits or Ancillary Services. Seller shall use Commercially Reasonable Efforts to maximize the availability of Generation Benefits and Ancillary Services available from the Facility, *provided, however*, that Seller shall not be required to make any capital expenditures or incur any increased operating expenses in connection with such efforts. Notwithstanding the above, compensation to be provided to Buyer under this Article shall not include cost recovery available to Seller from the Transmission Authority or any other payments received by Seller pursuant to or under a FERC-filed reactive power rate.

3. Subject to Seller meeting its obligations under this PPA including Article 3, Article 4, Article 5 and Exhibit C (as such Exhibit C will be replaced pursuant to Article 3.1 of this PPA), Seller makes no representations or warranties in respect of, and provides no guarantee with respect to, the availability of, or the quantity, quality, nature or value of, any Generation Benefits, RECs or Ancillary Services in respect of the Facility or otherwise, all of which is provided on an "AS IS/WHERE IS" basis. Buyer shall not have the right to direct the operation or maintenance of the Facility, or to modify the design of the Facility or any component thereof, for purposes of affecting the production, quantity, quality, nature or value of the Generation Benefits, RECs or Ancillary Services in respect of the Facility.

ARTICLE 7 - PAYMENT CALCULATIONS

7.1 Renewable Energy Payment Rate.

(A) Prior to the Commercial Operation Date, Buyer shall pay Seller for Test Energy delivered to the Point of Delivery pursuant to Article 4.3 at the Test Energy Rate. Seller shall be entitled to no Compensable Curtailment Energy payment prior to the COD in connection with Test Energy.

(B) Commencing on the Commercial Operation Date, Buyer shall pay Seller the Renewable Energy Payment Rate for Renewable Energy and RECs delivered pursuant to this PPA.

7.2 Curtailed Energy Payment Rate.

(A) Beginning on the Commercial Operation Date, Buyer shall dispatch the Facility through the dispatch procedures established by Buyer and Seller in accordance with Good Utility Practices, copies of which will be finalized by the Parties at least three (3) months prior to the Commercial Operation Date.

(B) If a Compensable Curtailment occurs, then:

1. the Parties shall determine the quantity of Potential Energy that would have been produced by the Facility but for the Compensable Curtailment.

2. For purposes of this PPA, "Compensable Curtailment Energy" shall be the number of MWh represented by the Potential Energy less the Renewable Energy actually delivered and measured by the Electric Metering Devices (and excluding any Non-Compensable Curtailments) during the period of a Compensable Curtailment.

3. Buyer shall pay to Seller for such Compensable Curtailment Energy the sum of (i) all amounts that Seller would have received from Buyer under this PPA had such Compensable Curtailment Energy actually been delivered and (ii) the Grossed-up PTC Amount.

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

(C) As used in this PPA, "Compensable Curtailment" means any curtailment, in whole or in part, of the production or deliveries of Renewable Energy from the Facility due to:

1. Buyer or Transmission Authority directives to curtail for reasons other than an Emergency, Forced Outage, Force Majeure, any market dispatch that includes an OOME flag, or Article 7.2(D);

2. Buyer's breach of, or failure to perform, its obligations under this PPA;

3. failure of Buyer to submit an offer or schedule for the output of Renewable Energy from the Facility, as long as the failure to submit a schedule was not caused in any material part by Seller's breach of this PPA;

4. provided that an offer or schedule is submitted by Buyer, failure of such offer or schedule to clear, in whole or in part, in the RTO market as long as the failure of the schedule to clear, was not caused in any material part by Seller's breach of this PPA;

5. failure of Buyer to maintain its status, or otherwise perform obligations, as Market Participant in the RTO or as Eligible Customer under the Transmission Tariff, as applicable; and

6. Buyer's failure to obtain and maintain, for all Renewable Energy generated by the Facility, firm transmission service from and beyond the Point of Delivery if the curtailment would not have occurred if Buyer had such firm transmission service in place at the time in question.

(D) In addition, as used in this PPA, "Non-Compensable Curtailment" means:

1. any action by the Transmission Authority, including any declaration of an Emergency or Force Majeure under and as defined in the Interconnection Agreement;

2. any curtailment of the Facility by the ERO (and not caused or requested by Buyer) due to the Facility having a provisional or conditional Interconnection Agreement (as described under the Transmission Tariff); and

3. any other curtailment, in whole or in part and not caused by Buyer, of production or deliveries of Renewable Energy from the Facility that is not a Compensable Curtailment.

For the sake of clarity, if Seller fails to reduce, in accordance with the provisions of this PPA (including the applicable protocols, limitations and requirements of the Transmission Authority and the Wind Turbine manufacturers' guidelines), the net Renewable Energy from the Facility pursuant to a directive from Buyer pursuant to Article 6.3(A), Seller shall not be entitled to any compensation for the Renewable Energy that was not so curtailed.

ARTICLE 8 - BILLING AND PAYMENT

8.1 Billing.

(A) The billing period shall be the calendar month. Within ten (10) Days after the end of a calendar month, Buyer will provide to Seller a statement containing the applicable billing parameters for that month based on Buyer's reading of the Electric Metering Devices (such applicable billing parameters to include a report on the total number of MWh of Renewable Energy delivered to the Point of Delivery. Within ten (10) Days after the end of a calendar month, Seller shall provide to Buyer the lost production due to Compensable Curtailments in five (5) minute increments, the lost production due to Non-Compensable Curtailments and the reason for classification of such lost production as Non-Compensable Curtailments, the start and stop times at which the AGC system adjusted the AGC Set Point and Buyer's assessment of the amount due with respect to that calendar month) in Central Prevailing Time (CPT). Seller will work with Buyer to determine the magnitude of Compensable and Non-Compensable Curtailment MWh amounts. No later than ten (10) Business Days after the end of each month, Seller shall submit an invoice to Buyer in a form and by a method mutually agreed to by the Parties showing the payment amount due Seller with respect to the previous calendar month (including but not limited to payments owing under Article 7.2(B)3 with respect to Compensable Curtailment Energy), specifying the products and services provided, all billing parameters, rates and factors, and any

other data reasonably relevant to the calculation of payments due to Seller (including but not limited to Seller's calculations with respect to any Compensable Curtailment Energy included in such invoice).

(B) Seller shall include an explanation of any items in dispute, as well as all supporting documentation upon which Seller relies. Billing disputes shall be resolved in accordance with Article 8.3.

(C) All billing data based on metered deliveries to Buyer shall be based on meter readings in accordance with Article 5.2.

8.2 Payment. Unless otherwise specified herein, undisputed payments shall be payable by check or electronic funds transfer, as designated by the owed Party, on or before the tenth (10th) Business Day following receipt of the invoice. Remittances received by mail will be considered to have been paid when due if the postmark indicates the payment was mailed on or before the tenth (10th) Business Day following receipt of the billing invoice.

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

(B) All payments shall be made in full, without deduction, set-off, counterclaim or condition whatsoever.

8.3 Billing Disputes. Either Party may dispute invoiced amounts, but shall pay at least the undisputed portion on or before the date due. To resolve any billing dispute, the Parties shall use the procedures set forth in Article 12. When the billing dispute is resolved, the Party owing shall pay the amount owed within ten (10) Business Days of the date of such resolution, without late payment interest except to the extent that it shall have been established that the amount owed was not disputed in good faith, in which case late payment interest charges shall be calculated on the amount found not to have been disputed in good faith in accordance with the provisions of Article 8.2.

8.4 Adjustments. In the event that (A) either Party discovers an error in billings or payments under this PPA due to metering, accounting or other errors, (B) a prior invoice was prepared on an estimated basis pursuant to this Article 8, or (C) SPP makes any adjustment that affects payments hereunder, each Party shall be entitled to an adjustment of the amount payable hereunder to reflect such revised price, error, or the availability of actual (as opposed to estimated) invoicing information, provided, that, (a) such adjustment is made within sixty (60) Days from the date that such Party knew or should have known the information supporting such adjustment and (b) the Party that seeks an adjustment to invoices as described in this Article 8 provides the other Party with notice and a description of the desired adjustment. Such notice shall include a calculation of the payment necessary to correct the prior invoice. Any invoice that has not been challenged pursuant to this Article 8 on or prior to the date that the amount used in preparation of such invoice are no longer subject to adjustment by SPP shall be deemed final and not subject to

adjustment under this Article 8; provided, however, in the event that a particular error(s) is not discoverable on or before such date, either Party may challenge that invoice as set forth in this Article 8 within sixty (60) days of such discovery; provided further, if an invoice has not been challenged pursuant to this Article 8 within twenty-four (24) months of the date it was rendered it shall be deemed final and not subject to adjustment under this Article 8.

ARTICLE 9 - OPERATIONS AND MAINTENANCE

9.1 Operation and Administration.

(A) Seller shall staff, control, and operate the Facility, at its own expense in a manner consistent in all material respects with Good Utility Practices, the terms of the Interconnection Agreement and the Operating Procedures, which shall be established in accordance with Good Utility Practices. Personnel shall be available at all times via telephone or other electronic means with (i) the capability of remotely starting, operating and stopping the Facility within manufacturers specifications for safe operation of the equipment (estimated to be approximately fifteen (15) minutes), and (ii) the ability to be present at the Site as soon as possible making Commercially Reasonable Efforts.

(B) Each Party shall comply in all material respects with the applicable requirements of NERC, ERO, Transmission Authority, FERC, or successor organizations, Buyer requirements, Governmental Authority, and Good Utility Practice in the operation of the Facility (in the case of Seller) and otherwise in connection with the performance of this PPA. To the extent that the actions of a Party contributes in whole or in part to actions that result in monetary penalties being assessed to other Party by NERC, ERO, Transmission Authority, FERC, or other Governmental Authority, the responsible Party shall reimburse the other Party for all such monetary penalties proximately caused by such actions.

(C) Seller shall be responsible for providing accurate and timely updates on the current availability of the Facility and other data as required. Seller shall provide to Buyer the data points set forth in Exhibit F hereto and a day-ahead availability forecast. Seller acknowledges that such data and forecasting is consistent with the reporting requirements required for compliance with NERC standards intended to maintain reliability and Applicable Law. Seller, as the generator and interconnecting customer, is primarily responsible for complying with Applicable Law, including NERC standards and to report the information to Transmission Authority, ERO or other reliability coordinator. For the avoidance of doubt, Seller shall remain responsible for complying with any requirements to provide data and forecast information to the Transmission Authority under the Interconnection Agreement.

9.2 Facility Maintenance.

(A) Seller shall maintain the Facility in accordance in all material respects with Good Utility Practice and relevant equipment manufacturers' requirements. Seller shall coordinate its regular maintenance requirements for the Facility with Buyer. Maintenance Schedules shall be provided to Buyer in writing ("Maintenance Schedule") and shall comply in all material respects with any applicable requirements regarding maintenance timing as set forth in the Transmission Tariff.

(B) When Forced Outages occur, Seller shall, as soon as practical, notify Buyer or Buyer's EMCC, as applicable, of the existence, nature, start time, and expected duration of the Forced Outage. As soon as possible, Seller shall inform Buyer's EMCC of changes in the expected duration of the Forced Outage unless relieved of this obligation by Buyer's EMCC for the duration of each Forced Outage.

9.3 Books and Records.

(A) Seller shall maintain an accurate and up-to-date operating log, in electronic format, at the Facility with records of production for each clock hour; changes in operating status; Forced Outages; information required by Applicable Law, Governmental Authority, Transmission Authority, or the ERO in the prescribed format; and other information reasonably requested by Buyer.

(B) Seller and Buyer shall each keep complete and accurate records and all other data required by each of them for the purposes of proper administration of this PPA, including such records as may be required by Governmental Authorities, Transmission Authority, NERC or ERO as applicable. All records of Seller pertaining to the operation of the Facility shall be maintained at Seller's headquarters or such other location as is mutually agreed to by the Parties. All applicable records of Buyer pertaining to the operation of the Facility shall be maintained at Buyer's headquarters or such other location as is mutually agreed to by the Parties.

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

(D) Buyer may audit and examine from time to time upon reasonable advance request and during normal business hours: (i) Seller's operating procedures, (ii) equipment manuals, Operating Records, (iii) and data kept by Seller relating to transactions under and administration of this PPA, by Buyer with Applicable Law and relevant accounting standards.

9.4 Operating Committee and Operating Procedures.

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

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

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

(D) The Operating Committee shall have authority to act in all technical and day-to-day operational matters relating to performance of this PPA and to attempt to resolve disputes or potential disputes, *provided, however*, that such representatives and the Operating Committee shall be advisory only and shall have no authority to amend or modify any terms or conditions of this PPA.

9.5 Access to Facility. Appropriate representatives of Buyer shall have access to the Facility with Commercially Reasonable prior Notice, to read meters and perform inspections as may be appropriate to facilitate the performance of this PPA, not more than five (5) times per calendar year. While at the Facility, such representatives shall comply with all of Seller's applicable safety and health rules and requirements and shall conduct themselves in a manner that will not interfere with the operation of the Facility.

ARTICLE 10 - SECURITY FOR PERFORMANCE

10.1 Security Fund.

(A) Not later than fifteen (15) Business Days after the Effective Date, Seller shall establish the Pre-COD Security Fund at a level of \$_____ per MW of anticipated Nameplate Capacity of the Facility. Within five Business Days after the Commercial Operation Date, Seller shall increase the Security Fund to bring the total Security Fund balance to a total of \$_____ per MW of Nameplate Capacity of the Facility, which shall represent the full amount of the Post-COD Security Fund amount. Seller shall maintain the Security Fund at the applicable required level throughout the Term. Seller shall not be required to replenish any amounts drawn from the Security Fund. Buyer shall promptly provide Seller with Notice of any amount drawn from the Security Fund. Failure to establish and maintain the Security Fund for the times and in the manner described in this Article shall constitute a material default of this PPA by Seller.

(B) The Security Fund shall be held by or for the benefit of Buyer as security for the payment of, and be available to pay, any and all amounts due and unpaid (after Notice and the passing of the applicable cure period set forth in Article 11.1(A)) to Buyer pursuant to this PPA, including damages attributable to Seller's breach of this PPA and the payment of Liquidated Delay Damages and Replacement Energy Costs owing by Seller hereunder. In addition to any other remedy available to it, Buyer may, before or after termination of this PPA, draw from the Security Fund such amounts as are necessary to recover amounts owed to Buyer pursuant to this PPA including any damages due to Buyer and any amounts for which Buyer is entitled to indemnification under this PPA. Buyer may, in its sole discretion, draw all or any part of such amounts due to it from any form of security to the extent available pursuant to this Article 10.1, and from all such forms, and in any sequence Buyer may select. Any failure to draw upon the Security Fund or other security for any damages or other amounts due to Buyer shall not prejudice Buyer's rights to recover such damages or amounts in any other manner.

(C) The Security Fund shall be maintained at Seller's expense and shall be in the form of one or more of the following instruments described below. The Security Fund must at all times be comprised of one or any combination of the following:

- i. An irrevocable standby letter of credit or a performance bond, in the form of Exhibit J or otherwise in form and substance acceptable to Buyer, issued by a Financial Institution meeting the minimum criteria as describe under the definition of Financial Institution. Security provided in this form shall be consistent with this PPA and include a provision for at least thirty (30) Days advance Notice to Buyer of any expiration or earlier termination of the security so as to allow Buyer sufficient time to exercise its rights under said security if Seller fails to extend or replace the security. The form of such security must meet Buyer's requirements to ensure that claims or draw-downs can be made unilaterally by Buyer in accordance with the terms of this PPA. Such security must be issued for a minimum term of three hundred and sixty (360) Days. Seller shall cause the renewal or extension of the security for additional consecutive terms of three hundred and sixty (360) Days or more (or, if shorter, the remainder of the Term of this PPA) no later than thirty (30) Days prior to each expiration date of the security. If the security is not renewed or extended as required herein, or if the issuing Financial Institution ceases to meet the minimum criteria hereof and Seller fails to provide a replacement form of Performance Security within thirty (30) Days of Notice from Buyer, Buyer shall have the right to draw the full amount of letter of credit and hold the amount so draw in cash and the amount so held shall constitute the Performance Security hereunder until replaced by another form of Performance Security meeting the requirements of this PPA.
- ii. United States currency either: (i) deposited in a trust or financial account under which Buyer is designated as beneficiary with sole authority to draft from the account or otherwise access the security; or (ii) held by a Financial Institution as escrow agent with instructions to pay claims made by Buyer pursuant to this PPA, such instructions to be in a form satisfactory to Buyer. Security provided in this form shall include a requirement for immediate Notice to Buyer from the Financial Institution and Seller in the event that the sums held as security in the account or trust do not at any time meet the required level for the Security Fund as set forth in this Article 10.1. Funds held in the account may be deposited in a money-market fund, short-term treasury obligations, investment-grade commercial paper and other liquid investment-grade investments with maturities of three months or less, with all investment income thereon to be taxable to, and to accrue for the benefit of, Seller, subject to the rights of Buyer hereunder. After the Commercial Operation Date is achieved, regular account sweeps for recovery of interest earned by the Security Fund shall be allowed by Seller; *provided, however*, that such sweeps shall not be permitted if the balance of the Security Fund before or after a sweep would be less than the amount required under Article 10.1(A) above. At such times as the balance in the escrow account

exceeds the amount of Seller's obligation to provide security hereunder, Buyer shall remit, or permit to be remitted, to Seller on demand (but no more than once each calendar year) any excess in the escrow account above Seller's obligations.

- iii. A guarantee, in form and substance satisfactory to Buyer from a guarantor ("Seller Guarantor") approved by Buyer, which approval shall not be unreasonably withheld, conditioned or delayed. If so approved, Seller Guarantor must maintain an Investment Grade rating for the term of the PPA, and Seller must, within five (5) Business Days, replace any guarantee provided by a Seller Guarantor who falls below the Investment Grade rating with a guarantee from an Investment Grade rated entity approved by Buyer. Failure to promptly replace in those circumstances shall constitute a material default of this PPA.

(D) Promptly following: (i) the earlier to occur of the end of the Term, or the termination of this PPA (except for termination by Buyer due to an Event of Default by Seller), and (ii) the payment of all amounts owing by Seller to Buyer under this PPA, Buyer shall release the Security Fund (including any accumulated interest, if applicable) to Seller. In the event that this PPA is terminated by Buyer due to an Event of Default by Seller, Buyer may retain an amount of the Security Fund required to satisfy any and all damages that may be due to Buyer, including (but not limited to) Liquidated Delay Damages and Actual Damages.

(E) With respect to all or any portion of the Security Fund in the form of a guarantee from Seller Guarantor, such guarantee shall be established and maintained in a fashion that provides Buyer with clear rights to call on the full principal balance of the guarantee to satisfy any and all amounts due Buyer under this PPA, as and when due. Buyer shall have the right, at any time and at its own expense, to procure the opinion of qualified counsel that (i) such guarantee is in full force and effect, and is enforceable against Seller Guarantor in accordance with its terms and conditions, and (ii) Seller Guarantor is validly existing, duly authorized and possesses all necessary corporate authority to enter into such guarantee, and Seller shall take all action reasonably necessary to enable Buyer to obtain such opinion.

(F) With respect to all or any portion of the Security Fund in the form of United States currency, such portion of the Security Fund shall be established and maintained in a fashion that provides Buyer with clear rights to call on the full principal balance of such portion of the Security Fund to satisfy any and all amounts due Buyer under this PPA, of whatever kind and nature, such rights being superior to any and all general and secured creditors of Seller and its Affiliates with respect to the Security Fund and any and all claims asserted by any such Person in a bankruptcy or insolvency proceeding, including but not limited to any creditors' trustee in bankruptcy, debtor in possession or receiver. Buyer shall have the right, at any time and at its own expense, to procure the opinion of qualified counsel that its rights as described herein are so protected, and Seller shall take all action reasonably necessary with respect to the Security Fund and in accordance with such opinion to so establish and maintain Buyer's superior rights thereto and therein.

10.2 Buyer Security. Buyer must maintain an Investment Grade rating for the term of the PPA. In the event that Buyer fails to maintain an Investment Grade credit rating, Buyer shall promptly (but no less than 5 Business Days after such failure) deliver to Seller security in an aggregate amount equal to \$_____ per MW of anticipated Nameplate Capacity. Buyer shall maintain such security in favor of Seller until it again receives an Investment Grade rating. Promptly following: (i) the earlier to occur of the end of the Term, or the termination of this PPA (except for termination by Seller due to an Event of Default by Buyer), and (ii) the payment of all amounts owing by Buyer to Seller under this PPA, Seller shall release Buyer's security (including any accumulated interest, if applicable) to Buyer. In the event that this PPA is terminated by Seller due to an Event of Default by Buyer, Seller may retain an amount of the Buyer's security required to satisfy any and all damages that may be due to Seller, including (but not limited to) Actual Damages. Buyer's security shall be maintained at Buyer's expense and shall be in the form of one or more of the following instruments described below:

(A) An irrevocable standby letter of credit or a performance bond, in the form of Exhibit K or otherwise in form and substance acceptable to Seller, issued by a Financial Institution meeting the minimum criteria as describe under the definition of Financial Institution. Security provided in this form shall be consistent with this PPA and include a provision for at least thirty (30) Days advance Notice to Seller of any expiration or earlier termination of the security so as to allow Seller sufficient time to exercise its rights under said security if Buyer fails to extend or replace the security. The form of such security must meet Seller's requirements to ensure that claims or draw-downs can be made unilaterally by Seller in accordance with the terms of this PPA. Such security must be issued for a minimum term of three hundred and sixty (360) Days. Buyer shall cause the renewal or extension of the security for additional consecutive terms of three hundred and sixty (360) Days or more (or, if shorter, the remainder of the Term of this PPA) no later than thirty (30) Days prior to each expiration date of the security. If the security is not renewed or extended as required herein, or if the Financial Institution ceases to meet the minimum criteria hereof and Buyer fails to provide a replacement form of security within thirty (30) Days of Notice from Seller, Seller shall have the right to draw the full amount of letter of credit and hold the amount so draw in cash and the amount so held shall constitute Buyer's security hereunder until replaced by another form of Buyer's security meeting the requirements of this PPA.

(B) United States currency either: (i) deposited in a trust or financial account under which Seller is designated as beneficiary with sole authority to draft from the account or otherwise access the security; or (ii) held by a Financial Institution as escrow agent with instructions to pay claims made by Seller pursuant to this PPA, such instructions to be in a form satisfactory to Seller. Security provided in this form shall include a requirement for immediate Notice to Seller from the Financial Institution and Buyer in the event that the sums held as security in the account or trust do not at any time meet the required level for Buyer's security as set forth in this Article 10.2. Funds held in the account may be deposited in a money-market fund, short-term treasury obligations, investment-grade commercial paper and other liquid investment-grade investments with maturities of three months or less, with all investment income thereon to be taxable to, and to accrue for the benefit of, Buyer, subject to the rights of Seller hereunder. Regular account sweeps for recovery of interest earned by Buyer's security shall be allowed by Buyer; *provided, however*, that such sweeps shall not be permitted if the balance of Buyer's security before or after a sweep would be less than the amount required under Article 10.2 above. At such times as the balance in the escrow account exceeds the amount of Buyer's obligation to provide

security hereunder, Seller shall remit, or permit to be remitted, to Buyer on demand (but no more than once each calendar year) any excess in the escrow account above Buyer's obligations.

ARTICLE 11 - DEFAULT AND REMEDIES

11.1 Events of Default. The following events each shall constitute an "Event of Default" of the specified Party if such event has not been cured within the cure period specified for such event:

(A) Either Party's failure to make, when due, any payment to the other Party as required by this PPA, including invoices pursuant to Article 8, Liquidated Delay Damages, Actual Damages, any required indemnification, or any other required payment, and such amount remains unpaid for a period of ten (10) Business Days after the date the defaulting Party receives Notice from the non-defaulting Party that the amount is overdue.

(B) Either Party's application for, or consent (by admission of material allegations of a petition or otherwise) to, the appointment of a receiver, trustee or liquidator for a Party or for all or substantially all of its assets, or its authorization of such application or consent, or the commencement of any proceedings seeking such appointment against it without such authorization, consent or application, which proceedings continue undismissed or unstayed for a period of ninety (90) Days from its inception.

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

(D) Either Party's unauthorized assignment or Change of Control of this PPA immediately upon its occurrence and without further Notice from the non-defaulting Party.

(E) Any material representation or warranty made by a Party in this PPA that is proven to have been false in any material respect when made or ceases to remain true during the Term if such cessation would reasonably be expected to result in a Material Adverse Effect on the non-defaulting Party and such representation or warranty is not corrected or such Material Adverse Effect is not removed within sixty (60) Days after Notice of such default from the non-defaulting Party.

(F) Either Party's failure to establish and maintain security as and in the amounts required in Article 10, and such obligations fail to be performed for a period of fifteen (15) Business Days after the non-defaulting Party provides Notice of such failure to the defaulting Party.

(G) Seller's failure to pay when due Liquidated Delay Damages owing pursuant to Article 11.2(B). For the avoidance of doubt, the Parties acknowledge that Seller's payment of

Liquidated Delay Damages and Buyer's termination right under Article 11.2(B)3 are Buyer's sole remedies for Seller's failure to achieve the Commercial Operation Milestone.

(H) The failure by either Party to perform or observe any other material obligation to the other Party under this PPA, that is not excused by Force Majeure and such failure shall remain unremedied for ninety (90) Days after Notice thereof shall have been given by the non-defaulting Party.

11.2 Remedies. Upon the occurrence of any Event of Default of this PPA, the non-defaulting Party may pursue all rights and remedies available to it at law and in accordance with the terms of this PPA, subject to the remedies limiting provisions in Article 11.3. Except as explicitly provided to the contrary in this PPA, each right or remedy of the Parties provided for in this PPA shall be cumulative of and shall be in addition to every other right or remedy provided for in this PPA, and the exercise of one or more of the rights or remedies provided for herein shall not preclude the simultaneous or later exercise by such Party of any other rights or remedies provided for herein.

(A) Termination and Damages. Subject to the remedies limiting provisions in Article 11.3, for any uncured Event of Default, the non- defaulting Party may, at its option do any, some, or all of the following:

1. Offset from any payments due from the non-defaulting Party any amount otherwise due, including any unpaid Liquidated Delay Damages or Actual Damages;
2. Seek Actual Damages in such amounts and on such basis for the default as authorized by this PPA;
3. In the case of an Event of Default by Seller, Buyer may draw on the Security Fund for any unpaid Liquidated Delay Damages, Actual Damages, or any other required and unpaid amount;
4. Terminate this PPA immediately upon Notice, without penalty or further obligation to the defaulting Party. Upon the termination of this PPA under this Article, the non-defaulting Party shall be entitled to receive from the defaulting Party, subject to the Damage Caps, all of the Liquidated Delay Damages and Actual Damages in connection with the Event of Default resulting in such termination.

(B) Liquidated Delay Damages. Prior to the COD, Seller shall be liable to pay Buyer Liquidated Delay Damages as liquidated damages and not as a penalty for any delay in meeting the Commercial Operation Milestone on the terms and conditions as follows:

1. Provided Seller actually pays Liquidated Delay Damages as and when owed, the payment of such Liquidated Delay Damages shall be Buyer's sole and exclusive remedy for Seller's failure to achieve, or Seller's delay in achieving, the Commercial Operation Milestone. Liquidated Delay Damages shall be payable in lieu of Actual Damages accrued for the period during which Liquidated Delay Damages are assessed. The Parties specifically recognize that Buyer's damages associated with any delays in achieving the Commercial Operation Milestone will be significant but that it will be difficult to quantify those damages.

2. All Liquidated Delay Damages shall begin to accrue with respect to any delay in achieving the Commercial Operation Milestone on the Day after the Commercial Operation Milestone (as may be extended pursuant to this PPA) until the Day that COD is achieved.

3. Notwithstanding the timely payment of Liquidated Delay Damages by Seller under this Article, Buyer shall have the unilateral right to terminate this PPA without further obligation or liability on its part if the COD has not been achieved by the first anniversary of the Commercial Operation Milestone (the “Outside Date”); provided, however, that if Buyer has not elected to terminate this PPA within thirty (30) days after the Outside Date, either Seller or Buyer may terminate this PPA. In the event of termination by the Seller solely pursuant to this Article, Seller shall forfeit the entire amount of the Pre-COD Security Fund minus Liquidated Delay Damages actually paid by Seller.

(C) Actual Damages. For all Events of Default arising after the COD, the non-defaulting Party shall be entitled to receive from the defaulting Party all direct damages proximately caused by such Event of Default (“Actual Damages”) incurred by the non-defaulting Party. If Seller is the defaulting Party, the Parties agree that Actual Damages recoverable by Buyer hereunder on account of an Event of Default of Seller shall include Replacement Power Costs. If Buyer is the defaulting Party, the Parties agree that Actual Damages shall include any direct damages available under this PPA and Seller’s Actual Damages shall expressly include the Replacement Sales Amount (*provided* that if this PPA is terminated by Seller due to an uncured Event of Default of Buyer, the Replacement Sales Amount shall be the net present value of such amount for the remaining Term of this PPA, using a discount rate equal to six percent (6%)).

(D) Specific Performance. In addition to the other remedies specified in this Article 11, in the event that following COD any Event of Default of a Party is not cured within the applicable cure period set forth herein, the non-defaulting Party may petition a court of competent jurisdiction for relief in the nature of specific performance if such specific performance would reasonably be expected to cure such Event of Default, except to the extent that such specific performance relief would require Seller to incur fees, costs, or expenses in excess of the Post-COD Damage Cap. By way of example only, if the breach by Seller arises from a failure by third party operating the Facility pursuant to an operating agreement entered into with Seller, and Seller fails or refuses to enforce its rights under the operating agreement that would result in the cure, or partial cure, of the Event of Default, Buyer’s right to specific performance shall include the right to obtain an order compelling Seller to enforce its rights under the operating agreement.

11.3 Limitation on Damages.

(A) Except as otherwise provided in this Article, (i) Seller’s aggregate financial liability to Buyer for Liquidated Delay Damages and all damages owing as a result of any termination pursuant to Article 11.2(B)3 shall not exceed the Pre-COD Damage Cap, and (ii) Seller’s aggregate financial liability to Buyer for post COD Actual Damages shall not exceed the Post-COD Damage Cap (collectively the “Damage Cap(s)”).

(B) The Post-COD Damage Cap shall not apply to Actual Damages arising out of any of the following events:

1. uninsured damage to Buyer-owned facilities caused by Seller's willful misconduct;
2. Seller's intentional misrepresentation or intentional misconduct in connection with this PPA or the operation of the Facility;
3. the sale or diversion by Seller to a third party of any capacity or energy committed to Buyer under this PPA except as expressly permitted hereby or to mitigate damages resulting from a Buyer breach;
4. Seller's failure (i) to maintain insurance coverages in the types and amounts required by this PPA or (ii) to apply any insurance proceeds to restoration of damaged equipment of the Facility following a casualty except to the extent allowed by this PPA.
5. any claim for third party indemnification under this PPA; and
6. any Environmental Contamination caused by Seller in connection with this PPA.

(C) The Parties confirm that the express remedies and measures of damages provided in this PPA satisfy the essential purposes hereof. Except as expressly stated to the contrary in this PPA, neither Party shall be liable to the other Party for consequential, incidental, punitive, exemplary, special, equitable or indirect damages, lost profits or other business interruption damages by statute, in tort or contract (except to the extent expressly provided herein); *provided, however*, that if either Party is held liable to a third party for such damages and the Party held liable for such damages is entitled to indemnification from the other Party hereto, the indemnifying Party shall be liable for, and obligated to reimburse the indemnified Party for, such damages; and *provided further* that Liquidated Delay Damages, Availability Damages, Replacement Power Costs, and/or the Replacement Sales Amount owing hereunder shall constitute direct, Actual Damages for all purposes of this PPA and shall not constitute consequential, incidental, punitive, exemplary, special, equitable or indirect damages, lost profits or other business interruption damages. To the extent and damages required to be paid hereunder are liquidated (including but not limited to Liquidated Delay Damages, Availability Damages, Replacement Power Costs and/or the Replacement Sales Amount), the Parties acknowledge that such damages are difficult or impossible to determine, that otherwise obtaining an adequate remedy is inconvenient, and that the liquidated damages constitute a reasonable approximation of the harm or loss.

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

ARTICLE 12 - DISPUTE RESOLUTION

12.1 Dispute Resolution.

(A) In the event of any dispute arising under this PPA (a “Dispute”), within ten (10) Business Days following Notice by either Party, (i) each Party shall appoint a representative, and (ii) the representatives shall meet, negotiate and attempt in good faith to resolve the Dispute quickly, informally and inexpensively. In the event the representatives cannot resolve the Dispute within thirty (30) Days after the first meeting, either Party may request that consideration and resolution of the Dispute be transferred to a designated representative of each Party’s senior management. Within ten (10) Days following such a request, each Party shall submit a written summary of the Dispute describing the issues and claims to a senior officer of each Party designated to address the Dispute. Within ten (10) Business Days after receipt of each Party’s Dispute summaries, the senior management representatives for both Parties shall negotiate in good faith to resolve the Dispute. If such senior management representatives are unable to resolve the Dispute thereafter, either Party may seek available legal remedies.

(B) If no Notice has been issued within twenty four (24) months following the applicable Party becoming aware of the occurrence of events or circumstances giving rise to the Dispute, the Dispute and all claims related thereto shall be deemed waived and the aggrieved Party shall thereafter be barred from proceeding thereon. For the purposes of this provision, in the case of a Dispute regarding amounts owing hereunder as set forth in an invoice provided pursuant to Article 8 hereof, the occurrence of events or circumstances giving rise to such Dispute shall be deemed to occur on the date of such invoice.

ARTICLE 13 - FORCE MAJEURE

13.1 Applicability of Force Majeure. A Party shall be relieved of its obligations to perform this PPA and shall not be considered to be in default with respect to any obligation under this PPA if, and to the extent such Party is prevented from fulfilling such obligation by Force Majeure, *provided, however*, that: (i) such Party gives prompt Notice describing the circumstances and impact of the Force Majeure; (ii) the relief from its obligations sought by such Party is of no greater scope and of no longer duration than is required by the Force Majeure; (iii) such Party proceeds with due diligence to overcome the Force Majeure and resume performance of its obligations under this PPA; and (iv) such Party provides Notice prior to the conclusion of the Force Majeure.

13.2 Limitations on Effect of Force Majeure.

(A) Force Majeure shall only relieve a Party of such obligations as are actually precluded by the Force Majeure.

(B) In no event will the existence of Force Majeure extend this PPA beyond its stated Term.

(C) If Force Majeure affecting Seller continues for an uninterrupted period of three hundred sixty-five (365) Days from its inception either Party may, at any time during the sixty (60) Days following the end of such period, terminate this PPA upon Notice to the other Party, without further obligation by either Party except as to costs and balances incurred prior to the effective date of such termination.

13.3 Delays Attributable to Buyer. Seller shall be excused from performing its obligations under this PPA where Seller can establish that such a failure was caused by any delay or failure by Buyer to perform its obligations under this PPA.

ARTICLE 14 - REPRESENTATIONS AND WARRANTIES

14.1 General Representations and Warranties. Each Party hereby represents and warrants to the other as follows, which representations and warranties will be deemed to be repeated, if applicable, by each Party throughout the Term:

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

(B) The Party's execution, delivery, and performance of all of its obligations under this PPA have been duly authorized by all necessary corporate action, and do not and will not:

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

2. violate any Applicable Law, or violate any provision in any formation documents, the violation of which could have a Material Adverse Effect; or

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

(C) This PPA is a valid and binding obligation of the representing Party.

(D) The execution and performance of this PPA will not conflict with or constitute a breach or default under any contract or agreement of any kind to which the representing Party is a party or any judgment, order, or Applicable Law, applicable to it or its business.

ARTICLE 15 - INSURANCE

15.1 Evidence of Insurance. Prior to commencement of construction of the Facility and continuing through the Commercial Operation Date, Seller shall acquire insurance coverage as required by Exhibit E-Insurance and provide Buyer with two copies of insurance certificates acceptable to Buyer evidencing that such builder's risk insurance coverage is in compliance with the specifications therefor set forth in Exhibit E-Insurance. On or before the Commercial Operation Date, Seller shall provide Buyer with two copies of insurance certificates acceptable to Buyer evidencing that the other insurance coverages for the Facility specified in Exhibit E-Insurance are in compliance with the specifications for insurance coverage set forth in Exhibit E-Insurance to this PPA. All such certificates shall (a) name Buyer as an additional insured (except worker's compensation); (b) provide that Buyer shall receive thirty (30) Days prior Notice of non-renewal, or cancellation of any of the corresponding policies (except that such Notice shall be ten (10) Days for non-payment of premiums), but in the event the insurer is not willing to give such Notice, Seller shall be required to give such Notice to Buyer; (c) provide a waiver of any rights of subrogation against Buyer, its Affiliates and their officers, directors, agents, subcontractors, and employees; and (d) indicate that the Commercial General Liability policy has been endorsed as described above. All policies shall be written with insurers with an AM Best rating of at least A-VIII or a Standard & Poor's rating of at least A. All policies shall be written on an occurrence basis, except as provided in Article 15.2. All policies shall contain an endorsement that Seller's policy shall be primary in all instances regardless of like coverages, if any, carried by Buyer. Seller's liability under this PPA is not limited to the amount of insurance coverage required herein.

15.2 Term and Modification of Insurance.

(A) All insurance required under this PPA shall cover occurrences during the Term. In the event that any insurance as required herein is commercially available only on a "claims-made" basis, such insurance shall provide for a retroactive date not later than the date of this PPA and such insurance shall be maintained by Seller for a minimum of two years after the Term.

(B) If any insurance required to be maintained by Seller hereunder ceases to be reasonably available and commercially feasible in the commercial insurance market, Seller shall provide Notice to Buyer, accompanied by a certificate from an independent insurance advisor of recognized national standing, certifying that such insurance is not reasonably available and commercially feasible in the commercial insurance market for electric generating plants of similar type, geographic location and capacity. Upon receipt of such Notice, Seller shall attempt to obtain other insurance that would provide comparable protection against the risk to be insured.

ARTICLE 16 - INDEMNITY

16.1 Indemnification.

(A) Each Party (an "Indemnifying Party") agrees to defend, indemnify and hold harmless the other Party and its members, shareholders, directors, managers, partners, officers, employees, agents and Contractors (the "Indemnified Parties") from and against, and shall

promptly reimburse each Indemnified Party with respect to any claim, demand or cause of action, including any actual loss, cost, expense, liability, fine or damage incurred or suffered by the Indemnified Party (including reasonable fees and expenses of attorneys, technical experts and expert witnesses, court costs and other out-of-pocket expenses) related to any bodily injury, death or property damage to the extent resulting from such Party's breach of this PPA (including any failure of Buyer, any of its Affiliates, and any of their officers, directors, employees, contractors, agents and representatives to comply with Seller's applicable safety and health rules and requirements as provided in Articles 4.1(B) and 9.5), such Party's violation of any law, rule or regulation or such Party's negligence or willful misconduct. Neither the coverage nor the limits of insurance required by this PPA shall in any way restrict the foregoing indemnity obligation of Seller.

(B) Nothing in this Article shall enlarge or relieve Seller of any liability to Buyer for any Event of Default under this PPA.

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

16.3 Settlement of Claim. If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim. If the Indemnifying Party assumes the defense of a claim meriting indemnification, the Indemnifying Party shall have the sole right to contest, settle or pay such claim.

16.4 Amounts Owed. Except as otherwise provided in this Article, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's actual loss.

ARTICLE 17 - LENDER PROVISIONS

17.1 Accommodation of Facility Lender. Buyer shall make Commercially Reasonable Efforts to provide such consents to collateral assignment, certifications, representations, legal opinions, information or other documents, as may be reasonably requested by Seller in connection with the financing of the Facility consistent with the terms set forth in Exhibit H-Consent Provisions (generally, a "Lender Consent"), *provided, however*, that in providing a Lender Consent, Buyer shall have no obligation to alter or modify the terms of this PPA or provide any consent or enter into any agreement, that has an materially and adversely affects any of Buyer's

rights, benefits, risks, or obligations under this PPA. Seller shall reimburse, or shall cause the Facility Lender to reimburse, Buyer for the direct and documented third party expenses (including the fees and expenses of outside counsel) incurred by Buyer in the preparation, negotiation, execution and/or delivery of the Lender Consent and any documents requested by Seller or the Facility Lender, and provided by Buyer, pursuant to this Article. Seller shall provide Buyer with a Notice identifying the Facility Lender and providing appropriate contact information for the Facility Lender.

17.2 Facility Lender Notice and Right to Cure. Seller shall provide Buyer with a Notice identifying the Facility Lender and providing appropriate contact information for the Facility Lender. Following receipt of such Notice, Buyer shall provide Notice of any breach or default of Seller to the Facility Lender, and Buyer will accept a cure performed by the Facility Lender, so long as the cure is accomplished in accordance with the terms of this PPA and within the applicable cure period set forth in this PPA.

17.3 Notice of Facility Lender Action. Within ten (10) Days following Seller's receipt of each Notice from the Facility Lender of default, or Facility Lender's intent to exercise any remedies under the Financing Documents, Seller shall deliver a copy of such Notice to Buyer.

17.4 Officer Certificates. Seller shall deliver or cause to be delivered to Buyer certificates of its officers, accountants, engineers or agents as to matters as may be reasonably requested, and shall make available personnel and records relating to the Facility to the extent that Buyer requests the same in order to fulfill any regulatory reporting requirements, to assist Buyer in registration of the Renewable Energy Credits and Generation Benefits, or in litigation, including administrative proceedings before utility regulatory commissions.

ARTICLE 18 - ASSIGNMENT AND OTHER TRANSFER RESTRICTIONS

18.1 Transfer Without Consent Is Null and Void. Any Change in Control or sale, transfer, or assignment of any interest in this PPA made without fulfilling the requirements of this PPA shall be null and void and a breach of this PPA; *provided* that Buyer's consent shall not be required in connection with any Seller Change of Control whereby Seller is acquired by an Affiliate thereof.

(A) Except as permitted in this Article, neither Party shall assign this PPA or any portion thereof, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed; *provided, however*, that (i) at least thirty (30) Days prior Notice of any proposed assignment requiring consent shall be given to the other Party; (ii) except in the case of an assignment of the PPA as security as provided in Article 18.1(A)2 below, any assignee shall expressly assume the assignor's obligations under this PPA unless otherwise agreed by the other Party, (iii) no assignment shall relieve the assignor of its obligations under this PPA in the event the assignee fails to perform, unless the other Party waives in writing the assignor's continuing obligations under this PPA; (iv) no assignment shall impair any security given by Seller unless such security has been replaced in accordance with Article 10.1; and (v) before this PPA is assigned, the assignee must first obtain such approvals as may be required by all applicable Governmental Authorities.

1. Seller's consent shall not be required for Buyer to assign this PPA to an Affiliate of Buyer; *provided, however*, that Buyer shall remain liable for obligations incurred under this PPA unless released in writing by Seller.

2. Neither Buyer's nor Seller's consent shall be required for the other party to assign this PPA for collateral purposes, to their respective lenders or for any resulting transfer in foreclosure or in lieu of foreclosure of such collateral assignment. An assigning party shall provide Notice to the other party of any such assignment no later than thirty (30) Days after the assignment.

(B) Any Change of Control of Seller, whether voluntary or by operation of law, shall require the prior written consent of Buyer, which shall not be unreasonably withheld, *provided, however*, that Buyer shall have no obligation to provide any such consent prior to the fulfillment and expiration of all rights conferred pursuant to Article 18.2. For the avoidance of doubt, in the event that at any time during the Term of the PPA a transferee acquires such rights as a result of (a) a foreclosure of the Facility; or (b) a collateral assignment associated with the Facility or Seller, the Tax Investor or such transferee herein shall be subject to the obligations set forth in Article 18.1(A)(i)-(iv).

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

ARTICLE 19 - MISCELLANEOUS

19.1 Notices. Notices required by this PPA ("Notices") shall be in writing and addressed to the other Party, including the other Party's representative on the Operating Committee, at the addresses noted in Exhibit D-Notices as either Party updates them from time to time by Notice to the other Party. Notices shall either be: (i) hand delivered; (ii) mailed, postage prepaid; or (iii) delivered by facsimile, e-mail or other electronic means. If mailed, Notices shall be simultaneously sent by facsimile, e-mail or other electronic means. 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 Facility operations shall be exempt from this Article.

19.2 Taxes and Change of Law.

(A) Seller shall be solely responsible for any and all present or future taxes and other impositions of Governmental Authorities relating to the construction, ownership or leasing, operation or maintenance of the Facility, or any components or appurtenances thereof, any sales or ad valorem taxes relating to the Facility, or any taxes imposed on the products and services generated by Seller, sold and delivered to Buyer prior to the Point of Delivery. Seller's prices under Article 7 are inclusive of such taxes and impositions during the Term. For the avoidance of doubt, Buyer will bear any sales taxes applicable to the transfer of products from and after the Point of Delivery.

(B) Buyer shall be solely responsible for the payment of any taxes imposed by Governmental Authorities on the Renewable Energy purchased under this PPA from and after the Point of Delivery.

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

19.3 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.

(A) As applicable, each Party shall give all required notices, shall procure and maintain all necessary governmental permits, licenses, and inspections necessary for performance of this PPA, and shall pay its respective charges and fees in connection therewith.

(B) Each Party shall promptly disclose to the other, any violation of any Applicable Laws arising out of or in connection with the Facility and this PPA.

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

19.4 Fines and Penalties.

(A) Each Party shall pay when due all fees, fines, penalties or costs incurred by such Party or its agents, employees or contractors for noncompliance by such Party, its employees, or subcontractors with any provision of this PPA, or any contractual obligation, Permit or requirements of Applicable Law, except for such fines, penalties and costs that are being actively contested in good faith and with due diligence by such Party and for which adequate financial reserves have been set aside to pay such fines, penalties or costs in the event of an adverse determination.

(B) If fees, fines, penalties, or costs are claimed or assessed against a Party by any Governmental Authority due to noncompliance by such Party, its employees, or subcontractors with any provision of this PPA, or any contractual obligation, Permit or requirements of Applicable Law, or, if the work of a Party or any of its contractors or subcontractors is delayed or stopped by order of any Governmental Authority due to such Party's or its employees, or subcontractors noncompliance with any provision of this PPA, or any contractual obligation, Permit or requirements of Applicable Law, such Party shall reimburse and hold the other Party harmless against any such costs incurred by the other Party, including claims for indemnity or contribution made by third parties against the other Party in accordance with Article 16.

19.5 Rate Changes.

(A) The terms and conditions and the rates for service specified in this PPA shall remain in effect for the term of the transaction described herein. Absent the Parties' written agreement, this PPA shall not be subject to change by application of either Party pursuant to Article 205 or 206 of the Federal Power Act.

(B) Absent the agreement of all Parties to the proposed change, the standard of review for changes to this PPA whether proposed by a Party, a non-party, or FERC acting *sua sponte* shall be the "public interest" standard of review set forth in *United Gas Pipe Line v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (the Mobile-Sierra doctrine), as interpreted in *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1*, 128 S. Ct. 2733 (2008).

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

19.7 Relationship of the Parties.

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

(B) Each Party shall be solely liable for the payment of all wages, taxes, and other costs related to the employment of persons to perform such services for such Party, 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 a Party shall be considered employees of the other Party for any purpose; nor shall a Party represent to any person that he or she is or shall become an employee of the other Party.

19.8 Equal Employment Opportunity Compliance Certification. Seller acknowledges that as a government contractor Buyer is subject to Applicable Laws regarding equal employment opportunity and affirmative action. Such Applicable Laws may also be applicable to Seller as a subcontractor to Buyer. All such 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).

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

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

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

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

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

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

19.15 Governing Law.

The interpretation and performance of this PPA and each of its provisions shall be governed and construed in accordance with the laws of the State of [Facility location state], exclusive of conflict of laws principles, and any question arising hereunder shall be governed according to such law. The Parties agree that any judicial action or other proceeding arising out of or in any way related to this PPA shall be brought in a state or federal court of competent jurisdiction located in [County], [State] regardless of permissive venue elsewhere, and all parties to this PPA hereby submit themselves to the jurisdiction of such court. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, EACH OF THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT EITHER OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED UPON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS PPA. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THIS PPA

19.16 Press Releases and Media Contact. Upon the request of either Party, the Parties shall develop a mutually agreed joint press release to be issued describing the location, size, type and timing of the Facility, the long-term nature of this PPA, and other relevant factual information about the relationship. In the event during the Term, either Party is contacted by the media concerning this PPA or the Facility, the contacted Party shall inform the other Party of the

existence of the inquiry, any questions asked, and the substance of any information provided to the media.

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

19.18 Confidentiality.

(A) Although this PPA is not Confidential Information (except as provided below with respect to the Confidential Provisions hereof), the Parties acknowledge and agree that during the course of the performance of their respective obligations under this PPA, either Party may need to provide information to the other Party, which the disclosing party deems confidential, proprietary or a trade secret (as more particularly defined below, “Confidential Information”).

1. Confidential Information shall include: (i) the Confidential Provisions; and (ii) all documentation and data, including special techniques, methods, computer programs and software, that the disclosing Party conspicuously labels as “proprietary” or “trade secret” and furnishes to the receiving Party and wants the receiving Party to maintain the confidentiality of such information pursuant to this Article 19. Confidential Information (other than the Confidential Provisions) shall be designated as Confidential Information by clear and distinct notation on such documentation or by equivalent method, and shall be treated as such by the receiving Party. Documentation and data (other than the Confidential Provisions) not so designated need not be considered by the receiving Party to be proprietary or trade secret; *provided, however*, that any and all data and documentation regarding Facility output, performance, outages and similar operational information shall be considered Confidential Information without the need for further designation if any disclosure thereof would be in a form or by a means that associates such data or documentation with the Facility or Seller or any of its Affiliates, or from which a reasonable person could make such an association. The Parties acknowledge and agree that the Confidential Provisions are Confidential Information. The disclosing Party hereby grants to the receiving Party authority to use Confidential Information for the purposes of this PPA, including keeping electronic copies of such Confidential Information. The receiving Party agrees to keep such Confidential Information confidential, except as set forth in this Article, to use it for work necessary to the performance of this PPA, and not to sell, transfer, sublicense, disclose or otherwise make available any such Confidential Information to others; *provided, however*, that Confidential Information may be disclosed by the receiving Party to the agents, employees, advisors, consultants, or potential or actual debt or equity investors of the receiving Party, 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; and *provided further that* a Party may disclose Confidential Information as required by Applicable Law (including in connection with any required filings with governmental regulatory agencies) provided that Notice of such disclosure is given to the providing Party and the disclosing Party seeks to have such Confidential Information protected, to the extent permitted under Applicable Law, from public disclosure when in the hands of the person to whom the same is required to be disclosed.

2. Confidential Information shall not include any data or information:

a. Which can be documented that such information was in the public domain as allowed by this Article, or through no fault or action of the receiving Party at the time it was disclosed by the disclosing Party to the receiving Party or at any time thereafter;

b. Which can be documented that it was independently developed by the receiving Party;

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

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

e. Which is legally requested or required (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process or, in the opinion of its counsel, by Applicable Laws) to be disclosed, *provided, however,* that the Party requested or required to make a disclosure shall, to the extent permitted under Applicable Law, promptly notify the non-disclosing Party, no later than five (5) Days of such request or requirement and prior to disclosure so that the non-disclosing Party may seek an appropriate protective order and/or waive compliance with the terms of this Article.

3. Disclosure by Buyer. Notwithstanding any other provision this PPA, Seller agrees that Buyer shall be entitled to make any and all disclosures necessary to its Board Of Directors, and any of its other existing or future lenders, regulators, and other authoritative bodies in the ordinary course of its business, *provided however* that Buyer shall identify and redact all of the Confidential Information as sensitive and confidential and shall endeavor to limit such disclosures to the entities described in this paragraph.

[remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the Parties have executed this PPA.

Seller:

_____ ,

By: _____

Its: _____

Buyer:

BASIN ELECTRIC POWER COOPERATIVE,
a North Dakota cooperative corporation

By: _____

Its: _____

EXHIBIT A

DEFINITIONS

The following terms shall have the meanings set forth herein:

“AC” means alternating electric current.

“Actual Damages” has the meaning set forth in Article 11.2(C).

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

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

“AGC Remote/Local” means a handshake electronic signal sent from the Facility to the EMCC AGC system, and from the EMCC AGC system to the Facility, indicating the Facility is receiving AGC Set-Point locally (from the facility) or remotely (EMCC AGC system) and is following that AGC Set-Point.

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

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

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

“As-built Supplement” shall be a supplement to Exhibit C (as such Exhibit C is replaced pursuant to Article 3.1 of this PPA), delivered to Buyer by Seller after completion of construction of the Facility, and sign off from the Facility operator, describing the Facility as actually built, and including all original equipment manufacturer and balance of plant contractor commissioning certificates and/or reports.

“Back-Up Metering” shall have the meaning set forth in Article 5.2(B).

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

“Business Day” means any Day that is not a Saturday, a Sunday, or a NERC recognized holiday in the State.

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

“Change of Control” means the occurrence of any one of the following events with respect to Seller or any direct or indirect owner of a majority of the ownership interests in Seller: (i) a transfer of a majority of the ownership interests in Seller or such owner; or (ii) any consolidation or merger of Seller or such owner in which Seller or such owner, as the case may be, is not the continuing or surviving entity, or (iii) a sale or conveyance of any direct or indirect ownership interest in Seller following which [Developer Name] or its Affiliate is no longer the direct or indirect owner of at least fifty percent (50%) of the ownership interests of Seller; provided, however, that a Change of Control shall not be deemed to have occurred as a result of:

- (i) transactions exclusively among Affiliates of Seller, or any transfer or sale of Seller or its assets to Affiliates,
- (ii) the financing obtained to develop, construct and operate the Facility, including any tax equity financing, backleverage financing or credit derivative arrangements, or any exercise by the Facility Lender of its rights and remedies under the Financing Documents,
- (iii) any refinancing or replacing of the Facility Debt by Seller, or any of its respective Affiliates, including any tax equity financing, liquidation or monetization,
- (iv) a change of control of [Developer Name],
- (v) any change of economic and/or voting rights triggered in Seller’s organizational documents arising from a tax-equity financing of the Facility,
- (vi) changes of control of any such upstream entity of Seller that is a publicly traded entity and that result or arise from the fact that such entity is publicly traded, including changes of voting control due to sales and purchases of equity interests in such entity in the market and changes to the composition of such entity’s board of directors or similar governing body at meetings of holders of equity interest of such entity,
- (vii) any transaction in which Seller offered to and Buyer declined to acquire the applicable Facility or enter into a Change of Control,
- (viii) any transaction, the sole purpose of which is to change the jurisdiction of Seller’s organization, and/or

- (ix) a transaction, the result of which is to sell all or substantially all of the assets of Seller to another entity (the “Surviving Entity”); provided that the Surviving Entity is owned directly or indirectly by the members of Seller immediately following such transaction in substantially the same proportions as their ownership of Seller’s equity securities immediately preceding such transaction; and provided, further, that the Surviving Entity expressly assumes all of Seller’s obligations under this PPA.

“COD Conditions” means all of the requirements that must be satisfied by Seller or waived by Buyer in order to established as a prerequisite to achieving Commercial Operation as set forth in Article 4.2(A).

“Commercial Operation” means the period beginning on the Commercial Operation Date and continuing through the Term of this PPA.

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

“Commercial Operation Milestone” means _____; *provided* that the Commercial Operation Milestone shall be extended Day-for-Day for each Day that Seller is prevented from achieving the Commercial Operation Date as a result of Force Majeure; and/or *provided that* notwithstanding the foregoing or anything else expressed or implied herein to the contrary, in no event will the aggregate number of Day-for-Day extensions of the Commercial Operation Milestone exceed an aggregate of 365 Days.

“Commercial Operation Year” means any consecutive twelve (12) month period during the Term, commencing January 1 and ending December 31.

“Commercially Reasonable” or “Commercially Reasonable Efforts” means, with respect to any action required to be made, attempted or taken by a Party under this PPA, the level of effort in light of the facts known to such Party at the time a decision is made that: (a) can reasonably be expected to accomplish the desired action at a reasonable cost; (b) is consistent with Good Utility 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.

“Compensable Curtailment” shall have the meaning set forth in Article 7.2(C).

“Compensable Curtailment Energy” shall have the meaning set forth in Article 7.2(B)2.

“Confidential Information” shall have the meaning set forth in Article 19.18(A).

“Confidential Provisions” means the following provisions of this PPA: (A) the Renewable Energy Payment Rate and the Test Energy Rate; (B) the provisions of Article 10 that set forth the Security Fund amounts required hereunder; (C) Article 11.2(B) (Liquidated Delay Damages) together with the amount of the Liquidated Delay Damages; and (D) Article 11.3 (Limitation on

Damages), together with the amounts of the Pre-COD Damage Cap and the Post-COD Damage Cap.

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

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

“Damage Caps” shall have the meaning set forth in Article 11.3.

“Day” means a calendar day.

“Dispute” shall have the meaning set forth in Article 12.1(A).

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

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

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

“Emergency” means any event or occurrence after the date of this PPA that results in the declaration of an Emergency Condition under and as defined in the Interconnection Agreement.

“Energy Markets Control Center” or “EMCC” means Buyer’s merchant representatives responsible for dispatch of generating units, including the Facility.

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

“ERO” means the Electric Reliability Organization certified by FERC pursuant to Article 215 of the Federal Power Act or any successor organization.

“Event of Default” means the events described in Article 11.1.

“Facility” means Seller’s electric generating facilities, associated balance of plant, parts and equipment consistent with the warranties for the major components, and all equipment necessary to interconnect to the Transmission Authority’s System, all as further described in Exhibit C-Facility Description (as the same will be replaced pursuant to Article 3.1 of this PPA and also as the same will be updated by the As-built Supplement), including all of the following (to the extent Seller has rights thereto): Seller’s equipment, buildings, Wind Turbines, generators,

step-up transformers, output breakers, facilities necessary to connect to the Interconnection Point, protective and associated equipment, improvements, and other tangible assets, contract rights, easements, rights of way, surface use agreements and other interests or rights in real estate owned or used for construction, operation, maintenance, generation and delivery of the capacity and energy subject to this PPA.

“Facility Debt” means (i) the obligations of Seller or its Affiliates to any lender or tax equity or other equity investor pursuant to the Financing Documents, including principal of, premium and interest on indebtedness, fees, expenses or penalties, amounts due upon acceleration, prepayment or restructuring, swap or interest rate hedging breakage costs and any fees or interest due with respect to any of the foregoing, and (ii) any value of any tax equity investment made in Seller or its Affiliates with respect to the tax benefits arising out of the amount of cash and tax attributes allocated to Facility.

“Facility Lender” means, collectively, any lenders or tax equity investors providing Facility Debt, including any successors or assigns thereof.

“Federal Power Act” means the provisions of 16 U.S.C. 791(A) et seq. and amendments or supplements thereto.

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

“Financial Institution” means a U.S. commercial bank, or domestic U.S. branch office of a foreign bank, having assets of at least ten billion US dollars (\$10,000,000,000), and an unsecured bond rating equivalent to “A-” or better as determined by at least one (1) nationally recognized statistical rating agency, one of which must be either Standard & Poor’s or Moody’s, or the successor to either. In addition, if such unsecured bond rating is exactly equivalent to “A-”, the Financial Institution must not be on negative credit watch by a rating agency.

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

“Force Majeure” means an event or circumstance that prevents a Party from performing its obligations under this PPA, which event or circumstance (i) was not reasonably foreseeable so as to enable the claiming Party to avoid the consequences thereof, (ii) is not within the control of, or the result of the fault or negligence, or breach of this PPA by, the Party claiming its occurrence, and (iii) which by exercise of due diligence and foresight could not reasonably have been avoided, including without limitation an action or restraint by court order or adoption or imposition of any Applicable Law by a Governmental Authority restricting or limiting the operation of the Facility (as long as the affected Party has not applied for or assisted in the application for, and has opposed

to the extent reasonable, such court order or action of the Governmental Authority), *provided, however, that* such an event or circumstance shall not include: (a) inability, or excess cost, to procure any equipment necessary to perform the obligations of this PPA; (b) acts or omissions of a third party, unless such acts or omissions are themselves excused by reason of Force Majeure; (c) changes in market conditions; or (d) any labor strikes, slowdowns, work stoppages, or other labor disruptions specific to Seller or the Facility. By way of example only, “Force Majeure” includes (i) any delay or failure by the Transmission Authority to perform its obligations under the Interconnection Agreement, (ii) acts of God; (iii) sudden actions of the elements, such as floods, earthquakes, hurricanes or tornadoes, lightning, ice storms, or high winds of sufficient strength or duration to materially damage a facility or significantly impair its operation for a period of time longer than normally encountered in similar wind facilities under comparable circumstances; (iv) fire, sabotage, vandalism beyond that which could reasonably be prevented by Seller; terrorism; war; riots; explosion; blockades; insurrection; (v) actions or inactions by any Governmental Authority taken after the Effective Date (including the adoption or change in any Applicable Laws imposed by such Governmental Authority), but only if such requirements, actions, or inactions are (1) not in response to acts or inactions of the affected Party, and (2) prevent or delay the affected Party’s performance; (vi) inability, despite due diligence, to obtain any licenses, permits, or approvals required by any Governmental Authority; and (vii) epidemic or pandemic (including COVID-19, but only to the extent of direct impacts of COVID-19 (including travel restrictions, quarantine restrictions, supply chain disruptions, and labor force disruptions) of which Seller was not aware as of the Effective Date).

“Forced Outage” means any condition at the Facility that requires the immediate and unplanned removal for a period of time reasonably believed by Seller to last for longer than one (1) hour of the Facility, or at least ten percent thereof, from service, another outage state, or a reserve shutdown state, resulting from immediate mechanical/electrical/hydraulic control system trips and operator-initiated trips in response to abnormal Facility conditions or alarms.

“Generation Benefits” means existing or future environmental benefits or attributes, economic and other related carbon credits, carbon offsets, carbon allowances or benefits, renewable energy credits or green tags, carbon dioxide emissions credits, avoided or reduced carbon dioxide emissions, that are attributable to Energy generated by Seller and sold to Buyer under this PPA, whether pursuant to or arising from any Governmental Authority or international agreement or treaty, *provided, however, that* this definition excludes any credits, offsets or other benefits arising out of or associated with any emission or pollutant other than carbon dioxide emissions.

“Good Utility Practices” means the practices, methods, standards and acts engaged in or approved by a significant portion of the applicable segment of the wind electric power generation industry pertaining to facilities of the type, similar size and location to the Facility that, at a particular time, in the exercise of Commercially Reasonable judgment, in light of the facts that are known, or reasonably should have been known, at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with Applicable Law, Permits, codes, standards, equipment manufacturer’s recommendations, reliability, safety, environmental protection, economy, and expedition. Good Utility Practices is not limited to the optimum practice, method, standard or act to the exclusion of all others, but rather to those practices, methods, standards and acts generally acceptable or approved by a significant portion of the

applicable segment of the wind electric power generation industry in the relevant region, during the relevant period.

“Governmental Authority” means any federal, state, local or municipal governmental body; any governmental, quasi-governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power; or any court or governmental tribunal. For the avoidance of doubt, Buyer and its Affiliates are not Governmental Authorities for purposes of this PPA.

“Grossed-up PTC Amount” means an amount equal to: (a) the PTCs to which Seller would have been entitled with respect to Compensable Curtailment Energy that would actually been delivered, plus (b) a “gross up” amount to take into account the federal, state and local income tax to Seller on such payments in lieu of PTCs so that the net amount retained by Seller, after payment of federal, state and local income taxes, is equal to the amount set forth in clause (a) of this definition.

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

“House Power” means retail power to the Facility.

“Indemnified Party” shall have the meaning set forth in Article 16.1.

“Indemnifying Party” shall have the meaning set forth in Article 16.1.

“Interconnection Agreement” means the separate contract for interconnection of the Facility to the Transmission Authority’s System, as such agreement may be amended from time to time. For purposes of this PPA, the Interconnection Agreement shall be interpreted to include any third party facility construction agreement or other agreement required by the Transmission Authority to interconnect the Facility in accordance with the Transmission Tariff. For the avoidance of doubt, “Interconnection Agreement” may include, at the option of Seller, any conditional or provisional interconnection agreement (as contemplated and described in the

Transmission Tariff) or any agreement where the Transmission Provider may limit the operational output of the Facility.

“Interconnection Facilities” means those facilities designated in the Interconnection Agreement for the direct purpose of interconnecting the Facility at the Interconnection Point, along with any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of such facilities, whether owned by Seller, the Transmission Authority or another entity. This equipment is conceptually depicted in Exhibit C-Facility Description to this PPA (as said Exhibit C will be replaced pursuant to Article 3.1 of this PPA).

“Interconnection Point” means the physical point within the operational authority of Transmission Authority as specified in the Interconnection Agreement, at which electrical interconnection is made between the Facility and the Transmission Authority’s System in accordance with the Transmission Authority OATT and the Interconnection Agreement.

“Investment Grade” 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 where the subject entity is not on negative credit watch if at Baa3/BBB-.

“PTC” or “Production Tax Credit” means the tax credits applicable to electricity produced from certain renewable resources pursuant to Article 45 of the Internal Revenue Code (as amended from time to time), or such substantially equivalent federal tax incentive that provides Seller with a tax credit based on energy production from any portion of the wind project.

“kW” means kilowatt.

“kWh” means kilowatt hour.

“Lender Consent” shall have the meaning set forth in Article 17.1.

“Liquidated Delay Damages” means:

For all days commencing with the Commercial Operation Milestone Date, an amount equal to Two Hundred Fifty Dollars (\$310) per MW per Day for each MW below ninety percent (90%) of the Facility’s then anticipated aggregate MW of Nameplate Capacity that have not been installed by the Commercial Operation Milestone.

For example, if 100 MW of Wind Turbines have been installed as of the Commercial Operation Milestone, Seller shall pay Buyer damages of ([Facility Size] MW * 90%) – (100 MW) * \$310/MW/day = \$_____ per day for each day up to and including March 31, 2024 in which 90% of the Facility’s anticipated Nameplate Capacity has not been completed..

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

“Maintenance Schedule” has the meaning set forth in Article 9.2.

“Market Participant” shall have the meaning set forth in the SPP Transmission Tariff with respect to the Facility.

“Material Adverse Effect” means any effect (or effects taken together) that has or is reasonably likely to have a material adverse effect on the ability of a Party to perform its obligations under this PPA.

“MW” means megawatt or one thousand kW.

“MWh” means megawatt hours.

“Nameplate Capacity” means the designed maximum output of each Wind Turbine as designated by the turbine manufacturer, or the sum of such output for the Facility, as applicable. The aggregate Nameplate Capacity of the Facility shall be as specified in the revised Exhibit C to be delivered by Seller pursuant to Article 3.1 hereof.

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

“Non-Compensable Curtailment” shall have the meaning set forth in Article 7.2(D).

“Notice(s)” shall have the meaning set forth in Article 19.1.

“Operating Committee” means one representative and one alternate representative, each from Buyer and Seller pursuant to Article 9.4.

“Operating Procedures” means those procedures developed pursuant to Article 9.4.

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

“Out of Order Merit Energy” or “OOME” has the meaning set forth in Attachment AE of the Transmission Tariff.

“Outside Date” shall have the meaning set forth in Article 11.2(B)(3).

“Park Potential” means the number provided to Buyer in real time through Buyer’s SCADA System in accordance with the Operating Procedures, which depicts Seller’s real time calculation of the Potential Energy capable of being provided by the Facility to Buyer as measured at the Point of Delivery. Park Potential shall be calculated as the aggregate energy available in real time for delivery at the Point of Delivery using the best-available data obtained through Commercially Reasonable methods; and shall be dependent upon measured wind resource, power curves, Wind Turbine availability, and derate(s) and transmission line losses, and any other adjustment necessary to accurately reflect the Potential Energy at the Point of Delivery.

“Party” and “Parties” shall have the meanings set forth in the introductory paragraph.

“Permit(s)” means all applicable construction, land use, air quality, emissions control, environmental and other permits, licenses and approvals from any Governmental Authority required under Applicable Laws for construction, ownership, operation and maintenance of the Facility and the generation and delivery of any output from the Facility to Buyer.

“PI” means the “plant information” system as described and implemented in Article 6.7.

“Point of Delivery” means the physical point within the operational authority of Transmission Authority at which Seller makes available to Buyer and delivers to Buyer the energy being provided by Seller to Buyer under this PPA as specified in Exhibit C-Facility Description to this PPA (as such Exhibit C will be replaced pursuant to Article 3.1 of this PPA).

“Post-COD Damage Cap” means the then applicable balance required to be maintained in the Security Fund per Article 10.1 of this PPA on and after the Commercial Operation Date.

“Post-COD Security Fund” means the total balance required to be maintained in the Security Fund per Article 10 of this PPA on and after the Commercial Operation Date.

“Potential Energy” means the quantity of the energy that Seller is capable of delivering at the Point of Delivery. In the event that Park Potential is not a reliable proxy for Potential Energy pursuant to Article 7.2(B), Potential Energy shall be calculated as the aggregate energy available for delivery at the Point of Delivery using the best-available data obtained through Commercially Reasonable methods; and shall be dependent upon measured wind resource, power curves, Wind Turbine availability, and derate(s) and transmission line losses, and any other adjustment necessary to accurately reflect the Facility’s capability to produce and deliver energy to the Point of Delivery.

“Pre-COD Damage Cap” means the then applicable balance required to be maintained in the Security Fund per Article 10.1 of this PPA prior to the Commercial Operation Date.

“Pre-COD Security Fund” means the amount of the Security Fund required to be posted before the Commercial Operation Date as provided in Article 10.1.

“REC Registration Program” means any State, regional, or federal program established to register Eligible Energy Resources and create and certify RECs arising from energy generated from such Resource, including any rights associated with any renewable energy information or tracking system that exists or may be established by Applicable Law with regard to monitoring, registering, tracking, certifying, or trading such credits. For purposes of this PPA, the REC Registration program shall mean the Midwest Renewable Energy Tracking System (M-RETS).

“Regional Reliability Entity” means the organization with delegated authority from NERC to develop and enforce mandatory reliability standards.

“Regional Transmission Organization” or “RTO” means any Person certified by FERC to provide open access transmission service over the transmission facilities of its members under a tariff filed with FERC. SPP is an RTO.

“Renewable Energy” means all electric energy generated by the Facility during the Term and purchased by Buyer, including all Test Energy and shall be deemed to include all RECs

associated with such electric energy and the capacity attributed to the Facility (provided, however, that with respect to forecasting, scheduling and other matters under this PPA to which the context is relevant only to energy, then “Renewable Energy” shall mean the electric energy generated by the Facility).

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

“Renewable Energy Payment Rate” means \$_____ per MWh.

“Replacement Power Costs” means, at Buyer’s election, (i) the fair market value of Renewable Energy (including capacity) that Seller is required to produce at the Facility and deliver to Buyer but fails to so produce and deliver due to an Event of Default; or (ii) the actual costs incurred by Buyer to replace the Renewable Energy (including capacity) that Seller is required to produce at the Facility and deliver to Buyer, but fails to so produce and deliver due to an Event of Default; in either case, less the sum of any payments from Buyer to Seller, under this PPA, that would be eliminated as a result of such failure; *provided, however*, that the net amount shall never be less than zero in the aggregate (it being agreed that any hour that yields a negative result will be included in the computation, but the aggregate result for all hours shall never be less than zero) and, if the calculation, in the aggregate, results in a number less than zero, the aggregate number shall be deemed to be zero. In the event of termination of this PPA by Buyer due to an uncured Event of Default of Seller pursuant to the terms and conditions of this PPA, the Replacement Power Costs will be equal to the net present value (using a discount rate equal to six percent (6%)) of such costs described above applicable to the remaining Term of this PPA (subject to the applicable Damage Cap).

“Replacement Sales Amount” means the sum of any payments which Buyer should have made but did not make to Seller less the revenue received, if any, by Seller for sales in mitigation of damages with respect to the Renewable Energy that Buyer was required to accept and purchase under this PPA, but failed to purchase.

“SCADA” means supervisory control and data acquisition.

“Scheduled Termination Date” means the end of day December 31 following the 25th anniversary of the COD.

“Security Fund” means the letter of credit, escrow fund, guaranty and/or other collateral that Seller is required to establish and maintain, pursuant to Article 10.1, as security for Seller’s performance under this PPA.

“Seller Guarantor” shall have the meaning set forth in Article 10.1(C)iii.

“Site” means the parcel of real property on which the Facility will be located, including any easements, rights of way, surface use agreements and other interests or rights in real estate necessary for the construction, operation and maintenance of the Facility. The Site is more specifically described in Exhibit C-Facility Description to this PPA (as such Exhibit C will be replaced pursuant to Article 3.1 of this PPA).

“Wind Turbine” means the devices and other equipment necessary for the Facility to collect the kinetic energy of blowing wind at the Site and convert it into electricity or thermal energy. The potential manufacturer(s) and model(s) of the Wind Turbines is identified on Exhibit C-Facility Description.

“SPP” means the Southwest Power Pool, Inc.

“Start-up Testing” means the initial synchronization to the Transmission System. Including production of energy as measured on the Electric Metering Devices.

“Tax Investor” means an individual or entity that acquires an ownership interest in Seller or any parent Affiliate of Seller for the primary purpose of obtaining the benefits associated with the PTC, accelerated depreciation, or other tax benefits associated with the Facility.

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

“Test Energy” means that energy which is produced by the Facility, delivered to Buyer at the Point of Delivery, and purchased by Buyer, pursuant to Article 4.3, in order to perform all testing of the Facility.

“Test Energy Rate” means a payment rate of seventy-five percent (75%) of the Renewable Energy Payment Rate applicable as of the Commercial Operation Date.

“Transmission Authority” means collectively those entities owning and/or operating the interconnected transmission system applicable to Seller and the Facility pursuant to a Transmission Tariff, including all entity(s) responsible under the Interconnection Agreement for providing the transmission lines, any Interconnection Facilities and other equipment and facilities with which the Facility interconnects at the Interconnection Point and transmission system.

“Transmission Authority’s System” means the contiguously interconnected electric transmission and sub-transmission facilities, over which the Transmission Authority has rights (by

ownership or contract) to provide bulk transmission of capacity and energy from the Interconnection Point.

“Transmission Tariff” means the applicable Open Access Transmission Tariff of the Transmission Authority, as amended from time to time.

EXHIBIT B

PROJECT MILESTONES

Milestone	Date
PPA Execution	
TSA Execution	
GIA Execution	
BOP-EPC Agreement Execution	
BOP-EPC NTP	
PUC State Permit	
Construction Start	
Turbine Delivery to Site Start	
Turbine Delivery to Site Complete	
Utility Back-feed available	
Commercial Operation Date	

EXHIBIT C
FACILITY DESCRIPTION AND SITE MAPS

EXHIBIT D

NOTICES AND CONTACT INFORMATION

Buyer	Seller
Notices: _____ _____ _____	Notices: _____ _____ _____
Operating Committee Representative: _____ _____ _____ Alternate: _____ _____ _____	Operating Committee Representative _____ _____ _____
Real-Time Contact Information _____ _____ _____	Real-Time Contact Information _____ _____ _____

EXHIBIT E
INSURANCE

<u>Coverage Type</u>	<u>Minimum Coverage Limits</u>
Commercial General Liability (including products/completed operations, advertising, and personal injury liability)	\$xxx per occurrence \$xxx general aggregate
Umbrella/Excess Liability	\$xxx per occurrence (injury and property damage combined)
Business Automobile Liability	Statutory Requirements in all jurisdictions where Seller has employees.
Workers' Compensation	\$xxx
Employer's Liability	\$xxx per loss
Crime Insurance	\$xxx per claim
Professional Liability or Errors and Omissions	\$xxx per occurrence \$xxx general aggregate

EXHIBIT F
DATA POINTS REQUIRED UNDER ARTICLE 9.1(C)
FACILITY DATA REQUIREMENTS
WIND PROJECT DATA REQUIREMENTS SPECIFICATION

EXHIBIT G

DISPATCH AND OPERATING PROTOCOLS

[To be appended as provided in Article 9.4.]

EXHIBIT H

LENDER CONSENT PROVISIONS

In the event Seller collaterally assigns its rights hereunder to the Facility Lender as security, any related Lender Consent will contain provisions substantially as follows:

1. Seller and Buyer will neither modify nor terminate the PPA other than as provided therein, without the prior written consent of the Facility Lender.
2. The Facility Lender shall have the right, but not the obligation, to do any act required to be performed by Seller under the PPA, and any such act performed by the Facility Lender shall be as effective to prevent or cure a default as if done by Seller itself.
3. If Buyer becomes entitled to terminate the PPA due to an uncured Event of Default by Seller, Buyer shall not terminate the PPA unless it has first given Notice of such uncured Event of Default to the Facility Lender and has given the Facility Lender the same cure period afforded to Seller under Article 12.1 of the PPA.
4. Neither the Facility Lender nor any other participant in the Facility Debt shall be obligated to perform or be liable for any obligation of Seller under the PPA until and unless any of them assumes possession of the Facility through the exercise of the Facility Lender's rights and remedies.
5. Any party taking possession of the Facility through the exercise of the Facility Lender's rights and remedies shall remain subject to the terms of the PPA and shall assume all of Seller's obligations under the PPA, both prospective and accrued, including the obligation to cure any then-existing defaults capable of cure by performance or the payment of money damages. In the event that the Facility Lender or its successor assumes the PPA in accordance with this Exhibit H, Buyer shall continue the PPA with the Facility Lender or its successor, as the case may be, substituted wholly in the place of Seller.
6. Within ninety (90) Days of any termination of the PPA in connection with any bankruptcy or insolvency Event of Default of Seller, the Facility Lender (or its successor) and Buyer shall enter into a new power purchase agreement on the same terms and conditions as the PPA and for the period that would have been remaining under the PPA but for such termination.

EXHIBIT I

MECHANICAL AVAILABILITY

Section 1. Definitions.

Capitalized terms used in this Exhibit I and not defined herein shall have the meaning assigned in Exhibit A, Definitions of the PPA.

“Actual Availability Percentage” means, with respect to any given Availability Period, a percentage calculated as (a) 100, multiplied by (b) the result of (i) the sum of all Available Hours for all Wind Turbines that were part of the Facility, divided by (ii) the sum of all Period Hours in such Availability Period for all Wind Turbines that were part of the Facility.

“Aggregate Availability Damages Cap” has the meaning set forth in Section 3(b) of this Exhibit.

“Annual Availability Damages Cap” has the meaning set forth in Section 3(b) of this Exhibit.

“Annual Report” has the meaning set forth in Section 4 of this Exhibit.

“Available Hours” means the portion of Period Hours, with respect to any given Wind Turbine, in which such Wind Turbine was electrically connected to the Interconnection Facilities. Available Hours are counted by a Wind Turbine’s inverters (through the inverters’ programmable logic controller). Available Hours shall include all Excused Hours. Available Hours will also include the time during which a Wind Turbine is deliberately de-energized to optimize output from the Facility and the time required to return Wind Turbines to service after termination of any Seller Excuse Hours event.

“Availability Damages” has the meaning set forth in Section 2(b) of this Exhibit.

“Availability Period” means each two consecutive Commercial Operation Years during the Term.

“Excused Hours” means during an Availability Period all (a) Seller Excuse Hours, and (b) other hours during which Buyer is unable for any reason (other than due to a breach by Seller of its obligations under this PPA) to accept delivery of any Renewable Energy that the Facility is otherwise capable of producing.

“Expected Facility Output” means _____ MWhs per Commercial Operation Year.

“Guaranteed Mechanical Availability Percentage” has the meaning set forth in Section 2(a) of this Exhibit.

“Period Hours” means the sum total of hours for any given Availability Period.

“Seller Excuse Hours” means those hours during which Seller is unable to schedule or deliver Renewable Energy to Buyer as a result of (a) Compensable Curtailments; (b) Non-Compensable Curtailments; (c) Force Majeure; (d) curtailment mandated by the Transmission Authority, (e) curtailment due to safety and/or scheduled maintenance; and/or (f) Buyer’s failure to perform or any other action or inaction of Buyer that is inconsistent with its obligations under this PPA and prevents Seller’s performance.

“Unavailable Hours” means those hours a Wind Turbine is not available to operate because it is (a) in an emergency, service mode or pause state (except to the extent that such emergency, service mode or pause state also constitutes an Emergency); (b) in “run” status and faulted; (c) included in a scheduled maintenance outage; or (d) otherwise not operational or capable of delivering Renewable Energy to the Point of Delivery; *provided, however*, that notwithstanding the preceding, for purposes of determining Available Hours, a Wind Turbine shall be deemed to have been available to operate during hours in which it is not operating during Excused Hours.

“Unexcused Hours” means the positive difference, if any, calculated by subtracting Excused Hours from Unavailable Hours (*e.g.*, 5,000 Unavailable Hours – 3,000 Excused Hours = 2,000 Unexcused Hours).

Section 2. Availability Guarantee.

(a) Availability Guarantee. Commencing on the first day of the second Commercial Operation Year and for the remainder of the Term, Seller guarantees that the Facility shall have achieved an average annual Actual Availability Percentage during each Availability Period equal to or greater than ninety percent (90%) for the Term (a “Guaranteed Mechanical Availability Percentage”).

(b) Availability Damages. For any Availability Period during which Seller fails to achieve the Guaranteed Mechanical Availability Percentage, Seller shall pay Buyer damages in the amount equal to (i) the Renewable Energy Payment Rate times, (ii) the Guaranteed Mechanical Availability Percentage minus the Actual Availability Percentage for such Availability Period (both expressed as a decimal), multiplied by (iii) the Expected Facility Output for such Availability Period (the “Availability Damages”), but in no event in excess of the Annual Availability Damages Cap and the Aggregate Availability Damages Cap. A sample calculation of the Availability Damages that would be owed by Seller under certain stated assumptions is provided as Attachment 1 to this Exhibit I.

Section 3. Damages Cap.

(a) The payment of Availability Damages shall be Buyer’s sole and exclusive remedy for Seller’s failure to achieve the Guaranteed Mechanical Availability Percentage.

(b) Buyer may terminate the PPA if the Actual Availability Percentage is less than 70% for two consecutive calendar years.

(c) The total Availability Damages payable by Seller for failure to achieve the Guaranteed Mechanical Availability Percentage in any Availability Period shall be capped annually at an amount equal 1/25th the Post-COD Security Fund (“Annual Availability Damages”).

Cap”) and in the aggregate at the amount of the Post-COD Security Fund (“Aggregate Availability Damages Cap”) over the Term of the PPA.

Section 4. Annual Report. At the beginning of the second Availability Period and at the beginning of each Availability Period thereafter, no later than the 30th Business Day of such Availability Period, Seller shall deliver to Buyer a calculation showing Seller’s computation of the Actual Availability Percentage of the Facility for the previous Availability Period and the Availability Damages, if any, due to Buyer (the “Annual Report”). Such Annual Report shall also include the total amount of Availability Damages paid to Buyer and shall provide notice that the Aggregate Availability Damages Cap has been reached, if applicable. If Availability Damages are due from Seller, Seller shall pay such damages no later than the 10th Business Day after providing the Annual Report; *provided*, if the Availability Damages are a negative number, the Availability Damages will be deemed to be zero dollars.

Section 5. Disputes. Disputes as to any calculations under this Exhibit I shall be addressed as provided in Article 12 of the PPA.

ATTACHMENT 1 TO EXHIBIT I

EXAMPLE CALCULATION OF AVAILABILITY DAMAGES

I. Example of Availability Percentage Calculation (PASSED)

The sample calculation set forth below is based on the following assumed facts:

During the Availability Period in question, the Facility Nameplate Capacity is 200.2 MW.

The Wind Turbines had the following operating characteristics:

	Hours	Wind Turbines Affected	Wind Turbines Hours
Period Hours ("PH")	8,760	100	876,000
Unavailable Hours ("FOH")	100	80	8,000
Excused Hours ("EH")	100	10	1,000
Unexcused Hours ("UH")			7,000

FOH includes all hours for which the Wind Turbines were unavailable.

EH includes, for example, Seller Excuse Hours.

Given these assumed facts, the Available Hours for the Wind Turbines during the Availability Period would be calculated as follows:

$$UH = FOH - EH$$

$$7,000 \text{ hours} = 8,000 \text{ hours} - 1,000 \text{ hours}$$

$$\text{Sum of Available Hours} = PH - UH$$

$$869,000 \text{ hours} = 876,000 \text{ hours} - 7,000 \text{ hours}$$

Actual Facility Availability Percentage

Given these assumed facts, the Actual Availability Percentage for the Facility during the Availability Period in question would be calculated as follows:

- (a) Sum of Available Hours: 869,000 hours
- (b) Sum of Period Hours: 876,000 hours
- (c) Actual Availability Percentage: $(\text{Sum of Available Hours} / \text{Sum of Period Hours}) \times 100$
 $= (869,000 \text{ hours} / 876,000 \text{ hours}) \times 100 = 99.2\%$

II. Example of Availability Percentage Calculation (FAILED)

The sample calculation set forth below is based on the following assumed facts:

During the Availability Period in question, the Facility Nameplate Capacity is 200.2 MW.

The Wind Turbines had the following operating characteristics:

	Hours	Wind Turbines Affected	Wind Turbines Hours
Period Hours (“PH”)	8,760	100	876,000
Unavailable Hours (“FOH”)	100	100	100,000
Excused Hours (“EH”)	10	50	500
Unexcused Hours (“UH”)			99,500

FOH includes all hours for which the Wind Turbines were unavailable.

EH includes, for example, Seller Excuse Hours.

Given these assumed facts, the Available Hours for the Wind Turbines during the Availability Period would be calculated as follows:

$$UH = FOH - EH$$

$$99,500 \text{ hours} = 100,000 \text{ hours} - 500 \text{ hours}$$

$$\text{Sum of Available Hours} = PH - UH$$

$$776,500 \text{ hours} = 876,000 \text{ hours} - 99,500 \text{ hours}$$

Actual Facility Availability Percentage

Given these assumed facts, the Actual Availability Percentage for the Facility during the Availability Period in question would be calculated as follows:

- (a) Sum of Available Hours: 776,500 hours
- (b) Sum of Period Hours: 876,000 hours
- (c) Actual Availability Percentage: $(\text{Sum of Available Hours} / \text{Sum of Period Hours}) \times 100$
 $= (776,000 \text{ hours} / 876,000 \text{ hours}) \times 100 = 88.64\%$

EXHIBIT J

SELLER'S FORM OF LETTER OF CREDIT

Letter of Credit Number: _____

Issuance Date: _____

Initial Expiration Date: _____

Initial Available Amount: _____ (United States Dollars _____)

Beneficiary:

Applicant:

Ladies and Gentlemen:

We, _____, _____ (the "Bank")
hereby establish our Irrevocable Standby Letter of Credit ("Letter of Credit") in favor of
_____ (the "Beneficiary"), on behalf of _____ and for the account
of _____, for the amount of _____ Unites Stated Dollars
_____ (USD _____) (the "Initial Available
Amount"), effective immediately.

This Letter of Credit shall expire at 5:00 p.m., Eastern Time on _____ (the "Initial
Expiration Date").

As used herein, the term "Business Day" shall mean any day except a Saturday, a Sunday or any
other day on which commercial banks are required or authorized to close in the City of New
York.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without
amendment for a one-year period from the Initial Expiration Date hereof and upon each
anniversary of such date (the "Extended Expiration Date"), unless at least 60 days prior to the then
current Expiration Date the Bank has sent the Beneficiary written notice, at the address provided
above, that Bank elects not to permit this Letter of Credit to be so extended. No presentation made
under this Letter of Credit after the then current Expiration Date will be honored.

Subject to the terms and conditions herein, funds under this Letter of Credit are available to the
Beneficiary by presentation on or prior to 5:00 p.m. Eastern Time, on or prior to the Expiration
Date, of the following:

A statement purportedly signed by an authorized representative of Beneficiary stating that payment
is due and owing by _____ to the Beneficiary under that certain
Power Purchase Agreement dated as of [insert date] by and between

_____ and Beneficiary, as may be amended, modified or supplemented from time to time (the “PPA”), and has not been received, which statement demands payment under the Letter of Credit in an amount specified by Beneficiary up to the entire remaining undrawn amount and states that the same is due and owing; or

A statement purportedly signed by an authorized representative of Beneficiary stating that, with reference to the PPA, _____ has failed to cause the Bank to extend, substitute or sufficiently increase the amount of a Letter of Credit (as defined in the PPA), or otherwise transfer sufficient credit support as required by the PPA, which statement demands payment under the Letter of Credit in an amount specified by Beneficiary up to the entire remaining undrawn amount and states that the same is due and owing pursuant to such PPA.

Any such statement presented to us by or on behalf of the Beneficiary shall purportedly be signed by duly authorized representatives of the Beneficiary.

Any full or partial drawing hereunder may be requested by transmitting copies of the requisite documents as described above to the Bank by physical delivery, facsimile to _____ or such other number as specified from time-to-time by the Bank, or by e-mail of a .pdf copy of the drawing document to _____ or such other e-mail address as specified from time-to-time by the Bank. In the event of any non-conforming presentation, the Bank shall immediately notify Beneficiary in writing, in accordance with the provisions of this Letter of Credit, that the presentation has been rejected, which notice shall indicate the reasons for dishonoring such presentation and shall, to the extent that Beneficiary physically presents such documents, return to Beneficiary the documents presented by Beneficiary in support of its demand for payment. Beneficiary may thereafter present corrected documents within the then Current Expiration Date and receive payment hereunder in the event a conforming presentation is made in accordance with the terms of this Letter of Credit.

The drawing request shall be deemed delivered when received. To the extent a presentation is made by facsimile transmission, you should provide telephonic notification thereof to _____ prior to or concurrently with the sending of such facsimile. Drawings made by facsimile or e-mail are deemed to be the operative instrument without the need of originally signed documents. If such originals are presented, they will not be examined

The Initial Available Amount shall automatically be reduced by the amount of any and all drawings honored by the Bank.

Partial and multiple drawings are permitted under this Letter of Credit.

This Letter of Credit shall remain in full force and effect with respect to any continuing balance. In the event of any partial drawing, and to the extent that Beneficiary physically presents this Letter of Credit and any supporting documents, the Bank will, promptly following such physical presentation, return the original Letter of Credit and all amendments, if any, to Beneficiary.

This Letter of Credit is not transferable or assignable.

All correspondence and any drawings (other than those made by facsimile or e-mail) hereunder are to be directed to the Bank at the address appearing in the first paragraph above.

All notices to Beneficiary shall be in writing and are required to be sent by certified letter, overnight courier, or delivered in person to: [Name and Address], or by facsimile to: [facsimile number], or by e-mail to: [e-mail address]. To the extent a notice to Beneficiary is made by Facsimile, the Bank shall provide telephonic notification thereof to [TELEPHONE NOS. TO BE PROVIDED] prior to or concurrently with the sending of such notice. Only notices to Beneficiary meeting the requirements of this paragraph shall be considered valid. Any notice to Beneficiary which is not in accordance with this paragraph shall be void and of no force or effect.

If the Bank receives a conforming presentation not later than 11:00 a.m., New York time, on any Business Day it will honor such presentation not later than 3:00 p.m., New York time on the Business Day following the date of such presentation. If the Bank receives a conforming presentation later than 11:00 a.m., New York time, on any Business Day it will honor such presentation not later than 3:00 p.m., New York time, on the second Business Day following the date of such presentation.

All payments made under this Letter of Credit shall be made by means of wire transfer in immediately available United States dollars to Beneficiary's account as indicated by Beneficiary.

All costs, fees and charges related to this Letter of Credit shall be the sole responsibility of the Applicant.

This Letter of Credit sets forth in full our obligations and such obligations shall not in any way be modified, amended, amplified or limited by reference to any documents, instruments or agreements referred to herein, except to the extent any such reference is for the definitional purposes.

The Bank engages with the Beneficiary that Beneficiary's drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to the Bank on or before the Expiration Date.

Except in the case of an increase in the Available Amount, this Letter of Credit may not be amended or modified without the Beneficiary's prior written consent.

Upon the Bank's receipt of an indemnity letter in a form acceptable to the Bank, purportedly signed by a representative of Beneficiary that includes a certification that the original of this Letter of Credit has been lost, stolen, or mutilated or destroyed, the Bank will promptly issue to Beneficiary a duplicate original of this Letter of Credit which shall constitute an original Letter of Credit for all purposes hereof.

Except so far as otherwise stated, this Letter of Credit is subject to the International Standby Practices, 1998 Revision, International Chamber of Commerce Publication No. 590, (the "ISP98").

As to matters not covered by the ISP98, the laws of the State of New York, without regard to the principles of conflicts of laws thereunder, shall govern all matters with respect to this Letter of Credit.

Please address all correspondence regarding this Letter of Credit to the attention of the Standby Letter of Credit Department located at _____, referring to our Standby Letter of Credit No. _____. For telephone assistance, please contact the Standby Letter of Credit Department at _____ and have this Letter of Credit number available.

EXHIBIT K

BUYER'S FORM OF LETTER OF CREDIT

Letter of Credit Number: _____

Issuance Date: _____

Initial Expiration Date: _____

Initial Available Amount: _____ (United States Dollars _____)

Beneficiary:

Applicant:

Ladies and Gentlemen:

We, _____, _____ (the "Bank") hereby establish our Irrevocable Standby Letter of Credit ("Letter of Credit") in favor of _____ (the "Beneficiary"), on behalf of _____ and for the account of _____, for the amount of United States Dollars _____ (USD _____) (the "Initial Available Amount"), effective immediately.

This Letter of Credit shall expire at 5:00 p.m., Eastern Time on _____ (the "Initial Expiration Date").

As used herein, the term "Business Day" shall mean any day except a Saturday, a Sunday or any other day on which commercial banks are required or authorized to close in the City of New York.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without amendment for a one-year period from the Initial Expiration Date hereof and upon each anniversary of such date (the "Extended Expiration Date"), unless at least 60 days prior to the then current Expiration Date the Bank has sent the Beneficiary written notice, at the address provided above, that Bank elects not to permit this Letter of Credit to be so extended. No presentation made under this Letter of Credit after the then current Expiration Date will be honored.

Subject to the terms and conditions herein, funds under this Letter of Credit are available to the Beneficiary by presentation on or prior to 5:00 p.m. Eastern Time, on or prior to the Expiration Date, of the following:

A statement purportedly signed by an authorized representative of Beneficiary stating that payment is due and owing by _____ to the Beneficiary under that certain Power Purchase Agreement dated as of [insert date] by and between _____ and Beneficiary, as may be amended, modified or supplemented from time to time (the "PPA"), and has not been received, which statement demands payment under the Letter of Credit in an amount specified by Beneficiary up to the entire remaining undrawn amount and states that the same is due and owing; or

A statement purportedly signed by an authorized representative of Beneficiary stating that, with reference to the PPA, _____ has failed to cause the Bank to extend, substitute or sufficiently increase the amount of a Letter of Credit (as defined in the PPA), or otherwise transfer sufficient credit support as required by the PPA, which statement demands payment under the Letter of Credit in an amount specified by Beneficiary up to the entire remaining undrawn amount and states that the same is due and owing pursuant to such PPA.

Any such statement presented to us by or on behalf of the Beneficiary shall purportedly be signed by duly authorized representatives of the Beneficiary.

Any full or partial drawing hereunder may be requested by transmitting copies of the requisite documents as described above to the Bank by physical delivery, facsimile to _____ or such other number as specified from time-to-time by the Bank, or by e-mail of a .pdf copy of the drawing document to _____ or such other e-mail address as specified from time-to-time by the Bank. In the event of any non-conforming presentation, the Bank shall immediately notify Beneficiary in writing, in accordance with the provisions of this Letter of Credit, that the presentation has been rejected, which notice shall indicate the reasons for dishonoring such presentation and shall, to the extent that Beneficiary physically presents such documents, return to Beneficiary the documents presented by Beneficiary in support of its demand for payment. Beneficiary may thereafter present corrected documents within the then Current Expiration Date and receive payment hereunder in the event a conforming presentation is made in accordance with the terms of this Letter of Credit.

The drawing request shall be deemed delivered when received. To the extent a presentation is made by facsimile transmission, you should provide telephonic notification thereof to _____ prior to or concurrently with the sending of such facsimile. Drawings made by facsimile or e-mail are deemed to be the operative instrument without the need of originally signed documents. If such originals are presented, they will not be examined

The Initial Available Amount shall automatically be reduced by the amount of any and all drawings honored by the Bank.

Partial and multiple drawings are permitted under this Letter of Credit.

This Letter of Credit shall remain in full force and effect with respect to any continuing balance. In the event of any partial drawing, and to the extent that Beneficiary physically presents this

Letter of Credit and any supporting documents, the Bank will, promptly following such physical presentation, return the original Letter of Credit and all amendments, if any, to Beneficiary.

This Letter of Credit is not transferable or assignable.

All correspondence and any drawings (other than those made by facsimile or e-mail) hereunder are to be directed to the Bank at the address appearing in the first paragraph above.

All notices to Beneficiary shall be in writing and are required to be sent by certified letter, overnight courier, or delivered in person to: [Name and Address], or by facsimile to: [facsimile number], or by e-mail to: [e-mail address]. To the extent a notice to Beneficiary is made by Facsimile, the Bank shall provide telephonic notification thereof to [TELEPHONE NOS. TO BE PROVIDED] prior to or concurrently with the sending of such notice. Only notices to Beneficiary meeting the requirements of this paragraph shall be considered valid. Any notice to Beneficiary which is not in accordance with this paragraph shall be void and of no force or effect.

If the Bank receives a conforming presentation not later than 11:00 a.m., New York time, on any Business Day it will honor such presentation not later than 3:00 p.m., New York time on the Business Day following the date of such presentation. If the Bank receives a conforming presentation later than 11:00 a.m., New York time, on any Business Day it will honor such presentation not later than 3:00 p.m., New York time, on the second Business Day following the date of such presentation.

All payments made under this Letter of Credit shall be made by means of wire transfer in immediately available United States dollars to Beneficiary's account as indicated by Beneficiary.

All costs, fees and charges related to this Letter of Credit shall be the sole responsibility of the Applicant.

This Letter of Credit sets forth in full our obligations and such obligations shall not in any way be modified, amended, amplified or limited by reference to any documents, instruments or agreements referred to herein, except to the extent any such reference is for the definitional purposes.

The Bank engages with the Beneficiary that Beneficiary's drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to the Bank on or before the Expiration Date.

Except in the case of an increase in the Available Amount, this Letter of Credit may not be amended or modified without the Beneficiary's prior written consent.

Upon the Bank's receipt of an indemnity letter in a form acceptable to the Bank, purportedly signed by a representative of Beneficiary that includes a certification that the original of this Letter of Credit has been lost, stolen, or mutilated or destroyed, the Bank will promptly issue to

Beneficiary a duplicate original of this Letter of Credit which shall constitute an original Letter of Credit for all purposes hereof.

Except so far as otherwise stated, this Letter of Credit is subject to the International Standby Practices, 1998 Revision, International Chamber of Commerce Publication No. 590, (the ISP98”).

As to matters not covered by the ISP98, the laws of the State of New York, without regard to the principles of conflicts of laws thereunder, shall govern all matters with respect to this Letter of Credit.

Please address all correspondence regarding this Letter of Credit to the attention of the Standby Letter of Credit Department located at _____, referring to our Standby Letter of Credit No. _____. For telephone assistance, please contact the Standby Letter of Credit Department at _____ and have this Letter of Credit number available.